ANNEX I

Concerning The Rules Of Origin For Products To Be Traded Between The Member States Of The Southern African Development Community

PREAMBLE

The High Contracting Parties:

AWARE that they have undertaken to progressively establish a Development Community within which Customs duties and other charges of equivalent effect imposed on imports shall be gradually reduced and eventually eliminated and non-tariff barriers to trade among Member States shall be removed, and all trade documents and procedures shall be harmonised;

RECOGNIZING that clear and predictable rules of origin and their application should facilitate the flow of regional trade and economies of scale in the Region;

RECOGNIZING that it is desirable to provide for transparency of laws, regulations and practices regarding rules of origin and that the scope of this Annex is to provide for a consolidated text, incorporating all provisions concerning the origin of goods, within the context of this Protocol, and aimed at facilitating implementation and administration of these rules;

DESIRING to ensure that rules of origin themselves do not create unnecessary obstacles to trade and facilitate the implementation thereof by Customs administrations by providing an exhaustive and complete text;

TAKING INTO ACCOUNT the provisions of Article 12 of this Protocol which require that the rules of origin for products that shall be eligible for Community treatment shall be set out in Annex I to this Protocol;

HEREBY AGREE as follows:

RULE 1

DEFINITIONS AND INTERPRETATION

1. Definitions

For the purposes of this Annex:

"Chapters" and "Headings"	mean the chapters and the headings (four-digit codes) used in the Harmonised Commodity Description and Coding System, referred to in this Annex as "the Harmonised System" or "HS";
"Classified"	refers to the classification of a product or material under a particular HS heading;
"Consignment"	means products which are either sent simultaneously from one exporter to one consignee or covered by a single transport document covering their shipment from the exporter to the consignee or, in the absence of such a document, by a single invoice;
"Customs value"	means the value as determined in accordance with the 1994 Agreement on implementation of Article VII of the GATT (WTO Agreement on Customs Valuation);
"Ex-works price"	means the price paid for the product ex works to the manufacturer in any Member State in whose undertaking the last working or processing is carried out, provided the price includes the value of all the materials used, plus the profit and minus any internal taxes which are, or may be, repaid when the product obtained is exported;
"Goods"	means both materials and products;
"MMTZ"	means the Republic of Malawi, the Republic of Mozambique, the United Republic of Tanzania and the Republic of Zambia;
"Manufacture"	means any kind of working or processing, including assembly or specific operations;
"Material"	means any ingredient, raw material, component or part and the like, used in the manufacture of the product;
"Product"	means the product being manufactured, even if it is intended for later use in another manufacturing operation;
"SACU"	means the Southern African Customs Union of which the members are the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia, the Republic of South Africa and the Kingdom of Swaziland;
"Territories"	includes territorial waters;

"Value of materials"	means the customs value at the time of importation of the non-originating materials used or, if this is not known and cannot be ascertained, the first ascertainable price paid for the materials in any Member State. The calculations of the Customs value of the non-originating materials will include: (a) the cost of transport of the imported goods to the port or place of importation; (b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and (c) the cost of insurance, provided that the amount of any transport costs incurred in transit through Member States should be deducted from the calculations of the Customs value of the non-originating materials as provided for in the definition herein;
"Value of the originating materials"	means the value of such materials as defined in "value of materials" above, applied *mutatis mutandis*.

RULE 2

ORIGIN CRITERIA

1. General requirements

For the purpose of implementing this Protocol, goods shall be accepted as originating in a Member State if they are consigned directly from a Member State to a consignee in another Member State and:

(a) they have been wholly produced in any Member State as provided for in Rule 4 of this Annex; or

(b) they have been obtained in any Member State incorporating materials which have not been wholly produced there, provided that such materials have undergone sufficient working or processing in any Member State within the meaning of paragraph 2 of this Rule.

2. Sufficiently worked or processed products

(a) For the purpose of this Rule, products, which are not wholly produced, are considered to be sufficiently worked or processed when the conditions set out in the list in Appendix I of this Annex are fulfilled.

(b) The conditions referred to in sub-paragraph (a) indicate, for all products covered by this Protocol, the working and processing which must be carried out on non-originating materials used in manufacturing and apply only in relation to such materials. Accordingly, it follows that if a product, which has acquired originating status by fulfilling the conditions set out in this list, is used in the manufacture of another product, the conditions applicable to the product in which it is incorporated do not apply to it, and no account shall be taken of the non-originating materials which may have been used in its manufacture.

(c) Notwithstanding the provisions of sub-paragraph (a), products of HS chapters 50 to 63 exported to SACU by MMTZ Member States will be considered to be sufficiently worked or processed when the conditions set out in column 4 of the list in Appendix I are fulfilled, subject to such quantitative limits, time periods and arrangements for the administration and enforcement of such quantitative limits as agreed upon by the CMT on 4 August 2000.

3. Value tolerance

(a) Notwithstanding the provisions of paragraph 2(b) of this Rule, non-originating materials which, according to the conditions set out in the list in Appendix I, should not be used in the manufacture of a product may nevertheless be used, provided that:

(i) their total value does not exceed 15 per cent of the ex-works price of the product; and

(ii) any of the percentages given in the list for the maximum value of non-originating materials are not exceeded through the application of this sub-paragraph.

(b) The provisions of sub-paragraph (a) shall not apply to the products falling within HS chapters 50 to 63, 87 and 98.

4. Cumulative treatment

(a) For the purposes of implementing this Annex, the Member States shall be considered as one territory.

(b) Raw materials or semi-finished goods originating in accordance with the provisions of this Annex in any of the Member States and undergoing working or processing either in one or more Member States shall, for the purpose of determining the origin of a finished product, be deemed to have originated in the Member State where the final processing or manufacturing takes place.

5. Non-eligibility of certain agricultural products

Notwithstanding any provision in this Annex, agricultural products, whether or not processed in any way, obtained, or partially obtained from food aid or monetization or similar assistance measures, including arrangements based on non-commercial terms, shall not be eligible for any

preferential treatment under this Protocol.

RULE 3

PROCESSES NOT CONFERRING ORIGIN

Notwithstanding the provisions of paragraph 1(a) of Rule 2 of this Annex, the following operations and processes shall be considered as insufficient to support a claim that goods originate in a Member State:

1. Packing, packaging and other preparations or processes for shipping and for sales:

   (a) packing, repacking or retail packaging, including bottling, placing in flasks, bags, cases and boxes, fixing on cards or boards and all other simple packing operations;

   (b) changes of packing and breaking up or assembly of consignments;

   (c) operations to ensure the preservation of merchandise in good condition during transportation and storage, such as ventilation, spreading out, drying, freezing, making into a solution, removal of damaged parts and similar operations. This also includes loading, reloading or any other operation necessary to maintain the merchandise in good condition.

2. Mere dilution, blending and other types of mixing:

   (a) simple mixing of ingredients imported from outside the Member States;

   (b) mere dilution with water or another substance that does not materially alter the characteristics of the material;

   (c) the addition of substances such as anti-caking agents, preservatives, wetting agent and the like;

   (d) diluting chemicals with inert ingredients to bring them to the standard degree of strength;

   (e) for the purposes of this sub-paragraph, dilution shall be taken not to include:

      (i) either mixing together of two bulk medicinal substances followed by the packaging of the mixed products into individual doses for retail sale; or

      (ii) the addition of water or another substance to a chemical compound under pressure which results in a reaction creating a new chemical compound.

3. Simple assembly or combining operations.

4. Other minor operations:

   (a) ornamental or finishing operations incidental to textile production designed to enhance the marketing appeal or ease the product's case, such as simple hand dyeing and printing, embroidery and applique, pleating, hemstitching, stone or acid washing, permanent pressing, or the attachment of accessories, findings and trimmings. The rules of origin for products of HS chapters 50 to 63 exported to SACU by MMTZ Member States, according to the provisions of paragraph 2(c) of Rule 2, may allow minor operations that would otherwise be non-origin conferring processes;

   (b) dismantling or disassembly;

   (c) repairs and alterations, washing, laundering or sterilisation;

   (d) application of preservatives or decorative coatings, including lubricants, protective encapsulation, preservative or decorative paint or metallic coatings;

   (e) testing, sorting or grading;

   (f) marking, labeling or affixing other like distinguishing signs on products or their packages;

   (g) simple operations such removal of dust, sifting or screening, sorting, classifying and matching, including the making up of sets, goods, greasing, washing, painting or cutting up.

5. Slaughter of animals.

6. Any process or work in respect of which it may be demonstrated, on the basis of the preponderance of evidence, that the sole objective was to circumvent these rules.

7. A combination of two or more insufficient working or processing operations does not confer origin, regardless of whether the product-specific rules of origin have been satisfied or not.

8. All the operations carried out in the Member States on a given product shall be considered together when determining whether they are to be regarded as insufficient within the meaning of this Rule.

RULE 4

GOODS WHOLLY PRODUCED IN THE MEMBER STATES

1. For the purposes of paragraph 1(a) of Rule 2 of this Annex, the following shall be regarded as wholly produced in the Member States:

   (a) Mineral products extracted from their ground or seabed;

   (b) Vegetable products harvested there;

   (c) Live animals born and raised there;

   (d) Products obtained there from live animals;

   (e) Products obtained by hunting or fishing conducted there;

   (f) Products of sea fishing and other products taken from the sea by their vessels;

   (g) Products made on board their factory ships exclusively from products referred to in sub-paragraph (f);

   (h) Used articles collected there fit only for the recovery of raw materials;

   (i) Waste and scrap resulting from manufacturing operations conducted there;

   (j) Products produced there exclusively from one or both of the following:

      (i) products specified in sub-paragraphs (a) to (i);

      (ii) materials containing no element imported from outside the Member States or of undetermined origin.

2. In determining the place of production of marine, river, or lake products and goods in relation to a Member State, a vessel of a Member State shall be regarded as part of the territory of that Member State. In determining the place from which goods originated, marine, river or lake products taken from the sea, river or lake or goods produced therefrom at sea or on a river or lake shall be regarded as having their origin in the territory of a Member State and have been brought directly to the territory of the Member State.

3. For the purpose of this Annex, a vessel shall be regarded as a vessel of a Member State if it is registered in a Member State and satisfies one of the following conditions:

   (a) The vessel sails under the flag of a Member State;

   (b) At least 75 percent of the officers and crew of the vessel are nationals of a Member State;

   (c) At least the majority control and equity holding in respect of the vessel are held by

nationals of a Member State or institution, agency, enterprise or corporation of the Government of such Member State.

4. Electrical power, fuel, plant machinery and tools used in the production of goods shall always be regarded as wholly produced within the Region when determining the origin of the goods.

RULE 5

UNIT OF QUALIFICATION

1. Each item in a consignment shall be considered separately.

2. Notwithstanding the provisions of paragraph 1 of this Rule:

   (a) Where the Harmonised System specifies that a group, set or assembly of article is to be classified within a single heading, such a group, set or assembly shall be treated as one article;

   (b) Tools, parts and accessories which are imported with an article, and the price of which is included in that of the article or for which no separate charge is made, shall be considered as forming a whole with the article, provided that they constitute the standard equipment customarily included in the sale of articles of that kind;

   (c) Notwithstanding the provisions of sub-paragraphs (a) and (b) of this paragraph, goods shall be treated as a single article if they are so treated for purposes of assessing Customs duties on like articles by the importing Member State.

3. An un-assembled or dis-assembled article which is imported in more than one consignment because it is not feasible for transport or production reasons to import it in a single consignment, shall be treated as one article.

RULE 6

SEPARATION OF MATERIALS

1. For those products or industries where it would be impracticable for the producers to separate physically materials of similar character but different origin used in the production of goods, such separation may be replaced by an appropriate accounting system which ensures that no more goods are deemed to originate in the Member State than would have been the case if the producer had been able to physically separate the materials.

2. Any accounting system shall conform to such conditions as may be agreed upon by the CMT in order to ensure that adequate control measures shall be applied.

RULE 7

TREATMENT OF MIXTURES

1. In the case of mixtures, not being groups, sets or assemblies of goods dealt with under Rule 5, any product resulting from the mixing together of goods originating in the Member States with goods which would not qualify as originating in the Member States, would not qualify as originating if the characteristics of the product as a whole are not different from the characteristics of the goods which have been mixed.

2. In the case of particular products where it is recognised by the CMT to be desirable to permit mixing of the kind described in paragraph 1 of this Rule, such products shall be accepted as originating in the Member States in respect of such part thereof as may be shown to correspond to the quantity of goods or originating in the Member States used in the mixing, subject to such conditions as may be agreed by the CMT.

RULE 8

TREATMENT OF PACKING

1. Where for purposes of assessing Customs duties, a Member State treats the origin of the goods separately from the origin of the packing, it may also, in respect of its imports cosigned from another Member State, determine separately the origin of such packing.

2. Where paragraph 1 of this Rule is not applicable, packing shall be considered as forming a whole with the goods and no part of any packing required for their transport or storage shall be considered as having been imported from outside the Member States when determining the origin of the goods as a whole

3. For the purposes of paragraph 2 of this Rule, packing with goods which are ordinarily sold at retail shall not be regarded as packing required for the transport or storage of goods.

4. Containers which are purely for the transport and temporary storage of goods and are to be returned shall not be subject to Customs duties and other charges of equivalent effect. Where containers are not to be returned, they shall be treated separately from the goods contained in them and be subjected to Customs duties and other charges of equivalent effect.

RULE 9

DOCUMENTARY EVIDENCE

1. The claim that goods shall be accepted as originating from a Member State in accordance with

the provision of this Annex shall be supported by a certificate given by the exporter or their authorized representative in the form prescribed in Appendix II of this Annex. The certificate shall be authenticated with a seal by an authority designated for this purpose by each Member State.

2. Every producer, where such producer is not the exporter, shall, in respect of goods intended for export, furnish the exporter with a written declaration in conformity with Appendix III of this Annex to the effect that the goods qualify as originating in the Member State under the provisions of Rule 2 of this Annex.

3. The competent authority designated by an importing Member State may in exceptional circumstances and notwithstanding the presentation of a certificate issued in accordance with the provisions of this Rule, require, in case of doubt, further verification of the statement contained in the certificate. Member States, through their competent authorities, shall assist each other in this process. Such further verification should be made within three months of the request being made by a competent authority designated by the importing Member State. The form used for this purpose shall be that contained in Appendix IV to this Annex.

4. The importing Member State shall not prevent the importer from taking delivery of goods solely on the grounds that it requires further evidence, but may require security for any duty or other charge which may be payable: provided that where goods are subject to any prohibitions, the conditions for delivery under security shall not apply.

5. Copies of certificates of origin and other relevant documentary evidence shall be preserved by the appropriate authorities of the Member States for at least five years.

6. All Member States shall deposit with the Secretariat the names of Departments and Agencies authorized to issue the certificates required under this Annex, specimen signatures of officials authorized to sign the certificates and the impressions of the official stamps to be used for that purpose, and those shall be circulated to the Member States by the Secretariat.

RULE 10
INFRINGEMENT AND PENALTIES

1. The Member States undertake to introduce legislation where such legislation does not exist, making such provision as may be necessary for penalties against persons who, in their territories, furnish or cause to be furnished documents which are untrue in any material sense, particularly in support of a claim in another Member State.

2. Any Member State to which an untrue claim is made in respect of the origin of goods shall

immediately bring the issue to the attention of the exporting Member State from which the untrue claim is made, in accordance with the provisions on mutual assistance and co-operation in customs matters as contained in Appendix I of Annex II of this Protocol.

3. Continued infringement by a Member State of the provisions of this Annex may be dealt with in accordance with the provisions of Annex VI of this Protocol.

RULE 11
DEROGATIONS

1. Notwithstanding the provisions of Rules 2 and 3 of this Annex, derogations may be granted by the CMT where the development of existing industries or the creation of new industries is justified.

2. The Member State shall make the request for a derogation for existing or new industries to the CMT.

3. In order to facilitate the examination of the request for derogation, the Member State making the request shall provide the CMT with the fullest possible information as to the reason for the request.

4. The CMT shall respond to each Member State's request which is duly justified and in conformity with this Rule, provided no serious injury is caused to any established industy within the Region.

5. The CMT shall take steps necessary to ensure that a decision is reached as soon as possible and in any case not later that 90 working days after the request is received.

6. The derogation shall be valid for a specific period to be determined by the CMT.

RULE 12
REGULATIONS

The CMT shall adopt regulations to facilitate the implementation of this Annex.