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Second Meeting of the Intergovernmental  
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Establishment of Preferential Trade Area  
in Eastern and Southern Africa

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MEMORANDUM ON DRAFT RULES OF ORIGIN FOR THE  
PREFERENTIAL TRADE AREA FOR EASTERN AND SOUTHERN AFRICAN STATES

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# MEMORANDUM ON DRAFT RULES OF ORIGIN FOR THE PREFERENTIAL TRADE AREA FOR EASTERN AND SOUTHERN AFRICAN STATES

## Introduction

1. It will be recalled that, at its inaugural meeting held in Addis Ababa from 27 to 30 June 1978, the Intergovernmental Negotiating Team for the establishment of a Preferential Trade Area in the Eastern and Southern Africa adopted a set of principles for the establishment of a preferential area for the Eastern and Southern African States<sup>1/</sup> including one to the effect that "member States should negotiate on common rules of origin with respect to products that will be traded within the PTA". The team also requested the secretariat to prepare a draft protocol on rules of origin for the preferential area together with a memorandum thereon for consideration by the team at its next meeting.

2. The present paper is presented accordingly. It is essentially intended to serve as an introduction to the draft Protocol by shedding light on the main objectives and factors that were taken into account in the preparation of the draft Protocol, including the criteria under which origin may be claimed, and the implementation of the rules.

## I. Objectives of the rules of origin

3. The primary objectives of rules of origin adopted by economic co-operation or integration groupings is doubtless to differentiate between goods that qualify for entry into the area concerned and those that do not (whether they come from third parties or even from member countries), with a view to promoting genuine intra area trade.

4. The draft protocol, as all such documents, is designed to assist the would be members of the PTA to achieve this basic objective. In doing so, however, efforts have been made to ensure, not only that the peculiar problems and circumstances obtaining in the subregion as a whole and in the various countries are taken into account, but also that the rules assist to the greatest extent possible in furthering economic development among these countries. With this in mind, the rules have been designed specifically with a view, inter alia, to:

- (i) Encouraging the optimum exploitation and utilization of local resources (raw materials, labour, management, technology and capital);
- (ii) Assisting in the development and expansion of indigenous industries through effective participation in the Preferential Trade Area;

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<sup>1/</sup> Report of the Inaugural meeting of the Intergovernmental Negotiating Team on the Treaty for the Establishment of a Preferential Trade area in Eastern and Southern Africa (ECA/MULPOC/LUSAKA/117).

- (iii) Promoting greater inter-state trade in locally produced goods, including agricultural products and raw materials;
- (iv) Facilitating linkages and complementarity in the development of industries among the member States;
- (v) Protecting the PTA market from third countries' products, where suitable products are available locally.

## II. Criteria under which origin may be claimed

5. The draft Protocol provides for four basic criteria under any of which goods may qualify as originating in member States, provided they fulfill all the following conditions. They must be:

- (i) produced in the member States;
- (ii) directly consigned from the member States; and
- (iii) produced by enterprises which are indigenously owned, managed and controlled to extents that have been defined.

6. Provided all the above conditions are met, the four basic criteria under which origin may be claimed are:

- (a) Wholly produced goods criterion as defined under Rule 3;
- (b) Content of imported materials criterion, providing for the value of foreign materials not to exceed 60 per cent of the value of all materials used in production;
- (c) Value added criterion, providing for the value added to be not less than 45 per cent of the product's ex-factory price; and the
- (d) Substantial transformation criterion, stipulating that where the ingredients are imported, the processing must lead to a change in the CCCN tariff heading.

7. The above criteria notwithstanding, and taking into consideration the special problems relating to the production of certain commodities, particularly those which are either of special importance to the economic development of member States or are mass-consumed but in short supply within the area, the draft Protocol provides for such commodities to qualify on a temporary basis under lower percentages of value added subject to the recommendations of the Committee and approval by the Council.

8. Due attention has also been paid to the treatment of products manufactured by mixing and assembling plants. The countries of Eastern and Southern Africa, unfortunately, hardly take any part in the growing international trade in components and products. The fact remains, however, that numerous mixing and assembly plants have come into being all over the area, for which no single country is capable of producing all the components or ingredients economically. The GSP origin system of developed countries generally exempts almost completely products resulting from simple mixing and simple assembly from preferential treatment granted to developing countries.

Within the subregion, however, this stand seems to be in need of some degree of qualification. In order to stimulate related subcontracting within the PTA, draft Rule 5 stipulates that simple mixing and simple assembly may qualify for PTA origin provided ingredients, parts and components are supplied from the countries of the subregion up to at least 40 per cent.

9. It will be noted that, in terms of value added, the proposed rules of origin tend to be more stringent in respect of goods qualifying under criterion (b) than under criteria (c) and (d). The intention, however, is not to impose new limitations on imports of foreign equipment, raw materials and technology per se, but rather to discourage the use thereof, when suitable substitutes are available within the PTA.

### III. Implementation of the Protocol on rules of origin

10. The implementation of the Protocol will clearly require close co-operation between the interested governments and in particular between their national customs administrations. Direct contacts and consultations between the latter will be necessary to clear specific issues and problems that are bound to arise from the practical application of the system. This is all the more so as the draft Protocol is deliberately confined to a set of basic rules. In the event of these being adopted with such modifications as may be found appropriate, member States might still find it necessary to establish supplementary rules and regulations for application in daily practice, in line with requirements of their national customs regulations, on the understanding that such rules and regulations would not be in contradiction with or in violation of the agreed Protocol.

11. Among the key proposals made for the optimum implementation of the Protocol is one for the issuance of a certificate of origin by competent government authorities. The suggested forms to be used for this purpose are annexed to the draft Protocol.

12. Finally, it is worth pointing out that whether or not the rules of origin will become an effective policy instrument, is most likely to depend, not only on written provisions, but also on their adequate application as well as on the readiness of the parties concerned for dynamic changes at the appropriate time, as the preferential trade area itself gradually develops.