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

Luanda, Angola, 12-16 June 1979

MEMORANDUM ON THE DRAFT PROTOCOL RELATING TO THE RE-EXPORT  
OF GOODS WITHIN THE PREFERENTIAL TRADE AREA FOR EASTERN AND  
SOUTHERN AFRICAN STATES

## I. Introduction

1. It will be recalled that, pursuant to the agreement reached 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 Preferential Trade Area, agreed that the Treaty establishing the Preferential Trade Area for Eastern and Southern African States should be supplemented by a number of protocols, including one on "the re-export within the Preferential Trade Area of goods imported from third countries".

2. The purpose of this memorandum is to review the situation and problems of trade in re-exports among the countries of Eastern and Southern Africa, take stock of the present rules and regulations concerning re-exports in the area, and highlight the main provisions of the draft Protocol.

## II. Situation and Problems of Trade in Re-exports among the Countries of Eastern and Southern Africa

3. In this memorandum the term "re-exports" means the exportation into a member State (hereinafter referred to as the "receiving State") of goods originally imported into another member State (hereinafter referred to as the "importing State") from another member State or a third country.

4. It should be observed that, while all countries would prefer to import all their goods directly from the countries producing those goods, sometimes, due to unavoidable circumstances, they are obliged to obtain certain goods from other countries which import them direct from producing countries. Among the countries of Eastern and Southern Africa such circumstances include the following:

- (a) Geographical location and inadequate transport and communications links with the producing countries, which may make direct importation of goods inconvenient;
- (b) Unfamiliar and cumbersome import procedures applied by the countries producing the goods;
- (c) Commercial policies of the producing countries which may restrict the exportation of certain goods to certain countries;
- (d) Lack of information regarding the availability of alternative sources for the supply of certain goods;
- (e) Foreign exchange constraints including shortage or lack of the foreign currencies demanded by the countries producing the goods; and
- (f) Inability of the countries to obtain from the exporting countries credit facilities on satisfactory terms for purchasing the goods.

5. When any such or similar type of situations arises the countries concerned are obliged to obtain their requirements in the form of re-exports from other countries which are more advantageously placed for direct importation of the goods from the respective producing countries.

6. A detailed analysis of trade in re-exports among all the countries of Eastern and Southern Africa cannot be adequately undertaken due to the fact that not all the countries record the source, direction and nature of goods re-exported by them. However, considering the level of intra-area trade and the types of goods produced in these countries, there is no doubt that there is a considerable amount of trade in re-exports within Eastern and Southern Africa, and that most of the goods re-exported by these countries originate from developed countries outside Eastern and Southern Africa. The analysis based on the re-export trade of five/six countries in respect of which relevant information is available confirms the above situation.

7. It will be noted from Annex I hereto that not only are all the countries of Eastern and Southern Africa involved in the importation of re-exports from the six countries selected, but also that in some countries re-exports comprise a large proportion of their total exports within the area. For example, Kenya's re-exports to all countries of Eastern and Southern Africa, which in 1976 amounted to Shs 383 500 000 accounted for about 22.7 per cent of her total exports within the area, while the re-exports of Seychelles to other countries amounted to 1 115 000 Rupees, or about 38.3 per cent of her total exports within the area.

8. It would also appear that most of the trade in re-exports takes place between neighbouring countries. For example, Annex I reveals that in 1976 re-exports from Ethiopia to Djibouti, Kenya to Tanzania and Uganda, Seychelles to Mauritius, Tanzania to Kenya and Zambia, Uganda to Kenya, and Zambia to Tanzania and Botswana were 83.7, 87.3, 94.9, 85.6, 96.9 and 66.9 per cent respectively.

9. It will also be observed from Annex II that the commodities re-exported in 1976 fall largely under SITC sections 5, 6, 7, and 8. That is, manufactured goods. This applies more particularly to machinery and transport equipment (section 7) which are hardly produced in Eastern and Southern Africa. Re-exports in these sections comprised 99.7 per cent of Ethiopia's total re-exports to other countries of Eastern and Southern Africa, while for Kenya, Tanzania, Uganda and Zambia the corresponding figures were 97.8, 81.7, 100 and 98.9 per cent respectively.

10. Taking into account the above trade situation and the level of industrial development in the area, trade in re-exports would appear to constitute an important part of the inter-State trade of the respective countries.

### III. Rules and regulations concerning re-exports

11. Besides transportation and other proposal physical constraints which affect inter-State trade generally, the different customs rules and regulations applied to trade in goods by various countries of Eastern and Southern Africa, play a major role in curtailing inter-State trade in re-exports. While the application of the different rules and regulations relating to the evaluation of goods for duty purposes and to the structure and rates of customs tariffs, to which attention is drawn elsewhere <sup>1/</sup> is bound to affect the price of re-exports and the level of trade in such goods, accordingly the customs rules and regulations which have the greatest bearing on trade in re-exports are naturally those relating to the exportation of goods entered by customs authorities.

12. Practically all the countries of Eastern and Southern Africa provide for entry of goods for home consumption, warehousing, temporary admission, transit, transshipment and re-export. However, the customs rules and regulations relating to the exportation of the entered goods differ from country to country.

13. In Kenya, Tanzania and Uganda imported goods held in bonded warehouses without payment of duty may be re-exported without payment of duties. In customs duties paid or payable on goods entered for home consumption may be refunded if the goods are re-exported in the packages in which they were originally imported, unless the contents were unpacked and re-packed by authority under customs supervision, and provided that the owner:

- (i) produces the goods for customs examination;
- (ii) enters the goods on a prescribed form;
- (iii) declares that the goods will not be re-imported;
- (iv) proves that he is the person entitled to the refund; and
- (v) presents his claim within 12 months of exportation of the goods.

14. Among the BLS countries where customs duties on imports are collected by South Africa under the South African Customs Union Agreement, 1969, the customs rules and regulations provide for the refund of customs duties on re-exportation of certain goods. Goods entered for bonded warehousing must be cleared for exportation or home consumption within five years, and those entered for transit are not subject to duty when exported.

15. In Zambia an importer may re-export goods entered for bonded warehousing without payment of customs duties provided he gives a bond with sufficient surety conditioned for payment of the duties applicable to those goods, unless he produces satisfactory evidence that the goods have been re-exported; or make a deposit in cash not less than the duty leviable upon the goods, pending production of evidence of re-exports to the customs authorities. Customs authorities may permit the owner of goods held in a bonded warehouse to sort, separate, pack, repack, assemble, blend, mix, convert or manufacture such goods in bond for re-export, provided the finished product does not qualify for payment of excise duty or surtax. Goods entered for temporary admission qualify for refund of customs duties when they are re-exported. Generally, unused imported goods qualify for the remission of the whole customs duty, excise duty or surtax paid or payable on such goods if re-exported within two years from the date on which duty was paid thereon.

<sup>1/</sup> See Memorandum on the Draft Protocol relating to Customs Co-operation.  
(ECA/MULPOC/LUSAKA/PTA/IV/5).

16. In Ethiopia, no provision exists for the payment of duty drawbacks on re-exported goods, except in the case where the owner produces satisfactory evidence that the goods were damaged, and provided that the claim for drawback refund is made before the goods are re-exported. In addition to export duties levied on certain goods, Ethiopia levies a non-refundable transit fee of  $1\frac{1}{2}$  per cent ad-valorem on all goods consigned for transit through its territory.

17. It will be noted that in the absence of adequate duty remission provisions in the importing States, consumers of re-exports in the receiving States end up paying much higher prices for the imported goods than they would pay were the goods imported direct from the producing countries. Besides, since the re-exports have generally to be paid for in the currency demanded by the importing States the receiving States end up spending much more foreign exchange on the goods than would be the case if the goods were imported direct into their territories from the producing countries.

18. It is therefore no wonder that in the absence of satisfactory re-exportation arrangements many countries of Eastern and Southern Africa may attempt to restrict the importation of re-exports from other countries to what is absolutely necessary, thus curtailing inter-State trade in the area.

#### IV. The Main Provisions of the Draft Protocol

19. In preparing the Draft Protocol on the re-export of goods within the Preferential Trade Area, it has been assumed that as a first ~~towards~~ the creation of an economic community for Eastern and Southern African States, member States would agree to the reduction or elimination of their customs tariffs and other charges of equivalent effect only in respect of certain selected goods that are traded among themselves. Hence due consideration has been given to the fact that initially, a greater or lesser part of their inter-State trade might not only be treated like foreign trade, but also that even those re-exports originally imported from other member States would be subjected to the same customs tariff rates, rules and regulations as those applicable to third country goods unless such goods qualify as "originating" in the member States in accordance with the Protocol on Rules of Origin. In view of this, the provision of the draft Protocol are made to cover not only re-exports originally imported from ~~third countries~~, but also those imported from within the Preferential Trade Area.

20. In view of the fact that one of the major constraints to trade in re-exports consists in that such goods are often subjected to payment of customs duties and other charges of equivalent effect in both the importing and receiving States, the draft Protocol proposed that only the member States in which re-exports are consumed (i.e. the receiving States) should levy and retain the customs duties and other charges applicable to the respective goods in accordance with their customs rules and regulations. The draft Protocol stipulates that in principle importing States should not levy customs duties and other charges of equivalent effect on re-exports although minor processing of goods intended for re-export may be subject to internal taxes and other charges levied for such processing activities. Where customs duties and other charges of equivalent effect have been levied and collected by the importing States, provision is made for such duties and charges to be refunded to the exporter in that member State when the respective goods are re-exported or transferred to other member States.

21. However, recognising the fact that imported goods may sometimes be partly used, repacked, blended or otherwise processed in the receiving States before being re-exported or transferred to other member States, provision is made for the importing States to withhold part of the duties and other charges applicable to those goods in accordance with their customs rules and regulations, provided that in respect of goods processed, the final products do not qualify as originating in the member States under the Protocol on Rules of Origin.

22. To control the prices of re-exports and protect the receiving States against the activities of unscrupulous businessmen, the draft Protocol provides for member States to ensure that the prices quoted by exporters do not include any customs duties or other charges refunded or refundable to them by the importing States.

23. Noting also that, with the exemption from payment of customs duties and other charges of equivalent effect, re-exports have to be subjected to customs control and treated like transit goods in the importing States, the draft Protocol provides for their handling and transportation being covered by the provisions of the Protocol on Transit Trade and Transit Facilities when consigned to other member States.

## ANNEX I

Volume of trade in all exports and re-exports within ESA by six  
 countries - 1976

	KENYA (1000 Shs)		SEYCHELLES (1000 Rup.)		TANZANIA (1000 Shs)		UGANDA (1000 Shs)		ZAMBIA (1000 Kw.)						
	Re- expt cent <sup>2/</sup>	Per cent <sup>2/</sup>	All expts	Re- expt cent <sup>2/</sup>	Per cent <sup>2/</sup>	All expts	Re- expt cent <sup>2/</sup>	Per cent <sup>2/</sup>	All expts	Re- expt cent <sup>2/</sup>	Per cent <sup>2/</sup>				
0 Food and animal	-	-	-	-	-	-	-	-	602.6	11.6	1.9				
1 Beverages and tobacco	-	-	-	-	-	-	-	-	230.3	171.2	74.3				
2 Crude minerals and fuels	-	-	-	-	-	-	-	-	-	-	-				
3 Mineral products	-	-	-	-	-	-	-	-	-	-	-				
4 Animal products	-	-	-	-	-	-	-	-	-	-	-				
5 Chemicals	-	-	-	-	-	-	-	-	-	-	-				
6 Manufactures	2	7.6	-	-	141	-	838	-	444.3	-	-				
7 Machinery and transport	-	-	2	-	-	-	-	-	-	-	-				
8 Miscellaneous manufactures	-	-	-	-	-	-	-	-	-	-	-				
9 Commerce, transport and communication	-	-	-	-	-	-	-	-	-	-	-				
Total	-	-	39	39	100.0	247693	15159	6.1	16224	949	5.8	3073.2	191.7	6.2	
	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
	5	294	1.7	-	15	15	100.0	-	-	-	-	-	-	-	
	9	1367	16.8	-	2087	1211	0.6	-	-	4719.0	64.7	1.4	-	-	
	9	1625	3.3	2856	1058	37.0	1.7	-	-	4.5	-	-	-	-	
	5	1443	29.6	-	9575	4	-	-	-	615.5	-	-	-	-	
	4	1407	3.0	-	293	2	0.7	24	-	0.1	-	-	-	-	
	3	6857	50.9	-	6366	2364	37.1	-	-	0.4	0.4	100.0	-	-	
	7	826	15.1	-	42	-	-	-	-	0.8	-	-	-	-	
	2	208929	31.2	-	-	-	-	35	35	100.0	7375.2	382.3	5.2	-	
	1	125807	19.0	9	9	100.0	6858	142	2.1	-	-	32.0	5.1	15.9	
	2	32349	17.9	9	9	100.0	29821	6616	22.2	-	-	-	-	-	
	7	383499	22.7	2915	1115	38.25	303070	25516	8.4	17121	984	6.6	17097.9	827.0	4.8

ra, Seychelles, Tanzania, Uganda and Zambia.

ports to the country concerned.

## ANNEX II

Structure and value of re-exports from five selected ESA countries to other ESA countries by SITC sections (1976)

Description	ETHIOPIA		KENYA		TANZANIA		UGANDA		ZAMBIA	
	Value (1000 Birr)	Per cent	Value (1000 Shs)	Per cent	Value (1000 Shs)	Per cent	Value (1000 Shs)	Per cent	Value (1000 Kw.)	Per cent
live	-	-	5 996	1.6	7	-	-	-	1	0.1
s and	-	-	693	0.1	-	-	-	-	-	-
aterials, except	1	0.2	2 678	0.7	88	0.3	-	-	3	0.4
uels, ts and aterials	-	-	28 055	7.3	4 529	17.8	-	-	6	0.7
nd vegetable fats	-	-	10 796	2.8	13	0.1	-	-	-	-
s	192	44.4	70 431	18.4	5 417	21.2	75	7.6	81	9.8
ured goods ed chiefly aials	4	0.9	74 690	18.8	2 509	9.8	94	9.6	61	7.4
y and t equipment	209	48.4	169 514	44.2	12 434	48.7	769	80.2	517	62.5
neous ured	26	6.0	20 748	5.4	517	2.0	45	4.6	158	19.1
ies and ions not ed g to kind	-	-	-	-	-	-	-	-	-	-
	432	99.9	383 500	100.0	25 514	99.9	980	100.0	827	100.0

Annual Trade Reports for Ethiopia, Kenya, Tanzania, Uganda and Zambia.

Zambia figures are for 1974.

Section as per cent of total re-exports.

ECA/MULPOC/LUSAKA/PTA/IV/3  
Annex I