

PROTOCOL ON THE RULES OF ORIGIN FOR PRODUCTS TO BE TRADED BETWEEN THE MEMBER STATES OF THE COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA

PREAMBLE THE HIGH CONTRACTING PARTIES

AWARE that they have undertaken to progressively establish a Common Market within which customs duties and other charges of equivalent effect imposed on imports shall be eliminated and non-tariff barriers to trade among member States shall be removed, a common external tariff shall be adopted and all trade documents and procedures shall be harmonised;

HAVING REGARD to the provisions of Article 46 of the Treaty which requires member States to reduce and ultimately eliminate, by the year 2000 in accordance with the programme adopted by the PTA Authority, customs duties and other charges of equivalent effect imposed on or in connection with the importation of goods which are eligible for Common Market tariff treatment;

CONSIDERING the provisions of Article 48 of the COMESA Treaty providing that only goods originating in the member States shall be eligible for Common Market tariff treatment; and

TAKING INTO ACCOUNT the provisions of paragraph 2 of Article 48 of the COMESA Treaty which requires that the rules of origin for products that shall be eligible for Common Market treatment shall be set out only in a Protocol to be annexed to the Treaty:

NOW THEREFORE

It is **HEREBY AGREED** as follows:

RULE 1 Interpretation

In this Protocol:

"Authority" means the Authority of the Common Market established by Article 7 of the Treaty;

"Bureau of Council" means the Chairman, Vice Chairman and Rapporteur elected in accordance with the Rules of Procedure of the Council;

"Committee" means the Committee on Trade and Customs established by Article 7 of the Treaty;

"Common Market" means the Common Market for Eastern and Southern Africa established by Article 1 of the Treaty;

"Council" means the Council of the Common Market established by Article 7 of the Treaty;

"Court" means the Common Market Court of Justice established by Article 7 of the Treaty;

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

"IC" means the Intergovernmental Committee established by Article 7 of the Treaty;

"Member State" means a Member State of the Common Market;

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

"produced" 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 5 of this Protocol;

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

"Protocol" means the Protocol on Rules of Origin for Products to be Traded between the Member States of the Common Market;

"Secretariat" means the Secretariat of the Common Market established by Article 7 of the Treaty;

"Treaty" means the Treaty Establishing the Common Market for Eastern and Southern Africa;

"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 the production;

"Vessel of a Member State" means vessel of a Member State if it is registered in a Member State and satisfies one of the following conditions:

- a. at least 75 per cent of the officers of the vessel are nationals of a Member State;
or
- b. at least 75 per cent of the crew of the vessel are nationals of a Member State; or

- 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.

RULE 2
Rules of Origin of the Common Market for
Eastern and Southern Africa

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 3 of this Protocol; 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
 - i. 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
 - ii. The goods are classified or become classifiable under a tariff heading other than the tariff heading under which they were imported; or
 - a. produced in the member State and designated in a list by the Council upon the recommendation of the Committee through the IC to be goods of particular importance to the economic development of the member States, and containing not less than 25 per cent of value added notwithstanding the provisions of sub-paragraph (b) (ii) of paragraph 1 of this Rule.
2. The Council may:
 - a. determine how long the goods contained in the list referred to in sub-paragraph (c) of paragraph 1 of this Rule shall remain on such list and may, from time to time, amend it as may be necessary; and
 - b. amend any of the percentage values and value added specified in sub-paragraph (b) (i) and (ii) of paragraph 1 of the Rule, from time to time, as may be necessary.
3. Raw materials or semi-finished goods originating in accordance with the provisions of this Protocol in any of the member States and undergoing working or processing either in one or two or in 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.

4. 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 if they were taken by or produced in a vessel of that member State and have been brought directly to the territory of the member State.

RULE 3

Goods Wholly Produced in the Member States

1. For the purposes of subparagraph (a) paragraph 1 of Rule 2 of this Protocol, 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 States;
 - c. live animals born and raised within the member States;
 - d. products obtained from live animals within the member States;
 - e. products obtained by hunting or fishing conducted within the member States;
 - f. products obtained from the sea and from rivers and lakes within the member States by a vessel of a member State;
 - g. products manufactured in a factory of a member State exclusively from the products referred to in sub-paragraph (f) of paragraph 1 of this Rule;
 - h. used articles fit only for the recovery of materials, provided that such articles have been collected from users within the member States;
 - i. scrap and waste resulting from manufacturing operations within the member State;
 - j. 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 (i) of paragraph 1 of this Rule;
 - ii. materials containing no element imported from outside the member states or of undetermined origin
1. Electrical power, fuel, plant, machinery and tools used in the production of goods shall always be regarded as wholly produced within the Common Market when determining the origin of the goods.

RULE 4

Application of Percentage of Imported Materials and Value Added Criteria

For the purpose of subparagraphs (b) and (c) of paragraph 1 of Rule 2 of this Protocol:

- a. any materials which meet the condition specified in sub-paragraph (a) of paragraph 1 of Rule 2 of this Protocol 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 State 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 its 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 5

Process not conferring Origin

Notwithstanding the provisions of sub-paragraphs (b) and (c) of paragraph 1 of Rule 2 of this Protocol, the following operations and processes shall be considered as insufficient to support a claim that goods originate from a member State:

- a. packaging, bottling, placing in flasks, bags, cases and boxes, fixing on cards or boards and all other simple packaging operations;
- b. (i) simple mixing of ingredients imported from outside member States
(ii) simple assembly of components and parts imported from outside the member States to constitute a complete product;
- i. simple mixing and assembly where the costs of the ingredients, parts and components imported from outside member States and used in any of such processes exceed 60 per cent of the total costs of the ingredients, parts and components used.
- a. operations to ensure the preservation of merchandise in good condition during transportation and storage such as ventilation, spreading out, drying, freezing, placing in brine, sulphur dioxide or other aqueous solutions, removal of damaged parts and similar operations;

- b. changes of packing and breaking up of or assembly of consignments;
- c. marking, labelling or affixing other like distinguishing signs on products or their packages;
- d. simple operations consisting of removal of dust, sifting or screening, sorting, classifying and matching, including the making up of sets of goods, washing, painting and cutting up;
- e. a combination of two or more operations specified in sub-paragraph (a) to (f) of this Rule;
- f. slaughter of animals.

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 Customs Co-operation Council's **Nomenclature or the Harmonised Commodity Description and Coding System** 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 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 on the sale of articles of that kind; and
 - c. in cases not within 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.

1. An unassembled or disassembled 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 producer 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 physically to separate the materials.

2. Any such accounting system shall conform to such conditions as may be agreed upon by the Council 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 Protocol, a member State may refuse to accept as originating in the member States any product resulting from the mixing together of goods which 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 Council 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 originating in the member States used in the mixing, subject to such conditions as may be agreed by the Council, upon the recommendation of the Committee through IC.

RULE 9

Treatment of Packing

1. Where for purposes of assessing customs duties, a member State treats goods separately from their 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 which goods are ordinarily sold at retail shall not be regarded as packing required for the transport or storage of goods.

4. Containers which are used 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 subject 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 Protocol, shall be supported by a certificate given by the exporter or his authorised representative in the form prescribed in Appendix I of this Protocol. The certificate shall be authenticated by an authority designated for that 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 II of this Protocol to the effect that the goods qualify as originating in the member States under the provisions of Rule 2 of this Protocol.
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. 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 Protocol.
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 other charge which may be payable:

Provided that where the goods are subject to any prohibitions, the stipulations 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 certificate required under this Protocol, the specimen signatures of officials authorised to sign the certificates and the impression of the official stamps to be used for that purpose, and these 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 already 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 particular in support of a claim in another member State that goods be accepted as originating from that 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 may, if it is of the opinion that no satisfactory action has been taken thereon by the exporting member State, refer the matter to the Bureau of Council which shall take such action as appropriate in accordance with the provisions of Article 25 of the Treaty.
4. Continued infringement by a member State of the provisions of this Protocol may be referred to the Bureau of Council which shall take such action as appropriate in accordance with the provisions of Article 25 of the Treaty.

RULE 12

Entry into Force

This Protocol shall enter into force upon its adoption by the Authority.

RULE 13

Regulations

The Council may make regulations for the better carrying out of the provisions of this Protocol.

RULE 14

Cessation of Force of the Protocol

The Authority shall, upon a recommendation from the Council verifying that the objectives of the Common Market have been fully achieved, declare that the provisions of this Protocol shall no longer apply.