

## **PROTOCOL ON TRADE**

### **ANNEXES**

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

ANNEX II CONCERNING CUSTOMS CO-OPERATION WITHIN THE  
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ANNEX III CONCERNING SIMPLIFICATION AND HARMONISATION OF TRADE  
DOCUMENTATION AND PROCEDURES

ANNEX IV CONCERNING TRANSIT TRADE AND TRANSIT FACILITIES

ANNEX V CONCERNING TRADE DEVELOPMENT

### **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 co-operation and combat illicit trade within the Community;

Convinced that a framework of trade co-operation 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 of 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 time frame 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 barriers 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 CMT shall adopt such measures as may be necessary to facilitate adjustment arising from 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 State 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 Article 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, in accordance with the provision of Annex 1 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 co-operation, 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 an ineffective or inappropriate means to fulfil its legitimate objectives.
2. A Member State's 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 from 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 in 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 provision of paragraph 5 of this Article, the total period of application of a safeguard measures 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 which 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), with 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 the 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 paragraph 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 COORDINATION OF TRADE POLICIES**

Member States shall, to their best endeavour, coordinate 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 CO-OPERATION WITH THIRD COUNTRIES OR GROUPS OF THIRD COUNTRIES**

Member States shall develop co-operation 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 Coordinating Unit;

c) clear the documents prepared by the Sector Coordinating Unit to be submitted to the CMT;

d) liaise closely with both the CMT and the Sector Coordinating 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 coordination, 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 co-operation 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 provision.
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 of 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 co-operate 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  
AMENDMENTS**

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  
DEPOSITARY**

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

REPUBLIC OF ANGOLA

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

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## **ANNEXES**

### **ANNEX I**

Annex I has been repealed and substituted with Annex I of the Amendment Protocol on Trade(.doc, 116KB).

### **ANNEX II**

Concerning Customs Co-Operation 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 co-operation 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 exchange;

**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 on the Harmonised Commodity Description and Coding System of the World Customs Organisation;

"Sub-committee" 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 of them.

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## **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) co-operating to prevent fraud and illicit trade.

2. The provisions of this Annex do not apply to areas of Customs co-operation which are covered specifically by Annexes I and IV of this Protocol.

3. Co-operation in Customs matters shall apply to any administrative authority of Member States which is competent for matters covered by Customs legislation. This co-operation shall be channeled 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 tariffs 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 on its import and export trade statistics in conformity with the six-digit codes of the Harmonised System, or at 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 Harmonised 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 Harmonised 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 Harmonised 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 Harmonised 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 Harmonised 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**

##### Harmonisation of Valuation Laws and Practice

Member States undertake 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 Harmonisation 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 (UN-ECE)
- 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 proceeding;
- 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 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 Offenses

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 office and along approved routes;

e) endeavour to correlate the powers and harmonise the working hours for their corresponding Customs office referred to in sub-paragraph (c) of this paragraph; and

f) 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 of 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 offenses 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 offenses 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 offenses; 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 exchange 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 lawfully 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 Customs 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 offenses; 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) establish joint training facilities and arrangements of programmes for the training of personnel engaged in Customs administration.

## **ARTICLE 11**

### **Sub-Committee on Customs Co-operation**

CMT shall appoint a Sub-Committee on Customs Co-operation 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 joint training for personnel engaged in Customs administration.

## **ARTICLE 12**

### **Regulations**

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

## **ANNEX III**

### **Concerning Simplification And Harmonisation 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 harmonisation of trade documentation and procedures;

**RECOGNISING** 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 coordination 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 harmonising 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) harmonising 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) centralising to the extent possible the issuing and processing of documents required for intra-SADC and international trade.

## **ARTICLE 4**

### **Standardisation 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 Coordinating 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 Organisation (IMO);

e) The International Civil Aviation Organisation (ICAO);

f) The International Standards Organisation (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 coordinating 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 programmes, 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**

### **Concerning Transit Trade And Transit Facilities**

#### **PREAMBLE**

The High Contracting Parties

**HAVING REGARD** to the provision of Article 15 of this 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 operations begin;

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

"Customs office en-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; andc) 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 particularly 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; andf) 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;

"Transistor" 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 States 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 of this Annex, a Member State 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 transitor, 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) undertaken 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 offenses in order to obtain a licence or who commit such offenses 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 at 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 authorise a transitor or his authorised agent, to prepare in respect of each consignment of transit goods SADC Transit Document in accordance with the rules laid down in Appendix I 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 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 partial 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 authorise 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 transporter'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 followed 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 are 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 this 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 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", the 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 State.
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 the 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 languages, 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 Customs office of commencement within the time limit given by issuing authorities.
4. (a) The document must be typed or multi-graphed 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
  - (ii) the number and type of packages and goods in bulk enumerated on the separate sheets;
  - (iii) 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 requirement 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 if 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 .....

Reasons for making the examination (check where appropriate)

Seals broken or missing

Evidence of break-in

Vehicle involved in an accident

Other

4. 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
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## **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:

## **Annex V 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 market 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 Organisation.

## **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.

Related documents:

- \* Annex III - Amendment
  - o Annex I (.doc, 116KB)
    - + Annex I, Appendix 1, part 1 (.doc, 58KB)
    - + Annex I, Appendix 1, part 2 (.xls, 48KB)
  - o Annex II, Appendix 1 (.doc, 45KB)
  - o Annex VI (.doc, 55KB)
  - o Annex VII (.doc, 38KB)
  
- \* Rules of Origin (.pdf, 197KB) (cover (.pdf, 69KB)).
  
- \* Country Tariff Phase Down Offers:
  - o Malawi (preliminary) (.zip, 405KB).
  - o Mauritius (final) (.zip, 512KB).
  - o Mozambique (final) (.zip, 382KB).
  - o SACU (final) (.zip, 356KB).
  - o Tanzania (preliminary) (.zip, 430KB).
  - o Zambia (final) (.zip, 472KB).
  - o Zimbabwe (preliminary) (.zip, 1394KB).