

ANNEX IV CONCERNING TRANSIT TRADE AND TRANSIT FACILITIES

ANNEX IV Concerning Transit Trade And Transit Facilities

PREAMBLE

The High Contracting Parties

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

HEREBY AGREE as follows,

ARTICLE 1 Definitions

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

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

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

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

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

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

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

"Means of transport include": a) any railway stock, containers, water going vessels, road vehicles and aircraft;b) where the local situation so requires, porters and pack animals; andc) pipelines and gas lines;

"SADC Transit Document" means a Customs document for transit declaration approved by the CMT to be utilised within the Community;

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

"SRCTD" means the SADC Road Customs Transit Declaration;

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

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

"Transistor" means the legal entity responsible for the conveyance of goods through the Customs

operations;

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

ARTICLE 2

General Provisions

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

- a) or bound for the Member States; or
- b) third countries and bound for other Member States; or
- c) other Member States and bound for third countries; or
- d) third countries and bound for third countries.

2. Member States undertake not to levy any import or export duties on the transit traffic referred to in paragraph 1 of this Article. However, in accordance with paragraph 6 of Article 11 of this Annex, a Member State may levy administrative or service charges.

3. For the purpose of this Annex, the Member States undertake to ensure that there shall be no discrimination in the treatment of persons, mail, merchandise and means of transport coming from or bound to Member States, and that rates and tariffs for the use of their facilities by other Member States shall not be less favourable than those accorded to their own traffic.

4. Notwithstanding the provisions of paragraph 1 of this Article, a Member State may, in conformity with Article 9 of the Trade Protocol, prohibit, restrict or otherwise control the entry of goods and services.

ARTICLE 3

Scope of Application

1. The provisions of this Annex shall apply to any transitor, mail, means of transport or any shipment of bonded goods in transit between two points either in two different Member States or between a Member State and a third country.

2. The provisions of this Annex shall only apply to transit transport if it is:

- a) operated by a carrier licensed under the provisions of Article 4 of this Annex;
- b) performed under the conditions set out in Article 5 of this Annex by means of transport approved by the Customs office of commencement and issue with certificates which shall be in the form set up in Appendix III of this Annex;
- c) guaranteed by a surety in accordance with the provisions of Article 6 of this Annex; and
- d) undertake under cover of the SRCTD, or any other transit document approved by CMT.

3. The provisions of this Annex shall apply to transit goods being carried by whatever means of transport, except that in the case of air, water and rail transport, the aircraft, vessel or train in transit

shall be exempted from the application of the provisions of this Annex. However, the aircraft, vessel or train will be subject to the national laws and regulations of the transit country.

4. The provisions of this Annex shall cease to apply to transit traffic referred to in Article 2 (1) (a) of this Annex when the import duties have been eliminated.

ARTICLE 4

Licensing of Transistors and Carriers

1. Any person intending to be engaged in the operation of transit traffic under the provisions of this Annex shall be licensed for that purpose by the competent authorities of the Member State in whose territory he is normally resident or established, and the competent authority shall inform all the other Member States of all the persons so licensed.

2. The conditions for the issuance of the licences referred to in paragraph 1 of this Article to person resident or established in a Member State shall be that:

a) the requirements of Article 5 of this Annex have been satisfied; and

b) the applicant has not during the previous three years been convicted of a serious offence including accepting, receiving or offering bribes, smuggling, theft, destroying documents of evidence, and failing or refusing to give information relating to interstate transportation of goods.

3. The conditions for issuance of the licences referred to in paragraph 1 of this Article to applicants who are not resident or established in a Member State shall be determined by each Member State in consultation with other Member States provided that such conditions shall not be more favourable than conditions accorded to persons resident or established in that Member State.

4. Licensed carriers and transistors, who are convicted of Customs offences referred to in sub-paragraph (b) of paragraph 2 of this Article or who conceal their record of having been convicted of such offenses in order to obtain a licence or who commit such offenses after they have been licensed to operate transit traffic, shall have their licences suspended automatically or withdrawn by the issuing authorities who shall thereupon notify the Customs authorities of the other Member States and the respective sureties of the action taken.

ARTICLE 5

Approval of Means of transport

1. The means of transport used in transit trade shall be licensed by the appropriate licensing authorities of the Member States in accordance with their national laws and regulations.

2. For the purpose of sub-paragraph (b) of paragraph 2 of Article 3 of this Annex, means of transport, together with their cargo, shall be presented at the Customs offices of commencement for examination to ensure that they comply with the technical conditions stipulated in Appendix II of this Annex before each transit traffic operation is undertaken.

ARTICLE 6

Bonds and Sureties

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

ARTICLE 7

SADC Transit Document

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

ARTICLE 8

Exemption From Customs Examinations and Charges

1. Provided the provisions of Article 4 and 5 of this Annex are satisfied, goods carried in approved sealed means of transport, sealed packages, or accepted by Customs office of commencement as goods not susceptible to tampering substitution or manipulation, and permitted to be carried unsealed shall not:
 - a) be subject to the payment of import or export duties at Customs office en-route; and
 - b) as a general rule, be subject to Customs examination at such offices.
2. However, in order to prevent abuse, the Customs authorities may, where they suspect an irregularity, carry out at such offices a partial or full examination of the goods.

ARTICLE 9

Transit Procedures

1. All transit goods and means of transport shall be presented to the Customs office of commencement together with duly completed SADC Transit Documents supported by appropriate bonds as necessary for examination and affixing of Customs seals. The office of commencement shall decide whether means of transport to be used provides enough safeguards to ensure Customs security and whether the shipment may be made under cover of relevant SADC Transit Document.
2. Where it is not possible for goods to be transported in sealed means of transport compartments, the Customs authorities at the Customs office of commencement may authorise the transportation in such unsealed means of transport or compartments and under such conditions as they may deem necessary, and endorse the relevant SADC Transit Document accordingly.

3. A means of transport engaged in the transport of goods under the provisions of this Annex shall not at the same time be used to transport passengers unless such passengers and their personal effects are carried in a part of the means of transport which is adequately sealed off to the satisfaction of the Customs authorities of commencement.

4. Nothing may be added or taken from or substituted for goods consigned under cover of a SADC Transit Document at times of off-loading, trans-shipment or collecting.

5. The means of transport, together with the respective SADC Transit Document, shall be presented to the Customs authorities at Customs offices en-route and at Customs offices of destination for such administrative action as may be required under the provisions of this Annex.

6. Except where irregularities are suspected, the Customs offices en-route within the Member States shall respect the seals affixed by the Customs authorities of other Member States. Such Customs authorities may, however, affix additional seals of their own.

7. In order to prevent abuse, the Customs authorities may, if they deem it necessary:

a) require the means of transport to be escorted through the territory of their country, at the transporter's expense, when goods are transported in unsealed means of transport; or

b) require that examination of the means of transport and their loads be carried out en-route in the territory of their country.

8. An unsealed shipment covered by an appropriate SADC Transit Document shall have only one Customs office of destination.

9. If the goods in a means of transport are examined at a Customs office en-route or anywhere in the course of transportation, the Customs authorities concerned shall affix new seals and make a certified declaration of the particulars of irregularities, if any, and of the new seals affixed by them.

10. In the event of an accident or imminent danger necessitating the immediate unloading in whole or part of a means of transport, the carrier may on his own initiative take such steps as may be necessary to ensure the safety of the goods being transported or the means of transport in which they are being transported. The carrier should, however as soon as possible thereafter, inform the Customs office of commencement. The carrier shall arrange where appropriate for the goods to be transferred to other means of transport in the presence of Customs authorities concerned or any other accredited authority shall endorse the SADC Transit Document with the particulars of the goods transferred to the other means of transport and where possible apply the Customs seal.

11. On arrival at the Customs office of destination, the SADC Transit Document shall be discharged without delay. If, however, the goods cannot be immediately entered under another Customs regime, the Customs authorities may reserve the right to discharge the document conditionally upon a new liability being substituted for that of the surety guaranteeing the said document.

12. If seal affixed by Customs authorities are broken en-route otherwise than in the circumstance set out in paragraph 10 of this Article, or if goods are destroyed or damaged without breaking such seals, the procedure laid down in paragraph 11 of this Article shall, without prejudice to the application of the provisions of national laws, be followed and a certified report drawn up in the form set out in Appendix IV of this Annex.

13. When the Customs authorities are satisfied that the goods covered by a SADC Transit Document have been destroyed by force majeure an exemption from payment of the duties shall be granted.

ARTICLE 10

Obligation of Member States and Sureties

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

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

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

ARTICLE 11

Other Provisions

1. The Member States undertake to establish or facilitate the establishment of bonded, transit or Customs areas or bonded warehouses for the temporary storage of transit goods where the direct trans-shipment of goods from one means of transport to another is not possible. The management and operation of such bonded, transit or Customs areas and such bonded warehouses shall be in accordance with the Customs rules and regulations of the Member States concerned.
2. The Member States undertake to permit and facilitate the establishment of cargo, clearing and forwarding offices in their territories by persons, organisations or associations of other Member States or their authorised agents, for the purpose of facilitating transit traffic in accordance with their national laws and regulations.
3. Each means of transport engaged in international transit traffic operations under cover of an SRCTD or any other transit document approved by CMT shall have affixed to its front and rear, a plate bearing the letters "SADC - TRANSIT", the specifications of which are laid down in Appendix V of this Annex. These plates shall be so placed as to be clearly visible, removable and capable of being sealed. The seals to such plates shall be affixed by the Customs offices of commencement and shall be removed by the authorities of the offices of destination.
4. The Member States shall communicate to each other through the Sector Coordinating Unit the seals, stamps and date stamps they use.
5. Each Member State shall send to the other Member States through the Sector Coordinating Unit, a list of its Customs offices and stations, including transit routes approved by it for SADC Transit Document covered traffic and normal working hours of such offices. Contiguous Member States shall consult each other in determining the frontier Customs offices to be included in such lists and where possible such office shall be juxtaposed.
6. In all Customs operations referred to in this Annex, no charges shall be levied for Customs attendance, save where it is provided on days or at times or places other than those appointed for such operations. Whenever possible, Customs frontier offices shall remain open for business for twenty-four hours a day or shall allow execution of Customs formalities relating to the transportation of goods under the provisions of this Annex outside the normal working hours.
7. Any breach of the provisions of this Annex shall render a carrier liable in the Member States where the offence is committed to the penalties prescribed by law in that Member State.
8. Nothing contained in this Annex shall prevent the Member States from enacting special legislation in respect of transport operations commencing or terminating in or passing through their territories provided that the provisions of such legislation shall not conflict with the provisions of this Annex, are extended to other Member States or do not confer benefits on third countries that are more favourable than those enjoyed by the Member States.
9. All SADC Transit Documents may have a note explaining how that particular document should be used.

ARTICLE 12

Regulations

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

APPENDIX I

NOTES FOR THE USE OF THE SADC TRANSIT DOCUMENT

1. The SADC Transit Document herein after referred to as "Document" shall be prepared in the country of commencement where the goods are first declared to be in transit.
2. The document shall be printed in the English and Portuguese languages, but completed in the language of the country of commencement. The Customs authorities of the other countries traversed reserve the right to require their translation into their own language. In order to avoid unnecessary delays which might arise from this requirement, carriers are advised to supply the operator of the means of transport with the requisite translations.
3. A document remains valid until completion of the transit operation at a Customs office of destination provided that it has been taken under Customs control at the Customs office of commencement within the time limit given by issuing authorities.
4. (a) The document must be typed or multi-graphed or printed legibly.

(b) When there is not enough space on the manifest separate sheets to enter all the goods carried, separate sheets to the same model as the manifest may be attached to the latter but all copies of the manifests must contain the following particulars:
 - (i) a reference to the sheets; and
 - (ii) the number and type of packages and goods in bulk enumerated on the separate sheets;
 - (iii) the total value and the total gross weight of the goods appearing on the said sheets.
5. Weights, volume and other measurements shall be expressed units of the metric system, and values in the currency of the country of commencement or in the currency determined by CMT.
6. No erasures or over-writing shall be allowed on the document. Any correction shall be made by deleting the incorrect particulars and adding, if necessary, the required particulars. Any correction, addition or other amendment shall be acknowledged by the person making it and countersigned by the Customs authorities.
7. When the document covers coupled means of transport or several containers, the contents of each means of transport shall be indicated separately on the manifest. This information shall be proceeded by the registration of identification number of the means of transport or container.
8. If there is more than one Customs office of destination, the entries concerning the goods taken under Customs control at, or intended for, each office shall be clearly separated from each other on the manifest.
9. In the event of Customs seals being broken or goods being destroyed or damaged accidentally en-route, the operator of the means of transport shall ensure that a certified report is drawn up as quickly as possible by the authorities of the country in which the vehicle is located. The operator shall approach the Customs authorities, if there are any near at hand, or if not, any other competent authorities. Operators shall accordingly provide themselves with copies of the certified report form laid down in Appendix V of this Annex on Transit Facilities within the Community.
10. In the event of accident involving immediate unloading of the whole or part of the load en-route the operator may take action on his own initiative without requesting awaiting intervention by the authorities mentioned in paragraph 9 of these notes.
He must then furnish adequate proof that he was compelled to take action in the interest of the means of transport or of the load. Having taken such preventive measures as the emergency may

necessitate, he shall at the first opportunity notify the authorities mentioned in paragraph 9 of these notes in order that the facts may be verified, the load checked, the means of transport sealed and report drawn up.

APPENDIX II

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

1. Approval for the intra-Community transport of goods by means of transport under Customs seal may be granted only for means of transport constructed and equipped in such a manner that:

a) Customs seal can be simply and effectively affixed thereto;

b) no goods can be removed from or introduced into the sealed part of the means of transport without obvious damage to it or without breaking the seals;

c) they contain no concealed spaces where goods may be hidden.

2. The means of transport shall be so constructed that eleven (11) spaces in the form of compartments, receptacles or other recesses which are capable of holding goods are readily accessible for Customs inspection.

3. Should any empty spaces be formed by the different layers of the sides, floor and roof of the means of transport, the inside surface shall be firmly fixed, solid unbroken and incapable of being dismantled without leaving obvious traces.

4. Openings made in the floor for technical purpose, such as lubrication, maintenance and filing of the sand-box, shall be allowed only on condition that they are fitted with a cover capable of being fixed in such a way as to render the loading compartment inaccessible from the outside.

5. Doors and all other closing systems of means of transport shall be fitted with a device which shall permit simple and effective Customs sealing. This device shall either be secured by at least two bolts, riveted or welded to the nuts on the inside.

6. Hinges shall be so made and fitted that doors and other closing systems cannot be lifted off the hinge-pins, once shut; the screws, bolts, hinge-pins and other fasteners shall be welded to the outer parts of the hinges. These requirement shall be waived, however, where the doors and other closing systems have a locking device inaccessible from the outside which, once it is applied, prevents the doors from being lifted off the hinge-pins.

7. Doors shall be so constructed as to cover all interstices and ensure complete and effective closure.

8. The means of transport shall be provided with a satisfactory device for protecting the Customs seal, or shall be so constructed that the Customs seal is adequately protected.

9. The foregoing conditions shall also apply to insulated vehicles, refrigerator vehicles, tank vehicles and furniture vehicles in so far as they are not incompatible fulfil in accordance with their use.

10. The flanges (filler caps), drain cocks and manholes of tank wagons shall be so conducted as to allow simple and effective Customs sealing.

11. Folding or collapsible containers are subject to the same conditions as non-folding or non-collapsible containers, provided that the locking device enabling them to be folded or collapsed allow Customs sealing and that no part of such container can be moved without breaking the seals.

APPENDIX III

CERTIFICATE OF APPROVAL OF MEANS OF TRANSPORT

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

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

APPENDIX IV

FRONT OF REPORT FORM

CERTIFIED DECLARATION OF EXAMINATION OF CONTENTS OF MEANS OF SADC TRANSPORT

1. SADC Transit Document No Issued at.....
2. Information concerning the means of transport examined:
 - Kind of means of transport
 - Registration No

Reasons for making the examination (check where appropriate)

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

The following goods/packages were missing/damaged
Serial No. Consignment and identification Number and kind of packages Description of goods
Remarks

APPENDIX V

SADC MARKET TRANSIT PLATES

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