

Annex II

ANNEX CONCERNING CUSTOMS COOPERATION WITHIN THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

PREAMBLE

THE HIGH CONTRACTING PARTIES

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

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

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

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

HEREBY AGREE AS FOLLOWS:

ARTICLE 1 : Definitions

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

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

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

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

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

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

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

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

ARTICLE 2 : Objectives and Scope

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

ARTICLE 3 : Harmonization of Customs Tariff Nomenclatures And Statistical Nomenclatures

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

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

ARTICLE 4 : Harmonization of Valuation Laws and Practice

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

ARTICLE 5 : Simplification And Harmonization of Customs Procedures

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

ARTICLE 6 : Computerization of Customs Operations

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

ARTICLE 7 : Preservation, Investigation and Suppression of Customs Offences

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

- (iii) particular places where stocks of goods have been built up giving reason for suspicion that they may be used for illicit importation into any Member States; and
- (iv) particular vehicles, ships, aircraft, or other means of transport suspected of being used to commit customs offenses in any Member State.

3. Member States shall exchange:

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

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

ARTICLE 8 : Cooperation in Training

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

ARTICLE 9 : Communication of Customs Information

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

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

ARTICLE 10 : Implementation Arrangements

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

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

ARTICLE 11 : Sub-Committee on Customs Cooperation

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

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

ARTICLE 12 : Regulations

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