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Distr.  
LIMITED

ECA/MULPOC/Lusaka/PTA/III/5  
7 February 1979

Original: ENGLISH

ECONOMIC COMMISSION FOR AFRICA

Third Meeting of the Intergovernmental  
Negotiating Team on the Treaty for the  
Establishment of a Preferential Trade  
Area in Eastern and Southern Africa

Addis Ababa

27 February - 5 March 1979

MEMORANDUM RELATING TO THE  
DRAFT PROTOCOL ON TRANSIT TRADE AND TRANSIT FACILITIES  
WITHIN THE PREFERENTIAL TRADE AREA FOR EASTERN  
AND SOUTHERN AFRICA

79-426

## I. Introduction

1. It will be recalled that pursuant to the principle adopted at its inaugural meeting held in Addis Ababa from 27 to 30 June 1978, the Intergovernmental Negotiating Team on the Treaty for the establishment of the P.T.A. agreed that "Member States should negotiate conditions for facilitating transit trade within the Preferential Trade Area". It was also decided a draft protocol should be prepared to this effect. Further to this, the Intergovernmental Negotiating Team at its second meeting held in Mbabane, Swaziland, from 30 November to 6 December 1978, agreed that the agenda for its next meeting should include "consideration of the Draft Protocol on Transit Trade and Transit Facilities".

2. The purpose of this paper is to highlight transit trade constraints within Eastern and Southern Africa, identify the objectives and scope of appropriate transit facilities within the proposed Preferential Trade Area, and introduce the draft protocol itself.

## II. Transit Trade constraints within Eastern and Southern Africa

3. The transit trade constraints experienced by the countries of Eastern and Southern Africa are both physical and operational. Arising from colonial heritages and also financial constraints, inter-state transportation routes within Eastern and Southern Africa are not only inadequate but also often disjointed. Such routes are also characterised by shortage of transport and handling equipment, existence of different modes of transport, different road design and maintenance standards, different railway gauges and different operational rules and regulations. Generally, except for those routes established by colonial powers to facilitate the accessibility of their land-locked colonies to sea ports, or to consolidate the administration of their contiguous colonies, direct inter-state transportation routes are still inadequate, and in some cases non-existent as is the case with surface transportation between Tanzania and Mozambique. Besides, even where such routes do exist, transit trade on such routes is sometimes disrupted by their closure due to differences between the countries concerned. All these constraints unavoidably lead to the transportation of transit goods on round-about and lengthy routes entailing many transshipments, high costs and sometimes damages to or loss of goods.

4. Coupled with the above physical constraints are the operational problems arising from the different customs rules and regulations applied by various countries in respect of transit traffic. Generally, such rules and regulations provide for the preparation and filing of transit documents, validity periods of transit documents, specification of transit traffic vehicles and containers and routes, physical checking and examination of transit goods, customs sealing safety of goods in bond, types of and amounts covered by bonds, deposits, control of bonds and their release, and other transit procedures. In the absence of effective co-operation among the member States, and considering the number of customs offices which the transit traffic may have to pass through, observation by transit traffic operators, of the different rules and regulations in these respects involves considerable inconveniences, increased costs, delays and sometimes damage to goods.

5. No doubt the physical problems described above may take sometime to solve, but the operational constraints relating to transit traffic can be tackled without further delay through identification and adoption of appropriate common rules and regulations by all Member States of the Preferential Trade Area, to facilitate the fast and safe movement of transit goods and their carriers.

### III. Objectives of Transit Facilities under PTA Arrangements

6. It is generally agreed that trade goods consigned from one country to another, but having to pass through a third country (the transit State) should not be subjected to payment of customs duties and other charges of equivalent effect relating to importation or exportation of goods in the transit State. However, to ensure that transit goods are not retained in their territories, and also to guarantee receipt of customs duties and other related charges to which such goods would be subjected in the event of the goods not being re-exported, all countries have established stringent rules and regulations, the provisions of which differ from country to country. The concern of the countries in this connexion should be appreciated considering the volume of the transit traffic which passes through some of these countries is substance enough. Admittedly it should be noted, for example, that in 1974 transit traffic passing through Mombasa (Kenya) to Uganda, Zambia and Ethiopia amounted to about 780,000 tons, and that similar traffic passing through Dar es Salaam (Tanzania) to Zambia alone amounted to about 610,000 tons.

7. Thus taking into account the transit trade constraints described above, and the desire by ESA countries to achieve the efficient and economic movement of their traffic, the transit facilities envisaged should be aimed at not only facilitating the safe and fast movement of their traffic through other Member States, but also guaranteeing payment of the duties and other charges due if transit goods are fraudulently retained in the transit State or offences committed in the transit traffic operation.

### IV. Scope of Transit Facilities under PTA Arrangements

8. In determining the scope of the transit facilities envisaged it should be borne in mind that the PTA is not an Economic Community. It should be noted, for example, that while under Economic Community arrangements all goods originating from and consigned to Member States would transit other Member States, freely (since they would not involve collection of customs duties within the Community), under the proposed PTA arrangements not all goods coming from Member States will be exempted from payment of customs duties.

9. It is also worth noting that transit problems are not experienced by land-locked countries alone, but also by those countries which have sea ports of their own. Tanzania, for example, is not a land-locked country, but her imports from Botswana may have to pass through Zambia (which is a land-locked country) and her exports to Ethiopia may have to transit Kenya. Furthermore, the Member States are not only interested in facilitating trade among themselves but are also concerned with the safe and fast movements of their imports from and exports to third countries through other Member States.

10. Therefore, it is suggested that under the proposed Preferential Trade Arrangements, the transit facilities envisaged should apply to all traffic coming from:

- (a) a Member State and going to another Member State through a third Member State;
- (b) a third country and going to a Member State through another Member State; or
- (c) a member State and going to a third country through another Member State.

11. It should also be noted that due to the disjointed nature of the various transportation routes it may not be possible for transit goods to be moved by one single mode of transport. Zambia's exports to Uganda for example, may have to transit Tanzania

by road (Zambia to Dodoma), railway (Dodoma to Mwanza) and inland waterways (Mwanza to Entebbe). Thus, the transit facilities envisaged should be applicable to all modes of transport not only individually but also in combination.

#### V. Provisions of the Draft Protocol

12. In drafting the Protocol on Transit Trade and Transit Facilities due consideration was given to the provisions of the "Customs Convention on the International Transport of Goods under cover of TIR Carnets (TIR Convention) 1/. Account has also been taken of the views expressed by customs experts 2/ on the "Report of a Mission of Experts on Transit Conditions in Central and Eastern Africa" 3/. It should be noted, however, that the provisions of the TIR Convention relate to road transportation only, and that PTA Member States may not, under the present conditions, be able to meet the technical specifications stipulated for transit vehicles under the Convention. Hence, the Draft Protocol takes into account not only the types of transport equipment and facilities available in the area, but also the need for transit facilities to cover all modes of transport.

13. Generally, the draft Protocol provides for the free and unimpeded movement of transit traffic through the Member States without being subjected to customs duties and other charges of equivalent effect, and lays down common rules and procedures for harmonizing and facilitating customs control in respect of the means of transport and containers in which they are transported.

14. However, the Protocol recognises the sovereign rights of the Member States or to prohibit or otherwise control transit traffic in the public interest, and in accordance with their national laws and regulations governing public morality, safety, public health or hygiene, or animal or plant health.

15. Furthermore, in spite of the general provisions described in paragraph 14 above, the Protocol permits Member States to levy reasonable charges in respect of services rendered provided such charges are not discriminatory as between traffic coming from or bound for various Member States, and they are not less favourable than those accorded to their own traffic.

16. In the context of the PTA arrangements Article 3 stipulates that the provisions of the Protocol shall apply to traffic passing through Member States when such traffic is coming from and bound for other Member States, or coming from third countries and bound for other Member States, or coming from Member States and bound for third countries.

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1/ Document ECE/TRANS/17 done in Geneva on 14 November 1975.

2/ "Report of the Meeting of Customs Experts from the Central and Eastern African Subregions on Transit Traffic" held in Addis Ababa from 13 to 17 September 1976 (Document E/CN.14/TT/ECAS/2 dated 3 December 1976).

3 / Document WP/ECAS/ECOP/13/Add.2 dated 2 April 1976.

Furthermore, the transportation must be:

- (a) made in means of transport approved by customs authorities;
- (b) operated by a carrier licenced by appropriate national authorities;
- (c) undertaken under cover of an intra-Area Transport document for Eastern and Southern Africa (TIA/PTA Carnet); and the transit of the goods is guaranteed by an approved surety.

17. Taking into account the technological constraints of the Member States and also the types of means of transport likely to be available within Eastern and Southern Africa, Annex III lays down the minimum common technical conditions for the means of transport and containers which may be approved for the transportation of goods under cover of TIA/PTA carnet. Provision is also made for customs authorities to approve, under certain circumstances, the transportation of bonded goods in unsealed means of transport and containers.

18. To facilitate preferential treatment to intra-PTA transit traffic, Article 6 of the Protocol provides for dispensation of bonds or deposits in respect of goods, means of transport and containers coming from and bound for Member States, and stipulates payment of bond promise in respect of other transit traffic covered by the Protocol.

#### VI. Implementation of the protocol on transit trade and transit facilities

19. The implementation of the protocol will require close co-operation between all Member States of the subregion particularly between their national customs administrations, clearing and forwarding agents and transport operators. Some countries might even find out necessary to carry out certain changes in their customs regulations in order to facilitate transit trade.

20. As from the previous studies carried out in the subregion, it has been observed that it takes a great deal of time for goods to be cleared, in this regard all the Member States are urged to give:

- (a) careful consideration individually and severally to all the possibilities for facilitating customs operations.
- (b) thorough training and instructions to customs officers to accelerate various phases of bonded shipments, and not to carry out examination of goods in transit, unless fraud is suspected.

21. The customs authorities of the Member States are urged to do everything possible in their power to see that the return of discharged transit receipts is speeded up significantly so that the guarantees may be released, thereby decreasing the costs to which they give rise.

22. Finally, it is worth noting that whether or not the provisions contained in the proposed protocol on transit trade and transit facilities become an effective tool to promote trade among the Member States is likely to depend to a large extent on the flexibility which each Member State will apply in the implementation of these provisions.