

# Treaty of the South African Development Community

This treaty came into effect on 12 September 2000

# **SOUTH AFRICAN REVENUE SERVICE**

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## **CUSTOMS AND EXCISE ACT, 1964 AMENDMENT OF SCHEDULE No. 10 (No.10/2)**

Under section 49(5) and (5A) and for the purposes of subsection (1)(a) and (b)(f) of the said section of the Customs and Excise Act, 1964, Schedule No. 10 is amended as set out in the Schedule hereto.

**M Mpahlwa  
DEPUTY MINISTER OF FINANCE**

### **SCHEDULE**

By insertion of the following:

#### **Part 2**

Treaty of the Southern African Development Community and Protocols concluded under the provisions of Article 22 of the Treaty.

#### **Part 2A**

Treaty of the Southern African Development Community.

**Notes:**

1. Any Note to Part B of the Schedule to the General Notes to Schedule No. 1 shall apply *mutatis mutandis* to any relevant provision of the Treaty and the Protocol on Trade referred to in Part 2B(1) of this Schedule.
  
2. Insertion of the Treaty comprises:
  - (a) The text of the Treaty signed at Windhoek on 17 August 1992 by the Heads of State or Government of:  
  
The People's Republic of Angola  
  
Republic of Botswana  
  
Kingdom of Lesotho  
  
Republic of Malawi  
  
Republic of Mozambique  
  
Republic of Namibia  
  
Kingdom of Swaziland  
  
United Republic of Tanzania  
  
Republic of Zambia  
  
Republic of Zimbabwe
  
  - (b) The instruments of accession of:  
  
Republic of South Africa signed by the Executive State President at Gaborone on 29 August 1994.  
  
Republic of Mauritius signed by the Prime Minister in the Republic of South Africa on 28 August 1995.  
  
Democratic Republic of Congo signed by the President on 28 February 1998.

Republic of Seychelles signed by the President at Victoria, Mahe, Seychelles  
on 24 June 1998.

**Part 2 B**

Protocols concluded under the Provisions of Article 22 of the Treaty of the South African  
Development Community.

**Part 2 B(1)**

Protocol on Trade:

**Notes:**

1. The following Member States of the Treaty of the Southern African Development  
Community have ratified this Protocol:

Republic of Botswana

Kingdom of Lesotho

Republic of Malawi

Republic of Mauritius

Republic of Mozambique

Republic of Namibia

Republic of South Africa

Kingdom of Swaziland

United Republic of Tanzania

Republic of Zambia

Republic of Zimbabwe

2. (a) In these notes –
  - (i) “Annex” means an Annex and its Appendixes;
  - (ii) “Protocol” means the Protocol on Trade.
- (b) Part 2 B(1) contains the full text of the Protocol on Trade signed at Maseru on 24 August 1996 and its Annexes.
3. The SADC Column of Part 1 of Schedule No. 1, the General Notes of the said Schedule and provisions in Schedule No. 4 relate to the elimination of duty or reduced rates of duty, as the case may be, contemplated in Article 4 of the Protocol.
4. Amendment of the Protocol adopted at Windhoek on 7 August 2000.
  - (a) (i) The full text of the Amendment Protocol, except Annex I and Annex VII to the Protocol respectively substituted by Article 7 and inserted by Article 9 of the Amendment Protocol, is contained in this Part of this Schedule.
  - (ii) The amendments of the Protocol specified in the Articles of the Amendment Protocol comprise:
    - (aa) Article 1 – Amendment of the Table of contents of the Protocol
    - (bb) Article 2 – Amendment of Article 1 of the Protocol by inserting the definition of Protocol
    - (cc) Article 3 – Amendment of Article 9 of the Protocol
    - (dd) Article 4 – Amendment of Article 31 of the Protocol
    - (ee) Article 5 – Amendment of Article 32 of the Protocol
    - (ff) Article 6 – Amendment of Article 34 of the Protocol

(gg) Article 7 – Repeal of Annex 1 of the Protocol and substitution with the Annex contained in Annex 1 of the Amendment Protocol

(hh) Article 8 – Annex II of the Protocol is amended by inserting the Appendix contained in Annex II of the Amendment Protocol after Article 12. This Appendix (Appendix I) is entitled Regulation on Mutual Assistance and Co-operation in Customs Matters

(ii) Article 9 – This Amendment inserts two new Annexes, contained in Annex III of the Amendment Protocol -

Annex VI – Concerning the Settlement of Disputes between the Member States of the Southern African Development Community; and

Annex VII --Concerning Trade in Sugar in the Southern African Development Community

(b) Annex I of the Amendment Protocol, which repeals and substitutes Annex I of the Protocol and new Annex VII, Concerning Trade in Sugar in the Southern African Development Community, are incorporated in Part B of the Schedule to the General Notes to Schedule No. 1.

(c) The provisions of the Protocol and the Amendment Protocol shall come into operation on 1 September 2000, except Annex IV of the Protocol (concerning Transit Trade and Transit Facilities) and certain provisions of Annex VII specified in Note 4 to Part B of the Schedule to the General Notes to Schedule No. 1, which shall come into operation on a date to be specified by notice in the Gazette.

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## PREAMBLE

WE, the Heads of State or Government of:

The People's Republic of Angola  
The Republic of Botswana  
The Kingdom of Lesotho  
The Republic of Malawi  
The Republic of Mozambique  
The Republic of Namibia  
The Kingdom of Swaziland  
The United Republic of Tanzania  
The Republic of Zambia  
The Republic of Zimbabwe

**HAVING REGARD** to the objectives set forth in "Southern Africa: Toward Economic Liberation - A Declaration by the Governments of Independent States of Southern Africa, made at Lusaka, on the 1<sup>st</sup> April, 1980";

**IN PURSUANCE** of the principles of "Towards a Southern African Development Community- A Declaration made by the Heads of State or Government of Southern Africa at Windhoek, in August, 1992", which affirms our commitment to establish a Development Community in the Region;

**DETERMINED** to ensure, through common action, the progress and wellbeing of the people of Southern Africa;

**CONSCIOUS** of our duty to promote the interdependence and integration of our national economies for the harmonious, balanced and equitable development of the Region;

**CONVINCED** of the need to mobilise our own and international resources to promote the implementation of national, interstate and regional policies, programmes and projects within the framework for economic integration;

**DEDICATED** to secure, by concerted action, international understanding, support and co-operation;

**MINDFUL** of the need to involve the people of the Region centrally in the process of development and integration, particularly through the guarantee of democratic rights, observance of human rights and the rule of law;

**RECOGNISING** that, in an increasingly interdependent world, mutual understanding, good neighbourliness, and meaningful co-operation among the countries of the Region are indispensable to the realisation of these ideals;

**TAKING INTO ACCOUNT** the Lagos Plan of Action and the Final Act of Lagos of April 1980, and the Treaty establishing the African Economic Community signed at Abuja, on the 3<sup>d</sup> of June, 1991;

**BEARING IN MIND** the principles of international law governing relation between States;

Have decided to establish an international organisation to be known as the **Southern African Development Community (SADC)**, and hereby agree as follows:

## **CHAPTER ONE**

### **ARTICLE 1 DEFINITIONS**

In this Treaty, unless the context otherwise requires:

"Treaty"	means this Treaty establishing SADC;
"Protocol"	means an instrument of implementation of this Treaty, having the same legal force as this Treaty;
"Community"	means the organisation for economic integration established by Article 2 of this Treaty;
"Region"	means the geographical area of the Member States of SADC;

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**Southern African Development Community**

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"Member State"	means a member of SADC;
"Summit"	means the Summit of the Heads of State or Government of SADC established by Article 9 of this Treaty;
"High Contracting Parties"	means States, herein represented by Heads of State or Government or their duly authorised representative for purposes of the establishment of the Community;
"Council"	means the Council of Ministers of SADC established by Article 9 of this Treaty;
"Secretariat"	means the Secretariat of SADC established by Article 9 of this Treaty;
"Executive Secretary"	means the chief executive officer of SADC appointed under Article 10 (7) of this Treaty;
"Commission"	means a commission of SADC established by Article 9 of this Treaty;
"Tribunal"	means the tribunal of the Community established by Article 9 of this Treaty;
"Sectoral Committee"	means a committee referred to in Article 38 of this Treaty;
"Sector Coordinating Unit"	means a unit referred to in. Article 38 of this Treaty;
"Standing Committee"	means the Standing Committee of Officials established by Article 9 of this Treaty;
"Fund"	means resources available at any given time for application to programmes, projects and activities of SADC as provided by Article 26 of this Treaty.

**CHAPTER TWO  
ESTABLISHMENT AND LEGAL STATUS**

**ARTICLE 2  
ESTABLISHMENT**

1. By this Treaty, the High Contracting Parties establish the Southern African Development Community ( hereinafter referred to as SADC).
2. The Headquarters of SADC shall be at Gaborone, Republic of Botswana.

**ARTICLE 3  
LEGAL STATUS**

1. SADC shall be an international organisation, and shall have legal personality with capacity and power to enter into contract, acquire, own or dispose of movable or immovable property and to sue and be sued.
2. In the territory of each Member State, SADC shall, pursuant to paragraph 1 of this Article, have such legal capacity as is necessary for the proper exercise of its functions.

**CHAPTER THREE  
PRINCIPLES, OBJECTIVES AND GENERAL UNDERTAKINGS**

**ARTICLE 4  
PRINCIPLES**

SADC and its Member States shall act in accordance with the following principles:

- a) sovereign equality of all Member States;

- b) solidarity, peace and security;
- c) human rights, democracy, and the rule of law;
- d) equity, balance and mutual benefit;
- e) peaceful settlement of disputes.

**ARTICLE 5  
OBJECTIVES**

1. The objectives of SADC shall be to:
  - a) achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration;
  - b) evolve common political values, systems and institutions;
  - c) promote and defend peace and security;
  - d) promote self-sustaining development on the basis of collective self-reliance, and the interdependence of Member States,
  - e) achieve complementarity between national and regional strategies and programmes;
  - f) promote and maximise productive employment and utilisation of resources of the Region;
  - g) achieve sustainable utilisation of natural resources and effective protection of the environment;
  - h) strengthen and consolidate the long standing historical, social and cultural affinities and links among the people of the Region.



2. In order to achieve the objectives set out in paragraph 1 of this Article, SADC shall:
- a) harmonise political and socio-economic policies and plans of Member States;
  - b) encourage the people of the Region and their institutions to take initiatives to develop economic, social and cultural ties across the Region, and to participate fully in the implementation of the programmes and projects of SADC;
  - c) create appropriate institutions and mechanisms for the mobilisation of requisite resources for the implementation of programmes and operations of SADC and its Institutions;
  - d) develop policies aimed at the progressive elimination of obstacles to the free movement of capital and labour, goods and services, and of the people of the Region generally, among Member States;
  - e) promote the development of human resources;
  - f) promote the development, transfer and mastery of technology;
  - g) improve economic management and performance through regional co-operation;
  - h) promote the coordination and harmonisation of the international relations of Member States;
  - i) secure international understanding, co-operation and support, and mobilise the inflow of public and private resources into the Region;
  - j) develop such other activities as Member States may decide in furtherance of the objectives of this Treaty.

**ARTICLE 6  
GENERAL UNDERTAKINGS**

1. Member States undertake to adopt adequate measures to promote the achievement of the objectives of SADC, and shall refrain from taking any measure likely to jeopardise the sustenance of its principles, the achievement of its objectives and the implementation of the provisions of this Treaty.
2. SADC and Member States shall not discriminate against any person on grounds of gender, religion, political views, race, ethnic origin, culture or disability.
3. SADC shall not discriminate against any Member State.
4. Member States shall take all steps necessary to ensure the uniform application of this Treaty.
5. Member States shall take all necessary steps to accord this Treaty the force of national law.
6. Member States shall co-operate with and assist institutions of SADC in the performance of their duties.

**CHAPTER FOUR  
MEMBERSHIP**

**ARTICLE 7  
MEMBERSHIP**

States listed in the Preamble hereto shall, upon signature and ratification of this Treaty, be members of SADC.

**ARTICLE 8  
ADMISSION OF NEW MEMBERS**

1. Any state not listed in the Preamble to this Treaty may become a member of SADC upon being admitted by the existing members and acceding to this Treaty.

2. The admission of any such state to membership of SADC shall be effected by a unanimous decision of the Summit.
3. The Summit shall determine the procedures for the admission of new members and for accession to this Treaty by such members.
4. Membership of SADC shall not be subject to any reservations.

**CHAPTER FIVE  
INSTITUTIONS**

**ARTICLE 9  
ESTABLISHMENT OF INSTITUTIONS**

1. The following Institutions are hereby established:
  - a) The Summit of Heads of State or Government;
  - b) The Council of Ministers;
  - c) Commissions;
  - d) The Standing Committee of Officials;
  - e) The Secretariat; and
  - f) The Tribunal.
2. Other institutions may be established as necessary.

**ARTICLE 10  
THE SUMMIT**

1. The Summit shall consist of the Heads of State or Government of all Member States, and shall be the supreme policy-making Institution of SADC.

2. The Summit shall be responsible for the overall policy direction and control of the functions of SADC.
3. The Summit shall adopt legal instruments for the implementation of the provisions of this Treaty; provided that the Summit may delegate this authority to the Council or any other institution of SADC as the Summit may deem appropriate.
4. The Summit shall elect a Chairman and a Vice-Chairman of SADC from among its members for an agreed period on the basis of rotation.
5. The Summit shall meet at least once a year.
6. The Summit shall decide on the creation of Commissions, other institutions, committees and organs as need arises.
7. The Summit shall appoint the Executive Secretary and the Deputy Executive Secretary, on the recommendation of the Council.
8. Unless otherwise provided in this Treaty, the decisions of the Summit shall be by consensus and shall be binding.

**ARTICLE 11  
THE COUNCIL**

1. The Council shall consist of one Minister from each Member State, preferably a Minister responsible for economic planning or finance.
2. It shall be the responsibility of the Council to:
  - a) oversee the functioning and development of SADC;
  - b) oversee the implementation of the policies of SADC and the proper execution of its programmes;
  - c) advise the Summit on matters of overall policy and efficient and harmonious functioning and development of SADC;

- d) approve policies, strategies and work programmes of SADC;
- e) direct, coordinate and supervise the operations of the institutions of SADC subordinate to it;
- f) define sectoral areas of co-operation and allocate to Member States responsibility for coordinating sectoral activities, or re-allocate such responsibilities;
- g) create its own committees as necessary;
- h) recommend to the Summit persons for appointment to the posts of Executive Secretary and Deputy Executive Secretary;
- i) determine the Terms and Conditions of Service of the staff of the institutions of SADC;
- j) convene conferences and other meetings as appropriate, for purposes of promoting the objectives and programmes of SADC; and
- k) perform such other duties as may be assigned to it by the Summit or this Treaty;

The Chairman and Vice-Chairman of the Council shall be appointed by the Member States holding the Chairmanship and Vice-Chairmanship of SADC respectively.

The Council shall meet at least once a year.

The Council shall report and be responsible to the Summit.

Decisions of the Council shall be by consensus.

**ARTICLE 12  
COMMISSIONS**

1. Commissions shall be constituted to guide and coordinate co-operation and integration policies and programmes in designated sectoral areas.
2. The composition, powers, functions, procedures and other matters related to each Commission shall be prescribed by an appropriate protocol approved by the Summit.
3. The Commissions shall work closely with the Secretariat.
4. Commissions shall be responsible and report to the Council.

**ARTICLE 13  
THE STANDING COMMITTEE OF OFFICIALS**

1. The Standing Committee shall consist of one permanent secretary or an official of equivalent rank from each Member State, preferably from a ministry responsible for economic planning or finance.
2. The Standing Committee shall be a technical advisory committee to the Council.
3. The Standing Committee shall be responsible and report to the Council.
4. The Chairman and Vice-Chairman of the Standing Committee shall be appointed from the Member States holding the Chairmanship and the Vice-Chairmanship, respectively, of the Council.
5. The Standing Committee shall meet at least once a year.
6. Decisions of the Standing Committee shall be by consensus.

**ARTICLE 14  
THE SECRETARIAT**

1. The Secretariat shall be the principal executive Institution of SADC, and shall be responsible for:
  - a) strategic planning and management of the programmes of SADC;
  - b) implementation of decisions of the Summit and of the Council;
  - c) organisation and management of SADC meetings;
  - d) financial and general administration;
  - e) representation and promotion of SADC; and
  - f) coordination and harmonisation of the policies and strategies of Member States.
2. The Secretariat shall be headed by the Executive Secretary.
3. The Secretariat shall have such other staff as may be determined by the Council from time to time.

**ARTICLE 15  
THE EXECUTIVE SECRETARY**

1. The Executive Secretary shall be responsible to the Council for the following:
  - a) consultation and coordination with the Governments and other institutions of Member States;
  - b) pursuant to the direction of Council or Summit, or on his/her own initiative, undertaking measures aimed at promoting the objectives of SADC and enhancing its performance;

- c) promotion of co-operation with other organisations for the furtherance of the objectives of SADC;
  - d) organising and servicing meetings of the Summit, the Council, the Standing Committee and any other meetings convened on the direction of the Summit or the Council;
  - e) custodianship of the property of SADC;
  - f) appointment of the staff of the Secretariat, in accordance with procedures, and under Terms and Conditions of Service determined by the Council;
  - g) administration and finances of the Secretariat;
  - h) preparation of Annual Reports on the activities of SADC and its institutions;
  - i) preparation of the Budget and Audited Accounts of SADC for submission to the Council;
  - j) diplomatic and other representations of SADC;
  - k) public relations and promotion of SADC;
  - l) such other functions as may, from time to time, be determined by the Summit and Council.
2. The Executive Secretary shall liaise closely with Commissions, and other institutions, guide, support and monitor the performance of SADC in the various sectors to ensure conformity and harmony with agreed policies, strategies programmes and projects.
3. The Executive Secretary shall be appointed for four years, and be eligible for appointment for another period not exceeding four years.



**ARTICLE 16  
THE TRIBUNAL**

1. The Tribunal shall be constituted to ensure adherence to and the proper interpretation of the provisions of this Treaty and subsidiary instruments and to adjudicate upon such disputes as may be referred to it.
2. The composition, powers, functions, procedures and other related matters governing the Tribunal shall be prescribed in a Protocol adopted by the Summit.
3. Members of the Tribunal shall be appointed for a specified period.
4. The Tribunal shall give advisory opinions on such matters as the Summit or the Council may refer to it.
5. The decisions of the Tribunal shall be final and binding.

**ARTICLE 17  
SPECIFIC UNDERTAKINGS**

1. Member States shall respect the international character and responsibilities of SADC, the Executive Secretary and other staff of SADC, and shall not seek to influence them in the discharge of their functions.
2. In the performance of their duties, the members of the Tribunal, the Executive Secretary and the other staff of SADC shall be committed to the international character of SADC, and shall not seek or receive instructions from any Member States, or from any authority external to SADC. They shall refrain from any action incompatible with their positions as international staff responsible only to SADC.

**CHAPTER SIX  
MEETINGS**

**ARTICLE 18  
QUORUM**

The quorum for all meetings of the Institutions of SADC shall be two-thirds of its Members.

**ARTICLE 19  
DECISIONS**

Except as otherwise provided in this Treaty, decisions of the Institutions of SADC shall be taken by consensus.

**ARTICLE 20  
PROCEDURE**

Except as otherwise provided in this Treaty, the Institutions of SADC shall determine their own rules of procedure.

**CHAPTER SEVEN  
CO-OPERATION**

**ARTICLE 21  
AREAS OF CO-OPERATION**

1. Member States shall co-operate in all areas necessary to foster regional development and integration on the basis of balance, equity and mutual benefit.
2. Member States shall, through appropriate institutions of SADC, coordinate, rationalise and harmonise their overall macro-economic and sectoral policies and strategies, programmes and projects in the areas of co-operation.

3. In accordance with the provisions of this Treaty, Member States agree to co-operate in the areas of:
  - a) food security, land and agriculture;
  - b) infrastructure and services;
  - c) industry, trade, investment and finance;
  - d) human resources development, science and technology;
  - e) natural resources and environment;
  - f) social welfare, information and culture; and
  - g) politics, diplomacy, international relations, peace and security.
4. Additional areas of co-operation may be decided upon by the Council.

**ARTICLE 22  
PROTOCOLS**

1. Member States shall conclude such Protocols as may be necessary in each area of co-operation, which shall spell out the objectives and scope of, and institutional mechanisms for, co-operation and integration.
2. Each Protocol shall be approved by the Summit on the recommendation of the Council, and shall thereafter become an integral part of this Treaty.
3. Each Protocol shall be subject to signature and ratification by the parties thereto.

**ARTICLE 23  
NON-GOVERNMENTAL ORGANISATIONS**

1. In pursuance of the objectives of this Treaty, SADC shall seek to involve fully, the people of the Region and non-governmental organisations in the process of regional integration.
2. SADC shall co-operate with, and support the initiatives of the peoples of the Region and non-governmental organisations, contributing to the objectives of this Treaty in the areas of co-operation in order to foster closer relations among the communities, associations and people of the Region.

**CHAPTER EIGHT  
RELATIONS WITH OTHER STATES, REGIONAL AND  
INTERNATIONAL ORGANISATIONS**

**ARTICLE 24**

1. Subject to the provisions of Article 6(1), Member States and SADC shall maintain good working relations and other forms of co-operation, and may enter into agreements with other states, regional and international organisations, whose objectives are compatible with the objectives of SADC and the provisions of this Treaty.
2. Conferences and other meetings may be held between Member States and other Governments and organisations associated with the development efforts of SADC to review policies and strategies, and evaluate the performance of SADC in the implementation of its programmes and projects, identify and agree on future plans of co-operation.

**CHAPTER NINE  
RESOURCES, FUND AND ASSETS**

**ARTICLE 25  
RESOURCES**

1. SADC shall be responsible for the mobilisation of its own and other resources required for the implementation of its programmes and projects.
2. SADC shall create such institutions as may be necessary for the effective mobilisation and efficient application of resources for regional development.
3. Resources acquired by SADC by way of contributions, loans, grants or gifts, shall be the property of SADC.
4. The resources of SADC may be made available to Member States in pursuance of the objectives of this Treaty, on terms and conditions mutually agreed between SADC and the Member States involved.
5. Resources of SADC shall be utilised in the most efficient and equitable manner.

**ARTICLE 26  
FUND**

The Fund of SADC shall consist of contributions of Member States, income from SADC enterprises and receipts from regional and non-regional sources.

**ARTICLE 27  
ASSETS**

1. Property, both-movable and immovable, acquired by or on behalf of SADC shall constitute the assets of SADC, irrespective of their location.
2. Property acquired by Member States, under the auspices of SADC, shall belong to the Member States concerned, subject to provisions of paragraph 3 of this Article, and Articles 25 and 34 of this Treaty.
3. Assets acquired by Member States under the auspices of SADC shall be accessible to all Member States on an equitable basis.

**CHAPTER TEN  
FINANCIAL PROVISIONS**

**ARTICLE 28  
THE BUDGET**

1. The budget of SADC shall be funded by contributions made by Member States, and such other sources as may be determined by the Council.
2. Member States shall contribute to the budget of SADC in proportions agreed upon by the Council.
3. The Executive Secretary shall cause to be prepared, estimates of revenue and expenditure for the Secretariat and Commissions, and submit them to the Council, not less than three months before the beginning of the financial year.
4. The Council shall approve the estimates of revenue and expenditure before the beginning of the financial year.
5. The financial year of SADC shall be determined by the Council.

**ARTICLE 29  
EXTERNAL AUDIT**

1. The Council shall appoint external auditors and shall fix their fees and remuneration at the beginning of each financial year.
2. The Executive Secretary shall cause to be prepared and audited annual statements of accounts for the Secretariat and Commissions, and submit them to the Council for approval.

**ARTICLE 30  
FINANCIAL REGULATIONS**

The Executive Secretary shall prepare and submit to the Council for approval financial regulations, standing orders and rules for the management of the affairs of SADC.

**CHAPTER ELEVEN  
IMMUNITIES AND PRIVILEGES**

**ARTICLE 31**

1. SADC, its Institutions and staff shall, in the territory of each Member State, have such immunities and privileges as are necessary for the proper performance of their functions under this Treaty, and which shall be similar to those accorded to comparable international organisations.
2. The immunities and privileges conferred by this Article shall be prescribed in a Protocol.

**CHAPTER TWELVE  
SETTLEMENT OF DISPUTES**

**ARTICLE 32**

Any dispute arising from the interpretation or application of this Treaty, which cannot be settled amicably, shall be referred to the Tribunal.

**CHAPTER THIRTEEN  
SANCTIONS, WITHDRAWAL AND DISSOLUTION**

**ARTICLE 33  
SANCTIONS**

1. Sanctions may be imposed against any Member State that:
  - a) persistently fails, without good reason, to fulfil obligations assumed under this Treaty;
  - b) implements policies which undermine the principles and objectives of SADC; or
  - c) is in arrears for more than one year in the payment of contributions to SADC, for reasons other than those caused by natural calamity or exceptional circumstances that gravely affect its economy, and has not secured the dispensation of the Summit.
2. The sanctions shall be determined by the Summit on a case-by-case basis .

**ARTICLE 34  
WITHDRAWAL**

1. A Member State wishing to withdraw from SADC shall serve notice of its intention in writing, a year in advance, to the Chairman of SADC, who shall inform other Member States accordingly.



2. At the expiration of the period of notice, the Member State shall, unless the notice is withdrawn, cease to be a member of SADC.
3. During the one year period of notice referred to in paragraph 1 of this Article, the Member State wishing to withdraw from SADC shall comply with the provisions of this Treaty, and shall continue to be bound by its obligations.
4. A Member State which has withdrawn shall not be entitled to claim any property or rights until the dissolution of SADC.
5. Assets of SADC situated in the territory of a Member State which has withdrawn, shall continue to be the property of SADC and be available for its use.
6. The obligations assumed by Member States under this Treaty shall, to the extent necessary to fulfil such obligations, survive the termination of membership by any State.

**ARTICLE 35  
DISSOLUTION**

1. The Summit may decide by a resolution supported by three-quarters of all members to dissolve SADC or any of its Institutions, and determine the terms and conditions of dealing with its liabilities and disposal of its assets.
2. A proposal for the dissolution of SADC may be made to the Council by any Member State, for preliminary consideration, provided, however, that such a proposal shall not be submitted for the decision of the summit until all Member States have been duly notified of it and a period of twelve months has elapsed after the submission to the Council.

**CHAPTER FOURTEEN  
AMENDMENT OF THE TREATY**

**ARTICLE 36**

1. An amendment of this Treaty shall be adopted by a decision of three-quarters of all the Members of the Summit.
2. A proposal for the amendment of this Treaty may be made to the Executive Secretary by any Member State for preliminary consideration by the Council, provided, however, that the proposed amendment shall not be submitted to the Council for preliminary consideration until all Member States have been duly notified of it, and a period of three months has elapsed after such notification.

**CHAPTER FIFTEEN  
LANGUAGE**

**ARTICLE 37**

The working languages of SADC shall be English and Portuguese and such other languages as the Council may determine.

**CHAPTER SIXTEEN  
SAVING PROVISIONS**

**ARTICLE 38**

A Sectoral Committee, Sector Coordinating Unit or any other institution, obligation or arrangement of the Southern African Development Coordination Conference which exists immediately before the coming into force of this Treaty, shall to the extent that it is not inconsistent with the provisions of this Treaty, continue to subsist, operate or bind Member States or SADC as if it were established or undertaken under this Treaty, until the Council or Summit determines otherwise.

**CHAPTER SEVENTEEN  
SIGNATURE, RATIFICATION, ENTRY INTO FORCE,  
ACCESSION AND DEPOSITARY**

**ARTICLE 39  
SIGNATURE**

This Treaty shall be signed by the High Contracting Parties.

**ARTICLE 40  
RATIFICATION**

This treaty shall be ratified by the Signatory States in accordance with their constitutional procedures.

**ARTICLE 41  
ENTRY INTO FORCE**

This Treaty shall enter into force thirty (30) days after the deposit of the instruments of ratification by two-third of the States listed in the Preamble.

**ARTICLE 42  
ACCESSION**

This Treaty shall remain open for accession by any state subject to Article 8 of this Treaty.

**ARTICLE 43  
DEPOSITARY**

1. The original texts of this Treaty and Protocols and all instruments of ratification and accession shall be deposited with the Executive Secretary of SADC, who shall transmit certified copies to all Member States.

2. The Executive Secretary shall register this Treaty with the Secretariats of the United Nations Organisation and the Organisation of African Unity.

**CHAPTER EIGHTEEN  
TERMINATION OF THE MEMORANDUM OF  
UNDERSTANDING**

**ARTICLE 44**

This Treaty replaces the Memorandum of Understanding on the Institutions of the Southern African Development Coordination Conference dated 20<sup>th</sup> July, 1981.

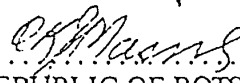
Southern African Development Community

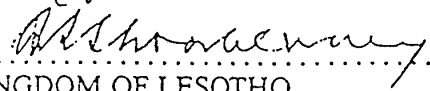
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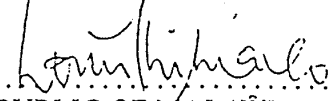
IN WITNESS WHEREOF, WE, the Heads of State or Government have signed this Treaty.


DONE AT Windhoek, on 17<sup>th</sup> Day of August, 1992 in two (2) original texts in the English and Portuguese languages, both texts being equally authentic.


  
.....  
THE PEOPLE'S REPUBLIC OF ANGOLA

  
.....  
REPUBLIC OF BOTSWANA

  
.....  
KINGDOM OF LESOTHO

  
.....  
REPUBLIC OF MALAWI

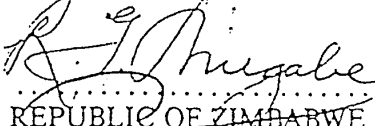
  
.....  
REPUBLIC OF MOZAMBIQUE

  
.....  
REPUBLIC OF NAMIBIA

  
.....  
KINGDOM OF SWAZILAND

  
.....  
UNITED REPUBLIC OF TANZANIA

  
.....  
REPUBLIC OF ZAMBIA

  
.....  
REPUBLIC OF ZIMBABWE

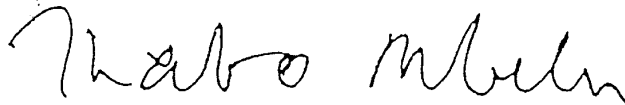
**INSTRUMENT OF ACCESSION**

**WHEREAS** the Treaty of the Southern African Development Community, done at Windhoek on 17 August 1992, remains open for accession;

**AND WHEREAS** the Government of the Republic of South Africa desires to accede to the said Treaty;

**NOW, THEREFORE**, the Government of the Republic of South Africa, having considered the Treaty, hereby, subject to approval by the Parliament of the Republic of South Africa, accedes to and accepts the same in accordance with Article 42 thereof.

**IN WITNESS WHEREOF**, I Thabo Mvuyelwa Mbeki, Executive Deputy President of the Republic of South Africa, have signed and sealed these presents at Gaborone on this the 29<sup>th</sup> day of August in the Year One Thousand Nine Hundred and Ninety Four.



**Executive Deputy President  
REPUBLIC OF SOUTH AFRICA**

# Democratic Republic of Congo



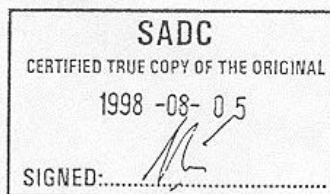
## INSTRUMENT OF ACCESSION

WHEREAS the Treaty of the Southern African Development Community done at Windhoek, Republic of Namibia on 17 August, 1992, remains open for accession;

AND WHEREAS the Government of the Democratic Republic of Congo desires to accede to the said Treaty;

NOW THEREFORE, the Government of the Democratic Republic of Congo, having considered the Treaty, **HEREBY ACCEDES THERETO** and undertakes faithfully to observe all its provisions and to carry out the stipulation contained therein.

IN WITNESS WHEREOF I, Laurent-Désiré KABILA, President of the Democratic Republic of Congo, have signed and sealed this instrument of Accession on this day of *the 28<sup>th</sup> of February* in the year one thousand nine hundred and ninety-eight.



Laurent-Désiré KABILA  
President  
Democratic Republic of Congo.





The President

State House  
Mahe  
Seychelles

INSTRUMENT OF ACCESSION

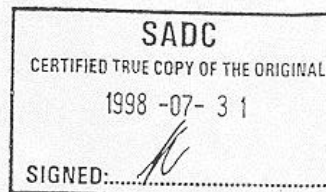
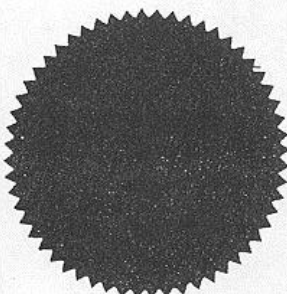
WHEREAS the Treaty of the Southern African Development Community, done at Windhoek on the 17th day of August 1992 remains open for accession;

AND WHEREAS the Government of the Republic of Seychelles desires to accede to the said Treaty;

NOW, THEREFORE, the Government of the Republic of Seychelles, having considered the Treaty, hereby accedes to and accepts the same in accordance with Article 42 thereof.

IN WITNESS WHEREOF, I, France Albert René, President of the Republic of Seychelles, have signed and sealed these presents at Victoria, Mahé, Seychelles on this *twenty fourth* day of *June* in the year One Thousand Nine Hundred and Ninety-eight.

France Albert René  
President of the Republic of Seychelles







*Prime Minister  
Republic of Mauritius*

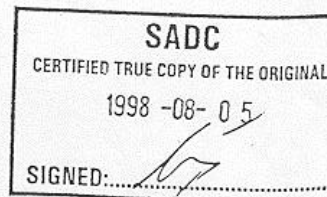
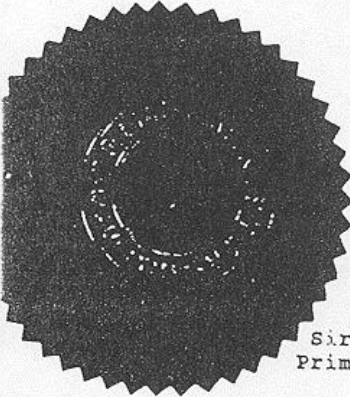
INSTRUMENT OF ACCESSION

WHEREAS the Treaty of the Southern African Development Community, done at Windhoek, Republic of Namibia on 17 August 1992, remains open for accession;

AND WHEREAS the Government of the Republic of Mauritius desires to accede to the said Treaty;

NOW THEREFORE, the Government of the Republic of Mauritius, having considered the Treaty, HEREBY ACCEDES THERETO and undertakes faithfully to observe all its provisions and to carry out the stipulations therein contained.

IN WITNESS WHEREOF I, Anerood Jugnauth, Prime Minister of the Republic of Mauritius, have signed and sealed this instrument of Accession in the Republic of South Africa on this *Twenty Eighth* day of August in the year one thousand nine hundred and ninety-five.



Sir Anerood Jugnauth, P.C., K.C.M.G., Q.C.  
Prime Minister of the Republic of Mauritius

**PROTOCOL**  
**ON**  
**TRADE**  
**IN THE**  
**SOUTHERN AFRICAN DEVELOPMENT**  
**COMMUNITY**  
**(SADC) REGION**

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## PROTOCOL ON TRADE

### Preamble:

The High Contracting Parties:

- Noting that the Treaty establishing the Southern African Development Community has, in Article 22, expressly called for the conclusion of Protocols as may be necessary in each area of co-operation within the Community;
- Considering that trade in goods and services and the enhancement of cross-border investment are major areas of co-operation among the Member States of the Community;
- Recognising that the development of trade and investment is essential to the economic integration of the Community;
- Recognising that an integrated regional market will create new opportunities for a dynamic business sector;
- Convinced of the need to strengthen customs cooperation and combat illicit trade within the Community;
- Convinced that a framework of trade cooperation among Member States based on equity, fair competition and mutual benefit will contribute to the creation of a viable Development Community in Southern Africa;
- Mindful of the different levels of economic development of the Member States of the Community and the need to share equitably the benefits of regional economic integration;
- Committed to linking the liberalisation of trade to a process of viable industrial development, as well as co-operation in finance, investment and other sectors;
- Noting the provisions of the Abuja Treaty calling for the establishment of regional and sub-regional economic groupings as building blocs for the creation of the African Economic Community;
- Mindful of the results of the Uruguay Round of Multilateral Trade Negotiations on global trade liberalisation;
- Recognising the obligations of Member States in terms existing regional trade arrangements and bilateral trade agreements;

Hereby Agree as follows:

## PART ONE

### DEFINITIONS AND OBJECTIVES

#### Article 1

##### DEFINITIONS

**"Annex"** means a legal instrument of implementation of this Protocol, which forms an integral part thereto, and has the same legal force.

**"Community"** means the Organisation as defined in Article 1 of the SADC Treaty.

**"Conformity Assessment"** means any procedure used, directly or indirectly, to determine that a technical regulation or standard is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, accreditation, registration or approval used for such a purpose, but does not mean an approval procedure.

**"Council"** means Council of Ministers as defined in Article 1 of the SADC Treaty.

**"CMT"** means the Committee of Ministers responsible for trade matters.

**"Dumping"** means, in accordance with the provisions of Article VI of GATT (1994), the introduction of a product into the commerce of another country at less than its normal value, if the price of the product exported from one country to another is less than the comparable price in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

**"Export Duties"** means any duties or charges of equivalent effect imposed on, or in connection with, the exportation of goods from any Member State to a consignee in another Member State.

**"High Contracting Parties"** means States as defined in Article 1 of the Treaty.

**"Import Duties"** means customs duties or charges of equivalent effect imposed on, or in connection with, the importation of goods consigned from any Member State to a consignee in another Member State.

**"Member State"** means a Member State as defined in Article 1 of the Treaty.

**"Non-Tariff Barrier" (NTB)** means any barrier to trade other than import and export duties.

**"Originating goods"** means goods of a Member State as provided for in Annex I on Rules of Origin.

**"Quantitative restrictions"** means prohibitions or restrictions on imports into, or exports from a Member State whether made effective through quotas, import licences, foreign exchange allocation practices or other measures and requirements restricting imports or exports.

**"Region"** means Region as defined in Article 1 of the Treaty.

**"Safeguard measures"** means measures imposed in accordance with Article 20 of this Protocol.

**"Services"** means intangible activities and those enumerated in Annex 1B to the World Trade Organisation's General Agreement on Trade in Services (GATS).

**"Sub-Committee"** means a committee of experts established under each respective Annex of this Protocol.

**"Subsidies"** shall have the same meaning and interpretation as in the WTO Agreement on Subsidies and countervailing measures.

**"Third country"** means a country other than a Member State.

**"FTA"** means Free Trade Area.

**"TNF"** means the Trade Negotiating Forum.

**"Treaty"** means the Treaty establishing the Southern African Development Community.

**"WTO"** means World Trade Organisation.

## **Article 2**

### **OBJECTIVES**

The objectives of this Protocol are:

1. To further liberalise intra-regional trade in goods and services on the basis of fair, mutually equitable and beneficial trade arrangements, complemented by Protocols in other areas.
2. To ensure efficient production within SADC reflecting the current and dynamic comparative advantages of its members.
3. To contribute towards the improvement of the climate for domestic, cross-border and foreign investment.
4. To enhance the economic development, diversification and industrialisation of the Region.
5. To establish a Free Trade Area in the SADC Region.



**PART TWO**  
**TRADE IN GOODS**

**Article 3**

**ELIMINATION OF BARRIERS TO INTRA-SADC TRADE**

1. The process and modalities for the phased elimination of Tariffs and non-tariff barriers shall be determined by the Committee of Ministers responsible for trade matters (CMT) having due regard to the following:-
  - (a) The existing preferential trade arrangements between and among the Member States.
  - (b) That the elimination of barriers to trade shall be achieved within a time frame of eight (8) years from entry into force of this Protocol.
  - (c) That Member States which consider they may be or have been adversely affected, by removal of tariffs and non-tariff barriers (NTBs) to trade may, upon application to CMT, be granted a grace period to afford them additional time for the elimination of tariffs and (NTBs). CMT shall elaborate appropriate criteria for the consideration of such applications.
  - (d) That different tariff lines may be applied within the agreed timeframe for different products, in the process of eliminating tariffs and NTBs.
  - (e) The process and the method of eliminating barriers to intra-SADC trade, and the criteria of listing products for special consideration, shall be negotiated in the context of the Trade Negotiating Forum (TNF).
2. The agreed process and modalities for eliminating to intra-SADC trade shall upon adoption, be deemed to form an integral part of this Protocol.

**Article 4**

**ELIMINATION OF IMPORT DUTIES**

1. There shall be a phased reduction and eventual elimination of import duties, in accordance with Article 3 of this Protocol, on goods originating in Member States.
2. The process should be accompanied by an industrialisation strategy to improve the competitiveness of Member States.

3. The C:4T shall adopt such measures as may be necessary to facilitate adjustment arising from the application of this Article. The CMT shall review such measures from time to time.
4. Pursuant to paragraph 1, Member States shall not raise import duties beyond those in existence at the time of entry into force of this Protocol.
5. Nothing in Paragraph 4 of this Article shall be construed as preventing the imposition of across-the-board internal charges.
6. This Article shall not apply to fees and similar charges commensurate with costs of any services rendered.

## **Article 5**

### **ELIMINATION OF EXPORT DUTIES**

1. Member States shall not apply any export duties on goods for export to other Member States.
2. This Article shall not prevent any Member States from applying export duties necessary to prevent erosion of any prohibitions or restrictions which apply to exports outside the Community, provided that no less favourable treatment is granted to Member States than to third countries.

## **Article 6**

### **NON-TARIFF BARRIERS**

Except as provided for in this Protocol, Member States shall, in relation to intra-SADC trade:

- (a) adopt policies and implement measures to eliminate all existing forms of NTBs.
- (b) refrain from imposing any new NTBs.

## **Article 7**

### **QUANTITATIVE IMPORT RESTRICTIONS**

1. Member States shall not apply any new quantitative restrictions and shall in accordance with Article 3, phase out the existing restrictions on the import of goods originating in Member States, except where otherwise provided for in this Protocol.
2. Notwithstanding the provisions of paragraph 1 of this Article, Member States may apply a quota system provided that the Tariff Rate under such a quota system is more favourable than the rate applied under this Protocol.

## **Article 8**

### **QUANTITATIVE EXPORT RESTRICTIONS**

1. Member States shall not apply any quantitative restrictions on exports to any other Member State, except where otherwise provided for in this Protocol.
2. Member States may take such measures as are necessary to prevent erosion of any prohibitions or restrictions which apply to exports outside the Community, provided that no less favourable treatment is granted to Member States than to third countries.

## **Article 9**

### **GENERAL EXCEPTIONS**

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Member States, or a disguised restriction on intra-SADC trade, nothing in Articles 7 and 8 of this Protocol shall be construed as to prevent the adoption or enforcement of any measures by a Member State:

- (a) necessary to protect public morals or to maintain public order;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws and regulations which are consistent with the provisions of the WTO;
- (d) necessary to protect intellectual property rights, or to prevent deceptive trade practices;
- (e) relating to transfer of gold, silver, precious and semi-precious stones, including precious and strategic metals;
- (f) imposed for the protection of national treasures of artistic, historic or archaeological value;
- (g) necessary to prevent or relieve critical shortages of foodstuffs in any exporting Member State;
- (h) relating to the conservation of exhaustible natural resources and the environment; or
- (i) necessary to ensure compliance with existing obligations under international agreements.

## **Article 10**

### **SECURITY EXCEPTION**

1. Nothing in this Protocol shall prevent any Member State from taking measures which it considers necessary for the protection of its security interests or for the purpose of maintaining peace.
2. The concerned Member State shall notify the CMT of any such measures.

## **Article 11**

### **NATIONAL TREATMENT**

Member States shall accord, immediately and unconditionally, to goods traded within the Community the same treatment as to goods produced nationally in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.

## **PART THREE**

### **CUSTOMS PROCEDURES**

## **Article 12**

### **RULES OF ORIGIN**

Originating goods shall be eligible for Community treatment, accordance with the provisions of Annex I of this Protocol.

## **Article 13**

### **CO-OPERATION IN CUSTOMS MATTERS**

Member States shall, as provided for in Annex II of this Protocol, take appropriate measures, including arrangements regarding customs administration cooperation, to ensure that the provisions of this Protocol are effectively and harmoniously applied.

## **Article 14**

### **TRADE FACILITATION**

Member States shall, as provided for in Annex III of this protocol, take such measures as are necessary to facilitate the simplification and harmonisation of trade documentation and procedures.

## **Article 15**

### **TRANSIT TRADE**

Products imported into, or exported from, a Member State shall, as provided for in Annex IV of this Protocol, enjoy freedom of transit within the Community and shall only be subject to the payment of the normal rates for services rendered.

## **PART FOUR**

### **TRADE LAWS**

## **Article 16**

### **SANITARY AND PHYTOSANITARY MEASURES**

1. Member States shall base their sanitary and phytosanitary measures on international standards, guidelines and recommendations, so as to harmonise sanitary and phytosanitary measures for agricultural and livestock production.
2. Member States shall, upon request, enter into consultation with the aim of achieving agreements on recognition of the equivalence of specific sanitary and phytosanitary measures, in accordance with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

## **Article 17**

### **STANDARDS AND TECHNICAL REGULATIONS ON TRADE**

1. Each Member State shall use relevant international standards as a basis for its standards-related measures, except where such standards would be ineffective or inappropriate means to fulfil its legitimate objectives.
2. A Member States standards-related measures that conform to an international standard shall be presumed not to create an unnecessary obstacle to trade.
3. Without reducing the level of safety, or of protection of human, animal or plant life or health, of the environment, or of consumers, without prejudice to the rights of any Member State and taking into account international standardisation activities, Member States shall, to the greatest extent practicable, make compatible their respective standards-related measures, so as to facilitate trade in goods and services within the Community.

4. Member States accept as equivalent technical regulations of other Member States, even if these regulations differ their own, provided that they adequately fulfil the objectives of their regulations.
5. A Member State shall, upon request of another Member State, seek through appropriate measures, to promote the compatibility of specific standards or conformity assessment procedures that are maintained in its territory, with the standards or conformity assessment procedures maintained in the territory of other Member States.

## **Article 18**

### **ANTI-DUMPING MEASURES**

Nothing in this Protocol shall prevent any Member State from applying anti-dumping measures which are in conformity with WTO provisions.

## **Article 19**

### **SUBSIDIES AND COUNTERVAILING MEASURES**

1. Member States shall not grant subsidies which distort or threaten to distort competition in the Region.
2. Notwithstanding paragraph 1 of this Article, a Member State may continue to apply a subsidy in accordance with Article 3.
3. A Member State may, for the purposes of offsetting the effects of subsidies and subject to WTO provisions, levy countervailing duties on a product of another Member State.
4. Notwithstanding the provisions of paragraph 1 of this Article, a Member State may introduce a new subsidy only accordance with WTO provisions.

## **Article 20**

### **SAFEGUARD MEASURES**

1. A Member State may apply a safeguard measure to a product only if that Member State has determined that such product is being imported to its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.
2. A serious injury shall be determined in accordance with Article 4 of the WTO Agreement on Safeguards.

3. Safeguard measures shall be applied to a product being imported irrespective of its source within the Region.
4. In applying measures in accordance with paragraph 1 of this Article, a Member State shall give like treatment to all imports of originating goods.
5. A Member State shall apply safeguard measures only to the extent and for such period of time necessary to prevent or remedy serious injury and to facilitate adjustment. In accordance with Article 7 of the WTO Agreement on Safeguards, the period shall not exceed four years, unless the competent authorities of the importing Member State have determined that the safeguard measure continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting.
6. Notwithstanding the provisions of paragraph 5 of this Article, the total period of application of a safeguard measure shall not exceed eight (8) years.

## **Article 21**

### **PROTECTION OF INFANT INDUSTRIES**

1. Notwithstanding the provisions of Article 4 of this Protocol, upon the application by a Member State, the CMT may, as a temporary measure in order to promote an infant industry, and subject to WTO provisions, authorise a Member State to suspend certain obligations of this Protocol in respect of like goods imported from the other Member States.
2. The CMT may, in taking decisions under paragraph 1 of this Article, impose terms and conditions to which such authorisation shall be subject, for the purposes of preventing or minimising excessive disadvantages as those may result in trade imbalances.
3. The CMT shall regularly review the protection of infant industries by a Member State applied in accordance with paragraph 1 of this Article.

## **PART FIVE**

### **TRADE RELATED INVESTMENT MATTERS**

## **Article 22**

### **CROSS-BORDER INVESTMENT**

Member States shall adopt policies and implement measures within the Community to promote an open cross-border investment regime, thereby enhancing economic development, diversification and industrialisation.

## **PART SIX**

### **OTHER TRADE RELATED ISSUES**

## **Article 23**

### **TRADE IN SERVICES**

1. Member States recognise the importance of trade in services for the development of the economies of SADC countries.
2. Member States shall adopt policies and implement measures in accordance with their obligations in terms of the WTO's General Agreement on Trade in Services (GATS), a view to liberalising their services sector within the Community.

## **Article 24**

### **INTELLECTUAL PROPERTY RIGHTS**

Member States shall adopt policies and implement measures within the Community for the protection of Intellectual Property Rights, in accordance with WTO Agreement on Trade Related Aspects of Intellectual Property Rights.

## **Article 25**

### **COMPETITION POLICY**

Member States shall implement measures within the Community that prohibit unfair business practices and promote competition.

## **PART SEVEN**

### **OTHER SUBSTANTIVE PROVISIONS**

## **Article 26**

### **TRADE DEVELOPMENT**

Member States shall adopt comprehensive trade development measures aimed at promoting trade within the Community, as provided for in Annex V of this Protocol.

## **PART EIGHT**

### **TRADE RELATIONS AMONG MEMBER STATES AND WITH THIRD COUNTRIES**

## **Article 27**

### **PREFERENTIAL TRADE ARRANGEMENTS**

1. Member States may maintain preferential trade and other trade related arrangements existing at the time of: entry into force of this Protocol;



2. Member States may enter into new preferential trade arrangements between themselves, provided that such arrangements are not inconsistent with the provisions of this Protocol.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, Member States party to any existing preferential trade arrangements and other trade related arrangements undertake to review the further application of such preferential trade arrangements, with a view to attaining the objectives of this Protocol.

## **Article 28**

### **MOST FAVOURED NATION TREATMENT**

1. Member States shall accord Most Favoured Nation Treatment to one another.
2. Nothing in this Protocol shall prevent a Member State from granting or maintaining preferential trade arrangements with third countries, provided such trade arrangements do not impede or frustrate the objectives of this Protocol and that any advantage, concession, privilege or power granted to a third country under such arrangements is extended to other Member States.
3. Notwithstanding the provisions of paragraph 2 of this Article, a Member State shall not be obliged to extend preferences of another trading bloc of which that Member State was a member at the time of entry into force of this Protocol.

## **Article 29**

### **CO-ORDINATION OF TRADE POLICIES**

Member States shall, to their best endeavour, co-ordinate their trade policies and negotiating positions in respect, of relations with third countries or groups of third countries and international organisations as provided for in Article 24 of the Treaty, to facilitate and accelerate the achievement of the objectives of this Protocol.

## **Article 30**

### **COOPERATION WITH THIRD COUNTRIES OR GROUPS OF THIRD COUNTRIES**

Member States shall develop cooperation and conclude agreements with third countries or groups of third countries and international organisations as provided for in Article 24 of the Treaty, to facilitate and accelerate the achievement of the objectives of this Protocol.

## **PART NINE**

### **INSTITUTIONAL ARRANGEMENTS AND DISPUTE SETTLEMENT PROCEDURES**

## **Article 31**

### **INSTITUTIONAL ARRANGEMENTS**

1. The institutional mechanisms for the implementation of this protocol shall comprise the CMT, Committee of Senior Officials responsible for trade matters, the TNF and the Sector Coordinating Unit.
2. The Committee of Ministers shall be responsible for trade matters including the following:
  - a) supervision of the implementation of this Protocol;
  - b) appointment of panels of trade experts to resolve disputes that may arise regarding the interpretation or application of this Protocol;
  - c) supervision of the work of any committee or sub-committee established under this Protocol;
3. The Committee of Senior Officials shall:
  - a) report to the CMT on matters relating to the implementation of the provisions contained in this Protocol;
  - b) supervise the work of the Sector Co-ordinating Unit;
  - c) clear the documents prepared by the Sector Co-ordinating Unit to be submitted to the CMT;
  - d) liaise closely with both the CMT and the Sector Co-ordinating Unit;
  - e) monitor the implementation of this Protocol;
  - f) supervise the work of the TNF.

4. The Trade Negotiation Forum shall be responsible for the conduct of trade negotiations and shall report to the Committee of Senior Officials. Its functions shall include:
  - a) regular reviews in which offers shall be made and where the removal of non-tariff barriers shall be requested or offered;
  - b) the creation of a research capacity of experts to monitor the impact of measures already implemented, and offer advice on the potential impact of offers under discussion;
  - c) the establishment of a linkage between trade liberalisation and industrial policy co-ordination, as well as other areas of sectoral co-operation; and
  - d) the establishment of a regional framework on the phased reduction and eventual elimination of tariff and NTBs to trade among Member States.
  
5. The Sector Coordinating Unit shall perform the following functions:
  - a) coordinate the day-to-day operations in the implementation of this Protocol;
  - b) provide technical and administrative assistance to the CMT, the Committee of Senior Officials and the TNF.
  - c) provide assistance to subsidiary committees, sub-committees and panels established to implement this Protocol;
  - d) work closely with the private sector;
  - e) identify research needs and priorities in the trade area.

## **Article 32**

### **SETTLEMENT OF DISPUTES**

1. Member States shall endeavour to agree on the interpretation and application of this Protocol, and shall make every effort, through cooperation and consultation, to arrive at a mutually satisfactory agreement.
  
2. The settlement of any dispute among Member States shall, whenever possible, imply removal of a measure not conforming with the provisions of this Protocol or causing mollification or impairment of such provisions.

3. Failing a settlement as provided in paragraph 2 of this Article, withdrawal of equivalent concession may be implemented by the Member State suffering the injury.
4. In case of disagreement, the Member States may take recourse to a panel of trade experts.
5. The appointment, composition, powers and functions of the panels trade experts shall be determined by the CMT.
6. As a last resort, disputes regarding the interpretation and application of this Protocol shall be settled in accordance with Article 32 of the Treaty.

### **Article 33**

#### **GENERAL UNDERTAKING**

1. Member States shall take all appropriate measures to ensure the carrying out of the obligations arising from this Protocol.
2. Member States shall cooperate in addressing any impediments to intra-SADC trade that may arise as a result of any action or lack of action by any Member State on issues having material bearing on such trade and which are not covered elsewhere in this Protocol.
3. In the event that Member States disagree on the existence of impediments to intra-SADC trade, the Member States may have recourse to the provisions of Article 32 of this Protocol.

### **Article 34**

#### **AMENDMENT**

Amendments to this Protocol shall be in accordance with the procedures established by Article 36 of the Treaty.

### **Article 35**

#### **SIGNATURE**

This protocol shall be signed by the High Contracting Parties.

### **Article 36**

#### **RATIFICATION**

This Protocol shall be ratified by the Member States in accordance with their constitutional procedures.

### **Article 37**

#### **ENTRY INTO FORCE**

This Protocol shall enter into force 30 days after the deposit of the instruments of ratification by two thirds of the Member States.

### **Article 38**

#### **ACCESSION**

This Protocol shall remain open for accession by any Member State.

### **Article 39**

#### **DEPOSITORY**

1. This Protocol and all instruments of Ratification or Accession shall be deposited with the Executive Secretary, who shall transmit certified true copies thereof, to all Member States.
2. The Executive Secretary of SADC shall notify the Member States of the dates of deposit of Instruments of Ratification and Accession.
3. The Executive Secretary shall register this Protocol with the United Nations, the Organisation of African Unity and such other organisations as the Council may determine.

IN WITNESS WHEREOF, WE, the Heads of State or Government or duly Authorised Representatives of SADC member States have signed this Protocol.

Done at MASERU this 24 day of August 1996 in two (2) original texts in the English and Portuguese languages, both texts being equally authentic.

..... Angola .....

Republic of Angola

..... [Signature] .....

Kingdom of Lesotho

..... Dr. the Hon. N. Rungqulu .....

Republic of Mauritius

..... [Signature] .....

Republic of Namibia

..... [Signature] .....

Kingdom of Swaziland

..... [Signature] .....

Republic of Zambia

Republic of Botswana

..... [Signature] .....

Republic of Malawi

..... [Signature] .....

Republic of Mozambique

..... [Signature] .....

Republic of South Africa

..... Benjamin L. Mkhapa .....

United Republic of Tanzania

..... [Signature] .....

Republic of Zimbabwe

## ANNEX I

### CONCERNING THE RULES OF ORIGIN FOR PRODUCTS TO BE TRADED BETWEEN THE MEMBER STATES OF THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

#### PREAMBLE

#### THE HIGH CONTRACTING PARTIES

**AWARE** that they have undertaken to progressively establish a Development Community within which customs duties and other charges of equivalent effect imposed on imports shall be gradually reduced and eventually eliminated and non-tariff barriers to trade among Member States shall be removed, and all trade documents and procedures shall be harmonised;

**AND TAKING INTO ACCOUNT** the provisions of this Protocol which require that the Rules of Origin for products that shall be eligible for community treatment shall be set out in an Annex to this Protocol:

#### NOW THEREFORE

**HEREBY AGREE** as follows:

#### RULE 1

##### Definitions and Interpretation

##### 1. Definitions:

"**Ex-factory cost**" means the value of the total inputs required to produce a given product;

"**Materials**" means raw materials, semi-finished products, products, ingredients, parts and components used in the production of goods;

"**Producer and a process of Production**" include the application of any operation or process; with the exception of any operation or process as set out in Rule 3 of this Annex;

"**Producer**" includes a mining, manufacturing or agricultural enterprise or any other individual grower or craftsman who produces or supplies goods for export;

"**Value-added**" means the difference between the ex-factory cost of the finished product and the c.i.f. value of the materials imported from outside the Member States and used in the production.

## 2. Interpretation

- a. In determining the place of production of marine, river, or lake products and goods in relation to a Member State, a vessel of a Member State shall be regarded as part of the territory of that Member State. In determining the place from which goods originated, marine, river or lake products taken from the sea, river or lake or goods produced therefrom at sea or on a river or lake shall be regarded as having their origin in the territory of a Member State and have been brought directly to the territory of the Member State.
- b. For the purpose of this Annex, a vessel shall be regarded as a vessel of a Member State if it is registered in a Member State and satisfies one of the following conditions;
  - i) the vessel sails under the flag of a member State;
  - ii) at least 75 per cent of the officers and crew of the vessel are nationals of a Member State;
  - iii) at least the majority control and equity holding in respect of the vessel are held by nationals of a Member State or institution, agency, enterprise or corporation of the government of such Member State.
- c. Electrical power, fuel, plant machinery and tools used in the production of goods shall always be regarded as wholly produced within the Community when determining the origin of the goods.

## RULE 2

### Origin Criteria

1. Goods shall be accepted as originating in a Member State if they are consigned directly from a Member State to a consignee in another Member State and:
  - a) they have been wholly produced as provided for in Rule 4 of this Annex; or
  - b) they have been produced in the Member States wholly or partially from materials imported from outside the Member States or of undetermined origin by a process of production which effects a substantial transformation of those materials such that:
    - i) The c.i.f. value of those materials does not exceed 60 per cent of the total cost of the materials used in the production of the goods; or



- ii) The value added resulting from the process of production accounts for a least 35 per cent of the ex-factory cost of the goods; or
  - c) There is a change in the tariff heading of a product arising from a processing carried out on the non-originating materials.
- 2. For the purposes of sub-paragraph (c) of paragraph 1, the agreed list of processing required to be carried out on non-originating materials in order that the product manufactured can obtain originating status, shall upon adoption, be deemed to form an integral part of the Annex on the rules of Origin.
- 3. For the purposes of sub-paragraph b(i) of paragraph 1, the CIF value shall not include the freight from the last sea-port to the final destination of the goods.
- 4. Notwithstanding; the provisions of sub-paragraphs (b) and (c) of paragraph 1 of this Rule, the CMT may, vary the required percentages; and lay down conditions for a change in tariff heading as an origin criteria, using the provisions of the Lome iv convention as the basis.
- 5. Cumulative treatment
  - (a) For the purposes of implementing this Annex, the Member States shall be considered as one territory.
  - (b) Raw materials or semi-finished goods originating in accordance with the provisions of this Annex in any of the Member States and undergoing working or processing either in one or more States shall for the purpose of determining the origin of a finished product be deemed to have originated -In the Member State where the final processing or manufacturing takes place.

### **RULE 3**

#### **Processes Not Conferring Origin**

Notwithstanding the provisions of subparagraphs (b) of paragraph 1 or Rule 2 of this Annex; the following operations and processes shall be considered as insufficient to support a Member State:

- 1. Packing, Packaging and other Preparations or Processes for shipping and for Sales
  - a) Packing, repacking or retail packaging including bottling, placing in flasks, bags, cases and boxes, fixing on cards or boards and all other simple packing operations.

- b) Changes of packing and breaking up or assembly of consignments.
- c) Operations to ensure the preservation of merchandise in good conditions during transportation and storage such as ventilation, spreading out, drying, freezing, making into a solution, removal of damaged parts and similar operations. This also includes loading, reloading or any other operations necessary to maintain the merchandise in good condition.

2. Mere Dilution, Blending and other Types of Mixing

- (a) Simple mixing of ingredients imported from outside the Member States.
- (b) Mere dilution with water or another substance that does not materially alter the characteristics of the material.
- (c) The addition of substances such as anticaking agents, preservatives wetting agents, etc.
- (d) Diluting chemicals with inert ingredients to bring them to the standard degree of strength.
- (e) For purposes of this section, mere dilution shall not be taken to include:
  - 1) either mixing together of two bulk medicinal substances followed by the packaging of the mixed products into individual doses for retail service.
  - 2) or the addition of water or another substance to a chemical compound under pressure which results in a reaction creating a new chemical compound.

3. Simple Assembly or Combining Operations

4. Other Minor Operations

- (a) Ornamental or finishing operations incidental to textile goods production designed to enhance the marketing appeal or ease the product's case, such as simple hand dyeing and printing, embroidery and appliqué, pleating, hemstitching, stone or acid washing, permanent pressing, or the attachment of accessories, notions findings and trimmings.
- (b) Dismantling or disassembly.
- (c) Repairs and alterations, washing, laundering or sterilisation.

- (d) Application of preservatives or decorative coatings, including lubricants, protective encapsulation, preservative or decorative paint or metallic coatings.
- (e) Testing, sorting or grading.
- (f) Marking, labelling or affixing other like distinguishing signs on products or their packages.
- (g) Simple operations consisting of removal of dust, sifting or screening, sorting, classifying and matching, including the making up of sets goods, greasing, washing, painting and cutting up.

5. Miscellaneous

- (a) Any process or work in respect of which it may be demonstrated, on the basis of the preponderance of evidence, that the sole objective was to circumvent these rules.
- (b) For purposes of this provision, any other single operation described above does not automatically prevent conferring origin if it is coupled with any other operation described above such as testing or fabricating. In deciding whether to confer origin, the administering authority must decide whether the operations considered results in a substantial transformation of the product, meaning that the operations resulted in a new and different article with a new name, character and use.

**RULE 4**

**Goods Wholly Produced in the Member States**

For the purpose of subparagraph (a) of paragraph 1 of Rule 2 of this Annex, the following are among the products which shall be regarded as wholly produced in the Member States:

- a) Mineral products extracted from the ground or sea-bed of the Member States;
- b) Vegetable products harvested within the Member States;
- c) Live animals born and raised within the Member States;
- d) Products obtained from live animals within the Member States;
- e) Products obtained from the sea and from rivers and lakes within the Member States by a vessel of Member State;
- f) Products manufactured in a factory of a Member State exclusively obtained from within the Member States;

- g) Used articles fit only for the recovery of materials, provided that such articles have been collected from users within the Member States;
- h) Scrap and waste resulting from manufacturing operations the Member States;
- i) Goods produced within the Member States exclusively or mainly from one or both the following:
  - a) Products referred to in subparagraphs (a) to (h) of this Rule;
  - b) Materials containing no element imported from outside the Member States or of undetermined origin.

## **RULE 5**

### **Application of Percentage of Imported Materials and Value Added Criterion**

For the purpose of subparagraphs (a) and (b) of paragraph 1 of Rule 2 of this Annex:

- a) any material which meet the condition specified in subparagraph (a) of paragraph 1 of Rule 2 of this Annex shall be regarded as containing- no elements imported from outside the Member States;
- b) the value of any materials which can be identified as having been imported from outside the Member States shall be their c.i.f. value accepted by the customs authorities on clearance for home consumption, or on temporary admission at the time of last importation, into the Member States where they were used in a process of production, less the amount of any transport costs incurred in transit through other Member States;
- c) if the value of any materials imported from outside the Member States cannot be determined in accordance with paragraph (b) of this Rule, their value shall be the earliest ascertainable price paid for them in the Member State where they were used in a process of production; and
- d) if the origin of any materials cannot be determined, such materials shall be deemed to have been imported from outside the Member States and their value shall be the earliest ascertainable price paid for such material in the Member State where they were used in a process of production.

## **RULE 6**

### **Unit of Qualification**

1. Each item in a consignment shall be considered separately.
2. Notwithstanding the provisions of paragraph 1 of this Rule:
  - (a) where the World Customs Organisation's Nomenclature specifies that a group, set or assembly of articles is to be classified within a single heading, such a group, set or assembly shall be treated as one article;
  - (b) tools, parts and accessories which are imported with an article, and the price of which is included in that on the article or for which no separate charge is made, shall be considered as forming a whole with the article provided that they constitute the standard equipment customarily included on the sale of articles of that kind;
  - (c) notwithstanding the provisions of sub-paragraphs (a) and (b) of this paragraph, goods shall be treated as a single article if they are so treated for purposes of assessing customs duties on like articles by the importing Member State.
3. An unassembled or disassembled article which is imported in more than one consignment because it is not feasible for transport or production reasons to import it in a single consignment shall be treated as one article.

## **RULE 7**

### **Separation of Materials**

1. For those products or industries where it would be impracticable for the producers to separate physically materials of similar character but different origin used in the production of goods, such separation may be replaced by an appropriate accounting system which ensures that no more goods are deemed to originate in the Member States than would have been the case if the producer had been able physically to separate the materials.
2. Any such accounting system shall conform to such conditions as may be agreed upon by the CMT in order to ensure that adequate control measures shall be applied.

## **RULE 8**

### **Treatment of Mixtures**

1. In the case of mixtures, not being groups, sets or assemblies of goods dealt with under Rule 6 of this Annex, Member States any product resulting from the missing together of goods which would qualify as originating in the Member States goods which would not qualify, if the characteristics of the product as a whole are not different from the characteristics of the goods which have been mixed.
2. In the case of particular products where it is recognised by by the CMT to be desirable to permit mixing of the kind described in paragraph 1 of this Rule, such products shall be accepted as originating in the Member States in respect of such part thereof as may be shown to Correspond to the quantity of goods or originating in the Member States used in the mixing, subject to such conditions as may be agreed by the CMT.

## **RULE 9**

### **Treatment of Packing**

1. Where for purposes of assessing customs duties a Member State treats goods separately the origin of such packing, it may also, in respect of its imports consigned from another Member State, determine separately the origin of such packing.
2. Where paragraph 1 of this Rule is not applicable, packing shall be considered as forming a whole with the goods and no part of any parking required for their transport or storage shall be considered as having been imported from outside the Member States when determining the origin of the goods as a whole.
3. For the purpose of paragraph 2 of this Rule, packing with goods which are ordinarily sold at retail shall not be regarded as packing required for the transport or storage of goods.
4. Containers which are purely for the transport and temporary storage of goods and are to be returned shall not be subject to customs duties and other charges or equivalent effects. Where containers are not to be returned, they shall be treated separately from the goods contained in them and be subjected to import duties and other charges of equivalent effect.

## **RULE 10**

### **Documentary Evidence**

1. The claim that goods shall be accepted as originating from a Member State in accordance with the provisions of this Annex shall be supported by a certificate given by the exporter or his authorised representative in the form prescribed in Appendix I of this Annex. The certificate shall be authenticated with a seal by an authority designated for the purpose by each Member State.
2. Every producer, where such producer is not the exporter, shall, in respect of goods intended for export, furnish the exporter with a written declaration in conformity with Appendix II of this Annex to the effect that the goods qualify as originating in the Member State under the provisions of Rule 2 of this Annex.
3. The competent authority designated by an importing Member State may in exceptional circumstances and notwithstanding the presentation of a certificate issued in accordance with the provisions of this Rule, require, in case of doubt, further verification of the statement contained in the certificate, Member States, through their competent authorities, shall assist each other in this process. Such further verification should be made within three months of the request being made by a competent authority designated by the importing Member State. The form to be used for this purpose shall be that contained in Appendix III of this Annex.
4. The importing Member State shall not prevent the importer from taking delivery of goods solely on the grounds that it requires further evidence, but may require security for any duty or other charge which may be payable:

provided that where goods are subject to any prohibitions, the stimulations for delivery under security shall not apply.

5. Copies of certificates of origin and other relevant documentary evidence shall be preserved by the appropriate authorities of the Member State for at least five years.
6. All Member States shall deposit with the Secretariat the names of Departments and Agencies authorised to issue certificates required under this Annex, specimen signatures of officials authorised to sign the certificates and the impression of the official stamps to be used for that purpose, and those shall be circulated to the Member States by the Secretariat.

## **RULE 11**

### **Infringement and Penalties**

1. The Member States undertake to introduce legislation where such legislation does not exist, making such provision as may be necessary for penalties against persons who, in their territories, furnish or cause to be furnished documents which are untrue in material particular in support of a claim in another Member State.
2. Any Member State to which an untrue claim is made in respect of the origin of goods shall immediately bring the issue to the attention of the exporting Member State from which the untrue claim is made so that appropriate action may be taken and a report made thereon within a reasonable time to the affected Member State.
3. A Member State which has, in pursuance of the provisions of paragraph 2 of this Rule, brought to the attention of an exporting Member State of an untrue claim, if it is of the opinion that no satisfactory action has been taken by the exporting Member State, refer the matter to the CMT which shall take such action as appropriate in accordance with the provisions of Article 32 of this Protocol.
4. Continued infringement by a Member State of the provisions of this Annex may be referred to the CMT which shall take such action as appropriate in accordance with the provisions of Article 32 of this Protocol.

## **RULE 12**

### **Derogations**

1. Notwithstanding the provisions of Rule 2 and 3 of this Annex, derogations may be granted by the CMT where the development of existing industries or the creation of new industries is justified.
2. The SADC Member State shall make the request for a derogation for existing or new industries to CMT.
3. In order to facilitate the examination of the request for derogation, the Member State making the request shall, furnish the CMT the fullest possible information as to the reason for the request.
4. The CMT shall respond to each SADC Member State's request which is duly justified and in conformity with this Rule provided no serious injury is caused to any established industry within SADC.



5. The CMT shall take steps necessary to ensure that a decision is reached as quickly as possible, and in any case not later than 90 working days after the request is received.
6. The derogation shall be valid for a specific period to be determined by the CMT.

### **RULE 13**

#### **Regulations**

The CMT shall adopt regulations to facilitate the implementation of this Annex.

**SADC CERTIFICATE OF ORIGIN**

**Appendix I**

1. Exporter (Name and Office Address)	3. Ref. No. ....			
2. Consignee (Name and Office Address)	SOUTHERN AFRICAN DEVELOPMENT COMMUNITY CERTIFICATE OF ORIGIN			
4. Particulars of transport:	5. For official use			
6. Marks and numbers; number and kind of package, description of goods	7. Customs tariff No.	8. Origin criterion (see overleaf)	9. Gross weight or other quantity	10. Invoice
<p>11. DECLARATION BY EXPORTER/ SUPPLIER</p> <p>I, the undersigned, hereby declare that the above details and statements are correct and that all the goods are produced in .....</p> <p>.....</p> <p>Place, date, signature of declarant</p>	<p>12. CERTIFICATE OF ORIGIN</p> <p>It is hereby certified that the above mentioned good are of .....</p> <p>.....</p> <p>.....</p> <p>Certificate of Customs or other Designated Authority</p> <p>STAMP</p>			

**INSTRUCTIONS FOR COMPLETING THE CERTIFICATE OF ORIGIN FORM**

- i. The forms may be completed by any process provided that the entries are indelible and legible.
- ii. Neither erasures nor superimposition should be allowed on the certificate, any alterations should be made by striking out the erroneous entries and making any additions required.
- iii. If warranted by export trade requirements, one or more copies may be drawn up in addition to the origin.
- iv. If warranted by export trade requirements, one or more copies may be drawn up in addition to the original.
- v. The following letters should be used when completing a certificate in the appropriate place:

"P" for goods wholly produced {Rule 2.1 (a)}

"M" for goods to which the materials content criterion applies {Rule 2.1 (b) (i)}

"V" for goods to which the value added criterion applies {Rule 2.1 (b)(ii) and (c)}<sup>1</sup>

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<sup>1</sup> The relevant percentages applicable under the relevant Rule should also be quoted.

**NB** Any person who knowingly furnishes or causes to be furnished a document which is untrue in any material particular for the purpose of obtaining a Certificate of Origin or during the course of any subsequent verification of such Certificate will be guilty of an offence and be liable to penalties.

**DECLARATION BY THE PRODUCER**

**To whom it may concern**

For the purpose of claiming preferential treatment under the provisions of Rule 2 of the Annex on the Rules of Origin for Products to be Traded between the member States of the Southern African Development Community:

I HEREBY DECLARE:

- a. that the goods listed here in quantities as specified below have been produced by this company/enterprise/workshop supplier;<sup>2</sup>
- b. that evidence is available that the goods listed below comply with the origin criteria as specified by the Annex on the Rules of Origin for the Southern Africa Development Community.

**List of goods**

Commercial Description of goods	Quantity	Criterion
	(Stamp)	..... Signature of the PRODUCER

---

<sup>2</sup> Please delete the description not applicable.

**FORM FOR VERIFICATION OF ORIGIN**

---

**A. REQUEST FOR VERIFICATION,**

---

Verification of the authenticity and accuracy of this certificate is requested

.....  
(Place and date)

.....  
(Signature)

**B. RESULTS OF VERIFICATION**

Verification carried out shows that this certificate<sup>3</sup>

was issued by the Customs Office or designated authority indicated and that the information contained therein is accurate.

does not meet the requirements as to authenticity and accuracy.

.....  
(Place and date)

STAMP

.....  
(Signature)

---

<sup>3</sup> Insert X in the appropriate box.



## Annex II

### ANNEX CONCERNING CUSTOMS COOPERATION WITHIN THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

#### PREAMBLE

#### THE HIGH CONTRACTING PARTIES

**NOTING** that divergences between national Customs laws and procedures can hamper intra-SADC trade and other intra-SADC exchanges;

**MINDFUL** of the need to promote trade and foster cooperation among Member States;

**CONSIDERING** that simplification and harmonisation of customs laws and procedures can effectively contribute to the development of intra-SADC trade and other intra-SADC exchanges;

**CONVINCED** that implementation of the provisions of the present Annex would lead progressively to a high degree of simplification and harmonisation of Customs procedures which is the objective of Article 13 of the Trade Protocol;

#### HEREBY AGREE AS FOLLOWS:

#### ARTICLE 1: Definitions

"**Customs Authorities**" means the administrative authority responsible for administering Customs Laws.

"**Customs Legislation**" means legal instruments adopted by the Member States and governing the import, export, transit of goods and their placing under any customs procedure, including measures of prohibition, restrictions and control.

"**Customs offence**" means any breach or attempted breach of customs law;

"**Customs territory**" means the territory in which the Customs Laws of a Member State applies in full;

"**Goods declaration**" means a statement made in the form prescribed by the Customs Authorities by which the persons interested indicates the procedure to be applied to the goods and furnish the particulars which the Customs Authorities require to be declared for the application of that procedure;

"**Harmonised system**" means the Harmonised Commodity Description and Coding System established by the International Convention the Harmonised Commodity Description and Coding System of the World Customs Organisation.

"**Subcommittee**" means the Customs Co-operation Sub-Committee established under Article 11 of this Annex;

"**Temporary admission**" means customs procedures under which certain goods (including means of transport) can be brought into a Customs territory conditionally relieved from payment of import duties and taxes and without application of import prohibitions or restrictions of economic character: such goods (including means of transport) must be imported for a specific purpose and must be intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made to them;

## **ARTICLE 2: Objectives and Scope**

1. The objective of this Annex is to simplify and harmonise customs laws and procedures by:
  - (a) providing for common measures with which Member States shall undertake to comply in the formulation of their customs laws and procedures.
  - (b) establishing appropriate institutional arrangements at regional and national levels.
  - (c) cooperating to prevent fraud and illicit trade.
2. The provisions of this Annex do not apply to areas of customs cooperation which are covered specifically by Annexes I and IV of this Protocol.
3. Cooperation in customs matters shall apply to any administrative authority of Member States which is competent for matters covered by customs legislation. This cooperation shall be channelled through the Customs Authorities of Member States.

## **ARTICLE 3: Harmonisation of Customs Tariff Nomenclatures and Statistical Nomenclatures**

1. Subject to the exceptions enumerated in paragraph 4:
  - (a) Each Member State undertakes, except as provided in sub-paragraph (c) of this paragraph, to adopt customs tariff nomenclatures and statistical nomenclatures which are in conformity with the Harmonised System. It thus undertakes that in respect of its customs tariff and statistical nomenclatures:
    - i. it shall use all the headings and sub-headings of the Harmonised System without addition or modification, together with their related numerical codes;



- ii. it shall apply the general rule for the interpretation of the Harmonised System and all the section, chapter and sub-heading notes, and shall notify the scope of the sections, chapters, headings or sub-headings of the Harmonised Systems; and
  - iii. it shall follow the numerical sequence of the Harmonised System;
- (b) Each Member State shall also make publicity available its import and export trade statistics in conformity with the six-digit codes of the Harmonized system, or on the initiative of the Member State, beyond that level, to the extent that: publication is not precluded for exceptional reasons such as commercial confidentiality or national security;
  - (c) Nothing in this Article shall require a Contracting Party to use the sub-headings of the Harmonized System in its Customs Tariff Nomenclature provided that it meets the obligations at (a) (i) - (iii) above in a combined tariff/statistical nomenclature.
2. In complying with the undertakings at paragraph 1(a) of this Article, each Member State may make such textual adoptions as may be necessary to give effect to the Harmonized System in its domestic law.
  3. Nothing in this Article shall prevent a Contracting Party from establishing, in its customs tariff or statistical nomenclatures, sub-divisions classifying goods beyond the level of the Harmonized System, provided that any such sub-division as added and coded at a level beyond that of the six-digit numerical code is as set out in the Harmonized System.
  4. CMT may allow exceptions in the application of the provisions of this Article as would be allowed in the application of the provisions of the Harmonized System convention. provided that CMT is satisfied that they would not hinder the comparison of customs tariffs and trade statistics of Member States.

**ARTICLE 4: Harmonization of Valuation Laws and Practice**

Member States undertaken to adopt a system of valuing goods for customs purposes based on principles of transparency, equity, uniformity and simplification of application in accordance with the WTO Valuation system.

**ARTICLE 5: Simplification and Harmonization of Customs Procedures**

1. Member States, undertake to incorporate in their customs laws, provisions designed to simplify customs procedures in accordance with internationally accepted standards, recommendations and guidelines particularly those which are contained in the International Instruments of:
  - the World Customs Organisation (WCO);
  - the United Nations Economic Commission for Europe (UNECE);
  - the International Maritime Organisation (IMO);
  - the International Civil Aviation Association (ICAO);
  - the international Standards Organisation (ISO);
  - the International Chamber of Commerce (ICC); and
  - the International Air Transport Association (IATA).
  
2. Member States undertake to adopt in their customs laws common principles for the Customs procedures which, in the opinion of CMT, are particularly important in intra-Community trade including:
  - (a) customs formalities applicable to commercial means of transport;
  - (b) clearance for home use;
  - (c) outright exportation;
  - (d) customs transit;
  - (e) drawback;
  - (f) temporary admission, subject to re-export in the same Member State;
  - (g) temporary admission for inward processing;
  - (h) free zones;
  - (i) postal traffic.
  
3. Member States undertake to develop a single customs document as support of all customs procedures, in intra-Community trade as well as in trade with third countries.

## **ARTICLE 6: Computerisation of Customs Operations**

1. Member States shall encourage and facilitate the use of data processing techniques to support customs operations in particularly in the following areas:
  - inventory control;
  - accounting for goods;
  - accounting for revenue;
  - goods declaration processing;
  - production of statistics;
  - enforcement.
2. Member States undertake to ensure that their laws cater for computerised customs procedures as well as manual procedures. In particular, the laws should provide for:
  - other information transmission methods as an alternative to paper based documentary requirements, e.g. magnetic media and tele-transmission;
  - other authentication methods as an alternative to hand-written and other paper-based signatures;
  - the definition of relevant terms using internationally accepted definitions which take account of data processing media.
3. The customs authorities of Member States should review and where appropriate modernise existing manual procedures, documentation and coding practices prior to introducing the use of data processing techniques.
4. Whenever practicable, computer applications implemented by customs authorities of Member States should use internationally accepted standards, especially those adopted by the World Customs Organisation, the United Nations Economic Commission for Africa and UNCTAD.
5. The customs authorities of Member States shall consider developing or adopting common customs application systems. They shall consult with other agencies, national and international, when considering the development or adoption of new systems or the enhancement of existing ones with a view to avoiding duplication of effort where possible.
6. In automating procedures, customs authorities of member States shall allow the possibility of interchanging data with trade users by direct link or on machine-readable media according to the technology available.

## **ARTICLE 7: Preservation, Investigation and Suppression of Customs Offences**

1. Member States undertake to co-operate in the prevention, investigation and suppression of customs offences.
2. For the purposes of paragraph 1 of this Article, the Member States undertake to:
  - (a) exchange lists of goods and publications the importation of which is prohibited in their respective territories;
  - (b) prohibit the exportation of goods and publications referred to in sub-paragraph (a) of this paragraph to each other's customs territories;
  - (c) exchange among themselves lists of customs offices located along common frontiers, details of the power of such offices, their working hours and any changes in these particulars for the effective operation of the provisions of sub-paragraph (d) of this paragraph;
  - (d) consult each other on the establishment of common border posts and take such steps as may be deemed appropriate to ensure that goods exported or imported through common frontiers pass through the competent and recognised customs offices and along approved routes;
  - (e) exchange among themselves lists of customs offices located along common frontiers, details of the powers of such offices, their working hours and any changes in these particulars for the effective operation of the provisions of sub-paragraph (d) of this paragraph;
  - (f) endeavour to correlate the powers and harmonise the working hours for their corresponding customs office referred to in sub-paragraph (e) of this paragraph; and
  - (g) maintain special surveillance over:
    - i. the entry into, sojourn in, and exit from their customs territories of particular persons reasonably suspected by a Member State of being involved in activities that are contrary to the customs law of any Member State;
    - ii. the movement of particular goods suspected by any Member State to be the subject illicit traffic towards the importing Member States;

- iii. particular places where stocks of goods have been built up giving reason for suspicion that they may be used for illicit importation into any Member States; and
  - iv. particular vehicles, ships, aircraft, or other means of transport suspected of being used to commit customs offences in any Member State.
3. Member States shall exchange:
- (a) as a matter of course and without delay, any information regarding:
    - (i) operations which it is suspected will give rise to customs offences in any Member States;
    - (ii) persons, vehicles, shops, aircraft and other means of transport reasonably suspected of being engaged in activities that may be in violation of the customs laws of any Member State;
    - (iii) new techniques of committing customs offences; and
    - (iv) goods known to be the subject of illicit traffic;
  - (b) on the request from a Member State and as promptly as possible, any available information:
    - (i) contained in customs documents relating to such exchanges of goods between countries as are suspected of being in violation of the customs Law of the requesting Member State;
    - (ii) enabling false declarations to be detected, in particular with respect to dutiable value; and
    - (iii) concerning certificates of origin, invoices or other documents, known to be, or suspected of being, false; and
  - (c) on the request and if appropriate in the form of official documents from a Member State, information concerning the following matters;
    - i. the authenticity of any official document produced in support of goods declaration made to customs authorities of the requesting Member State;

- ii. whether goods which were granted preferential treatment on departure from the territory of the requesting Member State, because they were declared as intended for home use in the other member State, have been duly cleared for home use in that State;
  - iii. whether goods imported into the territory of the requesting Member State have been, exported from that of the exporting Member States;
  - iv. whether goods exported from the territory of the requesting Member State have been lawfully imported into that of the importing Member States, and in accordance with the importer's declaration; and
  - v. special documents which may be issued by the customs authorities of the exporting Member State for surrender to the customs authorities of the importing Member State in order that they may certify that the goods were lawfully exported.
4. Each Member State undertakes, whenever expressly requested by another Member State, to:
  - (a) make enquiries, record statements and obtain evidence concerning a custom offence under investigation in the requesting Member State and transmit the results of the enquiry as well as any documents or other evidence, to the requesting Member State; and
  - (b) notify the competent authorities of the requesting Member State of actions and decisions taken by the competent authorities of the member State where the customs offence took place in accordance with the law in force in that Member State.
5. Member States shall keep information on customs matters strictly confidential.

#### **ARTICLE 8: Co-operation in Training**

Member States undertake to develop or adopt joint training programmes, exchange staff and share training facilities and resources.

#### **ARTICLE 9: Communication of Customs Information**

1. Member States shall exchange information on matters relating to customs and more particularly the following:

- (a) changes in customs legislation, procedures and duties and commodities subject to import or export restrictions;
  - (b) information relating to the prevention, investigation and repression of customs offences; and
  - (c) information required to implement and administer the regulations on the determination of originating goods.
  - (d) any other information deemed necessary by the Sub-Committee.
2. For the purpose of paragraph 1 of this Article, member States shall adopt loose leaf editions of national customs tariff scheduled.

**ARTICLE 10: Implementation Arrangements**

For the effective implementation of the provisions of this Annex, the Member States undertake to:

- (a) encourage co-operation between their respective national customs administration and the Sub-Committee; and
- (b) establishment joint training facilities arrangements of programmes for the training of personnel engaged in customs administration.

**ARTICLE 11: Sub-Committee on Customs Cooperation**

CMT shall appoint a Sub-Committee on Customs Cooperation whose functions shall include:

- (a) all activities relating to customs Co-operation among the Member States as set out in paragraph 1 of Article 2 of this Annex; and
- (b) the undertaking of studies and the making of recommendations on the practical aspects of customs co-operation among the Member States, including those relating to join training for personnel engaged in customs administration.

**ARTICLE 12: Regulations**

CMT shall adopt regulations to facilitate the implementation of this Annex.

## **Annex III**

### **ANNEXED CONCERNING SIMPLIFICATION AND HARMONIZATION OF TRADE DOCUMENTATION AND PROCEDURES**

#### **PREAMBLE**

#### **THE HIGH CONTRACTING PARTIES**

**RECALLING** the provisions of Article 14 of this Trade Protocol which requires the simplification and harmonization of trade documentation and procedures;

**RECOGNIZING** that cumbersome trade documentation and procedures can be a barrier to intra-community trade in goods and services;

**AWARE** of the need to adopt internationally accepted standards, and guidelines for facilitating trade documentation and procedures.

#### **HEREBY AGREE AS FOLLOWS:**

#### **ARTICLE 1: Definitions**

**"Document"** means paper and or other medium designed to carry and actually carrying data or information, and includes magnetic tapes and disks, and microfilm.

**"Trade facilitation"** means the co-ordination and rationalisation of trade procedures and documents relating to the movement of goods in international trade from the place of consignment to the destination.

**"Trade procedures"** means activities relating to the collection, presentation, processing and dissemination of data and information concerning all activities constituting international trade.

#### **ARTICLE 2: Objective**

The objective of this Annex is to promote co-operation among Member States in simplifying and harmonizing trade documentation and procedures for the purpose of facilitating intra-SADC trade.

#### **ARTICLE 3: Reduction of Costs of Trade Documentation**

Member States undertake to reduce the cost of all trade documentation and procedures by:



- (a) aligning intra-SADC and international trade documentation on the United Nations Layout Key;
- (b) reducing to a minimum the number of national documents and copies required for intra-community and international trade transactions;
- (c) harmonizing the nature of the information to be contained in documents referred to in sub-paragraph (a) of this paragraph;
- (d) reducing to a minimum the number of institutions required to handle documents referred to in sub-paragraph (a) of this paragraph;
- (e) centralizing to the extent possible the issuing and processing of documents required for intra-SADC and international trade.

**ARTICLE 4: Standardization of Trade Documents and Information**

1. Member States undertake to use internationally accepted standards, practices and guidelines, as a basis for designing, and standardising their trade documents and the information required to be contained in such documents.
2. Member States undertake to encourage and facilitate the use of data processing techniques in processing and transmitting trade data between the various parties and authorities involved in intra-SADC and international trade.
3. Member States shall review national legislation with a view to ensuring that its provisions allow the implementation of paragraph 2 of this Article. In particular, national legislation shall provide for:
  - (a) other information transmission methods as an alternative to paper based documentary requirements e.g. magnetic media and tele-transmission;
  - (b) other authentication methods as an alternative to hand-written and other paper-based signatures;
  - (c) the definition of relevant terms by using internationally accepted definitions which take account of data processing media;
  - (d) the possibility of using public telecommunication infrastructure and of developing and using private telecommunication lines, for trade data transmission;

- (e) provisions concerning documentary evidence appropriate to modern information technology.
4. The Sector Co-ordinating Unit shall keep Member States informed regarding trade facilitation activities, instruments, recommendations and guidelines of other international organisations, particularly of:
- (a) The UN Economic Commission for Africa (ECA) - Working Party on Trade Procedures;
  - (b) The United Nations Conference on Trade and Development (UNCTAD);
  - (c) The World Customs Organisation (WCO);
  - (d) The International Maritime Organization (IMO);
  - (e) The International Civil Aviation Organization (ICAO);
  - (f) The International Standards Organization (ISO);
  - (g) The International Chamber of Commerce (ICC) and the International Bureau of Chamber of Commerce (IBCC);
  - (h) The International Air Transport Association (IATA);
  - (i) The international Chamber of Shipping (ICS);
  - (j) The World Trade Organisation (WTO).

**ARTICLE 5: Trade Facilitation**

Member States undertake to initiate trade facilitation programmes aimed at:

- (a) reducing the cost of documents and the volume of paper work required in respect of trade between Member States;
- (b) ensuring that the nature and volume of information required in respect of trade within the Community does not adversely affect the economic development of, or trade among, the Member States;
- (c) adopting common standards of trade procedures within the community where international requirements do not suit the conditions prevailing among Member States;
- (d) ensuring adequate co-ordinating between trade and transport facilitation within the Community;
- (e) keeping under review the procedures adopted in international trade and transport with a view to simplifying and adopting for use by Member States;

- (f) collecting and disseminating information on international development regarding trade facilitation;
- (g) promoting the development and adoption of common solutions to problems in trade facilitation among Member States; and
- (h) initiating and promoting the establishment of joint programmed, for the training of personnel engaged in trade facilitation among Member States,

**ARTICLE 6: Sub-Committee on Trade Facilitation**

CMT shall appoint a Sub-Committee on Trade Facilitation which shall be responsible for the implementation of the provisions of this Annex, as provided for under Article 31 (2)(c) of the Trade Protocol. It shall address matters of trade documentation and procedures, particularly those relating to:

- (a) exportation and importation;
- (b) export and import licensing;
- (c) insurance of goods;
- (d) transit operations;
- (e) international transport and licensing of carriers; and
- (f) statistical control and dissemination of information on trade documents.

**ARTICLE 7: Regulations**

CMT shall adopt regulations on Trade Facilitation, for the implementation of the provisions of this Annex.

**Annex IV**

**ANNEX CONCERNING TRANSIT TRADE AND TRANSIT FACILITIES**

**PREAMBLE**

**THE HIGH CONTRACTING PARTIES**

**HAVING REGARD** to the provision of Article 15 Protocol;

**HEREBY AGREE AS FOLLOWS:**

**ARTICLE 1: Definitions**

"**Carrier**" means the person actually transporting transit goods or in charge of or responsible for the operation of the respective means of transport;

"**Customs office of commencement**" means any port, inland or frontier customs office of a Member State where transit begin;

"**Customs office of destination**" means any port, inland or frontier customs office of a Member State where transit operations end;

"**Customs office e-route**" means any customs office where goods are imported or exported in the course of a customs transit operation;

"**Customs office of entry**" means office of a second or other subsequent Member States where, in relation to that State, the provisions of this Annex begin to apply, and includes any customs office which, even when not situated on the frontier, is the first point of customs control after crossing the border;

"**Customs office of exit**" means any customs office which, even when not situated on the frontier, is the last point of customs control before crossing the border;

"**Goods**" means all chattels personal other than things in action and includes wares, merchandise, mail, emblems, industrial products and crops;

**Means of transport include:**

- (a) any railway stock, containers, water going vessels, road vehicles and aircraft;
- (b) where the local situation so requires, porters and pack animals; and
- (c) pipelines and gas lines;

"**SADC Transit Document**" means a customs document for transit declaration approved by the CMT to be utilised within the community;

"**container**" means an article of transport equipment:

- (a) fully or partially enclosed to constitute a compartment intended for containing goods and capable of being sealed;
- (b) of a durable nature intended for repeated use;
- (c) specifically designed for the carriage of goods by one or more modes of transport without intermediate unloading and reloading of its contents;
- (d) fitted with devices for easy handling, particularly for its transfer from one mode of transport to another;
- (e) so designed as to be easy to fill and empty; and
- (f) having an internal volume of at least one cubic metre.

"**SRCTD**" means the SADC Road Customs Transit Declaration;

"**Surety**" means any person who gives an undertaking to the customs authorities of a Member State to answer for or be collaterally responsible for the debt, obligation, default or miscarriage of the transitor and for the payment to transit States of import duties and any other sums of money due and payable to them in the event of non-compliance with the terms and conditions of transit relating to transit traffic introduced into the transit State by carriers of such goods;

"**Transit traffic**" means the passage of goods including unaccompanied baggage, mail, persons and their means of transport through the territories of the Member States in accordance with the itineraries set out in paragraph 1 of Article 2 of this Annex;

"**Transitor**" means the legal entity responsible for the conveyance of goods through the customs operations;

"**Vessel**" means any mechanically propelled ship, boat or craft with inboard engine power or any other craft moving through water carrying passengers or cargo.

## **ARTICLE 2: General Provisions**

1. The Member State undertake to grant all transit traffic freedom to traverse their respective territories by any means of transport suitable for that purpose when coming from:

- (a) or bound for the Member States; or
  - (b) third countries and bound for other Member States; or
  - (c) other Member States and bound for third countries; or
  - (d) third countries and bound for third countries.
2. Member States undertake not to levy any import or export duties on the transit traffic referred to in paragraph 1 of this Article. However, in accordance with paragraph 6 of Article 11 this Annex, a Member States may levy administrative or service charges.
  3. For the purpose of this Annex, the Member States undertake to ensure that there shall be no discrimination in the treatment of persons, mail, merchandise and means of transport coming from or bound to Member States, and that rates and tariffs for the use of their facilities by other Member States shall not be less favourable than those accorded to their own traffic.
  4. Notwithstanding the provisions of paragraph 1 of this Article, a Member State may, in conformity with Article 9 of the Trade Protocol, prohibit, restrict or otherwise control the entry of goods and services.

**ARTICLE 3: Scope of Application**

1. The provisions of this Annex shall apply to any transistor, mail, means of transport or any shipment of bonded goods in transit between two points either in two different Member States or between a Member State and a third country.
2. The provisions of this Annex shall only apply to transit transport if it is:
  - (a) operated by a carrier licensed under the provisions of Article 4 of this Annex;
  - (b) performed under the conditions set out in Article 5 of this Annex by means of transport approved by the customs office of commencement and issue with certificates which shall be in the form set up in Appendix III of this Annex;
  - (c) guaranteed by a surety in accordance with the provisions of Article 6 of this Annex; and
  - (d) undertake under cover of the SRCTD, or any other transit document approved by CMT.

3. The provisions of this Annex shall apply to transit goods being carried by whatever means of transport, except that in the case of air, water and rail transport, the aircraft, vessel or train in transit shall be exempted from the application of the provisions of this Annex. However, the aircraft, vessel or train will be subject to the national laws and regulations of the transit country.
4. The provisions of this Annex shall cease to apply to transit traffic referred to in Article 2 (1)(a) of this Annex when the import duties have been eliminated.

#### **ARTICLE 4: Licensing of Transistors and Carriers**

1. Any person intending to be engaged in the operation of transit traffic under the provisions of this Annex shall be licensed for that purpose by the competent authorities of the Member State in whose territory he is normally resident or established, and the competent authority shall inform all the other Member States of all the persons so licensed.
2. The conditions for the issuance of the licences referred to in paragraph 1 of this Article to person resident or established in a Member State shall be that:
  - (a) the requirements of Article 5 of this Annex have been satisfied; and
  - (b) the applicant has not during the previous three years been convicted of a serious offence including accepting, receiving or offering bribes, smuggling, theft, destroying documents of evidence, and failing or refusing to give information relating to interstate transportation of goods.
3. The conditions for issuance of the licences referred to in paragraph 1 of this Article to applicants who are not resident or established in a Member State shall be determined by each Member State in consultation with other Member States provided that such conditions shall not be more favourable than conditions accorded to persons resident or established in that Member State.
4. Licensed carriers and transistors, who are convicted of customs offences referred to in sub-paragraph (b) of paragraph 2 of this Article or who conceal their record of having been convicted of such offences in order to obtain a licence or who commit such offences after they have been licensed to operate transit traffic, shall have their licences suspended automatically or withdrawn by the issuing authorities who shall thereupon notify the customs authorities of the other Member States and the respective sureties of the action taken.

**ARTICLE 5: Approval of Means of Transport**

1. The means of transport used in transit trade shall be licensed by the appropriate licensing authorities of the Member States in accordance with their national laws and regulations.
2. For the purpose of sub-paragraph (b) of paragraph 2 of Article 3 of this Annex, means of transport, together with their cargo, shall be presented to the customs offices of commencement for examination to ensure that they comply with the technical conditions stipulated in Appendix II of this Annex before each transit traffic operation is undertaken.

**ARTICLE 6: Bonds and Sureties**

All SADC transit traffic operations carried under the cover of the SRCTD or any other transit document approved by CMT shall be covered by customs bond and sureties arrangements.

**ARTICLE 7: SADC Transit Document**

1. Subject to conditions and regulations as CMT may deem necessary, each Member State undertakes to authorize a transitor or his authorized agent, to prepare in respect of each consignment of transit goods SADC Transit Document in accordance with the rules laid down in Appendix of this Annex.
2. SADC Transit Documents shall conform to the standard form approved by the CMT. SADC Transit Documents shall be valid for only one transit operation and shall contain a sufficient number of copies for customs control and discharge required for the transport operation concerned.
3. All means of transport covered by the provisions of this Annex shall be accompanied by relevant SADC Transit Documents and such documents shall, on demand, be presented by the carriers, together with the respective means of transport and certificates to the customs offices en-route and the customs offices of destination for their appropriate actions.

**ARTICLE 8: Exemption from Customs Examinations and Charges**

1. Provided the provisions of Article 4 and 5 of this Annex are satisfied, goods carried in approved sealed means of transport, sealed packages, or accepted by customs office of commencement as goods not susceptible to tampering substitution or manipulation, and permitted to be carried unsealed shall not:

- (a) be subject to the payment of import or export duties at customs office en-route; and



- (b) as a general rule, be subject to customs examination at such offices.
2. However, in order to prevent abuse, the customs authorities may, where they suspect an irregularity, carry out at such offices a particular or full examination of the goods.

**ARTICLE 9: Transit Procedures**

1. All transit goods and means of transport shall be presented to the customs office of commencement together with duly completed SADC Transit Documents supported by appropriate bonds as necessary for examination and affixing of customs seals. The office of commencement shall decide whether means of transport to be used provides enough safeguards to ensure customs security and whether the shipment may be made under cover of relevant SADC Transit Document.
2. Where it is not possible for goods to be transported in sealed means of transport compartments, the customs authorities at the customs office of commencement may authorize the transportation in such unsealed means of transport or compartments and under such conditions as they may deem necessary, and endorse the relevant SADC Transit Document accordingly.
3. A means of transport engaged in the transport of goods under the provisions of this Annex shall not at the same time be used to transport passengers unless such passengers and their personal effects are carried in a part of the means of transport which is adequately sealed off to the satisfaction of the customs authorities of commencement.
4. Nothing may be added or taken from or substituted for goods consigned under cover of a SADC Transit Document at times of off-loading, trans-shipment or collecting.
5. The means of transport, together with the respective SADC Transit Document, shall be presented to the customs authorities at customs offices en-route and at customs offices of destination for such administrative action as may be required under the provisions of this Annex.
6. Except where irregularities are suspected, the customs offices en-route within the Member States shall respect the seals affixed by the customs authorities of other Member States. Such customs authorities may, however, affix additional seals of their own.
7. In order to prevent abuse, the customs authorities may, if they deem it necessary:

- (a) require the means of transport to be escorted through the territory of their country, at the transitor's expense, when goods are transported in unsealed means of transport; or
  - (b) require that examination of the means of transport and their loads be carried out en-route in the territory of their country.
- 8. An unsealed shipment covered by an appropriate SADC Transit Document shall have only one customs office of destination.
- 9. If the goods in a means of transport are examined at a customs office en-route or anywhere in the course of transportation, the customs authorities concerned shall affix new seals and make a certified declaration of the particulars of irregularities, if any, and of the new seals affixed by them.
- 10. In the event of an accident or imminent danger necessitating the immediate unloading in whole or part of a means of transport, the carrier may on his own initiative take such steps as may be necessary to ensure the safety of the goods being transported or the means of transport in which they are being transported. The carrier should, however as soon as possible thereafter, inform the customs office of commencement. The carrier shall arrange where appropriate for the goods to be transferred to other means of transport in the presence of customs authorities concerned or any other accredited authority shall endorse the SADC Transit document with the particulars of the goods transferred to the other means of transport and where possible apply the customs seal.
- 11. On arrival at the customs office of destination, the SADC Transit Document shall be discharged without delay. If, however, the goods cannot be immediately entered under another customs regime, the customs authorities may reserve the right to discharge the document conditionally upon a new liability being substituted for that of the surety guaranteeing the said document.
- 12. If seal affixed by customs authorities are broken en-route otherwise than in the circumstance set out in paragraph 10 of this Article, or if goods are destroyed or damaged without breaking such seals, the procedure laid down in paragraph 11 of this Article shall, without prejudice to the application of the provisions of national laws, be allowed and a certified report drawn up in the form set out in Appendix IV of this Annex.
- 13. When the customs authorities are satisfied that: the goods covered by a SADC Transit Document have been destroyed by force majeure an exemption from payment of the duties shall be granted.

## **ARTICLE 10: Obligation of Member States and Sureties**

Subject to the provisions of Article 6 of this Annex, the obligations of Member States and sureties are as follows:

- (a) Each Member State undertakes to facilitate the transfer to the other Member States of the funds necessary for payment of premiums or other charges claimed from sureties under the provisions of this Annex, or for payments of any penalties which the transitor may incur in the event of an offence being committed in the course of transit transport operations.
- (b) The Member States agree to ensure that the liabilities undertaken by sureties cover import or export duties due, any interest thereon, and other charges and financial penalties incurred by the holder of a SADC Transit Document and other persons involved in the transit transport operation under the customs laws and regulations of the Member State in which an offence has been committed. The surety and the persons charged with the offence shall be jointly and severally liable for payment of such sums. The fact that customs authorities might have authorised the examination of goods elsewhere than at a place where the business of the customs office of commencement or destination is usually conducted shall not affect the liability of the surety.
- (c) For the purpose of determining the duties referred to in paragraph (b) of this Article, the particulars of the goods as entered in the SADC Transit Document shall, unless the contrary is proved, be regarded as correct.
- (d) The liability of the surety to the authorities of any Member State shall commence from the time when the SADC Transit Documents is accepted by the customs authorities of that Member State, and shall cover only the goods enumerated in the document.
- (e) When the customs authorities of a Member State have unconditionally discharged a SADC Transit Document, they may not subsequently claim from the surety payment in respect of the duties referred to in paragraph (b) of this Article unless the certificate of discharge was issued erroneously or fraudulently.
- (f) The transitor and surety shall be released from their undertaking to the customs authorities of each Member State entered when goods carried have been duly exported or have otherwise been accounted for satisfactorily to the customs authorities of the Member State concerned.
- (g) Where a SADC Transit Document has not been discharged or has been discharged conditionally, the competent authority of a Member State shall not claim from the surety the payment referred to in Paragraph (b) of Article unless such authority has, within a period of one year from the date on which the SADC Transit Document was taken on charge, notified the surety of the non-discharge or conditional discharge of the document:

Provided that where the certificate of discharge was obtained erroneously or fraudulently, this paragraph shall not prevent the authorities of a Member State from taking the necessary action against the person or persons concerned at any time thereafter in accordance with their national laws.

- (h) The claim for payment referred to in paragraph (b) of this Article shall be made within three years from the date when the surety was notified that the relevant SADC Transit Document had not been discharged or had been discharged conditionally, or that the certificate of discharge had been obtained erroneously or fraudulently. However, the period of three years referred to in this Article includes a period of legal proceedings any claim for payment under the provisions of this Article shall be made within one year from the date when the decision of the court becomes enforceable.
- (i) The Member States shall, where feasible, use the services available in other Member States in all transit traffic operations provided such services are competitive and not less efficient than those offered by other parties.

#### **ARTICLE 11: Other Provisions**

1. The Member States undertake to establish or facilitate the establishment of bonded, transit or customs areas or bonded warehouses for the temporary storage of transit goods where the direct trans-shipment of goods from one means of transport to another is not possible. The management and operation of such bonded, transit or customs areas and such bonded warehouses shall be in accordance with the customs rules and regulations of the Member States concerned.
2. The Member States undertake to permit and facilitate the establishment of cargo, clearing and forwarding offices in their territories by persons, organisations or associations of other Member States or their authorised agents, for the purpose of facilitating transit traffic in accordance with their national laws and regulations.
3. Each means of transport engaged in international transit traffic operations under cover of an SRCTD or any other transit document approved by CMT shall have affixed to its front and rear, a plate bearing the letters "SADC - TRANSIT", specifications of which are laid down in Appendix V of this Annex. These plates shall be so placed as to be clearly visible, removable and capable of being sealed. The seals to such plates shall be affixed by the customs offices of commencement and shall be removed by the authorities of the offices of destination.

4. The Member States shall communicate to each other through the Sector Coordinating Unit the seals, stamps and date stamps they use.
5. Each Member State shall send to the other Member States through the Sector Coordinating Unit, a list of its customs offices and stations, including transit routes approved by it for SADC Transit Document covered traffic and normal working hours of such offices. Contiguous Member States shall consult each other in determining the frontier customs offices to be included in such lists and where possible such office shall be juxtaposed.
6. In all customs operations referred to in this Annex, no charges shall be levied for customs attendance, save where it is provided on days or at times or places other than those appointed for such operations. Whenever possible, customs frontier offices shall remain open for business for twenty-four hours a day or shall allow execution of customs formalities relating to the transportation of goods under the provisions of this Annex outside the normal working hours.
7. Any breach of the provisions of this Annex shall render a carrier liable in the Member States where the offence is committed to the penalties prescribed by law in that Member States.
8. Nothing contained in this Annex shall prevent the Member States from enacting special legislation in respect of transport operations commencing or terminating in or passing through their territories provided that the provisions of such legislation shall not conflict with the provisions of this Annex, are extended to other Member States or do not confer benefits on third countries that are more favourable than those enjoyed by Member States.
9. All SADC Transit Documents may have a note explaining how that particular document should be used.

#### **ARTICLE 12: Regulations**

CMT shall adopt regulations to facilitate the implementation of this Annex.

## APPENDIX I

### NOTES FOR THE USE OF THE SADC TRANSIT DOCUMENT

1. The SADC Transit Document herein after referred to as "Document" shall be prepared in the country of commencement where the goods are first declared to be in transit.
2. The document shall be printed in the English, and Portuguese language, but completed in the language of the country of commencement. The customs authorities of the other countries traversed reserve the right to require their translation into their own language. In order to avoid unnecessary delays which might arise from this requirement, carriers are advised to supply the operator of the means of transport with the requisite translations.
3. A document remains valid until completion of the transit operation at a customs office of destination provided that it has been taken under customs control at the custom office of commencement within the time limit given by issuing authorities.
4.
  - (a) The document must be typed or multigraphed or printed legibly.
  - (b) When there is not enough space on the manifest separate sheets to enter all the goods carried, separate sheets to the same model as the manifest may be attached to the latter but all copies of the manifests must contain the following particulars:
    - i) a reference to the sheets; and
    - iii) the number and type of packages and goods in bulk enumerated on the separate sheets;
    - iv) the total value and the total gross weight of the goods appearing on the said sheets;
5. Weights, volume and other measurements shall be expressed units of the metric system, and values in the currency of the country of commencement or in the currency determined by CMT.
6. No erasures or over-writing shall be allowed on the document. Any correction shall be made by deleting the incorrect particulars and adding, if necessary, the required particulars. Any correction, addition or other amendment shall be acknowledged by the person making it and countersigned by the customs authorities.

7. When the document covers coupled means of transport or several containers, the contents of each means of transport shall be indicated separately on the manifest. This information shall be preceded by the registration of identification number of the means of transport or container.
8. If there is more than one customs office of destination, the entries concerning the goods taken under customs Control at, or intended for, each office shall be clearly separated from each other on the manifest.
9. In the event of customs seals being broken or goods being destroyed or damaged accidentally en-route, the operator of: the means of transport shall ensure that a certified report is drawn up as quickly as possible by the authorities of the country in which the vehicle is located. The operator shall approach the customs authorities, if there are any near at hand, or, if not, any other competent authorities. Operators shall accordingly provide themselves with copies of the certified report form laid down in Appendix V of this Annex on Transit Facilities within the Community.
10. In the event of accident involving immediate unloading of the whole or part of the load en-route the operator may take action on his own initiative without requesting awaiting intervention by the authorities mentioned in paragraph 9 of these notes.

He must then furnish adequate proof that he was compelled to take action in the interest of the means of transport or of the load. Having taken such preventive measures as the emergency may necessitate, he shall at the first opportunity notify the authorities mentioned in paragraph 9 of these notes in order that the facts may be verified, the load checked, the means of transport sealed and report drawn up.

## APPENDIX II

### REGULATIONS RELATING TO TECHNICAL CONDITIONS APPLICABLE TO MEANS OF TRANSPORT OTHER THAN PORTERS AND PACK ANIMALS WHICH MAY BE ACCEPTED FOR TRANSPORT OF GOODS WITHIN THE COMMUNITY UNDER CUSTOMS SEAL

1. Approval for the intra-Community transport of goods by means of transport under customs seal may be granted only for means of transport constructed and equipped in such a manner that:
  - (a) customs seal can be simply and effectively affixed thereto;
  - (b) no goods can be removed from or introduced into the sealed part of the means of transport without obvious damage to it or without breaking the seals;
  - (c) they contain no concealed spaces where goods may be hidden.
2. The means of transport shall be so constructed that eleven (11) spaces in the form of compartments, receptacles or other recesses which are capable of holding goods are readily accessible for customs inspection.
3. Should any empty spaces be formed by the different layers of the sides, floor and roof of the means of transport, the inside surface shall be firmly fixed, solid unbroken and incapable of being dismantled without leaving obvious traces.
4. Openings made in the floor for technical purpose, such as lubrication, maintenance and filing of the sand-box, shall be allowed only on condition that they are fitted with a cover capable of being fixed in such a way as to render the loading compartment inaccessible from the outside.
5. Doors and all other closing systems of means of transport shall be fitted with a device which shall permit simple and effective customs sealing. This device shall either be secured by at least two bolts, riveted or welded to the nuts on the inside.
6. Hinges shall be so made and fitted that doors and other closing systems cannot be lifted off the hinge-pins, once shut, the screws, bolts, hinge-pins and other fasteners shall be welded to the outer parts of the hinges. These requirements shall be waived, however, where the doors and other closing systems have a locking device inaccessible from the outside which, once it is applied, prevents the doors from being lifted off the hinge-pins.



7. Doors shall be so constructed as to cover all interstices and ensure complete and effective closure.
8. The means of transport shall be provided with a satisfactory device for protecting the customs seal, or shall be so constructed that the customs seal is adequately protected.
9. The foregoing conditions shall also apply to insulated vehicles, refrigerator vehicles, tank vehicles and furniture vehicles in so far as they are not incompatible fulfil in accordance with their use.
10. The flanges (filler caps), drain cocks and manholes of tank wagons shall be so conducted as to allow simple and effective customs sealing.
11. Folding or collapsible containers are subject to the same conditions as non-folding or non-collapsible containers, provided that the locking device enabling them to be folded or collapsed allow customs sealing and that no part of such container can be moved without breaking the seals.

**APPENDIX III**

**CERTIFICATE OF APPROVAL OF MEANS OF TRANSPORT**

1. Certificate No. .... Date of expiry .....
2. Attesting that the means of transport specified below fulfils the conditions required for admission to intra-SADC transport of goods under customs seals.
3. Name and address of holder (owner of carrier)
4. Make .....
5. Type .....
6. Engine No. .... Chassis No. ....
7. Registration No. ....
8. Other particulars .....
9. Issued at ..... (place) on ..... (date) .....
10. Signature and stamp of issuing office at .....

NOTE: This licence must be framed and exhibited in the cab of the means of transport is not in use, or on a change of owner or carrier, or on expiry of the period of validity of the certificate, or if there is any material change in any essential particulars of the means of transport.

**APPENDIX IV**

**FRONT OF REPORT FORM**

**CERTIFIED DECLARATION OF EXAMINATION OF CONTENTS OF MEANS OF SADC TRANSPORT**

1. SADC Transit Document No. .... Issued at .....
2. Information concerning the means of transport examined:
  - Kind of means of transport .....
  - Registration No. ....
3. Reasons for making the examination (check where appropriate)

--

	Seals broken or missing
	Evidence of break-in
	Vehicle involved in an accident
	Other
	Results of examination (check where appropriate):
	All packages were intact and none of their contents were missing

The following goods/packages were missing/damaged

Serial No.	Consignment and identification	Number and kind of packages	Description of goods	Remarks

## APPENDIX V

### SADC MARKET TRANSIT PLATES

1. The plates shall measure 120 by 1 000 millimetres.
2. The words "SADC-TRANSIT" shall be 70 millimetres high.
3. Roman letters shall be used.
4. The letters shall be white on a blue background
5. The letter shall be arranged as follows:

"SADC TRANSIT"

## ANNEX V

### ANNEX CONCERNING TRADE DEVELOPMENT

#### PREAMBLE

#### THE HIGH CONTRACTING PARTIES

- Having regard to the provisions of Article 26 of the Trade Protocol;
- Recognising that trade development among Member States and between Member States and third countries is an important element of the strategy to achieve economic development and a more equitable international economic order;
- Convinced that trade development is an important tool in the integration process of the Community;
- Noting that trade development and promotion measures can provide access to a wider regional and international markets;

Hereby agree as follows:

#### ARTICLE 1: Trade Development

1. Member States shall adopt coherent trade development strategies.
2. Member States shall develop internal capacities for trade development and create awareness on the role and importance of trade and economic development.
3. In order to ensure effective distribution of goods and services, Member States shall undertake to strengthen infrastructure related to trade especially in the areas of transport and storage facilities.

#### ARTICLE 2: Involvement of the Business Community

1. Member States shall formulate and implement trade development policies in close co-operation with the private sector.
2. Member States shall facilitate the formation of private sector business associations.
3. Member States, in collaboration with the business community, shall encourage and facilitate the creation of small and medium scale enterprises and promote their participation in trade.

**ARTICLE 3: Trade Promotion Measures**

1. Member States shall promote the participation by the business community in SADC trade fairs, national fairs and exhibitions, specialised fairs and trade missions.
2. In collaboration with the business community, Member States shall disseminate market information on the Community and third countries.

**ARTICLE 4: Trade Related Services**

Member States shall facilitate the provision of trade related services within the Community, including those relating to insurance, freight, banking, warehousing and communication.

**ARTICLE 5: Information in the Area of Trade**

1. Member States shall facilitate the establishment of national and regional data bases and trade information networks for the Region.
2. The trade information shall be made compatible and linked to the World Trade Information System.

**ARTICLE 6: Harmonisation of Standards and Quality Assurance**

1. In order to improve quality and competitiveness of SADC products and achieve the diversification of the markets for such products, Member States shall promote harmonised standards and appropriate quality assurance systems within the Community, in accordance with the provisions of this Protocol.
2. Member States and the private sector shall take measures to ensure that SADC exports meet the quality and standards, in accordance with specifications set by international standards organisations.

**ARTICLE 7: Research and Development**

Member States shall promote market research and participation in international conferences and meetings for the purposes of:

- a) ensuring that they take advantage of the provisions of international trade arrangements, *inter alia* GSP, the Lome Convention and the WTO,
- b) developing well articulated and coordinated community positions in international negotiations.

**ARTICLE 8: Regulations**

CMT shall adopt regulations for the implementation of this Annex.