

AMENDMENT

PROTOCOL ON TRADE

IN THE

**SOUTHERN AFRICAN DEVELOPMENT
COMMUNITY**



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

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PREAMBLE

We, the Heads of State or Government of:

The Republic of Angola
The Republic of Botswana
The Democratic Republic of the Congo
The Kingdom of Lesotho
The Republic of Malawi
The Republic of Mauritius
The Republic of Mozambique
The Republic of Namibia
The Republic of Seychelles
The Republic of South Africa
The Kingdom of Swaziland
The United Republic of Tanzania
The Republic of Zambia
The Republic of Zimbabwe

NOTING that the Protocol on Trade in the Southern African Development Community (SADC), hereinafter referred to as "the Protocol", entered into force on 25 January 2000;

DESIRING to implement the Protocol from 1 September 2000;

RECOGNISING that certain provisions of the Protocol require amendment;

HAVE AGREED, pursuant to Article 34 of the Protocol, read with Article 36(1) of the Treaty, upon the following amendments:



ARTICLE 1
AMENDMENT OF THE TABLE OF CONTENTS OF THE PROTOCOL

The Table of Contents of the Protocol is amended by adding the following after Annex V:

"ANNEX VI

CONCERNING THE SETTLEMENT OF DISPUTES BETWEEN THE MEMBER STATES OF THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

ANNEX VII

CONCERNING TRADE IN SUGAR IN THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY"

ARTICLE 2
AMENDMENT OF ARTICLE 1 OF THE PROTOCOL

Article 1 of the Protocol is amended by inserting the following definition between the definitions of "Non-Tariff Barriers" and "Originating Goods":

" 'Protocol' means this instrument of implementation of the Treaty and includes any Annex or amendment thereof which form an integral part thereof;"

ARTICLE 3
AMENDMENT OF ARTICLE 9 OF THE PROTOCOL

Article 9 of the Protocol is amended by inserting the following new sub-paragraph after the existing sub-paragraph (i):

" (j) necessary to prohibit or control the importation or exportation of second-hand goods into or from its territory under this Protocol."



ARTICLE 4
AMENDMENT OF ARTICLE 31 OF THE PROTOCOL

Article 31 of the Protocol is amended by deleting sub-paragraph b) of paragraph 2 and renumbering the sub-paragraphs consequentially.

ARTICLE 5
AMENDMENT OF ARTICLE 32 OF THE PROTOCOL

Article 32 of the Protocol is amended by substituting paragraphs 1 to 6 with the following:

"The rules and procedures of Annex VI shall apply to the settlement of disputes between Member States concerning their rights and obligations under this Protocol.

ARTICLE 6
AMENDMENT OF ARTICLE 34 OF THE PROTOCOL

Article 34 of the Protocol is amended by:

(a) the addition of the following new paragraphs 2 and 3:

- "2. In the case of a proposal to amend an existing Annex or include a new Annex to this Protocol, the CMT shall adopt the proposal by consensus.
3. A proposal adopted by the CMT in accordance with paragraph 2 shall form an integral part of this Protocol."; and

(b) the existing article becoming paragraph 1.

ARTICLE 7
AMENDMENT OF ANNEX I OF THE PROTOCOL

Annex I of the Protocol is repealed and substituted with the Annex contained in Annex I of this Amendment Protocol.



ARTICLE 8
AMENDMENT OF ANNEX II OF THE PROTOCOL

Annex II of the Protocol is amended by inserting the Appendix contained in Annex II of this Amendment Protocol after Article 12.

ARTICLE 9
INSERTION OF NEW ANNEXES

The two new Annexes contained in Annex III of this Amendment Protocol shall be inserted after Annex V of the Protocol as Annexes VI and VII.

ARTICLE 10
IMPLEMENTATION

1. Each Member State shall deposit an instrument of implementation, indicating the date upon which that Member State shall implement the Protocol, within six months after the date of entry into force of this Amendment Protocol. This Amendment Protocol and the Tariff Reduction Schedules, adopted by the CMT pursuant to Article 3(2) of the Protocol, shall be implemented by each Member State on a date not later than twelve months from the date of entry into force of this Amendment Protocol. No Member State shall be obliged to extend preferential treatment under this Protocol to another Member State which has not deposited an instrument of implementation as provided for in this paragraph.
2. No Member State shall deposit an instrument of implementation or accession to this Amendment Protocol unless it has previously or simultaneously deposited an instrument of ratification or accession to the Protocol.
3. Except as herein otherwise specifically provided, the Protocol shall remain of full force and effect.
4. This Amendment Protocol shall form an integral part of the Protocol.



**ARTICLE 11
ENTRY INTO FORCE**

This Amendment Protocol shall enter into force upon adoption by a decision of three-quarters of the Members of the Summit.

**ARTICLE 12
ACCESSION**

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

**ARTICLE 13
DEPOSITORY**

1. This Amendment Protocol and all instruments of implementation or accession shall be deposited with the Executive Secretary of SADC.
2. The Executive Secretary shall transmit certified true copies of this Amendment Protocol and instruments of implementation or accession to all Member States.
3. The Executive Secretary shall register this Amendment 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 adopted this Amendment Protocol in Windhoek, Namibia this 7th day of August, 2000 in three (3) original texts in the English, French and Portuguese languages, all texts being equally authentic.



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;

RECOGNIZING that clear and predictable rules of origin and their application should facilitate the flow of regional trade and economies of scale in the Region;

RECOGNIZING that it is desirable to provide for transparency of laws, regulations and practices regarding rules of origin and that the scope of this Annex is to provide for a consolidated text, incorporating all provisions concerning the origin of goods, within the context of this Protocol, and aimed at facilitating implementation and administration of these rules;

DESIRING to ensure that rules of origin themselves do not create unnecessary obstacles to trade and facilitate the implementation thereof by Customs administrations by providing an exhaustive and complete text;

TAKING INTO ACCOUNT the provisions of Article 12 of this Protocol which require that the rules of origin for products that shall be eligible for Community treatment shall be set out in Annex I to this Protocol;

HEREBY AGREE as follows:

RULE 1

DEFINITIONS AND INTERPRETATION

1. Definitions

For the purposes of this Annex:



"Chapters" and "Headings"	mean the chapters and the headings (four-digit codes) used in the Harmonised Commodity Description and Coding System, referred to in this Annex as "the Harmonised System" or "HS";
"Classified"	refers to the classification of a product or material under a particular HS heading;
"Consignment"	means products which are either sent simultaneously from one exporter to one consignee or covered by a single transport document covering their shipment from the exporter to the consignee or, in the absence of such a document, by a single invoice;
"Customs value"	means the value as determined in accordance with the 1994 Agreement on implementation of Article VII of the GATT (WTO Agreement on Customs Valuation);
"Ex-works price"	means the price paid for the product ex works to the manufacturer in any Member State in whose undertaking the last working or processing is carried out, provided the price includes the value of all the materials used, plus the profit and minus any internal taxes which are, or may be, repaid when the product obtained is exported;
"Goods"	means both materials and products;
"MMTZ"	means the Republic of Malawi, the Republic of Mozambique, the United Republic of Tanzania and the Republic of Zambia;
"Manufacture"	means any kind of working or processing, including assembly or specific operations;
"Material"	means any ingredient, raw material, component or part and the like, used in the manufacture of the product;
"Product"	means the product being manufactured, even if it is intended for later use in another manufacturing operation;
"SACU"	means the Southern African Customs Union of which the members are the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia, the Republic of South Africa and the Kingdom of Swaziland;
"Territories"	includes territorial waters;



"Value of materials" means the customs value at the time of importation of the non-originating materials used or, if this is not known and cannot be ascertained, the first ascertainable price paid for the materials in any Member State. The calculations of the Customs value of the non-originating materials will include:

- (a) the cost of transport of the imported goods to the port or place of importation;
- (b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and
- (c) the cost of insurance,

provided that the amount of any transport costs incurred in transit through Member States should be deducted from the calculations of the Customs value of the non-originating materials as provided for in the definition herein;

"Value of the originating materials" means the value of such materials as defined in "value of materials" above, applied *mutatis mutandis*.

RULE 2 ORIGIN CRITERIA

1. General requirements

For the purpose of implementing this Protocol, 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 in any Member State as provided for in Rule 4 of this Annex; or
- (b) they have been obtained in any Member State incorporating materials which have not been wholly produced there, provided that such materials have undergone sufficient working or processing in any Member State within the meaning of paragraph 2 of this Rule.

2. Sufficiently worked or processed products

- (a) For the purpose of this Rule, products, which are not wholly produced, are considered to be sufficiently worked or processed when the conditions set out in the list in Appendix I of this Annex are fulfilled.



- (b) The conditions referred to in sub-paragraph (a) indicate, for all products covered by this Protocol, the working and processing which must be carried out on non-originating materials used in manufacturing and apply only in relation to such materials. Accordingly, it follows that if a product, which has acquired originating status by fulfilling the conditions set out in this list, is used in the manufacture of another product, the conditions applicable to the product in which it is incorporated do not apply to it, and no account shall be taken of the non-originating materials which may have been used in its manufacture.
- (c) Notwithstanding the provisions of sub-paragraph (a), products of HS chapters 50 to 63 exported to SACU by MMTZ Member States will be considered to be sufficiently worked or processed when the conditions set out in column 4 of the list in Appendix I are fulfilled, subject to such quantitative limits, time periods and arrangements for the administration and enforcement of such quantitative limits as agreed upon by the CMT on 4 August 2000.

2. Value tolerance

- (a) Notwithstanding the provisions of paragraph 2(b) of this Rule, non-originating materials which, according to the conditions set out in the list in Appendix I, should not be used in the manufacture of a product may nevertheless be used, provided that:
 - (i) their total value does not exceed 10 per cent of the ex-works price of the product; and
 - (ii) any of the percentages given in the list for the maximum value of non-originating materials are not exceeded through the application of this sub-paragraph.
- (b) The provisions of sub-paragraph (a) shall not apply to the products falling within HS chapters 50 to 63, 87 and 98.

3. 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 Member 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 paragraph 1(a) of Rule 2 of this Annex, the following operations and



processes shall be considered as insufficient to support a claim that goods originate in 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 condition 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 operation 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 anti-caking agents, preservatives, wetting agent and the like;
 - (d) diluting chemicals with inert ingredients to bring them to the standard degree of strength;
 - (e) for the purposes of this sub-paragraph, dilution shall be taken not to include:
 - (i) either mixing together of two bulk medicinal substances followed by the packaging of the mixed products into individual doses for retail sale; or
 - (ii) 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 production designed to enhance the



marketing appeal or ease the product's case, such as simple hand dyeing and printing, embroidery and applique, pleating, hemstitching, stone or acid washing, permanent pressing, or the attachment of accessories, findings and trimmings. The rules of origin for products of HS chapters 50 to 63 exported to SACU by MMTZ Member States, according to the provisions of paragraph 2(c) of Rule 2, may allow minor operations that would otherwise be non-origin conferring processes;

- (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, labeling or affixing other like distinguishing signs on products or their packages;
 - (g) simple operations such removal of dust, sifting or screening, sorting, classifying and matching, including the making up of sets, goods, greasing, washing, painting or cutting up.
5. Slaughter of animals.
 6. 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.
 7. A combination of two or more insufficient working or processing operations does not confer origin, regardless of whether the product-specific rules of origin have been satisfied or not.
 8. All the operations carried out in the Member States on a given product shall be considered together when determining whether they are to be regarded as insufficient within the meaning of this Rule.

RULE 4

GOODS WHOLLY PRODUCED IN THE MEMBER STATES

1. For the purposes of paragraph 1(a) of Rule 2 of this Annex, the following shall be regarded as wholly produced in the Member States:



- (a) Mineral products extracted from their ground or seabed;
 - (b) Vegetable products harvested there;
 - (c) Live animals born and raised there;
 - (d) Products obtained there from live animals;
 - (e) Products obtained by hunting or fishing conducted there;
 - (f) Products of sea fishing and other products taken from the sea by their vessels;
 - (g) Products made on board their factory ships exclusively from products referred to in sub-paragraph (f);
 - (h) Used articles collected there fit only for the recovery of raw materials;
 - (i) Waste and scrap resulting from manufacturing operations conducted there;
 - (j) Products produced there exclusively from one or both of the following:
 - (i) products specified in sub-paragraphs (a) to (i);
 - (ii) materials containing no element imported from outside the Member States or of undetermined origin.
2. 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.
3. 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:
- (a) The vessel sails under the flag of a Member State;
 - (b) At least 75 percent of the officers and crew of the vessel are nationals of a Member State;
 - (c) 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.
4. Electrical power, fuel, plant machinery and tools used in the production of goods shall always be regarded as wholly produced within the Region when determining the origin of the goods.



RULE 5

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 Harmonised System specifies that a group, set or assembly of article 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 of 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 in 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 un-assembled or dis-assembled 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 6

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 State than would have been the case if the producer had been able to physically separate the materials.
2. Any 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 7

TREATMENT OF MIXTURES

1. In the case of mixtures, not being groups, sets or assemblies of goods dealt with under Rule 5,



any product resulting from the mixing together of goods originating in the Member States with goods which would not qualify as originating in the Member States, would not qualify as originating 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 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 8

TREATMENT OF PACKING

1. Where for purposes of assessing Customs duties, a Member State treats the origin of the goods separately from the origin of the packing, it may also, in respect of its imports cosigned 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 packing 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 purposes 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 of equivalent effect. Where containers are not to be returned, they shall be treated separately from the goods contained in them and be subjected to Customs duties and other charges of equivalent effect.

RULE 9

DOCUMENTARY EVIDENCE

1. The claim that goods shall be accepted as originating from a Member State in accordance with the provision of this Annex shall be supported by a certificate given by the exporter or their authorized representative in the form prescribed in Appendix II of this Annex. The certificate shall be authenticated with a seal by an authority designated for this 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 III 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 used for this purpose shall be that contained in Appendix IV to 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 conditions 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 States for at least five years.
6. All Member States shall deposit with the Secretariat the names of Departments and Agencies authorized to issue the certificates required under this Annex, specimen signatures of officials authorized to sign the certificates and the impressions of the official stamps to be used for that purpose, and those shall be circulated to the Member States by the Secretariat.

RULE 10

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 any material sense, particularly 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, in accordance with the provisions on mutual assistance and co-operation in customs matters as contained in Appendix I of Annex II of this Protocol.
3. Continued infringement by a Member State of the provisions of this Annex may be dealt with in



accordance with the provisions of Annex VI of this Protocol.

RULE 11
DEROGATIONS

1. Notwithstanding the provisions of Rules 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 Member State shall make the request for a derogation for existing or new industries to the CMT.
3. In order to facilitate the examination of the request for derogation, the Member State making the request shall provide the CMT with the fullest possible information as to the reason for the request.
4. The CMT shall respond to each 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 the Region.
5. The CMT shall take steps necessary to ensure that a decision is reached as soon 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 12
REGULATIONS

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



APPENDIX I TO ANNEX I

INTRODUCTORY NOTES TO THE LIST OF CONDITIONS REGARDING WORKING AND PROCESSING CARRIED OUT ON NON-ORIGINATING MATERIALS THAT CONFERS ORIGINATING STATUS

Note 1:

The list sets out the conditions required for all products to be considered as sufficiently worked or processed within the meaning of paragraph 2 of Rule 2 of Annex 1 of this Protocol.

Note 2:

2.1: The first two columns in the list describe the product obtained. The first column gives the heading number or chapter number used in the Harmonised System and the second column gives the description of goods used in that System for that heading or chapter. For each entry in the first two columns a rule is specified in column 3. Where, in some cases, the entry in the first column is preceded by an "ex", this signifies that the rules in column 3 apply only to the part of that heading as described in column 2. Optional rules in column 4 only apply to textile and clothing products of HS chapters 50 to 63 exported by MMTZ to SACU under the quota system.

2.2: Where several heading numbers are grouped together in column 1 or a chapter number is given and the description of products in column 2 is therefore given in general terms, the adjacent rules in columns 3 or 4 apply to all products which, under the Harmonised System, are classified in headings of the chapter or in any of the headings grouped together in column 1.

2.3: Where there are different rules in the list applying to different products within a heading, each indent contains the description of that part of the heading covered by the adjacent rules in columns 3 or 4.

Note 3:

3.1: The provisions of Rule 2 of Annex 1 of this Protocol concerning products having acquired originating status which are used in the manufacture of other products apply regardless of whether this status has been acquired inside the factory where these products are used or in another factory in the Region.



For example*, an engine of heading No 8407, for which the rule may state that the value of non-originating materials which may be incorporated may not exceed a certain percentage of the ex-works price, is made from 'other alloy steel roughly shaped by forging' of heading No ex 7224.

If this forging has been forged in the Region from a non-originating ingot, it has already acquired originating status by virtue of the rule applicable to products of HS chapter 72 in the list. The forging can then count as originating in the value calculation for the engine regardless of whether it was produced in the same factory or in another factory in the Region. The value of the non-originating ingot is thus not taken into account when adding up the value of the non-originating materials used.

3.2: The rule in the list represents the minimum amount of working or processing required and the carrying out of more working or processing also confers originating status; conversely, the carrying out of less working or processing cannot confer originating status. Thus if a rule provides that non-originating material at a certain level of manufacture may be used, the use of such material at an earlier stage of manufacture is allowed and the use of such material at a later stage is not.

3.3: When a rule in the list specifies that a product may be manufactured from more than one material, this means that any one or more materials may be used. It does not require that all be used.

For example*, the rule for fabrics of heading Nos 5208 to 5212 provides that natural fibres may be used and that chemical materials, among other materials, may also be used. This does not mean that both have to be used; it is possible to use one or the other or both.

3.4: Where a rule in the list specifies that a product must be manufactured from a particular material, the condition obviously does not prevent the use of other materials which, because of their inherent nature, cannot satisfy the rule. (See also Note 6.2 below in relation to textiles).

For example*, in the case of an article of apparel of ex chapter 62 made from non-woven materials, if the use of only non-originating yarn is allowed for this class of article, it is not possible to start from non-woven cloth, even if non-woven cloths cannot normally be made from yarn. In such cases, the starting material would normally be at the stage before yarn, that is the fibre stage.

* This example is given for the purpose of explanation only. It is not legally binding.

* These examples are given for the purpose of explanation only. It is not legally binding.



Note 4:

4.1: The term "natural fibres" is used in the list to refer to fibres other than artificial or synthetic fibres. It is restricted to the stages before spinning takes place, including waste, and, unless otherwise specified, includes fibres that have been carded, combed or otherwise processed but not spun.

4.2: The term "natural fibres" includes horsehair of heading No 0503, silk of heading Nos. 5002 and 5003 as well as the wool fibres, fine or coarse animal hair of heading Nos. 5101 to 5105, the cotton fibres of heading Nos. 5201 to 5203 and the other vegetable fibres of heading Nos. 5301 to 5305.

4.3: The terms "textile pulp", "chemical materials" and "paper-making materials" are used in the list to describe the materials not classified in Chapters 50 to 63, which can be used to manufacture artificial, synthetic or paper fibres or yarns.

4.4: The term "man-made staple fibres" is used in the list to refer to synthetic or artificial filament tow, staple fibres or waste, of heading Nos. 5501 to 5507.

Note 5:

5.1: The conditions set out in column 3 or 4 shall not be applied to any basic textile materials, used in the manufacture of this product, which, taken together, represent 10 per cent or less of the total weight of all the basic textile materials used. (See also Notes 5.3 and 5.4 below).

5.2: However, the tolerance mentioned in Note 5.1 may only be applied to mixed products which have been made from two or more basic textile materials.

The following are the basic textile materials:

- silk,
- wool,
- coarse animal hair,
- fine animal hair,
- horsehair,
- cotton,
- paper-making materials and paper,
- flax,
- true hemp,
- jute and other textile bast fibres,
- sisal and other textile fibres of the genus Agave,
- coconut, abaca, ramie and other vegetable textile fibres,
- synthetic man-made filaments, artificial man-made filaments,



- synthetic man-made staple fibres of polypropylene,
- synthetic man-made staple fibres of polyester,
- synthetic man-made staple fibres of polyamide,
- synthetic man-made staple fibres of polyacrylonitrile,
- synthetic man-made staple fibres of polyimide,
- synthetic man-made staple fibres of polytetrafluoroethylene,
- synthetic man-made staple fibres of polyphenylene sulphide,
- synthetic man-made staple fibres of polyvinyl chloride,
- other synthetic man-made staple fibres,
- artificial man-made staple fibres of viscose,
- other artificial man-made staple fibres,
- yarn made of polyurethane segmented with flexible segments of polyether whether or not gimped,
- yarn made of polyurethane segmented with flexible segments of polyester whether or not gimped,
- products of heading No 5605 (metallised yarn) incorporating strip consisting of a core of aluminium foil or of a core of plastic film whether or not coated with aluminium powder, of a width not exceeding 5 mm, sandwiched by means of a transparent or coloured adhesive between two layers of plastic film,
- other products of heading No 5605.

For example*, a yarn of heading No 5205 made from cotton fibres of heading No 5203 and synthetic staple fibres of heading No 5506 is a mixed yarn. Therefore, non-originating synthetic staple fibres that do not satisfy the origin rules (which may require manufacture from chemical materials or textile pulp) may be used up to a weight of ten per cent of the yarn.

For example•, a woollen fabric of heading No 5112 made from woollen yarn of heading No 5107 and synthetic yarn of staple fibres of heading No 5509 is a mixed fabric. Therefore, synthetic yarn which does not satisfy the origin rules (which may require manufacture from chemical materials or textile pulp) or woollen yarn that does not satisfy the origin rules (which require manufacture from natural fibres, not carded or combed or other otherwise prepared for spinning) or a combination of the two may be used provided their total weight does not exceed ten per cent of the weight of the fabric.

For example•, tufted textile fabric of heading No 5802 made from cotton yarn of heading No 5205 and cotton fabric of heading No 5210 is only a mixed product if the cotton fabric is itself a mixed

* These examples are given for the purpose of explanation only. It is not legally binding.



fabric being made from yarns classified in two separate headings or if the cotton yarn used are themselves mixtures.

For example*, if the tufted fabric concerned has been made from cotton yarn of heading No 5205 and synthetic fabric of heading No 5407, then, obviously, the yarns used are two separate basic textile materials and the tufted textile fabric is accordingly a mixed product.

5.3: In case of products incorporating "yarn made of polyurethane segmented with flexible segments of polyether whether or not gimped" this tolerance is 20 per cent in respect of this yarn.

5.4: In the case of products incorporating "strip consisting of a core of aluminum foil or of a core of plastic film whether or not coated with aluminium powder, of a width not exceeding 5 mm, sandwiched by means of an adhesive between two layers of plastic film", this tolerance is 30 per cent in respect of this strip.

Note 6:

6.1: Textile materials, with the exception of linings and interlinings, which do not satisfy the rule set out in the list in column 3 or 4 for the made-up product concerned may be used provided that they are classified in a heading other than that of the product and that their value does not exceed 8 per cent of the ex-works price of the product.

6.2: Without prejudice to Note 6.3, materials which are not classified within Chapters 50 to 63 may be used freely in the manufacture of textile products, whether or not they contain textiles.

For example*, if a rule in the list provides that for particular textile items yarn must be used, this does not prevent the use of metal items, such as buttons, because buttons are not classified within chapters 50 to 63. For the same reason, it does not prevent the use of slide-fasteners, even though slide-fasteners normally contain textiles.

6.3: Where a percentage rule applies, the value of materials which are not classified within Chapters 50 to 63 must be taken into account when calculating the value of the non-originating materials incorporated.

* This example is given for the purpose of explanation only. It is not legally binding.



LIST OF CONDITIONS REGARDING WORKING AND PROCESSING CARRIED OUT ON NON-ORIGINATING MATERIALS THAT CONFERS ORIGINATING STATUS

The text in the document attached hereto, entitled "Consolidated Negotiating Text", contains the status of the negotiations on rules of origin after the Committee of Senior Officials held on 28th-29th July 2000, in Windhoek, Namibia. As such, it contains both agreed and non-agreed rules, including proposals by Member States.

For the purpose of implementation at the national level on 1st September 2000, Member States shall excerpt from the text attached hereto the agreed rules and incorporate them in their national legislation according to their national regulations and procedures in the format shown below. Negotiations will continue in the High Level Committee to reach agreement on the outstanding chapters and headings.

Example of Final Format of the List

HS HEADING No.	DESCRIPTION OF PRODUCTS	WORKING AND PROCESSING CARRIED OUT ON NON-ORIGINATING MATERIALS THAT CONFERS ORIGINATING STATUS	
(1)	(2)	All SADC Member States (3)	Only for MMTZ under quota system (4)



APPENDIX II TO ANNEX I

SADC CERTIFICATE OF ORIGIN

Registration No.(Optional) 1. Exporter (Name and Office Address)		3. Country Ref. No.			
2. Consignee (Name and Office address)		SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC) CERTIFICATE OF ORIGIN			
4. Particulars of transport:		5. For official use only			
6. Marks and numbers; number and kind of package, description of goods (i) Marks &Nos. (ii) Description of goods		7. Customs Tariff No.	8. Origin Criterion (See overleaf)	9. Gross weight or other quantity	10. Invoice No. & date (Optional)
11. CUSTOMS ENDORSEMENT Declaration certified Export Document (2) Form.....N° Customs Office..... Issuing Country or Territory..... Date..... Signature		12. CERTIFICATION Signature..... Certificate of Customs or other Designated Authority STAMP			



INSTRUCTIONS FOR COMPLETING THE SADC CERTIFICATE OF ORIGIN

- (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 original.
- (iv) The following letters should be used when completing a certificate in Box No. 8:

"P" for goods wholly produced

"S" for goods with imported inputs



APPENDIX III TO ANNEX I

DECLARATION BY THE PRODUCER

To whom it may concern

For the purpose of claiming preferential treatment under the provision of Rule 2 of the Annex of 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/supplier¹.

Name and address of producer: (Postal and physical Address)	
.....	Registration No: _____
.....	
.....	

and

- 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 African Development Community.

List of Goods

Commercial Description of Goods	Quantity	Criterion

Notes: This form should be completed in duplicate where the Exporter is not a Producer.

.....
Stamp & Signature of the PRODUCER

¹ Please delete the description not applicable



APPENDIX IV TO ANNEX I

FORM OF VERIFICATION OF ORIGIN

<p>A. REQUEST FOR VERIFICATION</p> <p>Verification of the authenticity and accuracy of this certificate is requested for the following reasons:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>(Place and date)</p> <p>.....</p> <p>(Signature and Stamp)</p>	<p>B. RESULT OF VERIFICATION</p> <p>Verification carried out shows that this certificate</p> <p><input type="checkbox"/></p> <p>was issued by the Customs Office or designated authority indicated and that the information contained therein is accurate.</p> <p><input type="checkbox"/></p> <p>does not meet the requirement as to the authenticity/accuracy (delete whichever not applicable)</p> <p>Insert X in the appropriate box</p> <p>.....</p> <p>(Place and date)</p> <p>.....</p> <p>(Signature and Stamp)</p>
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APPENDIX 1

**REGULATION ON MUTUAL ASSISTANCE AND
CO-OPERATION IN CUSTOMS MATTERS**

ARTICLE 1

DEFINITIONS

In this Regulation, an expression that has been defined in this Protocol has that meaning and, unless the context indicates otherwise:

"Personal data" means all information relating to an identified or identifiable person;

"Requested customs authority" means the customs authority of a Member State receiving a request for assistance;

"Requesting customs authority" means the customs authority of a Member State making a request for assistance.

ARTICLE 2

CENTRAL COORDINATING UNITS

1. Each Member State shall appoint in its customs authority a central coordinating unit responsible for-
 - (a) receiving all requests for assistance;
 - (b) coordinating requests for assistance; and
 - (c) maintaining contact with central coordinating units of the other Member States.
 2. The activity of the central coordinating units shall not exclude, particularly in an emergency, direct contact or co-operation between customs authorities. For reasons of efficiency and consistency, the central coordinating units shall be informed of any such direct contact or co-operation.
 3. If a customs authority is not competent to process a request for assistance, the central coordinating unit shall forward the request to the competent national authority and inform the requesting customs authority that it has done so.
-



ARTICLE 3

LIAISON OFFICERS

1. Member States may make agreements between themselves on the exchange of liaison officers for limited or unlimited periods.
2. Liaison officers may, subject to the conditions as may be agreed upon under paragraph 3, have the following duties:
 - (a) facilitating the exchange of information between Member States;
 - (b) providing assistance in investigations which relate to the Member State they represent;
 - (c) providing support in dealing with requests for assistance;
 - (d) advising and assisting the host Member State in preparing and executing mutual assistance operations; and
 - (e) any other duties which Member States may agree between themselves.
3. Member States may agree bilaterally or multilaterally on the terms of reference and the location of liaison officers. Liaison officers may also represent the interests of one or more other Member States.
4. Liaison officers shall have no powers of intervention in the host Member State and shall at all times be able to produce written authority stating their identity and their official functions.

ARTICLE 4

REQUESTS FOR INFORMATION AND ENQUIRIES

By agreement between the requesting customs authority and the requested customs authority, officers authorized by the requesting customs authority may, subject to detailed instructions from the requested customs authority –

- (a) obtain information from the offices of the requested customs authority where a request is made for information under Article 7(3)(b) or 7(3)(c) of Annex II of this Protocol; or
- (b) be present at the enquiries where a request is made for enquiries under Article 7(4)(a) of Annex II of this Protocol.



ARTICLE 5

JOINT OPERATIONS

1. Customs authorities may engage in mutual assistance operations which may include the holding of joint law enforcement exercises or the establishment of joint special investigation teams.
2. Coordination and planning of such operations shall be the responsibility of the central coordinating units appointed under Article 2.
3. Joint operations shall be subject to the following rules:
 - (a) Requests for joint operations shall, as a rule, take the form of requests for assistance as contemplated in Article 7.
 - (b) The requested customs authority shall not be obliged to engage in an operation if the type of operation is not permitted or not provided for under the national law of that Member State.
 - (c) Where officers of a Member State engage in activities in the territory of another Member State and cause damage by their activities, the Member State in whose territory the damage was caused shall make good the damage in the same way as it would have done if the damage had been caused by its own officers. That Member State shall be reimbursed in full by the Member State whose officers have caused the damage for the amounts it has paid to the victims or to other entitled persons or institutions.
 - (d) In the course of operations, officers on mission in the territory of another Member State-
 - (i) shall be treated in the same way as officers of that Member State with regard to offences committed against them or by them;
 - (ii) shall be bound by the law of the Member State in whose territory the operation takes place; and
 - (iii) shall not have the right to apprehend persons or seize goods.
4. Information obtained by officers during such operations may be used, subject to particular conditions laid down by the customs authority of the Member State in which the information was obtained, as evidence by the customs authority of the Member State receiving the information.

ARTICLE 6

ORIGIN VERIFICATIONS

1. For purposes of mutual assistance in the verification of the statements contained in certificates of origin contemplated in Annex I of this Protocol, a Member State may-



- (a) with the assistance and co-operation of, and accompanied by, the customs authority of the exporting Member State, visit the premises of an exporter or a producer in the territory of the exporting Member State; and
 - (b) during such verification visit, inspect the books, documents, records, premises, plant, machinery and processes relating to the goods reflected on the relevant certificate of origin.
2. Prior to conducting a verification visit pursuant to paragraph 1, a Member State shall, through its customs authority:
 - (a) request the required assistance and co-operation of the customs authority of the exporting Member State for the proposed verification visit;
 - (b) request the customs authority of the exporting Member State to make the necessary arrangements for the proposed verification visit with the exporter or producer concerned; and
 - (c) request the customs authority of the exporting Member State to obtain the written consent of the exporter or producer whose premises are to be visited.
3. A request made pursuant to paragraph 2 shall take the form of a request for assistance as contemplated in Article 7 but shall also include the following information:
 - (a) the name of the exporter or producer whose premises are to be visited;
 - (b) the date and place of the proposed verification visit; and
 - (c) the particulars of the officials to conduct the proposed verification visit.
4. Where an exporter or a producer has not given its written consent to a proposed verification visit within 30 days of receipt of a request made by the customs authority of the exporting Member State pursuant to paragraph 2(c), the importing Member State may deny preferential tariff treatment to the goods that would have been the subject of the verification visit.
5. Where a request is made to a customs authority pursuant to paragraph 2, such customs authority may, within 15 days of receipt of the request, postpone the proposed verification visit for a period not exceeding 60 days. Advice of such postponement and the reasons therefor shall immediately be forwarded to the requesting customs authority.
6. A Member State may require security for any duty or other charge which may be payable where a verification visit is postponed pursuant to paragraph 5.
7. The customs authority of the exporting Member State conducting a verification visit shall provide the exporter or producer whose goods are the subject of the verification with a written origin determination in accordance with its national legislation.



8. Where a verification indicates that an exporter or a producer made false or unsupported statements or declarations regarding the originating status of such goods, a Member State may withhold preferential tariff treatment to similar or identical goods exported or produced by such exporter or producer.

ARTICLE 7

FORM AND CONTENT OF REQUESTS FOR ASSISTANCE

1. Requests for assistance shall:
- (a) be made in writing; and
 - (b) include the following information:
 - (i) the particulars of the requesting customs authority;
 - (ii) the measure requested;
 - (iii) the object of, and reason for, the request;
 - (iv) the legal or regulatory provisions and other legal elements involved;
 - (v) indications as exact and comprehensive as possible on the assistance requested; and
 - (vi) a summary of the relevant facts and the enquiries already carried out.
2. If a request does not meet the formal requirements as set out in paragraph 1, the requested customs authority may ask for it to be corrected or completed but may commence with measures necessary to comply with the request in the meantime.

ARTICLE 8

EXECUTION OF REQUESTS

1. In order to comply with a request for assistance, the requested customs authority shall proceed, within the limits of its competence and available resources, as though it was acting on its own account, by supplying information already possessed, by carrying out appropriate enquiries or by arranging for them to be carried out.
2. Requests for assistance shall be executed in accordance with the national law of the requested customs authority.



ARTICLE 9

FORM IN WHICH INFORMATION IS TO BE COMMUNICATED

1. The requested customs authority shall communicate results of requests for assistance to the requesting customs authority in writing, or in electronic format, together with relevant documents, certified copies and other materials.
2. Original files, documents and other materials shall be transmitted only upon request in cases where certified copies would be insufficient.
3. Original files, documents and other materials that have been transmitted shall be returned as soon as possible.

ARTICLE 10

EXCEPTIONS TO THE OBLIGATION TO PROVIDE ASSISTANCE

1. Assistance may be refused or may be subject to certain conditions or requirements, in cases where a Member State is of the opinion that assistance would:
 - (a) be likely to prejudice its sovereignty;
 - (b) be likely to prejudice public policy, security or other essential interests; or
 - (c) violate any industrial, commercial or professional secret.
2. Assistance may be postponed by the requested customs authority on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case, the requested customs authority shall consult with the requesting customs authority to determine if assistance can be given subject to such terms and conditions as the requested customs authority may require.
3. Where the requested customs authority is not in a position to provide assistance on the grounds contemplated under paragraph 1, it shall inform the requesting customs authority accordingly.

ARTICLE 11

CONFIDENTIALITY OF INFORMATION

1. Any information communicated pursuant to a request for assistance shall be treated as confidential and shall at least be subject to the same protection and confidentiality as the same kind of information is subject to under the national law of the requesting Member State.
2. Paragraph 1 shall not impede the use of information in any judicial or administrative proceedings subsequently instituted for failure to comply with customs legislation.



3. Personal data may be exchanged only where the requesting Member State undertakes to protect such data in at least an equivalent way as the Member State that may supply it. To this end, the Member States shall communicate to each other information on their applicable rules and legal provisions relating to the treatment of personal data.

ARTICLE 12

EXPERTS AND WITNESSES

An official of a requested customs authority may be authorised to appear, within the limitations of the authorisation granted, as an expert or witness in judicial or administrative proceedings regarding the matters covered by or referred to in this Regulation, and produce such objects, documents or certified copies thereof, as may be required for the proceedings. The request for appearance must indicate specifically before which judicial or administrative authority the official will have to appear, on what matters and by virtue of what title or qualification the official will be questioned.

ARTICLE 13

ASSISTANCE EXPENSES

1. The Member States shall waive all claims on each other for the reimbursement of expenses incurred pursuant to a request for assistance.
2. Notwithstanding the provisions of paragraph 1, the customs authorities involved may consult to determine the terms and conditions under which a request shall be executed as well as the manner in which the costs shall be borne:
 - (a) if expenses of a substantial and extraordinary nature are, or will be, required to execute the request; or
 - (b) for expenses to experts and witnesses, and those to interpreters and translators who are not public service employees.

ARTICLE 14

IMPLEMENTATION

1. The Sub-Committee on Customs Co-operation shall ensure the satisfactory implementation of this Regulation.
2. Any matter related to the interpretation or implementation of this Regulation shall be referred to the Sub-Committee on Customs Co-operation.



ARTICLE 15

FINAL PROVISIONS

Each Member State may enact, where appropriate, such legislative measures as may be necessary to give effect to the provisions of this Regulation and shall inform the Sector Coordinating Unit accordingly.



ANNEX VI

**CONCERNING THE SETTLEMENT OF DISPUTES BETWEEN THE MEMBER
STATES OF THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY**

PREAMBLE

The High Contracting Parties:

HAVING UNDERTAKEN to progressively liberalise intra-regional trade in goods and services on the basis of fair, mutually equitable and beneficial arrangements;

AND HAVING REGARD to the provisions of Article 32 of this Protocol on the settlement of disputes;

HEREBY AGREE as follows;

ARTICLE 1

SCOPE AND APPLICATION

The rules and procedures of this Annex shall apply to the settlement of disputes between Member States concerning their rights and obligations under this Protocol.

ARTICLE 2

COOPERATION

The Member States shall:

- (a) at all times endeavour to agree on the interpretation and application of this Protocol;
- (b) make every attempt through cooperation to arrive at a mutually satisfactory resolution of any matter that may affect the operation of this Protocol; and



- (c) make use of the rules and procedures of this Annex to resolve disputes in a speedy, cost-effective and equitable manner.

ARTICLE 3 CONSULTATIONS

1. A Member State may request in writing consultations with any other Member State regarding any measure that it considers might affect its rights and obligations under the provisions of this Protocol.
2. The requesting Member State shall notify the other Member States and the CMT of the request, through the Sector Coordinating Unit. Any request for consultations shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis of the complaint.
3. The requested Member State shall accord sympathetic consideration to and afford adequate opportunity for consultations regarding any representations made by another Member State.
4. The requested Member State shall, unless otherwise mutually agreed, reply to the request within 10 days after the date of its receipt and shall enter into consultations in good faith within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution. If the requested Member State does not respond within 10 days after the date of receipt of the request, or does not enter into consultations within a period of no more than 30 days, or a period otherwise mutually agreed, after the date of receipt of the request, then the requesting Member State may proceed directly to request the establishment of a panel.
5. Whenever a Member State other than the consulting Member States considers that it has a substantial trade interest in consultations being held pursuant to a request made under paragraph 1, such Member State may notify the consulting Member States and the Sector Coordinating Unit, within 10 days after the date of circulation of the request for consultations, of its desire to be joined in the consultations. Such Member State shall be joined in the consultations, provided that the requested Member State agrees that the claim of substantial interest is well-founded. In that event, the consulting Member States shall also inform the CMT, through the Sector Coordinating Unit. If the request to be joined in the consultations is not accepted, the applicant Member State shall be free to request consultations under this Article.



6. The consulting Member States shall make every attempt to arrive at a mutually satisfactory resolution of any matter and, to this end, they shall-
 - (a) provide sufficient information to enable a full examination of how the actual or proposed measure or other matter may affect the operation of this Protocol;
 - (b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Member State providing the information; and
 - (c) seek to avoid any resolution that adversely affects the interests of any other Member State under this Protocol.

7. If the consulting Member States fail to resolve a matter pursuant to this Article within:
 - (a) 60 days after the date of receipt of the request for consultations; or
 - (b) such other period as they may agree,

any such Member State may request in writing the establishment of a panel.

The requesting Member State shall notify the other Member States and the CMT of the request through the Sector Coordinating Unit.

8. In cases of urgency, including those which concern perishable goods, Member States shall enter into consultations within a period of no more than 10 days after the date of receipt of the request. If the consultations have failed to settle the dispute within a period of 20 days after the date of receipt of the request, the requesting Member State may request the establishment of a panel.

ARTICLE 4

GOOD OFFICES, CONCILIATION AND MEDIATION

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the disputing Member States so agree.



2. ~~Procedures involving good offices, conciliation and mediation shall be confidential, and may be requested at any time by a disputing Member State. These procedures may begin at any time and be terminated at any time.~~
3. The Chairperson of the CMT, or any other Member of the CMT designated by the Chairperson who is not a national of a disputing Member State, may offer good offices, conciliation or mediation with a view to assisting the disputing Member States.

**ARTICLE 5
ESTABLISHMENT OF PANEL**

1. The Sector Coordinating Unit shall establish a panel within 20 days from the date of receipt of a request made pursuant to paragraph 4, 7 or 8 of Article 3.
2. The request for the establishment of a panel shall be made in writing to the Sector Coordinating Unit and shall indicate whether consultations were held, indicate the specific measures at issue and provide a brief summary of the legal basis of the complaint in the light of the relevant provisions of this Protocol sufficient to present the problem clearly.

**ARTICLE 6
ROSTER OF PANELISTS**

The Sector Coordinating Unit shall maintain an indicative roster of panelists nominated by Member States on the basis of their relevant expertise and qualifications as stipulated in Article 7. The roster, as well as any modifications thereto, shall be made known by the Sector Coordinating Unit to the Member States.

**ARTICLE 7
QUALIFICATION OF PANELISTS**

All panelists shall:



- (a) have expertise or experience in international trade or international law, other matters covered by this Protocol or the resolution of disputes arising under international trade agreements, and shall be chosen strictly on the basis of objectivity, reliability and sound judgment;
- (b) be governmental and/or non-governmental individuals;
- (c) serve in their individual capacities and not as government representatives, nor as representatives of any organization. Member States shall therefore not give panelists instructions nor seek to influence them as individuals with regard to matters before a panel; and
- (d) comply with a code of conduct and rules of procedures to be established by the CMT.

**ARTICLE 8
PANEL SELECTION**

1. A panel shall be composed of three panelists.
2. The following procedures shall apply in the selection of panelists:
 - (a) The disputing Member States shall endeavour to agree on the chair of the panel within 15 days of the delivery of the request for the establishment of a panel.
 - (b) Within 10 days of selection of the chair, each disputing Member State shall select one panelist who is not a citizen of such Member State.
 - (c) Where there are more than two disputing Member States, the Member State complained against shall select one panelist who is not a citizen of such Member State. The complaining Member States shall jointly select one panelist who is not a citizen of such Member States. This shall take place within 10 days of the selection of the chair.
3. When a Member State or States, in the selection of panelists pursuant to paragraph 2 fails to agree on the chair of the panel or to select a panelist in the prescribed time, such chair or panelist shall be selected by lot by the Executive Secretary of SADC from a list of twelve panelists who are not citizens of the disputing Member States. The Executive Secretary shall select the chair or panelist, as the case may be, within 5 days after the expiry of the prescribed time referred to in paragraph 2.



4. When a disputing Member State is of the opinion that a panelist does not comply with the requirements set out in Article 7, the disputing Member States shall consult and, if they agree, the panelist shall be removed and another panelist shall be selected in accordance with this Article.
5. Panelists shall, as far as possible, be selected from the roster contemplated in Article 6.

ARTICLE 9

TERMS OF REFERENCE OF THE PANEL

Unless the disputing Member States otherwise agree within 20 days from the date of establishment of the panel, the terms of reference for the panel shall be:

- (a) To examine, in the light of the relevant provisions of this Protocol, the matter referred to the Sector Coordinating Unit and to make findings, determinations and recommendations.
- (b) To determine whether the matter under dispute has nullified or impaired benefits of the disputing Member States according to the provisions of this Protocol.
- (c) To make findings, as and when appropriate, on the degree of adverse trade effects on any Member State of any measure found not to conform with the provisions of this Protocol or to have caused nullification or impairment of the complaining Member State.
- (d) To recommend that the Member State complained against brings a measure into conformity with this Protocol where such a measure is found to be inconsistent with this Protocol.

ARTICLE 10

PANEL PROCEDURES

Unless the disputing Member States otherwise agree, the panel shall conduct its proceedings in accordance with the following rules of procedure:

- (a) the disputing Member States shall have a right to at least one hearing before the panel as well as the opportunity to provide initial and rebuttal written submissions;



- (b) the panel's hearings, deliberations and initial report, and all written submissions to and communications with the panel shall be confidential; and
- (c) the disputing Member States may be represented during the panel procedures by legal representatives or other experts.

ARTICLE 11

PROCEDURES FOR MULTIPLE COMPLAINTS

1. Where more than one Member State requests the establishment of a panel related to the same matter, a single panel may be established to examine these complaints taking into account the rights of all Member States concerned. A single panel should be established to examine such complaints whenever feasible.
2. The single panel shall organize its examination and present its findings to the CMT in such a manner that the rights which the disputing Member States would have enjoyed, had separate panels examined the complaints, are in no way impaired. If one of the disputing Member States so requests, the panel shall submit separate reports on the dispute concerned. Notwithstanding the provisions of Article 10(b), the written submissions by each of the complaining Member States shall be made available to the other complaining Member States, and each complaining Member States shall have the right to be present when any one of the other complaining Member States presents its views to the panel.
3. If more than one panel is established to examine the complaints related to the same matter, to the greatest extent possible, the same persons shall serve as panelists on each of the separate panels and the timetable for the panel process in such disputes shall be harmonised.

ARTICLE 12

THIRD PARTY PARTICIPATION

A Member State that is not a disputing Member State having a substantial trade interest in a matter before a panel and which notified its interest in writing to the CMT, through the Sector Coordinating Unit, shall have an opportunity to attend all hearings, to make written and oral submissions to the panel and to receive the written submissions of the disputing Member States.



ARTICLE 13
ROLE OF EXPERTS

On request of a disputing Member State, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate.

ARTICLE 14
INITIAL REPORT

1. Unless the disputing Member States otherwise agree, the panel shall base its initial report on the submissions of the participating Member States and on any information before it pursuant to Article 13.
2. Unless the disputing Member States otherwise agree, the panel shall, within 90 days after the last panelist is selected or 45 days in the case of urgency, including those concerning perishable goods, present to the disputing Member States an initial report containing:
 - (a) findings of fact;
 - (b) its determination as to whether the measure at issue is or would be inconsistent with the obligations of this Protocol or cause nullification or impairment, or any other determination requested in the terms of reference; and
 - (c) its recommendations for resolution of the dispute.
3. The disputing Member States may submit written comments to the panel on its initial report within 15 days of presentation of the initial report. In such an event, and after considering such written comments, the panel, on its own initiative or on the request of any disputing Member State, may:
 - (a) request the views of any participating Member State;
 - (b) reconsider its initial report; and



ARTICLE 15
FINAL REPORT

1. A panel shall present to the disputing Member States a final report within 30 days of presentation of the initial report, unless the disputing Member States otherwise agree.
2. No panel shall, either in its initial report or its final report, disclose which panelists are associated with majority or minority opinions.
3. A panel shall transmit to the CMT, through the Sector Coordinating Unit, its final report.
4. Unless the CMT decides by consensus not to adopt the report, the final report of the panel shall be adopted by the CMT within 15 days after it is transmitted to the CMT and shall promptly be made public thereafter by the Sector Coordinating Unit.

ARTICLE 16
PANEL RECOMMENDATIONS

Where a panel concludes that a measure is not consistent with this Protocol, it shall recommend that the Member State complained against bring the measure into conformity with this Protocol. In addition, the panel may suggest ways in which the Member State complained against may implement the recommendations.

ARTICLE 17
IMPLEMENTATION OF PANEL RECOMMENDATIONS

The Member State complained against shall inform the Sector Coordinating Unit of its intentions in respect of implementation of the recommendations of the panel. If it is impracticable to comply immediately with the recommendations, the Member State complained against shall have a reasonable period of time in which to do so. The reasonable period of time shall be the period of time proposed by the Member State



complained against or a period mutually agreed by the disputing Member States. In any case, the period shall not exceed 6 months from the date of adoption of the panel report.

ARTICLE 18
COMPENSATION AND SUSPENSION OF CONCESSIONS

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the recommendations of the panel, as adopted, are not implemented within a reasonable period of time determined in accordance with Article 17. Full implementation of the panel recommendations to bring a measure into conformity with this Protocol shall always be preferred.
2. If the Member State complained against fails to bring the measure found to be inconsistent with this Protocol into conformity within the reasonable period of time determined in accordance with Article 17, it shall enter into negotiations with the complaining Member State with a view to developing a mutually satisfactory solution. If no satisfactory solution has been agreed within 20 days after the expiry of the reasonable period of time determined in accordance with Article 17, the complaining Member State may request authorization from the CMT, through the Sector Coordinating Unit, to suspend concessions or other obligations of equivalent effect to the level of the nullification or impairment.
3. Unless the CMT decides by consensus otherwise within 20 days from the date of receipt of the request for authorization to suspend concessions or obligations, such authorization shall be granted.
4. In considering what benefits to suspend, a complaining Member State shall first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the panel has found to be inconsistent with the obligations of this Protocol. A complaining Member State that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.
5. If the Member State complained against objects to the level of suspension proposed, the matter shall as far as possible be referred for arbitration to the original panel. Should the original panel not be available, the Executive Secretary of the SADC shall appoint a panelist. The original panel or panelist, as the case may be, shall be appointed within 10 days from the date of receipt of the request for arbitration. The arbitration shall be completed within 30 days after the date of



appointment of the original panel or panelist, as the case may be. Concessions or other obligations under this Protocol may not be suspended during the course of arbitration.

6. The panel or panelist acting pursuant to paragraph 5 shall determine whether the level of the proposed suspension is equivalent to the level of impairment as a result of a measure not complying with this Protocol. The disputing Member States shall accept the decision on the issue submitted to the panel or panelist as final. The CMT shall be informed, through the Sector Coordinating Unit, of the decision of the panel or panelist and shall within 20 days after the date of receipt of the decision of the panel or panelist, unless it decides by consensus otherwise, grant authorization to suspend concessions or other obligations where the request is consistent with the decision of the panel or panelist.

ARTICLE 19 EXPENSES

1. The CMT shall determine the amounts of remuneration and expenses that will be paid to panelists and experts appointed in terms of this Annex.
2. The remuneration of panelists and experts, their travel and lodging expenses and all other general expenses of panels shall be borne in equal parts by the disputing Member States or in a proportion as determined by a panel.
3. Each panelist or expert shall keep a record and render a final account of his or her time and expenses and the panel shall keep a record and render an account of all general expenses. The Sector Coordinating Unit shall control such accounts and make all payments against the accounts of the disputing Member States.

ARTICLE 20 REGULATIONS

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



ANNEX VII

CONCERNING TRADE IN SUGAR IN THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

PREAMBLE

The High Contracting Parties:

HAVING REGARD to the objectives of this Protocol and of its importance as an instrument to facilitate the achievement of the aim of regional economic integration and the creation of a single market through increased harmonisation of policies and liberalisation of tariffs and removal of NTBs on trade;

NOTING, however, that the world sugar market is highly distorted and conscious of the fact that the world price for sugar is a dumped or subsidised price resulting in the continuing need for most sugar producing countries to impose tariffs and NTBs against the free importation of sugar in order to protect their domestic industries;

RECOGNISING, therefore, that for as long as the world sugar market remains highly distorted, sugar will be a product requiring special dispensation within the framework of this Protocol so that no sugar industry within the Region will suffer injury;

MINDFUL of the need to establish a stable investment climate leading to both growth and development of SADC economies and of the need to maintain the Region as a reliable bloc of world competitive low cost sugar producers, well positioned to take advantage of the anticipated higher world prices once global liberalisation in sugar trade occurs;

ACKNOWLEDGING the need to improve and maintain the efficiency of all sugar producers within the Region through the exchange of research, training and information;

HEREBY AGREE as follows:

ARTICLE 1

DEFINITIONS

In this Annex, an expression that has been defined in this Protocol has that meaning and, unless the context indicates otherwise:

"Marketing Year" means a period of twelve months commencing on 1 April and ending on 31 March, and "annual" and "annum" shall have a corresponding meaning;

"MTTQ" means metric tons *tel quel*;

"Net surplus producer" means a sugar producing Member State, which has a net surplus production;



"Net surplus production" means the sugar wholly produced in any marketing year by a sugar producing Member State in excess of the sugar required to satisfy its total domestic consumption and to fulfil its preferential quotas granted by the European Union, the United States of America or any similar preferential quota granted to it or which may be granted to it in the future by any other third country or bloc of third countries, and in the case of other Member States, the quantity of sugar per annum which are sold into SACU in terms of preferential trade agreements;

"Preferential quota" means a tariff rate quota with preferential customs duties applying under the quota limit;

"Sugar" means raw sugar, refined sugar and direct consumption crystal sugar;

"Technical Committee on Sugar (TCS)" means the body comprising representatives of Member States and sugar industries in all Member States;

"Ton" means a metric ton of sugar, *tel quel*.

ARTICLE 2

OBJECTIVES

The objectives of this Annex are:

- (a) to promote, within the Region, production and consumption of sugar and sugar- containing products according to fair trading conditions and an orderly regional market in sugar for the survival of the sugar industries in all sugar producing Member States, in anticipation of freer global trade;
- (b) in support of the long term objective set out in paragraph 1 of Article 3, to provide temporary measures to insulate Member States' sugar producing industries from the destabilising effects of the distorted global market and, in this regard, to harmonise sugar policies and regulate its trade within the Region during the interim period until world trade conditions permit freer trade in sugar;
- (c) to create a stable climate for investment, leading to the growth and development of sugar industries in the Member States;
- (d) to improve the competitiveness of the sugar producing Member States in the world sugar market;
- (e) to facilitate the sharing of information, research and training with a view to improving the efficiency of growers, millers and refiners of sugar in the Member States;
- (f) to facilitate the development of small and medium sugar enterprises; and



- (g) to create stable market conditions in the Member States so as to encourage the rehabilitation and development of all sugar industries with a view to facilitating direct foreign investment and the creation of employment opportunities.

ARTICLE 3

RECIPROCAL MARKET LIBERALISATION

1. The long term objective of this Annex is to establish full liberalisation of trade in the sugar sector in the Region after the year 2012. Such liberalisation will be dependent on a positive review of conditions prevailing in the world sugar market five years after entry into force of this Annex in order to ascertain if the world sugar market has normalised sufficiently to make such liberalisation acceptable.
2. The liberalisation contemplated in paragraph 1 will be on a reciprocal basis and will also involve the removal of NTBs in relation to SADC sugar trade. However, in the interim period, market access will be on a non-reciprocal basis into the SACU on the terms outlined in Articles 4, 5 and 6.

ARTICLE 4

NON-RECIPROCAL ACCESS TO THE SACU MARKET BASED ON MARKET GROWTH

1. A portion of the SACU sugar market, based on the annual growth in that market, will be allocated to each SADC net surplus producer according to each producer's relative net surplus production.
2. The denominator for the calculation of each net surplus producer's share will be the total SADC net surplus production.
3. Annual growth of the SACU market will be deemed to be 45 000 tons in marketing year one, 91000 tons in marketing year two and 138000 tons in marketing year three. In marketing years four and five the growth shall be reviewed on the basis of the actual growth in the SACU market during the prior three marketing years, with minimum access for these marketing years set at 138000 tons.

ARTICLE 5

ADDITIONAL NON-RECIPROCAL ACCESS TO NON-SACU SADC SURPLUS SUGAR PRODUCING MEMBER STATES

1. Duty free access to the SACU sugar market of 20000 tons of sugar per annum shall be available to the non-SACU SADC surplus sugar producing Member States and will be allocated according to each producer's relative net surplus production.
2. The denominator for the calculation of each net surplus producer's share will be the total non-SACU SADC net surplus production.



3. In the event of the non-SACU SADC net surplus production being less than 20000 tons, then the duty-free access to the SACU market shall be limited to the actual net surplus production.

ARTICLE 6

GENERAL PROVISIONS RELATING TO MARKET ACCESS

1. Access will be established through duty-free quotas extended to net surplus sugar producers.
2. Duty-free quotas, as contemplated in paragraph 1, will be calculated in each marketing year on the basis of production, consumption and export forecasts for the year in question. Initial forecasts will be submitted in February of each year based on production, consumption and export forecasts for the coming marketing year, and reviewed at the end of June of that year. Access thus established will be adjusted in the succeeding marketing year or as soon as possible thereafter on the basis of actuals. Submitted forecasts will be reviewed by the TCS in consultation with the Member States.
3. The determined allocations are not transferable between Member States. In the case of *force majeure*, the quantities not supplied will be redistributed according to actual production, consumption and export figures of the remaining net surplus producers.
4. Quantities will be measured in MTTQ.
5. Any new sugar producer in the Region will be accommodated in this Annex.

ARTICLE 7

CO-OPERATION IN AREAS OF COMMON INTEREST

1. Co-operation in areas of common interest as identified by the TCS will be aimed at facilitating a balanced expansion of national industries with the ultimate objective of promoting the development of a regional competitive industry. Co-operation in the following areas shall be established with a view to increasing efficiencies of all SADC sugar producers:
 - (a) The TCS, established in terms of Article 9, will initiate dialogue on the usage and upgrading of infrastructure and adopt rules on the transfer of information in relation to sugar technology and research, training, promotion and marketing.
 - (b) Recognising established official customs cooperation arrangements, the TCS will make recommendations to such bodies on issues related to cross-border trade in sugar in the Region aimed at improving information flows on trade in sugar in the Region and improving border control.



- (c) Information on the nature and performance of existing national initiatives pertaining to the development of small- and medium size enterprises will be shared. Information on similar initiatives in other parts of the world will be collected and considered. Such information could be used to design appropriate strategies for small- and medium size enterprise
 - (d) Developments occurring in the rest of the world which have implications for sugar industries in the Region will be identified and monitored, and pro- active regional strategies will be pursued.
2. The TCS will establish terms of reference relating to the implementation of actions in the identified and new areas of cooperation, and may appoint technical working groups to obtain related information and submit recommendations.

ARTICLE 8

IMPLEMENTATION

1. Market access as provided for in Article 4 will be effected on 1 April 2001.
2. Market access as provided for in Article 5 will be effected upon implementation of this Annex but the access tonnage will be established pro rata to the period remaining to 31 March 2001.
3. Co-operation in areas of common interest will be effected on 1 September 2000.

ARTICLE 9

INSTITUTIONAL FRAMEWORK

1. The TCS is hereby established to manage the agreed terms for market access and to co-ordinate actions in the areas of cooperation outlined in Article 7.
2. The TCS will establish a secretariat, the functions of which will be to implement and monitor the market access arrangements, procure and collate statistical information concerning sugar from Member States, disseminate such information amongst Member States, and supply secretarial services to the SADC Sugar Committee and its Working Groups.