



**DRAFT
BUSINESS GUIDE TO THE SADC PROTOCOL ON
TRADE**

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TABLE OF CONTENTS

List of Acronyms	ii
Introduction.....	1
DEFINITIONS AND OBJECTIVES.....	2
TRADE IN GOODS	3
Elimination of Import Duties (Tariffs)	3
Harmonized System (HS).....	4
Elimination of Non-Tariff Barriers (NTBs).....	5
General Exceptions and Security Exceptions.....	5
National Treatment.....	6
Special Agreements	6
Sugar Agreement.....	6
MMTZ Preferences	7
CUSTOMS PROCEDURE	8
Rules of Origin	8
Customs Valuation	13
Transit Traffic	14
Transit Documents	15
TRADE LAWS.....	16
Sanitary and Phytosanitary Measures (SPS)	16
Technical Barriers to Trade (TBT).....	17
Anti-Dumping Measures.....	18
Prohibition of Subsidies.....	19
Safeguards.....	20
Infant Industries.....	22
OTHER TRADE RELATED ISSUES	23
Intellectual Property	23
TRADE RELATIONS AMONG MEMBER STATES AND WITH THIRD COUNTRIES	24
Bilateral Agreements.....	24
Most Favored Nation (MFN) Treatment	24
DISPUTE SETTLEMENT AND INSTITUTIONAL ARRANGEMENTS.....	25
Dispute Settlement.....	25
Institutional Structures.....	26
The SADC Protocol on Trade and the World Trade Organization (WTO).....	28
APPENDIX I: DECLARATION BY THE PRODUCER.....	29
APPENDIX II: SADC CERTIFICATE OF ORIGIN.....	30
APPENDIX III: SADC Enquiry Points for SPS Information	31
APPENDIX IV: SADC Enquiry Points for Technical Regulations and Standards	34
APPENDIX V: Trade Monitoring and Compliance Enquiry Points.....	36

List of Acronyms

CMT	Committee of Ministers responsible for Trade matters
DRC	Democratic Republic of Congo
FTA	Free Trade Area
HS	Harmonized System
ITC	International Trade Centre
LDC	Least Developed Country
MFN	Most Favored Nation (Treatment)
MMTZ	Malawi, Mozambique, Tanzania, and Zambia. These LDCs are given simplified rules of origin for selected textiles and clothing access into SACU market than other SADC members.
NTB	Non-Tariff Barrier
SACU	Southern African Customs Union. SACU members are Botswana, Lesotho, Namibia and Swaziland and South Africa.
SADC	Southern African Development Community
SPS	Sanitary and Phytosanitary Measures
TBT	Technical Barriers to Trade
TCS	Technical Committee on Sugar
TNF	Trade Negotiating Forum
WCO	World Customs Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Introduction

The Southern African Development Community (SADC) was created in 1992 by the Treaty of Windhoek, replacing the Southern African Development Co-ordination Conference. The current 14 members of SADC are Angola, Botswana, the Democratic Republic of Congo (DRC), Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe.

The SADC's goals are broad and far-reaching, and include reducing poverty and improving the living standards of the people of Southern Africa by advancing the economic and social development of the region. The SADC Protocol on Trade is part of the SADC's larger program of regional cooperation, which seeks to benefit all Member States by contributing to economic development in Southern Africa.

The SADC Protocol on Trade has been in effect since January 25, 2000. It is an agreement between SADC Member States to reduce customs duties and other barriers to trade on imported products from each other. By lowering customs duties and removing other barriers to trade, the SADC countries intend to promote economic growth and regional integration. By January 1, 2008, most customs duties (85%) should be eliminated for goods traded between SADC member countries. In the next several years, SADC intends to establish a customs union, in which all SADC Member States will have a common external tariff.

As of 2007, 13 SADC Member States had acceded to the Protocol on Trade, namely Angola, Botswana, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. Angola, however, has not presented its schedule of tariff reductions for goods originating from the SADC Member States. The Democratic Republic of Congo (DRC) has not yet acceded to the Protocol on Trade.

SADC Member States have begun to enjoy the benefits of regional trade cooperation. For example, more than 85% of the HS tariff lines are now at zero, several major border crossings have reduced the waiting time for commercial traffic by reducing the number of documents required for imports and exports, creating a one-stop border post so that shipments do not have to pass through two inspections at the same location. Steps have also been taken to simplify and harmonize transit documents, in order to reduce the paperwork burden on regional shippers.

The Business Guide to the SADC Protocol on Trade is designed to inform the business community in the SADC region about the terms of the Protocol. It explains the SADC legal trade framework in simple language. Awareness and understanding of the increased market access that is becoming available in the region should help businesses make informed decisions. This Guide will cover all aspects of the SADC Protocol on Trade that businesses must understand in order to trade better with each other under the terms of the Agreement. For completeness, this guide has to be read together with the national tariff reduction offers which can be down loaded from the SADC website: www.sadc.int

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DEFINITIONS AND OBJECTIVES

Article 1 contains definitions of key terms used through out the SADC Protocol on Trade.

Article 2 contains the main objectives of the Protocol which are to:

- liberalize trade, create a Free Trade Area and favourable conditions for investment;
- Ensure efficient production within the SADC reflecting the current and dynamic comparative advantages
- Enhance the economic development, diversification and industrialization of the region

TRADE IN GOODS

Elimination of Import Duties (Tariffs)

(Article 3)

This Article outlines the rules for the elimination of customs duties on goods traded among the Member States which meet the rules of origin set out in Annex 1.

An Import duty or a tariff is a customs tax that must be paid when a product enters a country. Customs duties usually take the form of a percentage (Ad Valorem duty), calculated based on the cost of the good at either the destination port (c.i.f.) or at the port in the country of origin (f.o.b.).

Example: Country A applies a customs duty or tariff of 10% to imported beef. Therefore a shipment of beef valued at \$1000 would be charged a tariff of \$100 to the customs officials of country A.

Specific duty, a tax of so much local currency per unit of the goods imported, is also used in the SADC region. A customs duty or tariff increases the price at which a good is sold in the importing country.

Example: Country B applies a customs duty or tariff of \$200 per ton of imported maize. Therefore a shipment of 10 tons of maize imported into Country B would be charged a customs duty of \$2000.

Countries decide what customs duties to apply to goods. Customs duties are commonly used to provide protection to domestic goods and as revenue for governments. Such customs duties are lowered or eliminated through negotiations. High customs duties restrict international trade because they increase the prices of imported products. Higher prices cause people to buy fewer imports, so fewer products are traded. By signing the SADC Protocol on Trade, Member States committed to reducing their tariffs, with a goal of establishing a free trade area (FTA) in 2008. A free trade area is a group of countries that have agreed to eliminate customs duties on most goods traded between them.

The SADC countries that are signatories to the SADC Protocol on Trade agreed to reduce customs duties over a period of 12 years starting September 2000. The gradual eliminations commitments by Members are presented in their Tariff Offers or Tariff Phase Downs which are sometimes referred to as national schedules of commitments. These schedules are legally binding.

At the start of the negotiations in 2000 it was agreed that the more developed countries such as South Africa would eliminate their duties faster than other SADC Countries. South Africa and the rest of the SACU countries (BLNS) eliminated many of their customs duties when the agreement began in 2000, and customs duties will be eliminated on all products by 2012. Least developed countries such as Mozambique, Malawi, Tanzania, and Zambia agreed to lower their Customs duties gradually, with many of the reductions coming between 2008 and 2012, with some countries schedules going up to 2015. Middle-income countries such as Mauritius and Zimbabwe agreed to reduce their customs duties each year between 2000 and 2008. These gradual reductions are referred to as tariff phase-downs.

Example: Country A has agreed to reduce its customs duties on imported beef from 40% to 0% over eight years. Each year, the tariff is lowered by 5% until it reaches 0%: 35%, 30%, 25%, 20%, 15%, 10%, 5% and 0%.

All goods are classified in one of four categories, and different time frames for tariff reductions apply to each category.

- Customs duties on goods in Category A were reduced to 0% when the Protocol on Trade took effect in 2000;
- Customs duties on goods in Category B will be phased down to 0% by January 2008;
- Goods in Category C are sensitive products, and customs duties on these goods will be phased down between 2008 and 2012;
- Goods in Category E are exempt from tariff elimination, but represent a very small number of products such as firearms.

Harmonized System (HS)

(Annex II, Article 3)

Businesses planning to export goods to other countries need to know what tariff, if any, will be applied to their products. If every country made up its own system for classifying goods, then exporters might be uncertain about which tariff would apply to their product in each country. In order to avoid this confusion, the World Customs Organization (WCO) has developed the Harmonized Commodity Description and Coding System, a commodity classification system used on a world-wide basis, which is usually referred to as the Harmonized System, or the HS Code for short.

The Harmonized System is a universal coding system used by more than 190 countries to facilitate international trade. This HS Nomenclature comprises about 7 000 commodity groups which are identified by a 6-digit code based on fixed rules. The SADC Protocol on Trade requires member countries to conform to the Harmonized System. The SADC countries have agreed to harmonize up to eight (8) digits. Every good has a code, so businesses can easily determine the tariff that will apply to their good in each country by referring to the product code in each country's published tariffs.

Structure of HS coding system

- Harmonized System begins with Sections.
- Each section consists of several Chapters.
- Each chapter is denoted by a 2-digit code which is further divided into several 4 digit codes.
- These four digit headings are subdivided into 6 digit codes (HS sub-headings)
- There are in all 21 sections consisting of 97 Chapters (01 to 97)
- The Chapter 77 is kept reserved by W.C.O.
- Two additional chapters 98 and 99 are earmarked for special use by contracting parties.
- HS Codes at 6 digit levels are further sub-divided into 8 digit level to suit the national requirement

Example: A vegetable exporter in Country A wants to know the tariff on such vegetables in countries X, Y, and Z. The Harmonized System 6-digit identifier for sweet-corn seeds is

071290, so the exporter looks up the tariff for good 071290 in the published tariff schedules for countries X, Y, and Z.

HS Codes are composed of a chapter level, a product level, and a sub-product level, as needed.

Chapter	Product description	Explanatory notes
07	Edible vegetables	The first two digits identify the chapter the goods are classified in (Chapter or two digit level).
0712	vegetables, dried, whole, cut etc., no added prep	The four digit level identify product grouping/heading within that chapter
071290	Other vegetables; mixtures of vegetables: Garlic: Powder or flour Sweet corn seeds of a kind used for sowing Other vegetables; mixtures of vegetables	The six digit level gives a description of the product at international level.
07129000	Other vegetables; mixtures of vegetables Dried leguminous vegetables, shelled, whether or not skinned or split.	The eight digit level gives a national level description (even more specific description of the product)

Elimination of Non-Tariff Barriers (NTBs) (Article 6)

A non-tariff barrier (NTB) is any measure that impedes the flow of international trade excluding the import and export duties. NTBs include import quotas, exchange controls, customs delays, government purchase policies, subsidies, customs calculation procedures, boycotts, technical barriers, bribes, and voluntary restraints.

SADC Member States have agreed to eliminate all NTBs and not imposing any new ones, except when NTBs are considered to be necessary, as in the case of Sanitary and Phytosanitary Measures, Technical Barriers to Trade, and other provisions described throughout this Guide.

General Exceptions and Security Exceptions (Articles 9 & 10)

The main aim of the SADC Protocol on Trade is to reduce barriers to intra - regional trade and liberalize the conditions of regional competition. However, the Protocol on Trade allows SADC Member States to adopt measures that restrict trade if the purpose of the restriction is any of the following:

- to protect public morals;
- to protect human, animal, or plant life;
- to secure intellectual property rights;
- to regulate the movement of gold, silver, or precious or semi-precious stones;
- to protect national historic treasures;
- to address food shortages;
- to conserve non-renewable national resources and the environment;
- to protect national security interests or maintain peace; and
- to prohibit and control the importation or exportation of second-hand goods

However when a Member decides to adopt any of these measures, laid down procedures have to be adhered and have to ensure that when they adopted measure, they are not

applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.

National Treatment

(Article 11)

The SADC Member States have agreed that imported goods should be subject to the same laws, regulations, procedures and requirements as domestically produced like goods. This is called “national treatment.” Without national treatment, a Member State could put burdensome requirements on imported goods but not on domestic goods. This would reduce trade and damage competition.

Example: Country A is not allowed to require that imported beef be kept frozen during transportation unless it also requires that domestic beef be kept frozen during transportation.

The national treatment provision is especially relevant for Sanitary and Phytosanitary (SPS) regulations and technical regulations and internal taxes. Any regulations that a SADC Member State applies to foreign imports must not be more stringent or burdensome than when it is applied to domestically produced goods of the same kind.

Special Agreements

Sugar Agreement

(Annex VII)

Certain industries in the Southern African region are considered very sensitive by the SADC Member States, and the Protocol on Trade includes special agreements for them. Sugar is one such industry.

The SADC Protocol on Trade asserts that “the world sugar market is highly distorted,” by the sugar policies of other countries, which has resulted in a world price for sugar that is much lower than what the price of sugar would be under global free trade. In order to protect regional sugar producers from the impact of artificially low world prices, and to maintain and promote sugar producers in the SADC region, the Protocol on Trade includes measures intended to increase cooperation and support for regional sugar producers.

The Protocol’s main support for sugar producers in Southern Africa comes from preferential access to the Southern African Customs Union (SACU), which is made up of Botswana, Lesotho, Namibia and Swaziland and South Africa. Each SADC Member State that has a surplus of sugar will be allowed to export an agreed portion of that surplus sugar to SACU member countries without paying any customs duty (duty-free). The amount of sugar that each SADC member may export to SACU will be proportional to that member’s share of the total SADC sugar surplus.

Example: In 2008, Country A produces 50 000 tons of surplus sugar. A total of 200 000 tons of surplus sugar is produced by all SADC Member States, so that Country A’s share of the total surplus is 25%. Based on the growth of demand for sugar within the SACU countries, the SACU decides to allow 100 000 tons of surplus sugar to enter SACU duty-free from other SADC Member states. Country A has produced 25% of the total sugar

surplus this year, so Country A may export 25 000 tons of sugar to the SACU duty-free (25% of 100 000 tons).

The Sugar Agreement is in the interim non-reciprocal, which means that the SACU countries allow some duty-free access to other SADC Member States without requiring that those other SADC Member States also allow duty-free access to SACU countries.

Example: The Sugar Agreement gives Mauritian sugar producers some duty-free access to the SACU market, but does not require that Mauritius give SACU sugar producers access to the Mauritian market.

This current non-reciprocal system of market access into SACU is intended to provide short-term support for sugar producers in the SADC region. The long-term objective of the Sugar Agreement is to establish reciprocal market access among all SADC members by removing all barriers to regional sugar trade after 2012. However, the Agreement establishes the Technical Committee on Sugar (TCS), with representatives from the sugar industry and all SADC members, to monitor the world and regional sugar markets, and to make appropriate policy changes in response to changing conditions.

MMTZ Preferences (Annex I, Appendix V)

The MMTZ countries are the least developed countries of Malawi, Mozambique, Tanzania, and Zambia. The SADC rules of origin include special preferences for a small number of clothing products produced in these countries. These preferences apply only to export shipments delivered to SACU countries (Botswana, Lesotho, Namibia, Swaziland and South Africa).

Example: The rules of origin on some clothing products require that imported materials go through a two-stage transformation in order to achieve originating status. However, if the clothing is produced in an MMTZ country, the material only needs to go through a single change of tariff heading in order to achieve originating status.

Example: According to the SADC Protocol on Trade, minor operations on foreign materials do not confer origin on those materials. However, if certain minor operations are carried out in an MMTZ country, the process does confer origin on the final product, provided that the product is shipped to a SACU country.

These examples are only given to clarify how special rules may apply to MMTZ products. Businesses located in an MMTZ country must consult the SADC rules of origin to determine whether their products are granted special privilege by the countries of the SACU.

CUSTOMS PROCEDURE

Customs procedures aim to simplify and harmonize customs procedures and to ensure that they are applied properly between the Member States.

Rules of Origin

(Annex I)

A free trade agreement gives mutual preferential or duty-free access for products produced by the countries that sign the agreement. Rules of origin (RoO) are used to determine the origin or nationality of a product. They also serve to ensure that only products that meet the origin requirements would benefit from tariff preferences, provided for under specific trade agreements.

Therefore only goods that originate within a SADC Member State are eligible to receive the preferential market access that the SADC Protocol on Trade provides.

Example: Zimbabwe and Mozambique have signed the SADC Protocol on Trade, and therefore give each other reduced or duty-free market access on products produced in their markets. Mozambique also imports products from China, but if it exports those products to Zimbabwe, without any value addition or substantial transformation, it must then pay Zimbabwean Customs duties that apply to those Chinese products.

In other words, a product does not “originate” from a country simply because it is located in that country. It must also meet specified conditions in order to acquire “originating status.” SADC has adopted a specific rule of origin for every product. Therefore businesses must consult the rules of origin to determine whether their products would meet the origin requirements.

A product is considered to originate in a country if one of the following origin criteria is met:

Wholly produced

A product originates in a SADC Member State if it is wholly produced within that state, or if imported inputs were used only to raise or grow agricultural products.

Example of wholly produced products include

- *minerals extracted within the Member State,*
- *vegetables harvested in the Member State,*
- *animals born and raised in the Member State,*
- *fishing products obtained within the waters of the Member State or by vessels that are registered with a Member State,*
- *or any other product that does not contain material from outside the Member State.*

If a product is not wholly produced in a Member State, then one of the following conditions must be met in order for a product to gain originating status. Most rules of origin will refer to either the “wholly produced” criteria described above, or one of the criteria below, under which non originating product used in the manufacture of a final product must undergo a “substantial transformation” or is sufficiently worked or processed.

Sufficient Processing or Substantial Transformation

Many products made within the SADC Member States include non originating materials imported from outside the SADC region. Certain production processes use materials from outside the member country and transform those materials in a significant way to produce the final product with a distinctive name, character or use for it to confer origin. If the material used are already originating, they need not satisfy the origin requirement. The country of origin of a product is usually where the last substantial transformation takes place. Rules of origin related to substantial transformation are typically determined at the 6 digit level of HS classification. When this kind of process occurs, it is said to “confer origin” on the final product. The final product therefore is entitled to receive preferential access into other SADC Member States under the terms of the Protocol on Trade.

Example: Imported cow hides may have to undergo specific types of tanning procedures in order to achieve originating status.

Example: Thread made from imported cotton may be required to undergo both spinning and dyeing in order to achieve originating status.

As in all cases, these examples are meant to illustrate a rule under the SADC Protocol on Trade, and do not reflect the actual rules of origin for leather and thread.

Three key tests or criteria are used to establish substantial transformation. These are:

a) Value Added Standard

When materials are imported from outside the SADC region and then used to make a finished product, the value of the finished product includes the cost of the imported material, the cost of any domestic material that was used, and the value that was added by the local production process. “Value added” is the increase in value that can be attributed to a certain input.

Example: A business in Country A makes product X. The business uses imported material Y and domestic material Z in order to manufacture X. The value added by the business’s manufacturing process is the ex-factory price of X minus the cost of both Y and Z.

The “ex-factory” price of a good, which is sometimes called the “ex-works” price, is the price that the manufacturer receives. Note that if a business uses a material of unknown origin, that material is assumed to be foreign when calculating the foreign content of the product.

Value added is usually expressed as a percentage. For some products, the SADC rules of origin specify a minimum value added for the production process used to make product X that must be met in order for the good to receive preferential market access to other SADC countries.

Example: Continuing from the example above, suppose the ex-factory price of the final good X is \$10, and each X contains \$2 worth of foreign good Y and \$3 worth of domestic good Z. Then the value added of the production process is $\$10 - \$2 - \$3 = \5 per unit, or $\$5/\$10 = 50\%$. If the value added requirement for X was 35%, then the production process has met the rule of origin and therefore conferred origin on X.

For some products, the SADC rules of origin specify the minimum amount of value that the domestic production process must add to the product in order for that product to receive preferential market access within SADC. This value added amount will be expressed as a percentage of the ex-factory price of the final product. The formula for value added under this rule can be expressed as follows:

$$\text{Value added of the production process} = \frac{\text{Ex-factory price} - \text{Cost of material inputs}}{\text{Ex-factory price}}$$

b) Change in Tariff Heading

Every product has a tariff heading, or classification, according to the Harmonized System described above. The SADC rules of origin makes provision for some products that contain non-SADC material, once substantially transformed to be originating provided that the final product has a different tariff heading or sub-heading, at a four digit level, than the imported materials that were used to make that final product.

Example: Country A imports material X and manufactures it into final product Y. X and Y have different tariff headings, so Y is considered to originate in SADC, assuming that the origination rule governs the originating status of Y in the SADC rules of origin.

In certain cases, the SADC rules of origin require a “two-stage transformation,” also called a “double-stage transformation.” This means that in order for a final product to receive preferential market access to the SADC Member States, the foreign materials used to make the product must change by two tariff headings.

Example: We will assume for the purposes of this example that foreign material used to make clothing in the SADC region must go through a two-stage transformation in order to confer origin on the final clothing products. Therefore if Country A imports cloth from outside the SADC region and stitches the cloth into clothes, the clothes do not receive preferential access to other SADC Member states. But Country B imports yarn from outside the SADC region, turns that yarn into cloth (one transformation), and then uses the cloth to make clothes (second transformation). Country B's clothes now qualify as originating within the SADC, and may therefore be exported to other SADC Member States under the preferential access provided by the Protocol on Trade.

c) Specific Processing (SP) or technical requirement

SP or list rule prescribes the specific production processes or sourcing processes that must be carried out on non originating materials for a product manufactured to obtain originating status.

Production processes that do not confer origin (Annex I, Rule 3)

Some production processes are very minor, and only result in minimal changes to the products or materials in question. The SADC Protocol on Trade does not confer origin on final products that have only gone through the following kinds of processing:

- Packaging or repacking
- “Operations to ensure the preservation of merchandise in good condition” including drying, freezing, loading and unloading
- Mixing, dilution, or blending that does not result in a new chemical compound
- Simple assembly or disassembly
- “Ornamental or finishing operations” on textiles such as dyeing and embroidery
- Slaughter of animals

This list is only given for the purpose of example. Other simple processes are also excluded from conferring origin to the products on which they are performed.

Principle of Cumulation (Annex I, Rule 2)

Cumulation allows SADC members to share production processes through sourcing inputs from each other and to recognize substantial manufacturing processes conducted in each others territories towards meeting the origin requirements.

Example: A business in Malawi, sources a good from Zambia as input for production of its final good. The input from Zambia contains 10% foreign material and 90% the SADC material.

If the inputs from other SADC Member States have satisfied the rules of origin that apply to them, then the full cost of those inputs is considered to originate from within the SADC when calculating the domestic content of the final product.

Example: Continuing from above, suppose that imported good has satisfied the SADC rules of origin. Therefore when the business in Malawi uses the good to produce its final product, , 100% of the cost of the imported good is counted toward the domestic content requirement of the final product when determining whether the final product satisfies the SADC rules of origin.

Value Tolerance Rule (or De Minimis Rule)

The Value Tolerance rule provide for a limit to deviate from the agreed rule regarding inputs requirement that may be allowed. For example, in a case where the rule prohibits the use of a specific input, derogation is made to the rule in accordance with a specified value tolerance threshold. For SADC the Value tolerance is set at 15%.

Example: A company in a SADC Country A imports oil from outside the SADC region and uses it to make hand cream. Suppose this type of change of tariff heading satisfies the SADC Rules of Origin with respect to hand cream. However, the company also adds an imported coloring die to the hand cream. Mixing the colouring dye with the hand cream does not confer origin on the dye.

As long as the cost of these non-transformed inputs does not breach the value tolerance threshold, then the change of heading confers origin on the whole product. The SADC value tolerance threshold is 10% of the ex-factory price of the final product.

Example: Continuing from the example above, if the cost of the die is less than 10% of the ex-works price of the hand cream, the hand cream is eligible to receive preferential market access to other SADC Member States.

Developing countries prefer higher value tolerance thresholds, in order to have more leeway in for production processes.

Fishing and Marine Products (Annex I, Rule 4)

Many fishing and marine products are caught outside the territorial waters of SADC Member States by companies that operate within the SADC. The SADC Rules of Origin state that marine products originate within SADC if they are caught from a vessel of a Member State, or produced on a vessel of a Member State.

A vessel is considered to be part of a SADC Member State as long as at least *one* of the following conditions is met:

- The vessel sails under the flag of a SADC Member State;
- At least 75 percent of the officers and crew of the vessel are nationals of a SADC Member State;
- At least the majority control and equity holding of the vessel is held by nationals of a SADC Member State or institution, agency, enterprise or corporation of the government of a SADC Member State.

Textiles produced in MMTZ countries

Please see the Special Agreements section of this Guide for the rules of origin governing textiles produced in Malawi, Mozambique, Tanzania and Zambia and exported to SACU.

Certificate of Origin

In addition to regular transit documents, shipments of goods that originate from within the SADC and are exported to other SADC Member States must carry a certificate of origin.

The certificate of origin includes

- a description of the goods in the shipment;
- the name and address of the exporter;
- the delivery destination; and
- the sworn signature of the producer, declaring that the goods in the shipment meet the requirements of the SADC rules of origin.

When customs officials suspect that the goods do not meet the requirements of the SADC rules of origin, they may request more information from the producer. If this occurs, the shipment may still be delivered to its destination before the information has been given to the customs officials, provided that the amount of any duty that may apply to the shipment is deposited as a security with the customs office in question.

Example: A shipment of good X from Country A arrives at the border of Country B. The customs officials suspect that the goods in the shipment may not have originated within the SADC in spite of the information supplied on the shipment's certificate of origin. While the customs officials wait for further information from the producer of good X, the exporter gives Country B's customs office an amount of money equal to cover the duty that would apply to good X if it did not originate from within the SADC. This money is returned to the exporter after the customs officials receive the additional information from the producer, provided that this information proves that the goods originated from within the SADC.

Steps to obtain confirmation of origin (Annex I, Rule 9)

The following steps give an outline of how a business in a SADC Member State may obtain confirmation of origin for their products. These steps are only meant to give a general guideline, as the procedure may vary slightly in each SADC country.

- 1) Find the HS Code for the product;
- 2) Check the SADC Rules of Origin to see which of the rules described above apply to that HS Code;
- 3) If the business believes that its product satisfies the SADC Rules of Origin, then the business should provide its exporter with a written declaration stating that the goods comply with the SADC rules of origin. See the Appendix to the Guide for the required format of this declaration. Where an exporter is not sure about

the origin criteria, they should approach the origin designated authority in their respective countries for advice.

- 4) The exporter of the goods must also provide customs officials with an authenticated Certificate of Origin. The format for the Certificate is provided in the Appendix.
- 5) In some rare cases, the customs authorities in a SADC Member State may require that the origin of certain goods be verified. When this happens, customs officials will likely inspect the production facilities and request documentary evidence from the business relating to the sources of inputs and the production processes used by the business.

Customs Valuation

(Annex II, Article 4)

Customs officers are responsible for collecting customs duties. In order to collect the right amount, they must know how to value every shipment that arrives at their border crossing. The SADC Protocol on Trade permits member countries to use six methods for valuing exported goods:

1. the transaction value of the imported goods
2. the transaction value of goods identical to the goods being valued
3. the transaction value of goods similar to the goods being valued
4. the deductive method
5. the computed value method
6. the fall-back method

When the transaction value of the imported goods method is used, customs duties are calculated based on the value reported on the shipment invoice.

Example: A shipment of potatoes from Country A arrives at the border of Country B. Country B has a 10% tariff on potatoes, and the invoice for this shipment values the potatoes at P1000. The customs officials at the border use the invoice as the basis for their tariff collection. They multiply P1000 times 10%, and collect a tariff of P100.

This is the simplest and most transparent way to calculate import duties, and the international Customs Valuation Agreement encourages countries to use it as much as possible. However the transaction value of the imported goods method is easily subject to abuse when exporters undervalue their shipments in order to avoid paying part of their tariff obligation. If a SADC Member State does not believe that the invoice value is reliable, it may move to the next method.

Example: A shipment of used cars is sent from Country A to Country B. The customs officials in Country B believe that the shipment invoice is lower than the true value of the cars. Instead of using the first method for calculating the tariff (the transaction value of the imported goods), they use method three, the transaction value of goods similar to the goods being valued. They do this by finding the value of used cars in Country B which are similar to the used cars in the shipment. The customs officials do not use method two (the transaction value of goods identical to the goods being valued) because it is too difficult to find used cars that are identical.

The transaction value of the imported goods is used for the vast majority of shipments in most SADC Member States. However, as in the example above, second-hand items like

used cars are frequently subject to other valuation methods by customs officials, most commonly methods two and three above. Because each member country has some choice in how to value shipments of imported products, an exporting business may face different valuation methods in different countries.

Example: A car dealer in Country A sends a shipment of used cars to Country B and a shipment to Country C. As in the example above, the customs officials in Country B calculate the tariff payment by using the transaction value of goods similar to the goods being valued. But the customs officials in Country C calculate the tariff payment using the transaction value of the imported goods (the value reported on the shipment invoice).

Exporters who feel their goods are being improperly valued by customs officials may appeal in the country in question. This appeals process varies in each country and may take several days.

Transit Traffic

(Annex IV, Article II)

Many SADC member countries are landlocked, such as Botswana, Zambia, and Lesotho. In order for these countries to receive goods from other SADC members, often the shipments must pass through countries that neighbor the landlocked members.

Example: Botswana receives a shipment of clothing from Mauritius, which travels from Mauritius to the port of Maputo, Mozambique, and from there by truck through South Africa to Botswana.

These shipments are referred to as “trans-shipments,” and the vehicles carrying trans-shipments are called “transit traffic” because they pass through a country on the way to another country. If customs duties were imposed by each country that the shipment passed through, then shipping costs would increase and trade would be reduced as a result. In order to prevent this from happening, the SADC Protocol on Trade requires member countries to remove any import or export duties on transit traffic.

Example: The shipment of clothing from Mauritius should not be subject to import duties at the port of Maputo or at the South African border. The only tariff that may be levied on this shipment is Botswana’s tariff on clothing, if Botswana has such a tariff.

Business should be aware that the SADC Member States are permitted to charge administrative and service fees on shipments passing through their territory. But these fees should be the same for both foreign and domestic traffic.

Transportation companies that engage in transit traffic must obtain a license from their primary country of business, and have the proper SADC Transit Documents available for each shipment they carry.

Warehousing

Ideally, trans-shipments would travel continuously through the transit countries until they got to their destination. But when trans-shipments cannot be transported continuously, they must be secured within a transit country so that they are not tampered with. In order to ensure that facilities exist for the secure storage of trans-shipments, the SADC Protocol on Trade requires the SADC Member States to establish warehouses or other customs areas for the temporary storage of trans-shipments.

Border Hours of Operation

Much of the trade that occurs between the SADC Member States is transported by road. One of the barriers to this trade is the hours of operation of border posts and customs offices at overland border crossings. The SADC Protocol on Trade encourages the SADC Member States to keep their borders open 24 hours a day whenever possible.

Example: Country A and Country B share a border, and the border is open from 6:00 hours to 22:00 hours. Trucks arriving outside these hours must wait until 6:00 in order to cross the border. As more and more trucks arrive during the night, a line of trucks forms which causes further delays for many trucks once the border does open at 6:00. If the border remained open all night, each of these trucks would experience a much shorter waiting time for customs processing, which would reduce the transportation costs of each shipment and make trade easier.

Sealing of Containers

If a country is allowing a trans-shipment to pass through its territory without paying tariffs, then the country must be assured that this transit traffic will not be used as a means to avoid paying tariffs

Example: A trans-shipment enters Country A on its way to Country B, so no customs duties are paid on the goods in the shipment. However, while the shipment is in Country A, some of the goods are sold, thereby avoiding the payment of tariffs.

This method of avoiding the payment of customs duties is illegal. To prevent trans-shipments from being used as a means to avoid the legitimate payment of tariffs, trans-shipments must be sealed by customs officials of a SADC Member State. Shipping companies that transport trans-shipments under the SADC Protocol on Trade are required to have their containers certified as tamper-proof by the country in which they are based.

Transit Documents

(Annex III, Articles III & IV)

In an effort to reduce the cost of regional trade, the SADC Protocol on Trade requires the SADC Member States to reduce and simplify the paperwork needed to cross borders. This will be done, in part, by creating transit documents using international standards.

As part of the effort to simplify and standardize transit documentation, the SACU countries adopted the Single Administrative Document (SAD 500) which is similar to the SADC-SAD. Some other SADC Member States are in the process of adopting the SAD 500, such as Zambia and Mozambique, although the SADC Protocol on Trade does not require them to do so.

Example: A shipment of goods is being sent from Botswana to Mauritius. A truck picks up the shipment in Botswana, travels through South Africa, and on to the port of Maputo, Mozambique, where it will be shipped by boat to Mauritius. If Botswana, South Africa, and Mozambique all accept the SADC-SAD, then the truck driver only needs to carry one transit document rather than three.

TRADE LAWS

Sanitary and Phytosanitary Measures (SPS)

(Article 16 and Annex on SPS)

The SADC Protocol on Trade allows member countries to regulate the importation of food products in order to protect consumers and domestic plants and animals from contaminants, toxins, pests, and diseases. These regulations are called Sanitary and Phytosanitary measures (SPS). “Sanitary” refers to regulations on animal products, while “Phytosanitary” refers to regulations on plant products. SPS measures concern the safe handling and production of food and plant products.

In order to make trade easier and minimize the burden of regulations, while at the same time protecting the health and welfare of citizens, the SADC Protocol on Trade requires the SADC Member States to adopt SPS measures that are in harmony with international standards.

Example: Country A, Country B, and Country C adopt SPS measures on coffee imports that are in harmony with international standards. This allows coffee growers in Country D to export coffee to each of these three countries without worrying about safety. Common standards make trade easier between countries.

The requirement to base SPS measures on international standards is designed to prevent countries from adopting rules that appear to protect consumer health but are in fact meant to prevent competition from imports. In practice, SPS measures are often agreed to during negotiations between two countries with an interest in a particular product, and the SADC Protocol on Trade allows a SADC Member state to request a mandatory consultation with any other SADC Member state if the member wishes to negotiate a modification of existing SPS standards.

Example: Country A blocks imports of canned tuna from Country B, claiming concerns with sanitary standards. Country B requests consultations with Country A and secures an agreement on the conditions that need to be met in order for tuna imports to satisfy Country A's safety standards.

Developing countries are sometimes hesitant to enter into SPS consultations because of limited capacity and technical expertise. However, there are international organizations that can assist in negotiations and advise industries and governments on the steps that must be taken in order to reach international SPS standards. Moreover, international rules of equivalence requires members to accept the SPS measures of importing member countries as long as those measures achieve the same level of sanitary and phytosanitary protection.

Example: Country A imports frozen chicken from Country B. Country B's SPS measures are different from Country A's SPS measures, but they achieve the same level of SPS protection. The rule of equivalence requires that Country A accept Country B's frozen chicken exports without demanding that Country B undertake additional safety requirements.

The SADC Protocol on Trade forbids the creation of SPS measures for the purpose of reducing trade and competition. Therefore, SPS measures should have a scientific basis and only be adopted for health and safety reasons.

Example: Country A adopts an SPS measure on maize, requiring that maize imports only come from farms that practice a certain type of crop rotation. There is no scientific evidence that crop rotation affects the safety of corn consumers, so this measure is not permitted under the SADC Protocol on Trade.

Example: Country A adopts an SPS measure on eggs, requiring that imported eggs be stored below a certain temperature. There is scientific evidence that storage practices affect the safety of eggs, so this regulation is permitted under the SADC Protocol on Trade.

Trade is made easier when businesses are informed of the SPS measures that apply in their export markets. Each SADC country has a point of enquiry that provides information on its SPS measures, technical requirements, and inspection procedures. The SPS Annex to the Protocol provides for notification of all SPS measures to the SADC secretariat. The enquiry points are listed at the end of this guide.

Technical Barriers to Trade (TBT) (Article 17 and Annex on TBT)

Countries often have an interest in making sure that imported products meet certain technical standards. In order to ensure that such standards are met, countries adopt technical regulations, or technical barriers to trade (TBT). For example, some countries have a regulation that toys for children may not contain certain toxic chemicals. These regulations apply equally to imported and domestic products.

However, as with SPS measures, countries sometimes use technical regulations improperly in order to protect domestic industries from foreign competition.

Example: Country A adopts a technical regulation that requires imported cigarettes to have a warning label on each pack, indicating that they are harmful. But Country A does not require its own domestic producers of cigarettes to put warning labels on their packaging. This is a technical barrier to trade that is not allowed under the SADC Protocol on Trade because it does not apply to both foreign and domestic producers.

The TBT Annex to the Protocol on Trade provides for regional cooperation in the area of standards, metrology, conformity assessment, accreditation and technical regulations. In order to prevent unnecessary technical barriers to trade, the SADC Protocol on Trade encourages the SADC Member States to use international standards whenever technical regulations are considered necessary. If two SADC Member States have different technical regulations for similar products, the SADC Protocol on Trade requires both Member states to accept the standards of the other, as long as both standards are effective in achieving the same goal.

Example: Country A has a technical regulation that helps ensure the quality of fertilizer produced in Country A, and it wishes to apply the same regulation to fertilizer imports from Country B. Country B does not have the same technical regulation for its fertilizer producers that Country A uses. But Country B does have a different regulation that also ensures the quality of the fertilizer produced in Country B. Therefore, Country A should consider Country B's regulation as equivalent to its own, and accept imports of fertilizer from Country B.

Trade is made easier when businesses are informed of the technical regulations that apply in their export markets. Each SADC Member state has a point of enquiry that provides information on its technical regulations and inspection procedures. A list of these enquiry points is included at the end of this guide.

Anti-Dumping Measures

(Article 18)

“Dumping” is defined as the sale of an exported good at a price that is lower than the price charged for that good in the country of origin.

Example: Peanut exporters from Country A are selling peanuts in Country B for a price that is lower than the price of peanuts in Country A. These peanuts are therefore being dumped in Country B.

Disputes over dumping are only negotiated between countries, not between businesses and not between a business and a country. If a country wants to impose anti-dumping duties on dumped products, the country must first prove that the products are being dumped, and then show that the importation of the dumped products is causing “material injury” to a domestic industry. Material injury occurs when the following sequence of events occur:

- imports increase significantly, relative to the size of the importing market or in absolute terms;
- the prices of the imports are lower than the prices of similar domestic products, or have forced domestic producers to lower their prices; and
- the increase of lower-priced imports has caused injury or the threat of injury to domestic producers of similar products.

Example: The government of Country A decides to take action against the peanut imports from Country B. First Country A compares the price of Country B’s peanuts in Country A to the price of the same peanuts in Country B, and finds that the price in Country A is lower. Then Country A shows that its domestic peanut farmers have been harmed. To prove this, Country A must show that:

1. *peanut imports from Country B have increased;*
2. *this increase of supply of peanuts has caused the price of peanuts to go down in Country A; and*
3. *Country A’s peanut farmers have been hurt by this decline in the price of peanuts.*

If Country A proved each of these things, then it would be legally allowed to impose an import duty on peanuts.

The rules of evidence in anti-dumping cases are complicated. An industry that is the target of a dumping complaint should be aware of at least three things.

1. For an anti-dumping case to result in a retaliatory duty, the authorities investigating the case must show that the primary cause of harm to the domestic industry is not any of the following:

- Reduced demand for the industry’s product.

- Improvements in technology that the domestic industry has failed to adopt.
- Poor productivity in the domestic industry caused by such factors as bad management, unskilled workers, etc.

Example: Country A's mango harvest last year was very large, forcing Country A's mango growers to sell their excess crop at a loss in SADC markets. Country B's mango farmers demand an anti-dumping case be brought against Country A. However, the mango industry in Country B has been suffering from a lack of investment and falling demand for mangos in Country B. This case should not be successful because the primary harm to Country B's mango growers is not cheap imports from Country A.

2. An anti-dumping case may only be successful if the size of imports relative to the market size is "not negligible."

Example: Leather producers in Country A decide to sell some of their product in Country B at a price that is lower than the price of leather in Country A. However, imports from Country A make up only 1% of the leather market in Country B, so it is unlikely that an anti-dumping case would be successful.

3. The authorities investigating the anti-dumping case will ask the exporting businesses for information. If exporting businesses do not cooperate, the investigators will only rely on the information provided by the domestic industry in making their decision. However, being a party to a case also entitles you to present evidence in defense of your business practices and examine any evidence presented by other parties to the case.

Example: Authorities are investigating whether peanuts from Country A are being dumped in Country B. Country A's peanut farmers are entitled to present evidence in defense of their behavior.

If authorities conclude that dumping is occurring, the importing country has the right to impose a tariff on the dumped goods which is equal to the difference between the price in the exporting country and the price in the importing country. The importing country also has the right to impose a smaller tariff, which may occur if authorities believe that a smaller tariff would be sufficient to remove the harm to the domestic industry.

Example: Country B files an anti-dumping complaint against Country A with the SADC Secretariat. After an investigation, SADC determines that the peanuts from Country A are being dumped in Country B. The price of peanuts in Country A is \$3 per kilogram, but Country A's peanut exports are selling for \$2 per kilogram in Country B. Country B therefore decides to impose a tariff on imported peanuts of \$1 per kilogram.

Prohibition of Subsidies

(Article 19)

In addition to protective customs duties and quotas, another way that governments sometimes aid domestic industries is by subsidizing production. A subsidy is any type of benefit that a government gives to a company. Subsidies are often provided in the form of cash payments from the government to a business for the purpose of helping the business produce its products. But subsidies also include goods and services that a government provides to a domestic business at reduced rates.

Example: Country A wants to help its domestic cattle ranchers sell beef on the global market. The government gives each rancher a cash payment for every cow in his herd in order to help the rancher buy feed. The government also transports the cattle to the slaughterhouse for free. Both the cash and the transportation are subsidies.

The subsidy pays for some of the business's costs, in effect making it cheaper for the business to produce products. The problem with subsidies, from the perspective of international trade, is that the lower costs of the subsidized business allow that business to sell its products at a lower price than competitors who are not subsidized.

Example: Country A subsidizes its cattle ranchers, but Country B does not. The subsidy allows the Country A's ranchers to sell beef for a lower price than Country B's cattle ranchers.

Although subsidies are less disruptive to international trade than are customs duties or quotas, usually only wealthier countries can afford to pay subsidies.

Example: A clothing manufacturer in Country A has the same labor, material, and utility costs as a clothing manufacturer in Country B. However, the company in Country A receives a subsidy from the government from Country A for each garment it produces. It can therefore lower its prices by an amount equal to the amount of the subsidy, giving it an advantage over the company in Country B when negotiating with buyers.

One problem with subsidies is that they allow inefficient and uncompetitive companies to stay in business. Without subsidies, some companies would not be able to compete in the marketplace. These companies would go out of business and their resources could then be used in more productive ways, benefiting the overall economy.

The SADC Protocol on Trade strongly discourages the use of subsidies by member governments, but does not forbid them in all cases. For example, the SADC Member States may continue to fund subsidy programs that were in place at the time of the SADC Protocol on Trade. In addition, the SADC subsidy rules follow international standards, which are fairly complex and allow for many exceptions, especially for developing countries.

Example: Country A begins subsidizing its domestic steel industry, which seems to violate the SADC Protocol on Trade. However, Country A is allowed to continue with this subsidy if it does so in order to protect national security interests.

It is worth repeating that subsidizing an industry is usually bad policy, even when the subsidy does not violate the SADC Protocol on Trade. In the example of the steel industry above, there is a very large world market for steel and it is unlikely that Country A could not obtain the steel it needed, even in an emergency.

Safeguards (Article 20)

Free Trade Agreements (FTAs) are signed under the assumption that the free flow of goods across international borders contributes to economic growth and prosperity. Consumers benefit when they can buy a product more cheaply from an importer than they can from a domestic producer, and competition from foreign producers forces domestic industries to be more productive, efficient, and competitive. However, sometimes a

product is imported in large quantities at a price that domestic producers have difficulty meeting. If these imports “cause or threaten to cause serious injury” to the domestic industry, the importing country may impose temporary safeguards on imports of the product.

Example: Tea farmers in Country A have a huge harvest this year because of favorable weather conditions. Some of this tea is exported to Country B, causing the price of tea in Country B to fall. Tea farmers in Country B have not had a good tea harvest, so they ask their government to protect them from imported tea. The government of Country B raises the tariff on tea, invoking its right to protect a sensitive industry.

Safeguards may come in the form of either higher customs duties or quantity restrictions. In the example above, the Tanzanian tea is not subject to anti-dumping measures because the price of the tea in Tanzania is the same as the price of the tea in Malawi.

Safeguard protection is only a temporary trade restriction. The SADC requires that a safeguard must be removed after four years. The domestic industry is expected to use the period of protection to prepare for the removal of the safeguards by becoming more competitive. After all, the ultimate purpose of a safeguard is not to protect a domestic industry, but to enhance competition in regional markets.

Example: Tea farmers in Country A improve their irrigation systems so that they have a large harvest every year. The price of tea in Africa has fallen as a result. Country B has imposed a safeguard tariff on tea imports because its own tea farmers have not been able to increase their harvests. While the tea tariff is in place, Country B's tea farmers should be investing in ways to increase their own harvests, such as improving their irrigation systems as Country A's farmers did.

If the protected domestic industry is making progress in preparing for a competitive marketplace but needs more time to avoid serious injury from the removal of a safeguard, the safeguard may be extended. However, a safeguard may never last longer than eight years in total.

Example: During the first four years of safeguard protection, Country B's tea farmers have been building irrigation systems in order to compete with Country A's tea farmers. However, they need one more year to complete their irrigation projects. In this case, the safeguard tariff may be continued for an additional year beyond the standard four-year limit.

Safeguards are not quickly or easily implemented. Industries are permitted to request safeguard protection from their government. A country that is considering implementing a safeguard is required to conduct an investigation into the alleged harm caused to the domestic industry. The SADC sets out procedural requirements for the investigation, which allow the foreign governments and producers that will be affected by the safeguard to present evidence and arguments against the restriction of trade.

Example: The production of milk in Country A and Country B increases, lowering the price of milk in the region and resulting in more imports of milk into Country C. If the Country C's milk producers cannot compete with the new price, they may ask the government of Country C to begin a safeguard investigation. If the government investigates and confirms that the harm is real and significant, it may raise the tariff on milk or institute a quantitative restriction on milk imports. While the higher tariff is in place, Country C's milk

producers should look for ways to become more competitive with regional milk producers, by cutting costs, investing in more efficient production technologies, and adopting more efficient techniques.

If a safeguard is applied, it must be applied to all importers of the product in question.

Example: Country A experiences a large increase in imports of honey, mainly from Country B, pushing down the price of honey and thereby hurting domestic honey producers in Country A. The government of Country A could impose a temporary safeguard on honey imports by increasing the tariff on honey. However, the higher tariff must apply to all honey imports, not just those from Country B.

Infant Industries

(Article 21)

In special cases, an industry may only be able to become competitive if it is protected by customs duties during its early development. This occurs when there are economies of scale at the industry level, meaning that as more firms produce more of the product, the average production cost for every firm declines.

Such cases are rare, and like standard safeguards, infant industry protection must be temporary. In order to raise customs duties on the grounds of infant industry protection, a SADC country must demonstrate to the SADC Committee of Ministers responsible for Trade matters (CMT) that the industry will become globally competitive after a reasonable period of time so that protective customs duties can be eliminated. Furthermore, a SADC Member State must also show the CMT that trade protection is the only policy available for developing the industry.

Example: Perhaps the most successful example of infant industry protection is the South Korean computer memory chip industry. South Korean makers of memory chips (DRAM chips) could not compete with American firms because the Korean DRAM industry had not yet developed the shared knowledge that is necessary to produce computer chips at low cost. The government of South Korea adopted Customs duties on DRAM chips that were so high that no DRAM chips were imported. This gave South Korean firms a monopoly in South Korea, allowing them to charge the high prices necessary to cover their high costs. The monopoly also gave the South Korean firms the chance to expand production, which eventually led to lower costs for each chip. Because the domestic South Korean market was big enough to allow for this expansion in production, eventually South Korean DRAM producers were able to produce at lower, globally-competitive costs.

OTHER TRADE RELATED ISSUES

Intellectual Property

(Article 24)

Intellectual Property is property such as patents, copyright material, and trademarks. Countries provide legal protection for intellectual property.

Example: Music, movies, software programs, and the trademark for Coca Cola are all intellectual property.

The SADC Protocol on Trade requires Member States to abide by international rules with respect to the protection of intellectual property as provided for under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). It prescribes minimum standards and periods for which protection should be granted to different intellectual property rights and countries are required not to discriminate among foreign nationals and between foreign nationals and their own nationals in the acquisition and maintenance of intellectual property rights.

TRADE RELATIONS AMONG SADC MEMBER STATES AND WITH THIRD COUNTRIES

Bilateral Agreements

(Article 27)

A bilateral agreement is a treaty between two parties, whereas the SADC Protocol on Trade is a regional agreement, signed between several parties. Many SADC Member States have signed bilateral trade agreements with each other. These bilateral agreements govern the conditions of trade between the two Member States. The SADC Protocol on Trade allows SADC Member States to maintain bilateral agreements that pre date the entry into force of the SADC Protocol on Trade. But any new bilateral agreements must be consistent with the rules of the SADC Protocol on Trade in particular the most favored nation treatment.

Example: Malawi and Zimbabwe sign a bilateral trade agreement in 2005 after the coming into force of the SADC Protocol on Trade. The preferential treatment extended to products originating from Malawi to Zimbabwe if better than what is provided for under the SADC Protocol on Trade should immediately and unconditionally be extended to all products originating from SADC Member States. (See also MFN provision below)

Most Favored Nation (MFN) Treatment

(Article 28)

As described above, the SADC Protocol on Trade allows the SADC Member States to maintain their bilateral trade agreements and even to sign new agreements. However, a SADC Member State that has signed a preferential trade agreement with any other country must extend the same benefits to all SADC members. This is known as Most Favored Nation (MFN) Treatment.

Example: A SADC Member State signs a bilateral trade agreement with a country that is not a SADC member. This trade agreement allows the non-SADC country to export bread to the SADC member duty-free. This SADC member must therefore allow duty-free access to bread originating from all SADC Member States.

The SADC Protocol on Trade permits exception to the MFN rule. The SADC Member States that were members of other trading blocs at the time the SADC Protocol on Trade was signed are allowed to give preferential access to members of those blocs without extending the same privileges to the SADC Member States.

Example: Country A was a member of the SACU at the time the SADC Protocol on Trade was signed. Country A is allowed to give other SACU Member States greater market access than it gives to non-SACU SADC Member States.

DISPUTE SETTLEMENT AND INSTITUTIONAL ARRANGEMENTS

Dispute Settlement

(Article 32, Annex VI)

Trade disputes may occur for a variety of reasons, such as when a SADC Member State does not lower its customs duties in accordance with its agreements under the SADC Protocol on Trade, or if a Member State raises customs duties in violation of the Protocol on Trade. The Protocol on Trade establishes procedures for settling disputes between Member States. At Annex V to this Guide is a list of National Enquiry Points to which a trader can report any barrier to trade that you encounter in your day to day transactions.

Example: A SADC Member State “A” believes that a SADC Member State “B” is discriminating against its products in violation of the SADC Protocol on Trade. Country “A” can begin a dispute settlement procedure with Country B in accordance with the laid down procedures in Annex VI to the SADC Protocol on Trade.

It is important to note that disputes are settled between Member States, not between businesses and Member States. Businesses that feel their goods are not being treated properly by another SADC Member State should inform their home country’s ministry of trade or designed enquiry point for report trade barriers to trade.

The first step in the dispute settlement process is for the Member State that is bringing the complaint to request consultations with the Member State that is allegedly violating the SADC Protocol on Trade or maintaining a barrier to trade. The requested member must respond to the request within 10 days, and consultations must begin within 30 days of the request.

Example: Country A requests consultations with country B on 1 July. Country B must respond to this request for consultations by 11 July, and consultations must begin by 31 July.

If the consultations fail to reach an agreement that is satisfactory to the Member States concerned within 60 days of the request for consultations, one of the Member States may request that a panel be convened to resolve the dispute. The three-person panel will be created within 20 days of the request. Panel members may be government or non-government experts in international trade, international law, and dispute settlement.

The panel will hold hearings and the disputing Member States will present evidence in support of their positions. If the panel decides that a Member State is in violation of the SADC Protocol on Trade, that Member State should implement the panel recommendations immediately. However, if this is not possible, then the Member State will have up to six months to implement the recommendations.

Example: Country A brings a complaint against Country B, and the panel finds that Country B is violating the SADC Protocol on Trade. Country B should change its policies immediately in order to come into compliance with the Protocol on Trade.

If a Member State does not comply with the panel recommendations within the required time period, then the disputing Member States will begin negotiations on a settlement. The settlement will usually take the form of increased customs duties on goods from the

country that is in violation of the SADC Protocol on Trade. Whenever possible, customs duties will be raised on goods within the same sector.

Example: The panel finds that Country B has a tariff on oranges in violation of the Protocol on Trade, and recommends that Country B remove this tariff. Country B does not implement the panel recommendations within the required time. Country A and Country B then begin negotiations on a settlement. The result is that Country A raises customs duties on oranges imported from Country B. The customs duties are raised by an amount equal to Country B's violation of the SADC Protocol on Trade.

This kind of retaliation is called a “suspension of concessions” and is only taken as a last resort.

Institutional Structures

(Article 31)

The SADC has created several different groups of experts and government officials to oversee and implement the terms of the SADC Protocol on Trade.

Committee of Ministers responsible for Trade (CMT)

The CMT supervises the implementation of the Protocol on Trade and the work of any Committee or sub-committee established under the SADC Protocol on Trade.

Committee of Senior Officials

The Committee of Senior Officials is composed of Permanent Secretaries responsible for Trade and reports to the CMT on matters relating to provisions of the SADC Protocol on Trade, monitoring the implementation of the SADC Protocol on Trade, and supervises the Trade Negotiating Forum.

Trade Negotiating Forum (TNF)

The TNF is responsible for the conduct of SADC trade negotiations, monitoring the effects of trade liberalization, and linking trade liberalization to regional cooperation in other sectors such as energy and transportation. The TNF reports to the Committee of Senior Officials.

SADC Monitoring Unit

This Unit will assist Member States in the monitoring of the implementation of the Protocol on Trade.

Technical Committees and Sub- Committees

Specific Technical Committees and sub-committees have been established to monitor the operations of specific provisions and elements of the SADC Protocol on Trade namely:

- The Textiles and Clothing Committee (TCC)
- Sub-Committee on Customs Co-operation
- Sub-Committee on Trade Facilitation
- Technical Committee on Sugar (TCS)
- The SADC Sanitary and Phytosanitary Coordinating Committee (SADC-SPS CC)
- SPS Expert Working Groups
- The SADC Technical Regulations Liaison Committee (SADCTRLC)
- The SADC TBT Stakeholders Committee (SADC TBT SC)
- SADC SQAM Expert Group (SQAMEG)

The SADC Protocol on Trade and the World Trade Organization (WTO)

Regional Trading arrangement such as the SADC Protocol on Trade, constitute an important exception to the most-favored-nation treatment rule. GATT/WTO lays down conditions for forming such trading arrangements. All SADC Member States are also members of the World Trade Organization (WTO). The WTO rules allow WTO Member States to join regional trade agreements such as the SADC Protocol on Trade, provided that the members do not violate their commitments to other WTO members in doing so. Such arrangements are required to meet two basic conditions:

- Members of regional arrangements must remove customs duties and other barriers to trade affecting substantially all trade among themselves. (SADC settled for at least 85% of their trade).
- The arrangement should not result in the creation of new barriers to trade in comparison to what the situation was before these countries formed a regional arrangement.

The SADC Protocol on Trade is therefore designed to be in conformity with the rules of the WTO, and SADC Member States may grant greater market access to other SADC Member States than they do to non-SADC WTO members. The SADC Protocol on Trade was notified to the WTO under Article XXIV GATT, a provision that provides exemption from extended MFN treatment to all WTO Members as required under WTO.

APPENDIX I: DECLARATION BY THE PRODUCER¹

To whom it may concern

For the purpose of claiming preferential treatment under the provision of Rule 2 of the Annex of the Rules of origin for Products to be Traded between the Member States of the Southern African Development Community:

I HEREBY DECLARE:

- a) that the goods listed here in quantities as specified below have been produced by this company/enterprise/workshop/supplier.

Name and address of producer: (Postal and physical Address)	
.....	Registration No: _____
.....	
.....	

and

- b) that evidence is available that the goods listed below comply with the origin criteria as specified by the Annex on the Rules of Origin for the Southern African Development Community.

List of Goods

Commercial Description of Goods	Quantity	Criterion

Notes: This form should be completed in duplicate where the Exporter is not a Producer.

..... Stamp & Signature of the PRODUCER

¹ Copied from the SADC RoO Annex, Appendix III

APPENDIX II: SADC CERTIFICATE OF ORIGIN²

Registration No.(Optional) 1. Exporter (Name and Office Address)	3. Country Ref. No. <p style="text-align: center;">SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)</p> <p style="text-align: center;">CERTIFICATE OF ORIGIN</p>			
2. Consignee (Name and Office address)	5. For official use only			
4. Particulars of transport: 6. Marks and numbers; number and kind of package, description of goods (i) Marks & Nos. (ii) Description of goods	7. Customs Tariff No.	8. Origin Criterion (See overleaf)	9. Gross weight or other quantity	10. Invoice No. & date (Optional)
11. CUSTOMS ENDORSEMENT Declaration certified Export Document (2) Form.....N ^o Customs Office..... Issuing Country or Territory..... Date..... Signature	12. CERTIFICATION Signature..... Certificate of Customs or other Designated Authority STAMP			

² Copied from the SADC RoO Annex, Appendix II

APPENDIX III: SADC Enquiry Points for SPS Information³

ANGOLA

Ministério do Comércio
Largo 4 de Fevereiro
Palácio de Vidro, R/C
Tel/Fax: + (244 2) 31 11 91, + (244 2) 31 11 95

Democratic Republic of Congo

(Not available)

MADAGASCAR

Directeur de la Protection des Végétaux
Ministère de l'Agriculture
Antananarivo
101
Tel: + (26120) 224 1613 / 224 1614
Fax: + (26120) 225 08
E-mail: spcplabo@dts.mg

BOTSWANA

The Permanent Secretary
Ministry of Agriculture
Private bag 003
Gaborone
Tel: + (267) 39 50 500
Fax: + (267) 39 56 027

LESOTHO

(Not available)

MALAWI

Animal health:
The Director of Animal Health
Department of Animal Health and Industry
P.O. Box 2096
Lilongwe
Tel: + (265) 1 750 455 / 751 349
Fax: + (265) 1 755 912

Plant protection:

Head of Plant Protection Services
Ministry of Agriculture and Irrigation
Bvumbwe Research Station
P.O. Box 5748
Limbe
Tel: + (265) 1 471 206 / 207 / 527
Fax: + (265) 1 471 527
E-mail: pesticideboard@malawi.net

Food safety including testing and analyzing of additives and contaminants:

The Director General
Malawi Bureau of Standards
P.O. Box 946
Blantyre
Tel: + (265) 1 670 488 / 672 657
Fax: + (265) 1 670 756
E-mail: mbs@malawi.net

MAURITIUS

The Permanent Secretary:
Ministry of Agriculture, Food Technology
and Natural Resources
Attn: Mrs. Neeta Rye Leckraz
Head, Division of Plant Pathology and
Quarantine (DPPQ)
Agriculture Services

MOZAMBIQUE

Departamento de Sanidade Vegetal (Plant
Health Department)
Av. FPLM, recinto de INIA, C.P. 3658
Maputo
Tel: + (258) 460591, + (258) 460 195, +
(258) 460 254
Fax: + (258) 460591

³ Source: International Portal on Food Safety, Animal & Plant Health,

Réduit

Tel: + (230) 464 48 72

Fax: + (230) 465 95 91

NAMIBIA

Phytosanitary issues:

Division Law Enforcement

Directorate of Extension and Engineering

Private Bag 13184

Ministry of Agriculture, Water & Rural
Development

Windhoek

Tel: + (264 61) 202 21 35 / 208 71 11

Fax: + (264 61) 23 56 72

E-mail: agrlaw@iafrica.com.na

Zoosanitary issues:

Directorate of Veterinary Services

Private Bag 13184

Ministry of Agriculture, Water & Rural
Development

Windhoek

Tel: + (264 61) 208 75 05

Fax: + (264 61) 208 77 79

E-mail:

SWAZILAND

Sanitary Measures

Senior Vet Officer

Ministry of Agriculture and Cooperatives

P.O. Box 162

Mbabane

Tel: + (268) 404 2731/9

Fax: + (268) 404 9802

Phytosanitary Measures

Research Officer

Malkerns Research Station

P.O. Box 4

Mbabane

Tel: + (268) 528 3017

E-mail:

malkernsresearch@africaonline.co.sz

ZAMBIA

National Coordinator

Phytosanitary Services

Ministry of Agriculture

Private Bag 7

Chilanga

Tel: +260 1 278141/278130

Email:

SOUTH AFRICA

The Director

Private Bag X250

Pretoria

0001

Tel: + (27 12) 319 61 20

Fax: + (27 12) 326 65 41

E-mail: ditr@nda.agric.za or

secitr@nda.agric.za

TANZANIA

Head Plant Quarantine and Phytosanitary
Services

Ministry of Agriculture, Food Security and
Cooperatives

P.O Box 9071

Dar-Es-Salaam

Tel+255 22 2865642

FAX: +255 22 2865642

ZIMBABWE

Permanent Secretary

Ministry of Agriculture

P/Bag 7701

Causeway Harare

Tel: + (263 04) 706081 / 706082-9

Fax: + (263 04) 734646 / 704058

pqpsmt@zamtel.zm

Head Plant Protection Research Institute
Box CY550
Harare
Tel: +263 4700339
Email: zpqg@gta.gov.zw
ppri@gta.gov.zw

APPENDIX IV: SADC Enquiry Points for Technical Regulations and Standards⁴

ANGOLA

(Not available)

BOTSWANA

Botswana Bureau of Standards
Private Bag BO 48
Gaborone
Tel: + (267) 390 32 00
Fax: + (267) 390 31 20
E-mail: infoc@hq.bobstandards.bw

DRC

(Not available)

LESOTHO

The Standards and Quality Assurance
Section
Ministry of Industry, Trade and Marketing
P.O. Box 747
Maseru, 100
Tel: + (266) 317 454 / 320 695
Fax: + (266) 311 075 / 310 326
E-mail: Lessqa@leoco.ls

MADAGASCAR

Direction de la Normalisation et de la
Qualité (DNQ)
Service Normalisation et Règlements
(Centre Documentation)
6 bis, rue Rainandriamampandry Soarano
B.P. 454 Antananarivo (101)
Tel: + (261 20) 22 238 60 / 22 237 99
Fax: + (261 20) 22 666 45 / 22 264
26 / 22 566 01
E-mail: dnq@wanadoo.mg

MALAWI

Malawi Bureau of Standards
P.O. Box 946
Blantyre
Tel: + (265) 670 488
Fax: + (265) 670 756

MAURITIUS

Mauritius Standards Bureau
Villa Road
Moka
Tel: + (230) 433 36 48
Fax: + (230) 433 50 51 / 433 51 50

MOZAMBIQUE

Instituto Nacional de Normalização e
Qualidade
Av. 25 de Setembro, 1179 2º andar
P.O. Box 2983
Maputo
Tel: + (258) 21 303822; + (258) 21 303823
Fax: + (258) 21 304206
E-mail: innoc@emilmoz.com

NAMIBIA

Namibia Standards Information and
Quality Office (NSIQO)
Private Bag 13340
Windhoek
Tel: + (264) 61 283 7111

SOUTH AFRICA

South African Bureau of Standards (SABS)
Standards Information Centre
Private Bag X191
0001 Pretoria
Tel: + (2712) 428 6666

⁴ Source: International Portal on Food Safety, Animal & Plant Health,

Fax: + (264) 61 220 227

SWAZILAND

Quality Assurance Unit
Ministry of Enterprise and Employment
P.O. Box 451
Mbabane
Tel: + (268) 432 01
Fax: + (268) 447 11

ZAMBIA

Zambia Bureau of Standards
The Director
Box 50259
ZA 15101
Ridgeway
Lusaka
Tel: + (260 1) 291 038 / 231 385
Fax: + (260 1) 238 483
E-mail: zabs@zamnet.zm

Fax: + (2712) 428 6928

E-mail: info@sabs.co.za

TANZANIA

The Director
Tanzania Bureau of Standards
PO Box 9524
Dar es Salaam
Tel: + (255) 22 2450 298 / 22 2450 206
Fax: + (255) 22 2450 983 / 059
E-mail: tbsinfo@uccmail.co.tz

ZIMBABWE

*Standards, technical regulations and
certification schemes:*

The Director General
Standards Association of Zimbabwe
P.O. Box 2259
Northend Close, Northridge Park
Borrowdale
Harare
Tel: + (263 4) 882 017-19 / 885 511/2
Fax: + (263 4) 882 020
E-mail: info@saz.org.zw

APPENDIX V: Trade Monitoring and Compliance Enquiry Points

ANGOLA

BOTSWANA

DEMOCRATIC REPUBLIC OF CONGO

LESOTHO

MADAGASCAR

MALAWI

MAURITIUS

MOZAMBIQUE

NAMIBIA

SOUTH AFRICA

SWAZILAND

TANZANIA

ZAMBIA

ZIMBABWE

Director of Foreign Trade
Ministry of Commerce, Trade and Industry
PO Box 31968
Lusaka
Tel: + (2601) 22 14 75
Fax: + (2601) 22 66 73