

Distr.
LIMITED

ECA/MULPOC/Lusaka/PTA/IV/5
30 April 1979

Original: ENGLISH

ECONOMIC COMMISSION FOR AFRICA

Fourth Meeting of the Intergovernmental
Negotiating Team on the Treaty for the
Establishment of a Preferential Trade
Area for Eastern and Southern African States

Luanda, Angola, 12-16 June 1979

MEMORANDUM RELATING TO THE DRAFT PROTOCOL
ON CUSTOMS CO-OPERATION

I. 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 on the Treaty for the Establishment of a Preferential Trade Area for Eastern and Southern African States, adopted a set of principles which would constitute the basis for the negotiation of the proposed Treaty.
2. At that meeting, it was also agreed that the Treaty should be supplemented by a number of protocols including one relating to Customs Co-operation.
3. Pursuant to a decision taken by the Lusaka-based MULPOC Council of Ministers, at its second meeting held in Nairobi from 1-2 February 1979, the Intergovernmental Negotiating Team included in its agenda for its fourth meeting an item entitled "Consideration of Draft Protocol relating to Customs Co-operation."
4. The purpose of this memorandum is first to analyse the existing customs procedures and practices with a view to identifying the main problems confronting the member States of Eastern and Southern Africa in their co-operative efforts. The memorandum also highlights the main provisions of the Draft Protocol relating to Customs Co-operation against the background of identified problems.

II. SITUATION REGARDING THE EXISTING CUSTOMS REGULATIONS AND PROCEDURES

5. As is well known before political independence, the member States of Eastern and Southern Africa were under different (British, French, Portuguese and Italian) colonial powers. As a result, apart from language differences, their customs administrative set up, regulations and procedures, some of which are still in use, tend to reflect not only the different practices in their respective former metropolitan countries, but also at least in a number of cases the type of relations which existed before independence between the groups of countries. This accounts for some notable differences in the customs tariffs and regulations applied by the various member States, with regard especially to tariff classification of goods and valuation of goods for customs purposes.

(a) Tariff classification of goods

6. A summary of the various tariff classification system currently being used by the member States of Eastern and Southern Africa, their respective major national customs tariff or commodity structure and other main import taxes or charges, can be found in the Annex.

7. As can be observed, with the exception of Seychelles, all the member States now use the internationally agreed nomenclature - the Customs Co-operation Council Nomenclature (CCCN).

8. The three former partners in the now defunct East African Community, namely Kenya, Tanzania and Uganda use single column CCCN system. Ad valorem duties on most items imported in these countries range from 12.5 to 75 per cent.

9. Although Botswana, Lesotho and Swaziland, (BLS) which belong to the South African Customs Union Agreement (SACUA) also utilize the CCCN system, the tariff schedule itself is based on three columns:

- (i) Preferential tariff on selected items extended to various British Commonwealth members;
- (ii) Most-favoured-nation duty rates extended to the United States of America (USA) and a wide variety of countries, but not to all members of the General Agreement on Tariff and Trade (GATT) 1/;
- (iii) General - applied, to the remaining trading partners.

10. Malawi maintains a two column tariff schedule numbered 4 and 5, Column 4 is applicable to all countries not falling under column 5; whereas column 5 is applicable to:

- (a) member countries of the European Economic Community (EEC) and all African Caribbean and Pacific (ACP) group of countries;
- (b) all other members of the British Commonwealth;
- (c) all other contracting parties to the GATT.

11. Mauritius uses a three column customs tariff schedule, which is based on the CCCN system, with duties levied as follows:

- (a) first column - fiscal duties which are levied on all imported goods, irrespective of their origin (approximately 10 per cent ad valorem);
- (b) second column - general duty rates, which are levied on all imported goods other than those from USA, from the member countries of EEC and the British Commonwealth (range from 10 to 30 per cent);
- (c) third column - preferential duty rates which are levied on goods from the USA, from EEC member States and from British Commonwealth countries (range from 5 to 10 per cent).

12. Seychelles is the only country in the Eastern and Southern African subregion which still has her own national three column tariff schedule, namely preferential, EEC and general rates.

13. In Somalia, the customs tariff schedule is based on CCCN system and includes preferential duties on items produced in the EEC area.

14. Both Madagascar and Mozambique maintain non-discriminatory import or trade policies. Madagascar is an associate member of EEC whereas Mozambique is not a member of any customs or trade community.

1/ The BLS countries are not signatories to the GATT, but maintain de facto application of its provisions.

15. All the member States of Eastern and Southern Africa, with the exception of Angola, Comoros, Djibouti, Mozambique and Seychelles are signatories to the Lomé Convention, which provides for preferential treatment of their exports to the EEC, but does not require them to extend preferential tariff treatment to EEC member countries. As a result a number of the member States for example Kenya and Tanzania, have already abolished tariff preferences to the EEC member countries.
16. Almost in all the countries of the Eastern and Southern African subregion special conditions exist whereby certain imported goods are exempted from payment of customs duty or such duty is considerably reduced. These special conditions vary from country to country. However, exemptions from import duties normally are allowed for various articles or goods forming the initial equipment of new industries or agricultural enterprises, raw materials used in the local manufacture of various goods, farm inputs, emergency medical equipment, diplomatic and consular goods, items for the use of Governments, charitable organizations, health, educational and other similar institutions. Capital investments enjoy exemptions as a result of concession agreements or investment codes. Reduced duty rates are fixed for some commodities, consumed mainly by people in the lower income group or brackets.
17. In many countries export drawbacks or duty refunds often are granted for imported materials to be used for local production for export. Suspended duties are found on a number of items for which local production is either non-existent or insufficient, but for which expanded production is planned. And, as pointed out elsewhere ^{2/}, in a number of Eastern and Southern African countries there are special customs provisions concerning entry, transit and re-export of goods.

(b) Valuation of goods for customs purposes

18. In Kenya, Tanzania and Uganda - ad valorem duties are assessed on the c.i.f. value, comprising of the original cost of goods plus freight, insurance, commissions and all other charges incurred in the making of the sale and delivery of the goods to the port of entry. In case of unavailability of such information, duties are assessed at the port of entry on the basis of the price that the goods would command in the local market.
19. Regarding specific or compound duties that are levied by these countries, the amount of duty depends mainly on whether the item is considered essential or a luxury or is readily available locally. Specific duties, where applicable, are based on the weight, length, area, volume or number of imported goods. Where duty is assessed according to weight, the net weight is used. However, if the package does not indicate the net weight, the duty is assessed on the gross weight of the package and its contents.

^{2/} See ECA/MULPOC/LUSAKA/PTA/IV/2 Draft Protocol on the re-export of Goods within The Preferential Trade Area for Eastern and Southern African States.

20. In the BLS countries, for article subject to duty on a value basis, the dutiable value is the domestic value or f.o.b. (free-on-board) price of the goods in the country of origin, whichever is the greater. Domestic value is considered to be the wholesale market price in the importing country plus the extra cost of packing, and packaging for export, carriage to the port of shipment and all other expenses incidental to placing goods on board, less excise taxes or sales taxes imposed by country of origin, and less drawbacks, refunds, rebates or remissions of customs duty granted by the exporting country.
21. Dutiable weight for the assessment of specific duties in the BLS countries is the legal weight of the merchandise plus the weight of the immediate container in which it is sold, unless specified otherwise in the tariff.
22. The basis of value for all imported goods in Malawi was changed on February 12, 1968 from f.o.b. to c.i.f., the essential definition of value being almost identical to the Brussels definition of value. Thus ad valorem duties are assessed (and other values must be shown) on the cost of the goods at the Malawi frontiers with adjustments, where contracts or sales differ from the national free market concept.
23. When goods are subject to duty by weight or quantity in Malawi such weight or quantity is considered to be, unless otherwise specified, the net weight or quantity, and duty is levied in proportion on any fraction of a whole unit of such weight or quantity. The weight of goods may be determined by weighing net or by deducting from the gross weight the actual tare or an allowance thereof.
24. In Madagascar, the dutiable value is the c.i.f. value of the goods. In Ethiopia, import duties are levied on the c.i.f. value plus 1 per cent in the case of ad valorem duties or on a specific basis. Duties are levied in Mauritius on an ad valorem basis, where the value used to assess the duty is the selling price of the goods. Most duties in Somalia are ad valorem (ranging between nil and 100 per cent for non-EEC areas) the value of duty being the original value of goods increased by freight, insurance, commission and all other expenses to the frontier of Somalia, except that in the case of air shipment, only 5 per cent of aerial freight is included.
25. It is considered in Mozambique that the value of goods shown on the invoices is the actual price of the goods as determined by regulations of international conventions. However, in determining those prices, account must be taken of the fact that the exporter must bear the cost involved with regards to the sales and delivery of the goods to the importer in a port or other territory through which the goods enter the country.
26. For purposes of levying duty in Seychelles, ad valorem duty is defined as f.o.b. the exporting vessel. In Zambia, import duties are levied on an ad valorem f.o.b. basis. The Republic of Djibouti is basically a free port and there are no import or export duties as such.

III. PROBLEMS AND PROSPECTS OF CUSTOMS CO-OPERATION IN EASTERN AND SOUTHERN AFRICA

27. In the light of the foregoing analysis of existing tariff classification system it is hardly necessary to stress the difficulties that stem from fundamental differences between national customs nomenclature and the subsequent importance that should be attached to the goods classification in such nomenclatures.

28. It should be noted firstly that the classification of an article in the customs tariff determines the rate of duty it will have to bear and has far reaching repercussions on the application of quantitative restrictions and collection of various other forms of taxes. Thus, an erroneous or unreasonable classification cannot only lead to excessively high duty on the goods, but also render them liable to formalities, controls, restrictions or charges of various kinds, not normally applicable to them.

29. What is more, a customs nomenclature which, because of defective design, lack of precision or excessive complexity or for any other reason, involves a high degree of subjective judgement in goods classification is unsuitable for purposes of trade negotiations. In particular, it introduces an element of uncertainty into duty consolidation and other concessions which may be agreed upon during such negotiations. And any uncertainty in the matter of classification considerably hampers trade partly by making it impossible for exporters and importers to make forecasts or to carry out market research or studies.

30. Therefore, the need for a uniform commodity classification has become more and more apparent. Hence, the adoption in 1959 of the Convention on Nomenclature for the Classification of Goods in Customs Tariff known as Brussels Nomenclature, which has been used, at times, for both customs tariff and statistical purposes. The Brussels Nomenclature now known as the Customs Co-operation Council Nomenclature mentioned earlier has been internationally accepted for classifying goods which are subject to import duties.

31. However, from the Customs point of view, the CCCN is a much more developed system, according to which duties are, in general, established on an ad valorem basis so as to avoid any distortions resulting from conjunctural factors in international relations and to ensure that agreed levels of protection are maintained for the productive activities.

32. The adoption by almost all countries of the subregion of an up-to-date system of customs classification, - i.e. the CCCN, demonstrates the determination and the will of these countries to modernize their national customs system, taking into account the progress and positive achievements in the other countries of the world. It also indicates a step further in the direction of elimination of customs systems and practices influenced by the different legacies of colonial era.

33. As has been observed a preponderance of customs duties are levied on an ad valorem basis as a percentage of the value of the goods, and this requires an equitable, uniform and readily applied system for the valuation of goods for customs purposes. Various systems of valuation are being used by different member States of Eastern and Southern Africa, such as systems based on the domestic value in the country of supply, on physical appraisal of value in the country of importation, or simply on the price paid by the importer.

34. It is worth noting, however, that such systems produce frequent anomalies and seldom meet the requirements for equity and uniformity. This is partly because current domestic value in the country of supply renders valuation dependent on external factors and is inequitable in the treatment of goods from competing sources of supply. It is difficult to achieve uniformity when appraisals are made by different customs personnel and particularly where numerous ports of entry exist. Moreover, it is perhaps even more difficult to appraise goods of a technical and complex nature about which local customs personnel have little knowledge or expertise. The price paid by the importer operates satisfactorily only in the simplest trading transactions, and since the goods are increasingly traded under complex arrangements of franchises, agencies and concessionaries and between branches of multinational firms, the price paid is often an unreliable measure of the real value of the goods. It is therefore encouraging to note that, as far as the member States of Eastern and Southern Africa are concerned, the majority of them have already adopted the CCCN definition of value.

35. There are various other problems of an operational nature, arising from different customs regulations and procedures applied by various member States in respect of their foreign trade. Apart from differences in the tariff systems and tariff structure and in the valuation of goods for customs purposes, there are other practical differences in the system of indirect taxes, with particular reference to import and export regimes, between the customs and statistical nomenclature; in the weights and measures; in statistical standards, concepts, definitions and coverage and in documentation and their processing procedures.

36. All these differences present considerable obstacles to the expansion of trade between the member States and should, therefore, form the subject of customs co-operation among these countries as proposed in the Draft Protocol.

37. What is more, the existence of differences in customs laws or regulations, procedures and practices underline the urgent need for their simplification and harmonization. The process of simplification and harmonization of customs system and procedures will imply a significant progress towards the establishment of the proposed PTA and modernization of national customs systems and procedures in order to meet the demands of the new situation.

38. This leads to the problem of BLS countries, whose customs regulations and procedure are actually those of SACUA. Note should be taken of the fact that SACUA makes it possible, subject to certain exceptions for the BLS countries to participate in other customs agreements as was the case in the Lomé Convention. However, provisions concerning the special circumstances of the BLS countries are deliberately not made in the Draft Protocol on Customs Co-operation on the understanding that they will be taken care of in a special Protocol on which it has been decided should cover the special situation of the BLS countries.

IV. PROVISIONS OF THE DRAFT PROTOCOL ON CUSTOMS CO-OPERATION

39. It should be noted that, in determining the scope and objectives of co-operation among the member States in customs matters, due attention has been paid to the fact that the proposed PTA is only a preliminary step towards the establishment of a common market or an economic community for Eastern and Southern African States.

40. In other words, while the objectives of customs co-operation as envisaged at this stage are limited to those ensuring the implementation of the PTA, the door has been left open for the realization of the longer-term objective of co-operation, namely to establish common or uniform customs tariffs in respect of goods imported from third countries, as and when the necessary conditions for such co-operation permit, that is to say when conditions for the evolution of PTA into a common market or an economic community obtain in the subregion.

41. In the same vein, the Draft Protocol provides for co-operation in the implementation of PTA Treaty provisions concerning the preferential treatment of goods with particular reference to the reduction and/or elimination of customs duties and any other charges of equivalent effect in respect of imports and exports, not of all goods, but only of selected goods originating from the PTA, in accordance with the stated objectives thereof.

42. The Draft Protocol also recognizes the sovereign right of any member State to impose restrictions or prohibitions in the interest of public policy, security, health preservation of human, animal or plant life, protection of national treasures of specified categories and so on.

43. Given the diversity in the customs regulations, procedures and practices that exist in the countries of Eastern and Southern Africa, and in order to ensure the effective implementation of the PTA, and to facilitate the movement of goods across the common frontiers of these countries; the Draft Protocol makes provisions for the promotion of their (customs regulations, procedures, etc.) simplification, harmonization and modernization with particular reference to:

- (i) tariff classification of goods;
- (ii) valuation of goods;
- (iii) temporary admission;
- (iv) re-exportation of goods;
- (v) transit of goods;
- (vi) customs and statistical nomenclatures;
- (vii) foreign trade statistical standards and compilation of data;
- (viii) customs documentation; and
- (ix) exchange of customs information.

44. In its article 5, the Draft Protocol outlines the main areas and modalities of co-operation among the member States for the prevention, investigation and repression of customs offences.

V. IMPLEMENTATION OF THE DRAFT PROTOCOL ON CUSTOMS CO-OPERATION

45. Genuine and unanimous goodwill and close co-operation among the member States of the subregion, particularly between their various national customs administrations, but above all between the national institutions and the proposed subregional organ,

will be of utmost necessity in order to achieve effective implementation of the Draft Protocol. There is every likelihood that for some countries this may entail certain re-organization of the customs administrative set up and changes in the customs laws and regulations with a view to simplifying and harmonizing if not modernizing, the customs procedures and to ensuring the realization of the proposed PTA and its objectives.

46. Measures designed to facilitate customs operations as well as those aimed at the prevention, investigation and repression of customs offences may clearly require direct contacts and consultations between the national customs administrations to deal with specific problems or issues that are bound to arise in the course of practical application of the relevant provisions of this Protocol.

47. It goes without saying that the effective implementation of the Draft Protocol will, to a considerable extent, depend on the early establishment of the proposed subregional Customs Co-operation committee and the strengthening where necessary, of the various national customs organs. It is also clear in this connexion that joint training of the required customs personnel would go a long way towards facilitating such implementation.

48. Finally, it is worth pointing out that the implementation of the provisions of the Draft Protocol can hardly be conceived in isolation from that of other protocols, such as the Protocol on the rules of origin, the protocol on transport and communications and the protocol on simplification and harmonization of trade documents and procedures, and that on re-exports, for all of which it is bound to constitute a vital element.

ANNEX

SUMMARY OF NATIONAL CUSTOMS TARIFFS OF EASTERN AND SOUTHERN AFRICAN STATES

Country	System of Customs Tariff Classification	Column Title Covering Import Duties	Major Import Taxes	Remarks
Angola	CCCN	Minimum tariff rate (in fact MFN rate)		The maximum tariff rate. for non-privileged countries, are double those of the minimum tariff, but not less than 10 per cent ad valorem (information on changes after independence not available).
Botswana	CCCN	Fiscal duty General duty rate MFN duty rate	Sales duties excise duties levied on spirits, beer, tobacco, oil and motor vehicles.	Customs Agreement with South Africa provides for duty free imports from South Africa; there is also no exchange control within the Southern Africa Customs Union. Preferential import duties are granted for some British goods.
Comoro Islands	CCCN	Customs duty Import tax	Consumption tax Foreign transaction tax	

ANNEX

SUMMARY OF NATIONAL CUSTOMS TARIFFS OF EASTERN AND SOUTHERN AFRICAN STATES (cont.d)

Country	System of Customs Tariff Classification	Column Title Covering Import Duties	Major Import Taxes	Remarks
Ethiopia	CCCN	Duty rate	Transaction tax Various taxes levied on such items as tobacco, cigarette paper & pocket lighters excise taxes are levied on salt, sugar, alcohol, perfume, & petrol products.	
Kenya	CCCN	Customs duty	Excise duties sales tax	Effective 1 January 1976 tariff preferences to the EEC were abolished, Ad valorem duties on most items imported range from 12.5% to 75 per cent.
Lesotho	CCCN	MFN rate Duty rate Revenue duty		Member of Southern African Customs Union.
Madagascar	CCCN	Customs duty Import taxes	Transaction tax (Taxe Unique sur les Transactions)	Customs duty ranges from 5-10 per cent import taxes 28-100 per cent.

ANNEX

SUMMARY OF NATIONAL CUSTOMS TARIFFS OF EASTERN AND SOUTHERN AFRICAN STATES (cont'd)

Country	System of Customs Tariff Classification	Column Title Covering Import Duties	Major Import Taxes	Remarks
Malawi	CCCN	2 column tariff schedule numbered	Surtax tariff*	Column 4 is applicable to all countries not falling under Column 5. Column 5 is applicable to (a) Member countries of the EEC and all ACP countries (b) All other members of the commonwealth (c) All other contracting parties to the GATT.
Mauritius	CCCN	Fiscal duty General duty Preferential	Additional duty	Duties are levied on an ad valorem basis where the value used to assess the duty is the selling price of the good. Preferential rates applied on goods from US, EEC and the Commonwealth.
Mozambique	CCCN	Minimum tariff	General tax consumer tax for less essential goods	For non-privileged countries maximum rate is applied, which is 10 per cent <u>ad valorem</u> higher.

* A surtax of 15 per cent is levied on most goods imported into Malawi, irrespective of origin; the surtax is calculated on 120 per cent of the sum of the value for customs duty purposes and any customs duty payable.

ANNEX

SUMMARY OF NATIONAL CUSTOMS TARIFFS OF EASTERN AND SOUTHERN AFRICAN STATES (cont.)

Country	System of Customs Tariff Classification	Column Title Covering Import Duties	Major Import Taxes	Remarks
Somalia	CCCN	Customs duty Revenue duty	Surcharges on sugar products. Administrative and statistical charge of 10 per cent.	Somalia does not give preferences to products of the 9 member countries of EEC. The import of a few commodities from all sources is temporarily prohibited for balance-of-payments reasons*.
Swaziland	CCCN	Fiscal duty General duty MFN duty rate	Sales duties 5-20 per cent Excise taxes are levied on a few items such as spirits, beer, tobacco, oil and motor vehicles	Customs Agreement with South Africa provides for duty free imports from South Africa; there is also no exchange control within the Southern Africa Customs Union. Preferential import duties are provided for some British goods.
Seychelles	National	Rate of duty		Preferential rate for imports from UK and Commonwealth.
Tanzania	CCCN	Customs duty	Sales taxes (rates ranging up to 50 per cent)	Customs duty rates range from 12.5 per cent to 75 per cent.

* Butter, cheese, tomatoes, non-alcoholic beverages, ready-made clothing, textiles and related materials, electrical appliances and parts, and small passenger automobiles.

ANNEX

SUMMARY OF NATIONAL CUSTOMS TABLES OF EASTERN AND SOUTHERN AFRICAN STATES (cont'd)

Country	System of Customs Tariff Classification	Column Title Covering Import Duties	Major Import Taxes	Remarks
Uganda	CCCN	Import duty Fiscal duty	Sales tax	
Zambia	CCCN	Rate of duty	Sales tax (see remarks)	Commonwealth preferences was abolished in January 1966. Most imported goods are subject upon customs clearance to sales tax, at a rate of 25 per cent, calculated on the sum of 120 per cent of the customs value plus the applicable import duty.