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DRAFT PROTOCOL RELATING TO THE RULES OF ORIGIN  
FOR PRODUCTS TO BE TRADED BETWEEN THE MEMBER  
STATES OF THE PREFERENTIAL TRADE AREA FOR THE  
EASTERN AND SOUTHERN AFRICAN STATES

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PROTOCOL RELATING TO THE RULES OF ORIGIN FOR PRODUCTS TO BE  
TRADED BETWEEN THE MEMBER STATES OF THE PREFERENTIAL  
TRADE AREA FOR THE EASTERN AND SOUTHERN AFRICAN  
STATES

THE HIGH CONTRACTING PARTIES

Having regard to paragraph                      of Article                      of the Treaty  
for the establishment of the Preferential Trade Area for the Eastern and  
Southern African States on the rules of origin for products to be traded  
between the Member States of the Preferential Trade Area;

AGREE AS FOLLOWS:

RULE 1

Interpretation

1. In this Protocol:

"Committee" means the Committee for Trade\* established by Article of the Treaty;

"Council" means the Council of Ministers\* established by Article of the Treaty;

"ex-factory price" of the goods shall be the price paid or payable for them by the exporter in the territory of the Member States where the goods are produced, that price being adjusted, where necessary, to a f.o.b. or free at frontier basis;

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

"Member State" or "Member States" means a Member State or Member States of the Preferential Trade Area for the Eastern and Southern African States;

"Preferential Trade Area" means the Preferential Trade Area for the Eastern and Southern African States;

"produced" and "a process of production" include the application of any operation or process with the exception of any operation or process which consist only of one or more of the operations or process set out in Rule 5 of this Protocol;

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

"value-added" means the difference between the ex-factory price of the finished product and subsidies if any, less local taxes and duties, and the c.i.f. value of the materials imported from outside the Member States and used in the production;

\*The above references to a Committee for Trade and a Council of Ministers are made purely for the sake of convenience and on the assumption that some kind of institutional framework will be provided for in the Treaty setting up the Preferential Trade Area. Such references are not intended to prejudge the issue in any way and will be modified in due course as may be required.

"Treaty" means the Treaty for the establishment of the Preferential Trade Area for the Eastern and Southern African States.

2. In determining the place of production of marine, river or lake products and goods in relation to a Member State, the vessel of a Member State shall be regarded as part of the territory of that State and in determining the place from which such 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 State and have been brought directly to the territories of the Member States.

3. For the purposes of paragraph (2) of this Rule, a vessel shall be regarded as a vessel of a Member State only if:

- (a) it is registered in a Member State;
- (b) the officers of the vessel consist entirely of nationals of the Member States;
- (c) at least 75 per cent of the crew of the vessel are nationals of the Member States; and
- (d) at least the majority control and equity holding in respect of the vessel are held by nationals of the Member State and or a Government or Governments of the Member States or institutions, agencies, enterprises or corporations of such Government or Governments.

## RULE 2

### Rules of origin of Preferential Trade Area goods:

1. Goods shall be accepted as originating in a Member State if:

- (i) they have been produced by enterprises in a Member State which are subject to indigenous management and to at least 60 per cent equity holding by nationals of the Member State and or a Government or Governments of the Member States or institutions, agencies, enterprises or corporations of such Government or Governments;

(ii) are consigned direct from a Member State to a consignee in another Member State; and

(iii) where the goods satisfy one of the criteria set out in (a) to (e) of this sub-paragraph:

(a) they have been wholly produced as defined in Rule 3 of this Protocol;

(b) they have been produced in the Member States and the c.i.f. value of materials imported from outside the Member States or of undetermined origin which have been used at any stage of the production of the goods does not exceed 60 per cent of the total cost of materials used in the production of the goods;

(c) they have been produced in the Member States essentially from materials imported from outside the Member States or of undetermined origin and the value added, resulting from the process of production, including the value of the materials originating in the Member States, accounts for at least 45 per cent of the ex-factory price:

Provided that the Council may, upon the recommendations of the Committee, raise or lower the percentage of the value added required;

(d) notwithstanding the provisions of sub-paragraph (c) of paragraph 1 of this Rule,

(i) they have been produced in the Member States and designated in a list by the Council upon the recommendation of the Committee to be goods of particular importance to the economic development of the Member States, and containing not less than 25 per cent of the value added; or

(ii) they have been produced in the Member States and the consumption of which is very high and general within the Member States and have been designated in a list by the Council upon the recommendations of the Committee to be goods currently in short supply within the Member States and containing value added of not less than 30 per cent;

(e) subject to such exemptions as may be determined by the Council, they have been imported into the Member States and they have undergone a process of substantial transformation, that is to say, a process of production as a result of which such goods are classified or become classified under a CCN tariff heading other than the CCN tariff heading under which they are imported.

2. The Council may determine how long the goods contained in the lists referred to in sub-paragraph (d) of paragraph 1 of this Rule shall remain on such lists and may from time to time amend them as may be required.

### RULE 3

#### Goods wholly produced in the Member States

For the purposes of paragraph (a) 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 or raised within the Member States;
- (d) products obtained within the Member States from live animals referred to in paragraph (c) of this Rule;
- (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 paragraph (f) 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 States;
- (j) goods produced within the Member States exclusively or mainly from one or both of the following:
  - (i) products referred to in paragraphs (a) to (i) of this Rule;
  - (ii) materials containing no element imported from outside the Member States or of undetermined origin.

#### RULE 4

#### Application of percentage of imported materials and value added criteria:

For the purposes of sub-paragraphs (b), (c) and (d) of Rule 2 of this Protocol:

- (a) any material which meets the conditions specified in paragraph (a) 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;
- (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 them in the Member State where they were used in a process of production.

#### RULE 5

##### Processes not conferring origin

For the purpose of sub-paragraphs (b), (c), (d) and (e) 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) packing, bottling, placing in flasks, bags, cases and boxes, fixing on cards or boards and all other simple packing operations;
- (b)
  - (i) simple mixing of products except as provided for in Rule 8 of this Protocol;
  - (ii) simple assembly of parts of a product to constitute a complete product;
  - (iii) simple mixing and assembly where the costs of the ingredients, parts and components imported from outside the Member States and used in any of such processes exceed 60 per cent of the total costs of the ingredients, parts and components used.
- (c) 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;



- (d) changes of packing and breaking up or assembly of consignments;
- (e) marking, labelling or affixing other like distinguishing signs on products or their packages;
- (f) 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;
- (g) a combination of two or more operations specified in paragraphs (a) to (f) of this Rule;
- (h) slaughter of animals.

RULE 6

Unit of qualification

1. Each item in a consignment shall be considered separately:  
Provided that,
  - (a) where the Customs Co-operation Council'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 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;
  - (c) in cases not within 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.
2. 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 7Separation 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 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 Council in order to ensure that adequate control measures will be applied.

RULE 8Treatment 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 a Member State any product resulting from the mixing together of goods which would qualify as originating in the Member State with goods which would not qualify, if the characteristics of the product as a whole are not essentially different from the characteristics of the goods which have been mixed.

2. In the case of particular products where it is recognized 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.

RULE 9Treatment 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 by retail shall not be regarded as packing required for the transport or storage of goods.

#### 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 the Annex I to this Protocol. The certificate shall be countersigned by an Authority designated for that purpose by each Member State.

2. Every producer, where he is not the exporter, shall, in respect of goods intended for export, furnish the exporter with a written declaration in conformity with Annex II to this Protocol to the effect that the goods qualify as originating in the Member State 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. The form to be used for this purpose shall be that contained in Annex 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 or other charge which may be payable:

Provided that where 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 for at least three years.
6. All the exporters and the exporting companies shall deposit with the designated certifying authorities the names, functional titles and specimen signatures of the persons authorized to sign the declaration of origin on their behalf. The designated certifying authorities may reject a person authorised by an exporter or exporting company to give a certificate required under the provisions of Rule 10 of this Protocol as, being, on account of his qualifications, unsuitable for that purpose.
7. All Member States shall deposit with the Permanent Secretariat of the Preferential Trade Area the names, functional titles and specimen signatures of the persons authorised by an exporter or exporting companies to give the certificates required under Rule 10 of this Protocol and also the impression of the official stamps to be used for that purpose, and these shall be circulated confidentially to all Member States by the Permanent Secretariat of the Preferential Trade Area.
8. Any changes in any of the particulars referred to in paragraph 7 of this Rule shall also be communicated to all Member States by the Permanent Secretariat of the Preferential Trade Area.

#### RULE 11

#### Regulations

The Council may make regulations for the better carrying out of the provisions of this Protocol and matters connected therewith.

#### RULE 12

#### Infringement and penalties

1. Member States undertake to introduce legislation, making such provision as may be necessary for penalties against persons who, in their State, furnish or cause to be furnished a document which is untrue in a material particular in support of a claim in another Member State that goods should be accepted as originating from the Member States.

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 former 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 the making 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 Council for appropriate action.

4. Continued infringement by a Member State of the provisions of this Protocol may be referred by another Member State to the Council which may take such action as it may deem necessary.

#### RULE 13

#### Amendments

The Committee shall from time to time examine whether the provisions of this Protocol may be amended to make them simpler and more functional and the Council may from time to time amend them accordingly.

#### RULE 14

#### Deposit and entry into force

1. This Protocol shall be subject to signature and shall enter into force with respect to all the Member States upon ratification by at least seven Member States in accordance with the constitutional procedure applicable for such Member States.

2. This Protocol and all instruments of ratification shall be deposited with the United Nations Economic Commission for Africa which shall transmit certified true copies of this Protocol to all Member States and notify them of the dates of deposit of instruments of ratification and shall register this Protocol with the Organization of African Unity, the United Nations and such other organizations as the Council shall determine.

IN WITNESS WHEREOF THE FOLLOWING PLENIPOTENTIARIES FROM EASTERN AND SOUTHERN AFRICA HAVE SIGNED THIS PROTOCOL.

Done at this day of 1980  
in the English and French languages both texts being equally authentic.

ANNEX I

PREFERENTIAL TRADE AREA FOR THE EASTERN AND SOUTHERN AFRICAN STATES  
MOVEMENT CERTIFICATE OF ORIGIN

Ref. No. ....

CERTIFICATE OF ORIGIN

1. NAME OF EXPORTER AND OFFICE ADDRESS

2. NAME OF CONSIGNEE AND OFFICE ADDRESS

3. PARTICULARS OF TRANSPORT

4. COUNTRY, GROUP OF COUNTRIES IN WHICH THE PRODUCTS ARE CONSIDERED AS ORIGINATING FROM

5. CHANGES IN TARIFF CLASSIFICATION IF APPLICABLE

6	7	8	9	10	11
CUSTOMS TARIFF NO.	MARKS & NUMBERS	NUMBER AND KIND OF PACKAGES AND DESCRIPTION OF GOODS	ORIGIN CRITERION (SEE OVERLEAF)	GROSS WEIGHT OR OTHER QUANTITY	F.O.B. VALUE

12. DECLARATION BY EXPORTER  
PRODUCER/SUPPLIER\*

I, the undersigned, hereby declare that the above details and statements are correct, that all the goods are produced in .....

.....  
Signature of Declarant  
Place and date

13. CERTIFICATE

It is hereby certified that the above mentioned goods are of ..... origin.

.....  
Certificate of Customs or other  
Designated Authority

STAMP

\*Please delete the description not applicable.

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 super-impositions should be allowed on the certificates. Any alterations should be made by striking out the erroneous entries and making any additions required. Such alterations should be approved by the person who made them and certified by the appropriate authority or body;
- (iii) Any unused spaces should be crossed out to prevent any subsequent addition.
- (iv) If warranted by export trade requirements, one or more copies may be drawn up in addition to the original.
- (v) 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),
  - "V" for goods to which the value added criterion applies (Rule 2.1 (c) and (d)\*,
  - "T" for goods to which the substantial transformation criterion applies (Rule 2.1 (e),

\*The relevant percentage applicable under the relevant Rule should also be quoted.



ANNEX II

DECLARATION BY THE PRODUCER

To whom it may concern

For the purpose of claiming a preferential treatment under the provisions of Rule 2 of the Protocol Relating to the Rules of Origin for products to be traded between the Member States of the Preferential Trade Area for the Eastern and Southern African States,

I HEREBY DECLARE:

(a) that the goods listed herein in quantities as specified below have been produced in this company/enterprise/workshop\*, whose management and ownership comply with the requirements of the Protocol Relating to the Rules of Origin for the Preferential Trade Area for the Eastern and Southern African States, and

(b) that evidence is available that the goods listed below comply with the origin criteria as specified by the Protocol Relating to the Rules of Origin for the Preferential Trade Area for the Eastern and Southern African States.

List of goods

Commercial description	Quantity	Criterion to be claimed

(Stamp mark)

.....  
Signature of the PRODUCER

\*Please delete the description not applicable.

ANNEX III

FORM FOR VERIFICATION OF ORIGIN

A. REQUEST FOR VERIFICATION, to

Verification of the authenticity and accuracy of this certificate is requested.

.....  
(Place and date)

STAMP

.....  
Signature

B. RESULT OF VERIFICATION

Verification carried out shows that this certificate (1)

☐

was issued by the Customs Office indicated and that the information contained therein is accurate.

☐

does not meet the requirements as to authenticity and accuracy

.....  
(Place and date)

STAMP

.....  
(Signature)

(1) Insert X in the appropriate box.