

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

## **PREAMBLE**

The High Contracting Parties

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

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

NOW THEREFORE,

HEREBY AGREE as follows:

## **RULE 1**

### **Definitions and Interpretation**

#### 1. Definitions

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

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

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

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

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

#### 2. Interpretation

a) In determining the place of production of marine, river, or lake products and goods in relation to a Member State, a vessel of a Member State shall be regarded as part of the territory of that Member State. In determining the place from which goods originated, marine, river or lake products taken from the sea, river or lake or goods produced therefrom at sea or on a river or lake shall be regarded as having their origin in the territory of a Member State and have been brought directly to the territory of the Member State.

b) For the purpose of this Annex, a vessel shall be regarded as a vessel of a Member State if it is registered in a Member State and satisfies one of the following conditions;

(i) the vessel sails under the flag of a Member State.

(ii) at least 75 per cent of the officers and crew of the vessel are nationals of a Member State.

(iii) at least the majority control and equity holding in respect of the vessel are held by nationals of a Member State or institution, agency, enterprise or corporation of the government of such Member State.

c) Electrical power, fuel, plant machinery and tools used in the production of goods shall always be regarded as wholly produced within the Community when determining the origin of the goods.

## **RULE 2**

### **Origin Criteria**

1. Goods shall be accepted as originating in a Member State if they are consigned directly from a Member State to a consignee in another Member State and:

a) they have been wholly produced as provided for in Rule 4 of this Annex; or

b) they have been produced in the Member States wholly or partially from materials imported from outside the Member States or of undetermined origin by a process of production which effects a substantial transformation of those materials such that:

(i) the c.i.f. value of those materials does not exceed 60 per cent of the total cost of the materials used in the production of the goods; or

(ii) the value added resulting from the process of production accounts for at least 35 per cent of the ex-factory cost of the goods; or

c) there is a change in the tariff heading of a product arising from a processing carried out on the non-originating materials.

2. For the purposes of sub-paragraph (c) of paragraph 1, the agreed list of processing required to be carried out on non-originating materials in order that the product manufactured can obtain originating status, shall upon adoption, be deemed to form an integral part of the Annex on the Rules of Origin.

3. For the purposes of sub-paragraph b(i) of paragraph 1, the c.i.f. value shall not include the freight from the last sea-port to the final destination of the goods.

4. Notwithstanding, the provisions of sub-paragraphs (b) and (c) of paragraph 1 of this Rule, the CMT may, vary the required percentages; and lay down conditions for a change in tariff heading as an origin criteria, using the provisions of the Lome IV convention as the basis.

5. Cumulative treatment

a) For the purposes of implementing this Annex, the Member States shall be considered as one territory.

b) Raw materials or semi-finished goods originating in accordance with the provisions of this Annex in any of the Member States and undergoing working or processing either in one or more States shall for the purpose of determining the origin of a finished product be deemed to have originated in the Member State where the final processing or manufacturing takes place.

## **RULE 3**

### **Processes Not Conferring Origin**

Notwithstanding the provisions of sub-paragraph (b) of paragraph 1 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 conditions during transportation and storage such as ventilation, spreading out, drying, freezing, making into a solution, removal of damaged parts and similar operations. This also includes loading, reloading or any other operations necessary to maintain the merchandise in good condition.

## 2. Mere Dilution, Blending and other Types of Mixing

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

## 3. Simple Assembly or combining Operations

## 4. Other Minor Operations

- a) Ornamental or finishing operations incidental to textile goods production designed to enhance the marketing appeal or ease the product's case, such as simple hand dyeing and printing, embroidery and applique, pleating, hemstitching, stone or acid washing, permanent pressing, or the attachment of accessories, notions findings and trimmings.
- b) Dismantling or disassembly
- c) Repairs and alterations, washing, laundering or sterilisation.
- d) Application of preservatives or decorative coatings, including lubricants, protective encapsulation, preservative or decorative paint or metallic coatings.
- e) Testing, sorting or grading.
- f) Marking, labeling or affixing other like distinguishing signs on products or their packages.
- g) Simple operations consisting of removal of dust, sifting or screening, sorting, classifying and matching, including the making up of sets goods, greasing, washing, painting and cutting up.

## 5. Miscellaneous

a) Any process or work in respect of which it may be demonstrated, on the basis of the preponderance of evidence, that the sole objective was to circumvent these rules.

b) For purposes of this provision, any other single operation described above does not automatically prevent conferring origin if it is coupled with any other operation described above such as testing or fabricating. In deciding whether to confer origin, the administering authority must decide whether the operations considered results in a substantial transformation of the product, meaning that the operations resulted in a new and different article with a new name, character and use.

### **RULE 4**

#### **Goods Wholly Produced In The Member States**

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

a) Mineral products extracted from the ground or sea-bed of the Member States;

b) Vegetable products harvested within the Member State;

c) Live animals born and raised within the Member States;

d) Products obtained from live animals within the Member States;

e) Products obtained from the sea and from rivers and lakes within the Member States by a vessel of Member State;

f) Products manufactured in a factory of a Member State exclusively obtained from within the Member States;

g) Used articles fit only for the recovery of materials, provided that such articles have been collected from users within the Member States;

h) Scrap and waste resulting from manufacturing operations within the Member States;

i) Goods produced within the Member States exclusively or mainly from one or both of the following:

(i) Products referred to in sub-paragraphs (a) to (h) of this Rule;

(ii) Materials containing no element imported from outside the Member States or of undetermined origin.

### **RULE 5**

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

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

a) any material which meet the condition specified in sub-paragraph (a) of paragraph 1 of Rule 2 of this Annex shall be regarded as containing - no elements imported from outside the Member States;

b) the value of any materials which can be identified as having been imported from outside the Member States shall be their c.i.f. value accepted by the Customs authorities on clearance for home consumption, or on temporary admission at the time of last importation, into the Member States where

they were used in a process of production, less the amount of any transport costs incurred in transit through other Member States;

c) if the value of any materials imported from outside the Member States cannot be determined in accordance with paragraph (b) of this Rule, their value shall be the earliest ascertainable price paid for them in the Member State where they were used in a process of production; and

d) if the origin of any materials cannot be determined, such materials shall be deemed to have been imported from outside the Member States and their value shall be the earliest ascertainable price paid for such material in the Member State where they were used in a process of production.

## **RULE 6**

### **Unit of Qualification**

1. Each item in a consignment shall be considered separately.

2. Notwithstanding the provisions of paragraph 1 of this Rule:

a) where the World Customs Organisation's Nomenclature specifies that a group, set or assembly of articles is to be classified within a single heading, such a group, set or assembly shall be treated as one article;

b) tools, parts and accessories which are imported with an article, and the price of which is included in that on the article or for which no separate charge is made, shall be considered as forming a whole with the article provided that they constitute the standard equipment customarily included on the sale of articles of that kind;

c) notwithstanding the provisions of sub-paragraphs (a) and (b) of this paragraph, goods shall be treated as a single article if they are so treated for purposes of assessing Customs duties on like articles by the importing Member State.

3. An 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 7**

### **Separation of Materials**

1. For those products or industries where it would be impracticable for the producers to separate physically materials of similar character but different origin used in the production of goods, such separation may be replaced by an appropriate accounting system which ensures that no more goods are deemed to originate in the Member States than would have been the case if the producer had been able physically to separate the materials.

2. Any such accounting system shall conform to such conditions as may be agreed upon by the CMT in order to ensure that adequate control measures shall be applied.

.

## **RULE 8.**

### **Treatment of Mixtures**

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

## **RULE 9**

### **Treatment of Packing**

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

## **RULE 10**

### **Documentary Evidence**

1. The claim that goods shall be accepted as originating from a Member State in accordance with the provisions of this Annex shall be supported by a certificate given by the exporter or his authorised representative in the form prescribed in Appendix I of this Annex. The certificate shall be authenticated with a seal by an authority designated for the purpose by each Member State.
2. Every product, where such producer is not the exporter, shall, in respect of goods intended for export, furnish the exporter with a written declaration in conformity with Appendix II of this Annex to the effect that the goods qualify as originating in the Member State under the provisions of Rule 2 of this Annex.
3. The competent authority designated by an importing Member State may in exceptional circumstances and notwithstanding the presentation of a certificate issued in accordance with the provisions of this Rule, require, in case of doubt, further verification of the statement contained in the certificate. Member States, through their competent authorities, shall assist each other in this process.

Such further verification should be made within three months of the request being made by a competent authority designated by the importing Member State. The form to be used for this purpose shall be that contained in Appendix III of this Annex.

4. The importing Member State shall not prevent the importer from taking delivery of goods solely on the grounds that it requires further evidence, but may require security for any duty or other charge which may be payable: provided that where goods are subject to any prohibitions, the stimulations for delivery under security shall not apply.

5. Copies of certificates of origin and other relevant documentary evidence shall be preserved by the appropriate authorities of the Member State for at least five years.

6. All Member States shall deposit with the secretariat the names of Departments and Agencies authorised to issue the certificates required under this Annex, specimen signatures of officials authorised to sign the certificates and the impression of the official stamps to be used for that purpose, and those shall be circulated to the Member States by the Secretariat.

## **RULE 11**

### **Infringement and Penalties**

1. The Member States undertake to introduce legislation where such legislation does not exist, making such provision as may be necessary for penalties against persons who, in their territories, furnish or cause to be furnished documents which are untrue in material, 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 so that appropriate action may be taken and a report made thereon within a reasonable time to the affected Member State.

3. A Member State which has, in pursuance of the provisions of paragraph 2 of this Rule, brought to the attention of an exporting Member State of an untrue claim, if it is of the opinion that no satisfactory action has been taken by the exporting Member State, refer the matter to the CMT which shall take such action as appropriate in accordance with the provisions of Article 32 of this Protocol.

4. Continued infringement by a Member State of the provisions of this Annex may be referred to the CMT which shall take such action as appropriate in accordance with the provisions of Article 32 of this Protocol.

## **RULE 12**

### **Derogations**

1. Notwithstanding the provisions of Rule 2 and 3 of this Annex, derogations may be granted by the CMT where the development of existing industries or the creation of new industries is justified.

2. The SADC Member State shall make the request for a derogation for existing or new industries to the CMT.

3. In order to facilitate the examination of the request for a derogation, the Member State making the request shall, furnish the CMT the fullest possible information as to the reason for the request.

4. The CMT shall respond to each SADC Member State's request which is duly justified and in conformity with this Rule, provided no serious injury is caused to any established industry within SADC.

5. The CMT shall take steps necessary to ensure that a decision is reached as quickly as possible, and in any case not later than 90 working days after the request is received.

6. The derogation shall be valid for a specific period to be determined by the CMT.

.  
**RULE 13**  
**Regulations**

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

.



**APPENDIX I**

**SADC CERTIFICATE OF ORIGIN**

- 1. Exporter (Name and Office address) COMMUNITY CERTIFICATE OF ORIGIN
- 2. Consignee (Name and Office address)
- 3. Ref. No. ....SOUTHERN AFRICAN DEVELOPMENT
- 4. Particulars of transport: 5. For official use
- 5. Marks and numbers; number and kind of package, description of goods
- 7. Customs tariff No.
- 8. Origin criterion (see overleaf)
- 9. Gross weight or other quantity
- 10. Invoice
- 11. DECLARATION BY EXPORTER / SUPPLIER, the undersigned, hereby declare that the above details and statement are correct and that all the goods are produced in

.....Place, date, signature of declarant

- 12. CERTIFICATE OF ORIGIN is hereby certified that the above mentioned goods are  
of.....Certificate  
of Customs or other Designated Authority STAMP

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

- i. The forms may be completed by any process provided that the entries are indelible and legible.
- ii. Neither erasures nor superimposition should be allowed on the certificate, any alterations should be made by striking out the erroneous entries and making any additions required.
- iii. If warranted by export trade requirements, one or more copies may be drawn up in addition to the original.
- iv. The following letters should be used when completing a certificate in the appropriate place:  
  
P for goods wholly produced (Rule 2.1 (a))  
M for goods to which the materials content criterion applies (Rule 2.1 (b) (i))  
V for goods to which the value added criterion applies (Rule 2.1 (b) (ii) and (c)) 1.

1 The relevant percentages applicable under the relevant Rule should also be quoted.

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

**APPENDIX II**

**DECLARATION BY THE PRODUCER**

To whom it may concern

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

I HEREBY DECLARE:

- a) that the goods listed here in quantities as specified below have been produced by this company/enterprise/workshop supplier; 2
  
- 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

(stamp) .....Signature of the PRODUCER

2 Please delete the description not applicable

.

**APPENDIX III**

**FORM FOR VERIFICATION OF ORIGIN**

**A. REQUEST FOR VERIFICATION**

Verification of the authenticity and accuracy of this certificate is requested

.....  
(Place and date)

.....  
(Signature)

**B. RESULTS OF VERIFICATION**

Verification carried out shows that this certificate 3

.....  
(Place and date)

**STAMP**

.....  
(Signature)

3 Insert X in the appropriate box.