



AUDIT OF THE IMPLEMENTATION OF THE SADC PROTOCOL ON TRADE

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List of Acronyms

ACP	African, Caribbean and Pacific states
ASYCUDA	Automated System for Customs Data
CET	Common External Tariff
CMS	Customs Management System
CMT	Committee of Ministers responsible for trade matters
COMESA	Common Market for East and Southern Africa
DRC	Democratic Republic of Congo
EAC	East African Community
EU	European Union
FTA	Free Trade Area
HS	Harmonized System
IT	Information Technology
LDC	Least Developed Countries
MAA	Mutual Administrative Assistance
MFN	Most Favoured Nation Treatment
MMTZ	Malawi Mozambique Tanzania and Zambia
RICB	Regional Integration Capacity Building
RISDP	Regional Indicative Strategic Development Plan
RSA	Republic of South Africa
SACU	Southern African Customs Union
SAD	Single Administrative Document
SADC	Southern African Development Community
SCCC	Sub-Committee on Customs Cooperation
SPS	Sanitary and Phytosanitary measures
TCC	Textiles and Clothing Committee
TCS	Technical Committee on Sugar
TBT	Technical Barriers to Trade
TIMS	Trade Information Management System
TOR	Terms of Reference
WCO	World Customs Organisation
WTO	World Trade Organisation

Executive Summary

In 2004, the Mid-Term Review (MTR) of the Protocol on Trade identified a number of implementation issues including rules of origin constraints, back-loaded tariff liberalization schedules, and inconsistency in executing tariff reductions and recommended actions to address the implementation issues. This Audit report presents the current implementation status for each of these issues. The findings are summarised below:

- The audit findings found that four Member States – Malawi, Mozambique, Zimbabwe and Tanzania are not up to date on the implementation of their tariff phase down schedules.
- Malawi has made only one tariff reduction in 2001. No further reductions have been implemented by Malawi.
- Mozambique and Tanzania made block approvals of their tariff phase down programmes but have not implemented these in accordance with the agreed phase down timetable.
- Zimbabwe has not implemented the tariff reduction offer to SADC excluding South Africa. Their tariff reduction for 2007 is the offer to South Africa, which applies to all SADC countries that do not have bilateral or other preferential trading arrangements with Zimbabwe.
- The Non-SACU members who heavily back-loaded their tariff preference offers will experience a decline in tariff revenue as they eliminate tariffs on more than 50 percent of their tariff lines in a one year period. However, in all cases the reduction in revenue is expected to be less than 5 percent of total government revenue.
- Following unilateral tariff reductions to the MFN rates by some Member States, a number of tariff lines MFN rates are lower than current SADC applied rates. Furthermore Tanzania has implemented concessions to Kenya and Uganda through implementing the EAC CET.
- Outside of SACU most of the intra-SADC trade is taking place under either COMESA or bilateral preferences. There has been a very modest increase in trade between the non-SACU members and South Africa except for the recent increase in apparel exports from Mauritius following the removal of the SACU tariffs.
- Following the implementation of the SADC Protocol on Trade several non-SACU countries (Malawi, Mozambique and Zimbabwe) renewed 'dormant' bilateral agreements to incorporate reciprocal preferences.
- The consultants found that most Member States had not revised their tariff offers for sensitive products, with the exception of Mauritius and Zimbabwe, which had updated a small number of products.

- The new trade being created by the SADC Protocol on Trade is modest-the private sector has complained about the complexity of the SADC rules of origin. Some progress to complete outstanding issues for a number of products has been recorded.
- All SADC members were found to be implementing either all or most of the trade facilitation instruments that had been rolled out by SADC, however, there are important trade facilitation instruments governing transit trade and bond guarantees that remain at the pilot stage and have yet to be rolled out to the region. These need to be implemented to enable Member States to maximize the benefits from establishing an FTA.
- Member States recognized the need for more capacity building for trade officials, customs officers and the private sector (customs brokers and traders) on the administration of the rules of origin, customs valuation and administrative procedures.
- There is a need to publicize the benefits of SADC trade integration more widely. Both traders and government officials at many of the border posts visited were lacking Information on the SADC Protocol on Trade.
- Effective implementation of the FTA will facilitate the implementation of the SADC Customs Union Implementation Roadmap.

1.1 Background to the Study

The Southern African Development Community Protocol on Trade was signed in Maseru in August 1996 by eleven Member States and came into force on January 25, 2000. Tariff phase down commenced on September 1, 2000¹, and is scheduled to result in a WTO compliant Free Trade Area by January 1, 2008². The SADC Protocol on Trade is being implemented by Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. In addition, Madagascar acceded to the SADC Protocol on Trade in 2006 and has submitted a tariff offer that has now been accepted and is ready to commence implementation. Angola also acceded to the Protocol and is expected to submit a tariff offer in 2007. The Democratic Republic of Congo is not yet party to the Protocol on Trade.

In 2004, the Mid-Term Review (MTR) of the Protocol on Trade identified a number of implementation issues including rules of origin constraints, back-loaded tariff liberalization schedules, and inconsistency in executing tariff reductions and made a number of recommendations. The Committee of Ministers (CMT) accepted the key recommendations of the Mid Term Review with the following comments:

1. *The current SADC Rules of Origin are complex and restrictive and SADC should strive for clear, straightforward, transparent, and predictable Rules of Origin that will encourage trade;*
2. *For consistency and transparency in implementation, tariff phase down schedules should be effected annually on January 1;*
3. *For the purposes of harmonization, Member States should update their tariff offers, which originally were based on the Harmonized System (HS) 1996 tariff classification, to the current HS 2002;*
4. *For countries that had back-loaded their tariff cuts, it was suggested that they should implement their tariff cuts twice a year;*
5. *As far as possible, tariffs below 5 % should be eliminated;*
6. *In cases where the Most Favoured Nation (MFN) rate has been reduced Member States are encouraged to also reduce the SADC preference rate in order to ensure a minimum preference margin;*
7. *Initial phase down schedules for sensitive products should be reviewed in view of the decision by SADC to move towards a Customs Union by 2010 as well as the need to take into account latest economic developments;*
8. *There is need for improvement of the capacity for monitoring and communication among all stakeholders on the implementation of the SADC Protocol on Trade both at national and regional level. A section within the Trade, Industry, Finance and Investment (TIFI) Directorate, dedicated solely to implementation of the SADC Protocol on Trade, would be able to undertake the following:*

¹ This is the case for SACU and Mauritius. The rest of member states started implementation from 2001.

² In terms of Article XXIV (GATT, 1994), interpreted to mean that at least 85 per cent of intra-SADC trade would be duty free and no major sector would be excluded.

- *Improve the collection and dissemination of information including the status of implementation, trade flow data and changes in tariff regimes;*
- *Update and verify the original tariff phase down offers against the gazetted schedules in order to reflect any changes in coding systems or in the overall tariff regime.*

Following the decisions of the CMT and working through the Trade Negotiating Forum, SADC Secretariat began working with Member States to implement the above recommendations.

The SADC Regional Indicative Strategic Development Plan (RISDP), finalized in 2003, recommended that SADC establish a customs union to further regional integration. In 2006, following this recommendation, the SADC Council of Ministers and the Extra-Ordinary Summit formally agreed to begin work on the creation of a SADC Customs Union. Both bodies endorsed the following actions:

1. *That the adopted recommendations from the Mid Term Review be expeditiously implemented;*
2. *That the Secretariat undertakes an assessment and outcomes audit of Member States' gazetted tariff schedules, planned for the first quarter of 2007. The results of the audit will inform SADC of compliance with their Protocol on Trade commitments ahead of the coming into force of the FTA in 2008;*
3. *That the negotiations on revised and more flexible rules of origin be finalized by the first quarter of 2007;*
4. *That the Secretariat set up an effective monitoring mechanism to assist Member States in the implementation of the Protocol on Trade;*
5. *That the Ministerial Task Force develops an Action Plan for the monitoring and elimination of NTBs in the first quarter of 2007.*

On the basis of this mandate, the SADC Secretariat hired independent consultants to assess the status of Member States implementation of the SADC Protocol on Trade. This report contains the findings of that audit.

1.2 Structure of the Report

The report is divided into five chapters. Chapter 1 outlines the background to the Trade Audit. Chapter 2 outlines the approach of the audit. Chapter 3 presents the findings on the implementation of the tariff phase down schedules, the treatment of sensitive sectors, the significance of other preferential trade agreements, the operation of the rules of origin, and the pattern of trade under the SADC Protocol on Trade. Chapter 4 addresses issues surrounding the implementation and conformity with the trade facilitation instruments focusing on customs procedures and documentation, WTO customs valuation, Harmonized System coding and capacity building initiatives. Finally, Chapter 5 concludes with a series of issues that Member states could consider. The Terms of reference for the study are attached as **Annex V**.

2.1 Methodology

The Council of Ministers agreed that the audit would be conducted through a review of relevant records at both the SADC Secretariat and in Member States' capitals. In addition, the audit included site visits to all 11 countries to examine implementation of the SADC Protocol on Trade.

2.1.1 Desk research

In preparation for the site visits, the consultants undertook an in-depth review of the literature on the SADC Protocol on Trade and met with officials from the Directorate of Trade, Industry, Finance, and Investment (TIFI) at the SADC Secretariat. This review included a thorough evaluation of SADC Member States' tariff offers, gazetted statutory instruments, tariff schedules, SADC publications, Summit and Ministerial decisions, decisions of the Sub-Committee on Customs Cooperation (SCCC) and relevant website data. Information gathered during this process was analysed and used to prepare the audit checklist for the site visits. The checklist was prepared on the basis of the following main focus areas:

- Tariff phase down;
- Customs trade facilitation instruments;
- Capacity building focused on the training of Customs officers and the implementation of the WTO Agreement on Customs Valuation.

All of the Member States implementing the SADC Protocol on Trade were audited. The consultants prepared an audit checklist, which was submitted to and approved by the SADC Secretariat as part of the Inception Report. The Secretariat then circulated the work plan, travel schedule, and audit checklist to all the SADC Member States' implementing the SADC Protocol on Trade.

2.1.2 Field Work

Following the desk research, the consultants commenced the site visit audits using the audit checklist. The first interviews were undertaken in Botswana to test the audit questionnaire. This was then rolled out to the other countries.

In each country the consultants visited the Ministries of Trade and Finance, Customs Departments, Revenue Authorities offices, and border posts (see Annex I). Meetings were also held with Chambers of Commerce, Associations of Customs Brokers, and Exporters' Associations. Private companies were included in the discussions in order to obtain their perspective on the implementation of the SADC Protocol on Trade. The audit research team conducted its fieldwork from April 2007 through the first week of June 2007.

The Mid-Term Review previously recommended that Member States gazette their SADC tariff reductions on 1 January of each year to promote consistency and transparency in the implementation of the tariff phase downs. To check compliance with this recommendation the consultants collected hard and/or soft copies of the

gazetted 2007 SADC tariff schedules and Draft Statutory Instruments prepared by the Member States awaiting publication. For countries with integrated tariff schedules that incorporate the SADC Tariff schedule, the consultants collected both the schedule and the relevant Government Notice where these were readily available.

The auditors used WCO based correlation tables (see **Annex II**) to check Member States' compliance with the MTR requirement that Member States update their tariff schedules to the 2002 version of the Harmonized System (HS). Comparisons between hard and soft copies of tariff schedules were also carried out on selected tariff lines. Visits were made to both headquarters and selected border points to check if the tariff rates applied at the Customs headquarters were the same as those applied at the borders. This comparison was made irrespective of whether hard copies or computer-based tariff schedules were used, and regardless of the IT system in place (e.g. ASYCUDA++, TIMS or CMS).

The consultants carried sample copies of the SADC Trade Facilitation instruments with them in order to check whether relevant officials had copies with them for daily reference. This procedure included checking with the designated unit responsible for the verification and certification of origin.

To assess the training and progress on capacity building, the consultants visited the Customs training facilities in each country and held meetings with the training manager and training officers. In the event that a Member State did not have a customs school, the consultants held meetings with the relevant training officers.

The implementation of the WTO Agreement on Customs Valuation was confirmed through interviews with both the customs authorities (at Headquarters and the borders) and the private sector representatives. The meetings included both customs brokers and members of business associations such as Chambers of Commerce.

Finally, trade data was collected from member states and SADC Secretariat and used to assess the impact of the SADC tariff liberalization process on intra-SADC trade flows. The analysis was limited by the fact that trade data was either not available or final for 2005 and 2006 for some countries. In one instance no trade data was available since the manual methods used to collect the data raised doubt about its accuracy and reliability. Going forward Member States should agree on a standard format for submitting trade data to the SADC Secretariat in order to permit routine reporting and analysis of the SADC Protocol on Trade.

3.1 Introduction

The SADC Protocol on Trade commits the signatories to the establishment of a Free Trade Area (FTA). Following extensive negotiations through 1996-2000 Member States agreed a series of tariff phase down schedules that would result in 85 per cent of all intra-SADC trade being duty free by 2008³, with the remaining 15 per cent consisting of sensitive products being liberalized by 2012. In implementing the tariff phase downs, the Mid-Term Review also recommended that sensitive products be fast-tracked if the SADC FTA and Customs Union were to be achieved as intended in 2008 and 2010, respectively.

This chapter documents the implementation of the agreed tariff phase down schedules, the treatment of sensitive sectors and products, 'revitalized' preferential trade arrangements between Member States and third parties, the operation of the rules of origin and also contains a preliminary assessment of the impact of the Protocol on the pattern of trade within SADC.

3.2 Tariff Phase Down

The SADC tariff reduction programme grouped the SADC Member States into three clusters based on the level of economic development: Developed, Developing, and Least Developed. Each cluster was scheduled to implement their tariff phase-down based on different timetables. Countries considered "Developed" (SACU⁴) were expected to front-load their tariff reductions. Zimbabwe and Mauritius were both considered Developing countries, and permitted to mid-load their tariff reductions and achieve zero tariffs by 2008. While the LDC's namely, Malawi, Mozambique, Tanzania and Zambia were permitted to back-load their tariff reductions in order to eliminate tariffs on 85 per cent of products by 2008 and on virtually all products by 2012.

It was agreed to allocate tariffs into four categories:

- Tariff lines that will be reduced to zero upon implementation of the Protocol (Category A);
- Tariff lines that will be removed within one to eight years (Category B);
- Sensitive products, which should not exceed 15 per cent of total intra-SADC trade and will be removed between eight and twelve years (i.e. 2008-2012). The Mozambique submission for sensitive products was over a 15 year period –this was adopted as part of the implementation agreement in 2000; and
- Tariff lines that will be excluded from preferential tariff treatment under Articles 9 and 10 of the Protocol. (Category E).

SADC Member States are required to deposit their Instruments of Implementation with the SADC Secretariat to both implement their tariff offers and receive

³ The 85% is based on the 1996 trade flows.

⁴ SACU was defined as developed because of South Africa and the fact that SACU has a Common External tariff.

concessions from other Members. Tariff reductions must be published by each state on 1 January of each year.

Each non-SACU SADC member of the Protocol submitted two tariff offers based on the HS 1996 coding system: one applicable to all SADC members except South Africa; and the other applicable to South Africa⁵. SACU members submitted a single offer applicable to non-SACU members. Table 3.1 shows duty elimination in terms of tariff lines applied by Malawi, Mauritius, Mozambique, Tanzania, Zambia and Zimbabwe towards other SADC members excluding South Africa. Table 3.2 shows duty elimination for the same countries vis-à-vis South Africa.

The tables highlight that the burden of adjustment for the tariff phase down in LDCs is heavily weighted towards the years 2007 and 2008. This is particularly significant for the offers made to South Africa by Malawi, Mozambique, Tanzania, and to a lesser extent Zambia. The number of product lines excluded from tariff reductions is small on the offers to SADC, however, this is not the case with the offers to South Africa where Mozambique, Tanzania and Zimbabwe permanently exclude 520, 389 and 1,285 tariff lines respectively.

Table 3.1 SADC Tariff Phase Down Offers: Ex South Africa
(Per Cent of Tariff Lines at Zero)

Country offering Preference	#Tariff Lines	2001 %	2005 %	2006 %	2007 %	2008 %	2012 %
Malawi	5,443	33.4	33.4	48.7	85.3	85.3	99.7
Mauritius	5,479	69.7	90.5	90.5	90.5	90.5	100.0
Mozambique	5,246	30.1	30.1	30.1	30.1	94.0	99.6
SACU	7,802	63.9	94.6	99.3	99.3	99.3	99.3
Tanzania	6,215	17.5	24.4	42.8	43.1	86.3	99.3
Zambia	6,066	54.2	54.2	95.9	95.9	95.9	100.0
Zimbabwe	7,167	30.7	30.7	72.2	72.2	89.8	98.7

Source: Derived from Tariff Offers

Table 3.2 SADC Tariff Phase Down Offers: South Africa
(Per Cent of Tariff Lines at Zero)

Country offering Preference	#Tariff Lines	2001 %	2005 %	2006 %	2007 %	2008 %	2012 %
Malawi	5,443	33.4	33.4	34.8	34.8	84.9	99.7
Mauritius	5,479	69.4	69.7	69.7	90.5	90.5	100.0
Mozambique	5,246	28.1	28.1	28.1	28.1	92.6	92.6
Tanzania	6,215	15.7	15.7	15.7	15.9	84.6	99.3
Zambia	6,066	32.1	32.1	40.0	40.0	95.9	100.0
Zimbabwe	5,957	32.1	44.0	48.4	55.4	71.6	82.1

Source: Derived from Tariff Offers

⁵ Some SADC members have updated these offers to HS 2002. This has created some difficulty with regard to the status of implementation and matching the original tariff offer with the new coding system.

Malawi: For the SADC countries excluding South Africa, 33.4 per cent of *Malawi's* total tariff lines⁶ were duty-free (Category A) for qualifying products. Based on 2002-2004 imports from SADC members this accounts for 24.0 per cent of the imports from non-SACU SADC countries.⁷ By 2012 this figure is scheduled to increase to 99.6 of tariff lines and 84.3 per cent of imports will be duty free. In regards to South Africa, 33.4 per cent of Malawi's total tariff lines were duty-free for products of South African origin. Based on 2002-2004 imports from South Africa this is 24.9 per cent of imports.⁸ By the end of 2012, 99.7 percent of tariff lines will be duty free representing 87.7 percent of South African imports.

Mauritius: 69.7 per cent of *Mauritius'* total tariff lines⁹ were duty-free for products of SADC origin (except RSA). Based on 2002-2004 imports from SADC members (excluding RSA), 40.3 per cent would enter duty free.¹⁰ By 2012, these figures increase to 100 and 96.4 per cent, respectively. 69.4 per cent of Mauritius' total tariff lines were duty-free for products of South African origin; in terms of 2002-2004 imports from South Africa, the corresponding figure amounts to 53.6 per cent.¹¹ By the end of the implementation period (2012), these figures increase to 100 per cent and 89.7 per cent, respectively.

Mozambique: 30.1 per cent of *Mozambique's* total tariff lines¹² were duty-free for products of SADC origin (except RSA); in terms of 2002-2004 imports from SADC members (excluding RSA), the corresponding figure amounts to 53.2 per cent.¹³ By the end of 2012, these figures increase to 99.5 and 99.7 per cent, respectively. 28.1 per cent of Mozambique's total tariff lines were duty-free for products of South African origin; in terms of 2002-2004 imports from South Africa, the corresponding figure amounts to 22.2 per cent¹⁴. By the end of the implementation period (2015), these figures increase to 99.6 per cent and 81.6 per cent, respectively.

⁶ Malawi's tariff schedules applied to SADC members and to RSA are each composed of 5,443 tariff lines at the HS 8-digit level. All lines contain *ad valorem* rates. The base rates used by Malawi for implementation of tariff liberalization are MFN 1998 rates.

⁷ Trade figures are based on the average value of Malawi's imports from SADC members (excluding RSA) in 2002-2004, involving 2,606 tariff lines (47.9 per cent of total tariff lines).

⁸ Trade figures are based on the average value of Malawi's imports from South Africa in 2002-2004, involving 4,381 tariff lines (80.1 per cent of total tariff lines).

⁹ Mauritius' tariff schedules applied to SADC members and to RSA are each composed of 5,479 tariff lines at the HS-8 digit level. All lines contain *ad valorem* rates. The base rates used by Mauritius for implementation of tariff liberalization are MFN 1999 rates.

¹⁰ Trade figures are based on the average value of Mauritius' imports from SADC Members (excluding RSA) in 2002-2004, involving 445 tariff lines (8.1 per cent of total tariff lines).

¹¹ Trade figures are based on the average value of Mauritius' imports from South Africa in 2002-2004, involving 3,739 tariff lines (68.2 per cent of total tariff lines).

¹² Mozambique's tariff schedules applied to SADC members and to RSA are each composed of 5,246 tariff lines at the HS 8-digit level. All lines contain *ad valorem* rates. The base rates used by Mozambique for implementation of tariff liberalization are MFN 1998 rates.

¹³ Trade figures are based on the average value of Mozambique' imports from SADC Members (excluding RSA) in 2002-2004, involving 1,658 tariff lines (31.6 per cent of total tariff lines).

¹⁴ Trade figures are based on the average value of Mozambique's imports from South Africa in 2002-2004, involving 4,214 tariff lines (80.3 per cent of total tariff lines).

Tanzania: 17.5 per cent of *Tanzania's* total tariff lines¹⁵ were duty-free for products of SADC origin (except RSA); in terms of 2002-2004 imports from SADC members (excluding RSA), the corresponding figure amounts to 3.4 per cent.¹⁶ By the end of the 2012, these figures increase to 99.2 per cent and 99.6 per cent, respectively. 18.4 per cent of Tanzania's total tariff lines were duty-free for products of South African origin, in terms of 2002-2004 imports from South Africa, the corresponding figure amounts to 6.2 per cent.¹⁷ By the end of the implementation period (2012), these figures increase to 81.3 and 92.7 per cent, respectively.

Zambia: 54.2 per cent of *Zambia's* total tariff lines¹⁸ were duty-free for products of SADC origin (except RSA); in terms of 2002-2004 imports from SADC members (excluding RSA), the corresponding figure amounts to 44.8 per cent.¹⁹ By the end of the 2012, these figures increase to 100 per cent and 89.2 per cent, respectively. 32.1 per cent of Zambia's total tariff lines were duty-free for products of South African origin, in terms of 2002-2004 imports from South Africa, the corresponding figure amounts to 31 per cent.²⁰ By the end of the implementation period (2012), these figures increase to 100 per cent and 91.9 per cent, respectively.

Zimbabwe: 30.7 per cent of *Zimbabwe's* total tariff lines²¹ were duty-free for products of SADC origin (except RSA); in terms of 2002-2004 imports from SADC members (excluding RSA), the corresponding figure amounts to 51.6 per cent.²² By the end of the 2012, these figures increase to 98.6 per cent and 73.7 per cent, respectively. 38.6 per cent of Zimbabwe's total tariff lines²³ were duty-free for products of South African origin, in terms of 2002-2004 imports from South Africa, the corresponding figure amounts to 23.9 per cent.²⁴ By the end of the implementation period (2011), these figures increase to 99.4 per cent and 79.8 per cent, respectively.

SACU: Upon implementation 63.9 per cent of *SACU's* total tariff lines²⁵ were duty-free for products of SADC origin, in terms of 2002-2004 imports from SADC

¹⁵ Tanzania's tariff schedule applied to all SADC members is composed of 6,215 tariff lines (in the case of South Africa, 6,216 tariff lines) at the HS 8-digit level. All lines contain *ad valorem* rates. The base rates used by Tanzania for implementation are MFN 1998 base rates.

¹⁶ Trade figures are based on the average of Tanzania's imports from SADC members (excluding RSA) in 2002-2004, involving 864 tariff lines (13.9 per cent of total tariff lines).

¹⁷ Trade figures are based on the average of Tanzania's imports from RSA in 2002-2004, involving 3,918 tariff lines (63 per cent of total tariff lines).

¹⁸ Zambia's tariff schedules applied to SADC members and to RSA are each composed of 6,066 tariff lines at the HS 8-digit level. All lines contain *ad valorem* rates. The base rates used by Zambia for implementation of tariff liberalization are MFN 1999.

¹⁹ Trade figures are based on the average value of Zambia's imports from SADC members (excluding RSA) in 2002-2004, involving 2,245 tariff lines (37 per cent of total tariff lines).

²⁰ Trade figures are based on the average value of Zambia's imports from South Africa in 2002-2004, involving 5,054 tariff lines (83.8 per cent of total tariff lines).

²¹ Zimbabwe's tariff schedule submitted under the Protocol to apply to SADC members (except RSA) is composed of 7,167 tariff lines at the HS-8 digit level. In 2000 this consisted of 7,091 tariff lines with *ad valorem* rates, while the remaining 76 lines contain specific or mixed duties. This schedule has never been applied.

²² Trade figures are based on the average value of Zimbabwe's imports from SADC members (excluding RSA) in 2002-2004, involving 2,182 tariff lines (30.4 per cent of total tariff lines).

²³ Zimbabwe's tariff schedule applied to RSA is composed of 5,957 tariff lines at the HS-8 digit level. 5,932 tariff lines contain *ad valorem* rates, while the remaining 25 lines contain specific or mixed duties.

²⁴ Trade figures are based on the average value of Zimbabwe's imports from SADC members (excluding RSA) in 2002-2004, involving 5,440 tariff lines (91.3 per cent of total tariff lines).

²⁵ SACU's tariff schedule applied to non-SACU SADC members is composed of 7,802 tariff lines at the HS 8-digit level. 5,812 tariff lines contain *ad valorem* rates, while 1,990 lines contain specific or mixed duties.

members, the corresponding figure amounts to 81.4 per cent.²⁶ By the end of the implementation period (2006), these figures increase to 99.3 and 95.9 per cent, respectively.

3.2.1 Implementation of the SADC Tariff Reductions

In assessing the implementation of the SADC tariff reductions a random sample of at least 10 tariff lines has been used in all cases. The tables within the country sections are therefore only illustrative, however, based on the results from the random sample it is possible that a more comprehensive check would uncover many more lines to be at variance with the agreed schedules of tariff reductions.

Malawi

Malawi back-loaded its tariff phase down but has only reduced SADC tariff rates once since implementation in May 2001. At the time of the MTR Malawi cited budgetary constraints as the explanation for the delay.

Malawi's tariff rates range from 0% to 30% and its SADC tariff reductions are currently at a standstill. Thus the position as noted by the 18th Special Ministers of Trade Meeting of 14 July 2006 in paragraph 3.4 of their Draft Record is unchanged.

A provision to reduce tariffs under the SADC Tariff phase down was made in Malawi's 2006/2007 Budget where the Finance Minister highlighted the need for such reductions to be effected as 5 years had elapsed since Malawi reduced its SADC tariffs in line with its tariff reduction obligations under the SADC Protocol on Trade. A Tariff Amendment Order, which seeks to reduce SADC tariff rates has already been prepared and at the time of this assessment was awaiting Government approval before it can be published. This will be Malawi's second SADC tariff reduction since 2001. At the presentation of the preliminary findings of this Audit (July 2007), authorities from Malawi indicated that they would gazette their tariff phase down before the August 2007 Summit.

Malawi's current integrated tariff schedule, which also incorporates the SADC tariff reduction schedule in Columns 8 (for imports from SADC Members, other than RSA) and 9 (for imports from RSA), is based on the HS 2002 version and work is currently in progress to upgrade it to the 2007 version.

The following table provides examples chosen at random of where the actual applied tariff rates are at variance with the SADC tariff reductions appearing in the pending Tariff Amendment Order. There are also a few tariff lines in the sample below which show that the SADC applied rate is higher than the MFN rate. This may have occurred as a result of unilateral tariff reductions over time. There is need for Malawi to review the SADC Schedule of Concession to eliminate these anomalies.

²⁶ Trade figures are based on the average value of SACU's imports from non-SACU SADC Members in 2002-2004, involving 3,312 tariff lines (42.4 per cent of total tariff lines).

Table 3.3 Illustrative Differences between Proposed Tariff Reduction and Applied Tariffs: Malawi

HS Code	Category	MFN ²⁷ Rates	2007 SADC offer (excluding RSA)%	2007 Applied SADC Rate%	2007 RSA Offer%	2007 Applied RSA Rate%
1201.00.00	C	Free	Free	10	Free	10
2301.10.00	C	Free	10	10	10	10
2401.1029	C	10%	10	15	10	25
2521.00.00	B	free	Free	10	Free	10
2710.1119	C	10%	10	15	10	25
2710.11.29	C	Free	Free	20	Free	20
3704.00.00	B	5%	5	10	5	15
4813.20.00	C	5%	5	10	5	15
4907.00.90	B	Free	Free	10	Free	10
8426.41.00	B	Free	Free	5	Free	5

Source: Consultants interviews

Mauritius

In line with the Mid-Term Review, Mauritius published its 2007 SADC tariff reduction schedule through Government Notice No 251 of 2006, which came into force on 1 January 2007. The SADC tariff reduction schedule forms part of Mauritius' Integrated Tariff Schedule, which has now been updated to the 2007 HS version.

The number of tariff lines for Category C goods appearing in Mauritius' current SADC tariff schedule is, according to Mauritian trade authorities, less than 10% of the total tariff lines. A list of category C goods provided by MRA Customs division showed that only 268 tariff lines representing 5.36% of the total tariff lines (out of 5000+ tariff lines) fell into this category.

In 2006 Mauritius combined its differentiated and RSA tariff offers as the MFN and SADC tariff rates for most goods is zero. Since submitting their SADC phase down schedules Mauritius has made significant reductions to their MFN tariff, and they have reviewed and lowered their tariff phase schedules rates for SADC partners to maintain a preferential margin in favour of SADC.

The Ministry of Finance is currently working on the 2008 Budget, which may contain further tariff cuts. The highest MFN tariff rate in the current Integrated Tariff Schedule is 30%. Mauritius is in compliance with the proposed phase down schedule.

Mozambique

Parliament made a block approval of Mozambique's tariff phase down programme from 2001 up to 2015. Following Parliamentary approval of the tariff phase down schedule in 2001 it formed part of Mozambique's tariff law. Therefore, there is no need to republish the tariff reductions annually.

²⁷ Customs and Excise Act (CAP 42:01) Customs And Excise (Tariffs) Order, 2006

The 2007 SADC tariff rates (for both imports from RSA and from other SADC Member States) had not yet been implemented during the audit mission because Mozambique effects tariff reductions in the second half of the year as opposed to the 1st of January each year. At the time of the Audit in May 2007, the information available showed that the tariff phase down had not been effected for 2007. Furthermore the data reviewed at one of the points of entry showed differences between applied rates generated by the TIMS and those gazetted for both the differentiated offer and the offer to South Africa. At the presentation of the preliminary findings just before Summit in Lusaka, Mozambique indicated that obtained Parliamentary approval to implement outstanding obligations to comply with the obligations from the SADC Protocol on Trade.

The following table shows how for illustrative tariff lines selected at random²⁸ under Category B the applied rates differ from the schedule. In addition the table also shows that since 1998, Mozambique has reduced its highest MFN rate of 35% to 20%. The preferential margin has therefore reduced but no further reduction has been made to the applied SADC rates to maintain the margin that was provided for at the adoption of the Schedule of concessions as recommended by the MTR.

Table 3.4 Mozambique: Illustrative differences between the Applied Tariffs and the SADC Tariff Offers

HS Code	Category	MFN ²⁹ Rates	2007 SADC offer (excluding RSA)	2007 Applied SADC Rate	2007 RSA Offer	2007 Applied RSA Rate
0302.34	B1	20%	10%	20%	10%	20%
0302.35	B1	20%	10%	20%	10%	20%
0810.60	B1	20%	10%	20%	10%	20%
0810.90	B1	20%	10%	20%	10%	20%
1904.30	B1	20%	10%	20%	10%	20%
1904.90	B1	20%	10%	20%	10%	20%
7302.90	B2	7.5%	4%	7.5%	4%	7.5%
8906.10	B2	5%	3%	5%	3%	5%
8906.90	B2	5%	3%	5%	3%	5%
9613.80	B1	20%	10%	20%	10%	20%

Southern African Customs Union (SACU)

Botswana, Lesotho, Namibia, South Africa and Swaziland as members of the Southern African Customs Union (SACU) made a single offer to the rest of SADC. The tariff phase down was front-loaded and is on schedule. The annual tariff reductions are implemented each January. By 2007 more than 99 per cent of tariff lines are at zero for qualifying products from SADC partners.

²⁸ Random selection of sample

²⁹ Source: "SADC Member States Integrated MFN Tariff Hand Book", adopted by Trade Ministers and amended in 2007 to incorporate 2007 HS amendments.

Tanzania

Tanzania notified the SADC Secretariat of its tariff phase down schedule in May 2001, and began implementing the tariff reductions following the publication in the Government Gazette on 7 June 2002. This resulted in the immediate phase down of Category A, which removed tariffs on more than 1,000 tariff lines.

No further issuance of the gazette notices is required since the schedule was already enacted into law. Instead, the Commissioner issues a public notice to inform importers and the public of the applicable rates.

Tanzania heavily back loaded their phase down. Reductions in Category B were expected in 2005 but there is no evidence that this is being done. Further questions have been sent to the Commissioner of Customs who was not available at the time to explain inconsistencies in the questionnaire responses.

At the time of the audit, there was contradictory information from officials who claimed that the phase down had happened every January except for the period 2006/2007, when there was concern of "revenue" loss. A check at the border confirmed that except for Category A there had been no movement in tariffs. When the preliminary findings were presented at the Maputo Meeting in July 2007, the authorities undertook to amend the ASYCUDA system to reflect what was in the tariff book. A further review of the tariff offers compared with the reduction schedules confirmed some positive changes but there still a number of tariff lines where Tanzania was not in compliance with the original offers.

Table 3.5 Tanzania Illustrative differences between the Applied Tariffs and the SADC Tariff Offers

HS Code	Category	Tanzania MFN ³⁰ (Prior to CET)	(MFN) EAC CET ³¹	2007 SADC offer (excluding RSA)	2007 Applied SADC Rate	2007 RSA Offer	2007 Applied RSA Rate ³²
1003.00.90	C	25%	25% ³³	5%	10%	30%	10%
0302.2900	A / B ³⁴	25%	25%	0%	5%	5%	5%
0302.6100	A / B	25%	25%	0%	5%	5%	5%
0302.6900	A / B	25%	25%	0%	5%	5%	5%
3004.10.00	B	0%	0%	0%	5%	5%	5%
0303.2900	A / B	25%	25%	0%	5%	5%	5%
0303.3900	A / B	25%	25%	0%	5%	5%	5%
0302.7000	A / B	25%	25%	0%	5%	5%	5%
0303.4100	A / B	25%	25%	0%	5%	5%	5%
0303.5000	A / B	25%	25%	0%	5%	5%	5%

³⁰ Source: "SADC Member States Integrated MFN Tariff Hand Book", adopted by Trade Ministers and amended in 2007 to incorporate 2007 HS amendments.

³¹ Source: The EAC Tariff 2007 Version.

³² Information is yet to be supplied by Tanzanian Authorities

³³ Tanzania is permitted to import 6000 tons of Barley duty free to sustain beer production.

³⁴ In the Offer to South Africa this product is categories as B while in the offer to the rest of SADC it s categorised as A.

Furthermore, Tanzania is a member of the East African Community and a common external tariff applies. It is not clear whether Tanzania has amended the Schedule of offers to SADC and RSA to take into account the changes brought about by the establishment of the EAC Common External Tariff (CET). There are products as illustrated in table 3.5 below whose rates have increased this may not conform with the requirements of Article 4:4 of the SADC Protocol on Trade. There are also a number of products whose duty rates have been reduced as a result of the introduction of the EAC CET.

Zambia

In April 2001, Zambia issued Statutory Instrument (SI) number 53 to effect tariff reductions for category A products. In 2004 under SI number 75 Zambia gazetted and published the SADC tariff reduction. Annual reductions can be viewed through the Customs System-ASYCUDA, which is updated every year after the National Budget announcement that usually takes place in February. No further publications are made.

In the 2007 Budget, a number of tariff lines were either reduced or increased. Customs duty rates on woven polyester staple fibres of headings 5208.11 90, 5208 19 90, 5513 19 90 and 5513 39 90 were reduced from 25% or K7000 per kg whichever is greater respectively to 15%. It is clear whether and how this is incorporated in the SADC offer because Zambia's offer is still based on HS 1996. During the audit mission, it was indicated by the officials that the offers are being reviewed to base them on HS 2007.

In addition the 2007 budget announcement increased duty rates on woven polyester staple fibres of headings 5208 11 10, 5208 12 10, 5208 19 10, 5513 19 10, 5513 29 10 and 5513 39 10 from 0% to 15%. According to the Zambian authorities this only applies to MFN rates and does not affect the SADC offers. These amendments are intended to harmonize duty rates for like products and to promote growth of the local textile industry respectively, for purposes of tariff treatment.

Zambia is on target to meet its original offer. However, the Zambian government may face a revenue gap in 2008 when the vast majority of its tariff lines will be reduced to zero. This issue could have potentially been avoided by implementing the Mid Term Review recommendation of accelerating some tariffs reductions. Zambian officials indicated that it was not possible for them to accelerate tariff reductions due to revenue implications.

Zimbabwe

Zimbabwe has published its 2007³⁵ SADC tariff reduction schedule, this entered into force on 1 January 2007 and repealing the 2002 instrument. The schedule is based on the HS 2007 version. The reductions however are not in line with Zimbabwe's tariff offer of 2000. These reductions bring Zimbabwe in line with the 2004, 2005, 2006 level of reductions but are behind on some tariff lines for 2007 levels. Table 3.6

³⁵ Statutory Instrument 257 of 2006: Customs and Excise (Southern African Development Community) (amendment)

provides an illustrative list of where such reductions are identified. A small number of sensitive products were fast-tracked in Statutory Instrument 257 of 2006

Table 3.6 Illustrative Differences between Applied Tariffs and the Offer

HS Code	Category	MFN ³⁶ Rates	2007 SADC offer (excluding RSA)	2007 Applied SADC Rate ³⁷	2007 RSA Offer	2007 Applied RSA Rate
0203 1900	C	40%	0%	20%	20%	20%
0204 1000	B	40%	0%	10%	10%	10%
2104 1000	C	40%	0%	20%	20%	20%
3925 9000	C	40%	0%	15%	20%	15%
3926 1000	C	40%	0%	15%	20%	15%
6306 1200	B	40%	0%	10%	10%	10%
6306 1900	B	40%	0%	10%	10%	10%
6306 2200	B	40%	0%	10%	10%	10%
6306 2900	B	40%	0%	10%	10%	10%
6306 9900	B	40%	0%	10%	10%	10%

Under their original tariff phase down offers Zimbabwe prepared two offers in line with all the non-SACU SADC countries. The tariff phase down implemented in terms of the 2002 Statutory Instrument and the successor 2006 Statutory Instrument 257 applies to all SADC countries and yet this was the original tariff phase down offered to South Africa. Zimbabwe has not implemented any tariff reductions on the differentiated offer in terms of the SADC Protocol on Trade. According to the Zimbabwean authorities, they did not see the need to gazette the differentiated offer because the countries concerned would trade with Zimbabwe either under the COMESA trade regime or bilateral trade agreements. This decision however leaves Lesotho and Tanzania out and forced to trade under the terms originally meant to be for products originating from South Africa as both of these countries are neither members of COMESA nor have bilateral agreements with Zimbabwe.

3.3 Sensitive Products and Sectors

The SADC member states had agreed that sensitive products should not exceed 15% of total intra-SADC Trade. The tariff phase down for these products was to start from 2008 and completed by 2012. In 2001, the Mid term review recommended that the initial tariff phase down for sensitive products be reviewed in the view of SADC decision to move to a Customs Union by 2010. The consultants found that most Member States had not revised their tariff offers for sensitive products, with the exception of Mauritius, Zimbabwe which has reduced a small number of sensitive products and the SACU countries who had from the start provided to reduce their sensitive products to zero by 2009.

³⁶ Source: "SADC Member States Integrated MFN Tariff Hand Book", adopted by Trade Ministers and amended in 2007 to incorporate 2007 HS amendments.

³⁷ According to SI 257 of 2006, which became operational on Jan 2007

Table: 3.7 Member states sensitive products to SADC (excluding RSA)

Country	Total tariff lines covered	Number of Sensitive tariff line 2002		% Number of Sensitive tariff line 2002		% Number of Sensitive tariff line 2007	
		SADC	RSA	SADC	RSA	SADC	RSA
Malawi	5,443	777	803	14%	15%	14%	15%
Mauritius	5,479	520	520	10%	10%	5%	5%
Mozambique	5,246	299	370	6%	7%	6%	7%
SACU	7,804	33	n/a	0.42%	n/a	0.42%	n/a
Tanzania	6,212	790	903	13%	15%	13%	15%
Zambia	6,066	251	254	4%	4%	4%	4%
Zimbabwe ³⁸	7,167	410	751	6%	13%	6%	10%

Zambia, Mozambique, Mauritius and SACU 's sensitive products represent less than 10 percent of the tariff lines covered by the SADC protocol on Trade while the rest are about 10% or more.

While the majority of non SACU Member States excluded a small proportion of sensitive products there was a consensus on establishing special arrangements for managing trade in sugar, textiles and clothing. These special arrangements are outlined in the following two sections.

3.3.1 SADC Sugar Cooperation Agreement

The SADC Sugar Cooperation Agreement established under Annex VII of the SADC Protocol on Trade outlines the bylaws governing sugar market access between SADC member states. The agreement is based on SADC's desire to insulate member states from what it perceives as a highly distorted world sugar market in order to position SADC as a long-term competitive production centre of sugar. Annex VII is designed as an interim non-reciprocal market access agreement for non-SACU SADC states into the SACU market with the goal of full sugar sector liberalization and policy harmonization on a reciprocal basis by 2012, permitting agreement that the world sugar market has sufficiently normalized.

Annex VII delineates the two core components of non-reciprocal access to SACU through duty-free quotas for net surplus sugar producing countries in SADC**: (Annex VII, Article 3/6)

- Each SADC net surplus producer is granted access to a portion of the SACU sugar market based on annual market growth of the SACU market. Each surplus producer's share of the market is determined by the size of their net surplus relative to total SADC net surplus production. Annual growth was pre-determined for the first three years and thereafter based upon forecasted market growth with a guaranteed minimum access of 138,000 MT. (Annex VII, Article 4)
- In addition, SACU market access of 20,000 MT per year is open to non-SACU SADC net surplus sugar producers. Access is allocated according to the net surplus production of each country relative to the total non-SACU SADC net

³⁸ Zimbabwe's offer to RSA has 5, 957 tariff lines 16% less than Zimbabwe's offer to the rest of SADC

surplus production. If the non-SACU SADC surplus is less than 20,000 MT, the duty-free SACU access is limited to the actual net surplus. (Annex VII, Article 5)

The Technical Committee on Sugar (TCS) was established to implement and monitor Annex VII as well as to increase, the flow of information regarding the sugar industry, to improve the cooperation of member states, to promote a competitive industry, and to harmonize policy. (Annex VII, Article 7-9)

A recent amendment stipulates that non-sugar producing SACU members (BLN) are granted exclusive rights to buy quota imports under Annex VII. Import access is allocated in a country specific manner (Lesotho 50%, Botswana 25%, Namibia 25%) taking into account the pre-existing bilateral agreements of Botswana and Namibia. BLN countries have 30 days from the allocation of provisional quotas to secure commercial arrangements to buy quota sugar before it is available to all SACU members (26th Meeting of TCS).

Table 3.8 Total quotas and exports per marketing year

Total quotas and exports per marketing year

Marketing Year: April - March	TOTAL: METRIC TONS		Percentage Quota Utilisation
	Quota	Exported	
2001-02	28,744	5,098	17.70%
2002-03	37,435	58,745	156.90%
2003-04	43,371	42,642	98.30%
2004-05	40,559	35,305	87.00%
2005-06	35,937	29,037	80.80%
2006-07	41,871	*	*
Total quotas	227,917	-	-
Total exports	-	170,827*	75.0%*
Prov. Quotas for 2007-08	42,286	-	-

* Export figures not available as the SACU tariff was zero and SARS did not clear imports under the rebate provision.

Note: Due to the delay in the implementation of the SADC Trade Protocol the quotas allocated in 2001-02 were deliverable during 2002-03. (Progress Report on the Activities of SADC TCS, April 2007)

** Net surplus production is defined as sugar wholly produced in a given year by a member state in excess of the sugar required to "satisfy its total domestic consumption and to fulfill its preferential quotas granted by the European Union and the United States of America and any similar preferential quota granted to it" currently or in the future. (Annex VII, Article I)

One major Malawian exporter of sugar however complained of the existence of escort fees imposed on trucks by Mozambique amounting to approximately US\$141 regardless of whether there is only one truck or more and only one escort officer is made available per ten trucks crossing from Malawi on transit to northern Malawi (Villa Ulongwe and Zombwe).

3.3.2 MMTZ-SACU Market Access Arrangement

The MMTZ Market Access Arrangement, between SACU and MMTZ is established under Appendix V to Annex I of the SADC Protocol on Trade. Under this Appendix, SACU agreed to conditionally open duty free market access to the non SACU LDC states implementing the Protocol (MMTZ) for certain textile product categories in the aim of fostering regional economic integration and growth. Requests for access under the same terms were denied by SACU for Mauritius and Zimbabwe since they were not considered LDC's.

Duty free market access for MMTZ textiles is limited to annually revised quotas and is subject to a series of terms and conditions outlined by the SACU Trade Ministers:

- The arrangement exempts MMTZ from applying the standard SADC Rules of Origin criteria of double stage transformation and permits application of a single stage transformation for eligible products. Under this condition non originating products must undergo substantial transformation in order to ensure minimum local value addition before final products are exported by the MMTZ.
- In exchange for the opening of BLNS markets, MMTZ agreed to grant the “immediate and unconditional market access for BLNS products of export interest to MMTZ.”
- SACU reserves the right to suspend the quotas in the event that any MMTZ country does not satisfactorily implement their portion of the agreed obligation.
- The arrangement identifies specific procedures to identify, certify, and track the products.

Oversight: The **Textile and Clothing Committee (TCC)** established in Article 7 is responsible for monitoring and allocation of tariff quotes, monitoring the operation and compliance of export procedures, reviewing quota levels, and overseeing the implementation of the regulations.

Duration: The original term of the market access approved by SACU from August 2001 until July 1, 2006 received two short-term extensions until March 31, 2007. The SACU Trade Ministers subsequently extended this period until December 31, 2009.

Table 3.9 2000 Original Quota Schedules and 2007 Revised Quotas Based on Recent Utilization Levels

2000 Original Quota Schedules

HS Chapter	Unit	Malawi	Mozambique	Tanzania	Zambia
52	Kg	1,110,000	3,600,000	1,200,000	1,700,000
55	Kg	43,000	-	-	390,000
58	Kg	-	-	-	-
60	Kg	200,000	-	-	60,000
61 & 62	Pieces	8,565,000	4,200,000	500,000	500,000
63	Kg	565,000	170,000	300,000	300,000

Appendix V to Annex I, SADC Trade Protocol, 2000.

2007 Revised Quotas Based on Recent Utilization Levels

HS Chapter	Unit	Malawi	Mozambique	Tanzania	Zambia
52	Kg	-	-	1,000,000	100,000
55	Kg	-	-	500,000	-
58	Kg	-	-	-	-
60	Kg	-	-	-	-
61 & 62	Pieces	6,000,000	1,000,000	500,000	500,000
63	Kg	-	-	500,000	-

SACU Secretariat, Letter to Dr. Tomaz Salomao, April 1, 2007

3.4 Preferential Trade Arrangements among Members and Third Parties

Out of the 11 SADC Members that are implementing the Protocol on Trade, five (5) are also members of COMESA and participate in the COMESA Free Trade Area (Malawi, Mauritius, Swaziland³⁹, Zambia and Zimbabwe). Tanzania belongs to the East Africa Community, which has transformed itself into a Customs Union and introduced a common external tariff. Botswana, Lesotho, Namibia, South Africa and Swaziland belong to a Customs Union-SACU, which predated the signing of the SADC Protocol on Trade.

In addition, most of these countries also have or entered into preferential bilateral trade arrangements with each other or third parties with the exception of Lesotho⁴⁰ and Zambia. Zimbabwe has signed preferential trade agreements with, Botswana, the Democratic Republic of Congo, Namibia, Malawi, Mozambique and South Africa and this provides a wider choice to the business community.

Some of these bilateral intra-SADC trade agreements predate the SADC Protocol on Trade others have been revived after 1996. The bilateral agreements between South Africa and Malawi, Mozambique and Zimbabwe were all negotiated prior to 1996. However, many of the other bilateral agreements involving SADC members that are not members of COMESA and the non-SACU countries have been negotiated after 1996 (although legally they are grandfathered from agreements negotiated during the colonial period⁴¹). These bilateral trade agreements aim to allow the participating countries to trade duty free or at reduced rates, under more simple and liberal rules of origin than the SADC Protocol.

Table 3.10 List of SADC Member States trade arrangements⁴²

SADC member States	Name/Type of Agreement	Third countries	Existence since	Amended
PLURILATERAL AGREEMENTS				
Botswana, Lesotho, Namibia, South Africa, Swaziland	(SACU)		1910	2003
Malawi, Mauritius, Swaziland, Zambia, Zimbabwe	(COMESA)	Burundi, Comoros, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Rwanda, Seychelles, Sudan, Uganda	1994	
Tanzania	East African Community (EAC)	Kenya, Uganda	2000	EAC-CET 2005
BILATERAL INTRA-SADC AGREEMENTS				
Botswana – Malawi			1956	1988
Botswana – Zimbabwe			1956	1988 /2001 ⁴³

³⁹ Swaziland however has derogation till 2008 to enable Swaziland to complete negotiations with SACU regarding her full participation in the FTA. Swaziland originating goods do benefit from the tariff reductions offered under the PTA rates prior to the introduction of the FTA in 2000.

⁴⁰ SACU members have entered into a bilateral trading arrangement with the EFTA.

⁴¹ For example the bilateral agreement between Mozambique and Zimbabwe refers to an earlier agreement between the East African Federation and the Government of Portugal.

⁴² Table 3.7 only covers those SADC countries that are implementing the SADC Protocol on Trade (July 2007)

SADC member States	Name/Type of Agreement	Third countries	Existence since	Amended
Malawi – Mozambique			1959	2005
Malawi – South Africa			1967	1990 / 1999
Malawi – Zimbabwe			1995	-
Mozambique – Zimbabwe			1959	2005
Namibia – Zimbabwe			1964	..1992 /2000 ⁴⁴
South Africa – Mozambique			1990	-
South Africa – Zimbabwe			1964	..2000
BILATERAL EXTRA-SADC AGREEMENTS				
South Africa	Trade and Development Cooperation Agreement	EC and its member States	1 Jan. 2000	
SACU – EFTA FTA		EFTA members	2007	

Source: Compiled by the Consultants

A review of the import/export entries at border posts during the audit showed that in several instances the majority of trade was occurring under the bilateral arrangements as opposed to under the SADC Protocol. For example, Mwanza Border post (between Malawi and Mozambique) processes an average of 100 export entries per month under COMESA and the bilateral trade agreements. Conversely, no SADC entries were logged. Similar circumstances prevail at Mchinji (between Malawi and Zambia) where an average of 70 import and 30 export entries are processed under COMESA and at Ramokgwebana where virtually all border clearances were conducted under the bilateral trade agreement between Botswana and Zimbabwe.

Addressing this issue and responding to the WTO Committee on Regional Trade Agreements questions the SADC Secretariat stated that, *“The Protocol on Trade (Article 27) has not overridden the existing bilateral agreements. They will effectively be overridden once the provisions of the SADC Protocol on Trade offer better market access. Some of the bilateral agreements amongst SADC Members excluding South Africa, offer duty free access with simple value added rules set at modest thresholds and will therefore continue to be an important feature in trade among the concerned countries until perhaps after the completion of tariff reductions and a review of the rules of origin under the SADC Protocol on Trade. The situation is different however in the case of trade with South Africa where the SADC Protocol now offers the best conduit for preferential trade between South Africa and the non-SACU SADC Members.”*⁴⁵

In the past three years some progress has been made towards revising the rules of origin. The 19th CMT meeting in Maseru adopted for implementation additional revised rules of origin. The Trade Negotiating Forum (TNF) was directed to finalise the review of the outstanding rules before the end of 2007. In the absence of a comprehensive simplification of the rules of origin, it would appear that trade within

⁴³ Signed but never effected. The 1988 version is in force

⁴⁴ Was renegotiated but was never signed. The 1992 version remains in force.

⁴⁵ WTO Committee on Regional Trade Agreements document WT/REG176/5 of 2 May 2007.

SADC will continue to be divided between the two categories as noted by SADC in their submission to the WTO. Preferential trade between SADC members and the SACU countries will largely take place under the auspices of the SADC Protocol on Trade⁴⁶, while intra-SADC trade outside of SACU will use either COMESA or bilateral preferences.

Botswana

Botswana has bilateral trade agreements with Malawi and Zimbabwe that date back to 1956 as the Basutholand, Bechuanaland Protectorate, Swaziland; High Commissioners Notice no 63 of 1956. This agreement came into force on 1 June 1956 and was amended in 1988. Although signed in 2001, it has been reported that implementation failed due to an error in the texts, indicating that the 1988 agreement effectively remains in force.

The current agreement between Botswana and Malawi also stems from the 1956 Agreement. Officials from both countries reported that no further amendments have occurred to the original agreement, but that it is still not being utilized. It can be assumed that trade between Malawi and Botswana is taking place under the SADC Protocol on Trade in particular for sugar and the MMTZ arrangement.

SACU member states have a bilateral extra-SADC FTA with European Free Trade Area members⁴⁷ which entered into Force in 2007, for more information refer to the section below on South Africa.

Lesotho

Lesotho has no intra-SADC bilateral agreements. However, SACU member states have a bilateral extra-SADC FTA with European Free Trade Area members, which entered into Force in 2007. For more information on this agreement refer to the section below on South Africa.

Malawi

Malawi belongs to both SADC and COMESA but has recommended that these two regional organizations be harmonized to avoid duplication of programmes. Malawi also trades under bilateral trade agreements with Botswana, Mozambique, South Africa and Zimbabwe.

As noted above the agreement with Botswana is not effective.

Malawi renegotiated a bilateral agreement with South Africa in 1990 that provides non-reciprocal duty free access for Malawian products into South Africa upon meeting specified rules of origin criteria. The latest amendment in 1999 removed the quantitative restrictions in the 1990 agreement. The rules of origin governing this

⁴⁶ Both Namibia and Botswana have bilateral trade agreements with Zimbabwe which remain in operation.

⁴⁷ The EFTA Members are Iceland, Liechtenstein, Norway and Switzerland.

agreement are much simpler than the SADC rules of origin⁴⁸, however shipments of textiles under this agreement were suspended due to an influx of apparel suspected of not being from Malawi. Textiles now fall under the MMTZ arrangement.

The Malawi-Zimbabwe Agreement came into force on 5 May 1995 and provides duty free access for goods grown, produced or manufactured in the territory of the other. The value addition criteria provided for under this arrangement is 25% of the manufacturing cost of those goods. Almost all the trade between these two countries takes place under the bilateral agreement because it has slightly more liberal rules of origin than the COMESA FTA and significantly more lenient rules than SADC

The Malawi-Mozambique bilateral arrangement originates from an agreement signed in 1959 between Portugal and the Federation of Rhodesia and Nyasaland to facilitate commercial relations between their respective territories. The current agreement between Malawi and Mozambique, which was updated in 2005, is a reciprocal duty free access arrangement. The main aim is to move faster in liberalising trade than the SADC agreement. The agreement was signed after entry into force of the SADC Protocol on Trade, which permits for new preferential trade arrangements provided that such arrangements are not inconsistent with the provisions of the Protocol (Article 27:2).

Mauritius

Mauritius is a member of COMESA and the Indian Ocean Commission (IOC) and is currently negotiating bilateral trade agreements with India and Pakistan.

Mozambique

Mozambique is the only Member state that belongs to only one regional organization SADC. Mozambique continues to use its bilateral agreement with South Africa for the export of garments and has also signed bilateral preferential trade agreements with Malawi and Zimbabwe, which came into force in 2005.

The Mozambique-South Africa special bilateral trade arrangement⁴⁹ came into force in 1990 and extends non-reciprocal preferential market access for a limited number of products⁵⁰ originating from Mozambique. South Africa created a special rebate item under Schedule Number 4 of its Customs and Excise Act to facilitate implementation of this arrangement. Eligible manufactured products are required to contain 35% local content to qualify for preferences. Duty concessions take the form of full rebate of import surcharges as well as rebates of duties to the level of 3% of ad valorem duty.

The agreement with Malawi has been discussed in the section above on Malawi.

⁴⁸ Products partially produced in Malawi from non-originating products are subject to 25% local content requirement and for the last production process to have taken place in Malawi. The principle of cumulation is also provided for in this agreement.

⁴⁹ This is a unilateral arrangement, similar to the Generalized System of Preferences.

⁵⁰ These are fish products, prawns, cashew nuts, citrus fruits, wooden furniture, coconut oil, new tyres, handicrafts, textiles and clothing. Agriculture and fisheries products are subject to quotas and import permits.

The bilateral agreement with Zimbabwe supersedes the 1959 Trade agreement between Portugal and the Federation of Rhodesia and Nyasaland. It was concluded on 9 January 2004 and came into force in 2005. The agreement provides for duty free access for selected products⁵¹ grown, produced or manufactured in the territory of either Party. The agreement provides for a value addition of at least 25% of the ex-factory costs of the goods. The agreement was signed after entry into force of the SADC Protocol on Trade.

Namibia

Namibia belongs to the Southern African Customs Union (SACU) and has a bilateral preferential trade agreement with Zimbabwe. The bilateral agreement with Zimbabwe is a reciprocal one and it came into force in 1992 replacing a 1964 Agreement signed between the Republic of South Africa (which included the territory of South West Africa) and the Government of Southern Rhodesia. It covers all products and grants duty free access for products that confer origin (grown or wholly produced from partially imported materials with a 25% local content). This agreement was reviewed in 2000 to introduce among others the inclusion of the principle of cumulation to the rules of origin. However, this new agreement has not yet been ratified and the 1992 agreement remains in force.

As a SACU Member State, Namibia has a bilateral extra-SADC FTA with European Free Trade Area members⁵² that entered into force in 2007.

South Africa

South Africa is a member of SACU and has intra-SADC bilateral trading arrangements with Malawi, Zimbabwe and Mozambique. South Africa also has a bilateral trading arrangement with the European Union –the Trade and Development Cooperation Agreement that entered into force on 1 January 2000.

The South Africa-Zimbabwe preferential bilateral arrangement was concluded in 1964.⁵³ This was a reciprocal arrangement whose coverage was limited to a specified list of products. The agreement underwent several reviews most recently in 2000,⁵⁴ to improve its terms and conditions, scope, product coverage and levels of tariff concessions. Among other changes, the amendments in 2000 replaced specific rebates with specific rates of duties. The rules of origin under the agreement include 25% local content for some of the manufactured products made from non-originating products with some textiles products requiring up to 75% local content. In addition, some of the agricultural products and textiles require import permits to qualify for preferential treatment.

⁵¹ The following are not covered by the agreement: Refined sugar and unrefined sugar; Soft drinks under the (Coca-cola Aerated Beverages) Coca-cola and Schweppes Franchise; Firearms, ammunitions and explosives; motor vehicles and manufactured tobacco

⁵² The EFTA Members are Iceland, Liechtenstein, Norway and Switzerland.

⁵³ The signatories to this agreement were the Republic of South Africa (including the territory of South West Africa) and the Government of Southern Rhodesia).

⁵⁴ SI 317 of 2000.

SACU member states have a bilateral extra-SADC FTA with European Free Trade Area members (EFTA) that entered into Force in 2007. This Agreement provides for SACU to progressively reduce its customs duties on imports originating from the EFTA. The reductions are applied to MFN rates on 1 July 2003. Article 8:4 of this agreement also states that *“Parties shall, on entry into force of this agreement, eliminate all customs duties on exports to the other Parties except as provided for in this Agreement”*. This Agreement came into force after the SADC Protocol on Trade. According to the officials from DTI, the agreement with European Free Trade Area provides does not provide more favorable treatment than that accorded to SADC Member states.

Swaziland

SACU member states have a bilateral extra-SADC FTA with European Free Trade Area members⁵⁵ that entered into Force in 2007.

Swaziland is also a member of COMESA. Under the agreed derogation with COMESA Swaziland’ exports will continue to enjoy non-reciprocal duty-free access into the COMESA FTA through to December 31, 2007. The limiting factor for exports into the SADC market is the Rules of Origin, which are viewed by both the public and private sectors as stifling intra-SADC trade because of their complexity. While COMESA Certificates of origin are certified by Customs, the SADC Certificate of origin is signed by the Trade Promotion Unit and countersigned by Customs.

The public sector supports the move to a SADC FTA. The Ministry of Trade and Industry indicated it was necessary to address NTBs. There was concern that increasing incidences of NTB would impede the benefits of tariff elimination on intra-SADC trade. The officials also indicated that while there was significant progress towards the elimination of NTBs in specific areas of concern, these measures seemed to have proliferated in other areas.

Tanzania

Tanzania is also a member of the EAC. The EAC regional integration initiative has its origin in the Mediation Agreement for Division of Assets and Liabilities of the East African Community that collapsed in 1977. The Treaty establishing the East African Community was signed by Heads of Government of the partner states on November 30, 1999 in Arusha, Tanzania and came into force on July 7, 2000. When Tanzania withdrew from COMESA, the three then EAC Partner States agreed to continue trading preferentially along the COMESA trading regime that was applicable at the time of signing the EAC Treaty. This continued until the protocol on the EAC Customs Union was signed and enforced in 2005.

The elimination of import duties on some products is done progressively every year on some products from Kenya to Tanzania and Uganda. The first round of tariff reductions came into effect on 1 January 2006. The Tanzania Revenue Authority reduced the import rates on the specified items from Kenya as follows:

- Items at 25% import duty in 2005 were reduced to 20% in 2006

⁵⁵ The EFTA Members are Iceland, Liechtenstein, Norway and Switzerland.

- Items at 15% import duty in 2005 were reduced to 12% in 2006
- Items at 10% import duty in 2005 were reduced to 8% in 2006
- Items at 5% import duty in 2005 were reduced to 4% in 2006
- Items at 3% import duty in 2005 were reduced to 2% in 2006
- Items at 2% import duty in 2005 were reduced to 1% in 2006

With regard to imports originating from Uganda, Tanzania applies zero duty in line with the Common External Tariff.

It is not clear whether Tanzania has amended the Schedule of offers to SADC and RSA to take into account the changes brought about by the establishment of the EAC Common External Tariff (CET). There are products (illustrated in table 3.5 below) whose rates have increased as a result and which might not be in line with the requirements of Article 4:4 of the SADC Protocol on Trade. There are also a number of products whose duty rates have been reduced as a result of the introduction of the EAC CET.

Zambia

Zambia has no intra-SADC bilateral agreements but is a Member of the COMESA FTA. There is a draft agreement in the pipeline with Mozambique. There have been discussion for a bilateral agreement with Malawi but the Zambian government decided to discontinue the negotiations. Zambia's trade with Malawi, Mauritius and Zimbabwe is conducted under the COMESA trading arrangement.

Zimbabwe

Zimbabwe is a member of COMESA FTA and has signed bilateral trade agreements with Botswana, the DRC, Malawi, Mozambique, Namibia and South Africa. Insufficient information was available to adequately review the bilateral agreement with the Democratic Republic of Congo. According to the Zimbabwean authorities the administration of these bilateral agreements presents a serious challenge to the Zimbabwe Revenue Authority.

Compared to COMESA and bilateral trade agreements, the business community generally found the SADC Rules of origin to be difficult to meet especially the double transformation criteria. For example, the research team found that most of the trade at Ramokwebane and Pluntree Border Posts (between Zimbabwe and Botswana) was based on the bilateral trade agreement between the two countries. Under the bilateral trade agreement (which was signed in 1956 and reviewed in 1988), for goods made from imported materials to qualify as originating in either country, they are required to attain a minimum value added threshold of 25% of the ex-factory cost of the finished good. This rule applies to all manufactured products without restriction. The business community in Zimbabwe is more familiar with rules under this trade agreement compared to the rules under the SADC Protocol on Trade, which came into force 12 years after implementation of the bilateral trade agreement. In addition, COMESA Rules provide economic operators with a choice of five independent methods to determine the originating status of goods compared to the product-specific rules under SADC.

3.5 Rules of Origin

Rules of origin are an inherent feature of the SADC Protocol on Trade as a means of determining whether goods are eligible for preferential treatment in the importing country and to prevent “trade deflection”. To benefit from the preferential tariff rates under the SADC Protocol on Trade, goods must meet specified rules of origin requirements. Initially the SADC Protocol on Trade provided for simple and less restrictive rules of origin where products could qualify if they underwent a single change of tariff heading or if they contained a minimum of 35% regional value-added or if they included not more than 60% of non-SADC imported materials of the value of total inputs used.

SADC Rules of origin are delineated in Annex I of the SADC Protocol on Trade in a list of product-specific criteria that non-SADC originating materials must satisfy for the final product to acquire SADC originating status. The Protocol also provides the conditions for more lenient rules of origin for textile products imported into the SACU from MMTZ⁵⁶ countries in Appendix V. These products are subject to separate quantitative restrictions, time constraints, and administrative procedures agreed upon by the CMT.

Following the signing of the Protocol on Trade in 1996 it became apparent that the rules of origin would be an important issue. During the debate on the implementation of the Protocol, the rules of origin became the major source of contention with some Member states demanding tightening of the rules of origin and this led to the introduction of product specific rules of origin which have proven to be more complex, restrictive, cumbersome and costly for exporters to meet in most of the member states. similar to the more complex EU product specific model.

Upon implementation there are no regime-wide rules of origin, but a list (in Appendix I of Annex I) of specific criteria (mostly at the heading level but also at the chapter and subheading level) that non-originating materials must meet so that a final good acquires originating status. In the majority of cases, origin is granted if the working or processing carried out on non-originating materials results in a change of tariff classification (CTC) on an HS basis. These changes are normally required at the tariff heading (CTH 4-digit), although changes in subheading (CTS 6-digit) are not uncommon. In some cases, this type of rule may require a change from a specific heading or material (some textiles and pearls and precious stones).⁵⁷

For many tariff lines, an import-content (MC), or a technical process requirement may also apply, either alone or in combination with another rule. The MC requirement establishes the maximum value of non-originating materials allowed in the final product, expressed as a percentage of the ex-works price of the product.⁵⁸ This percentage ranges from 30 per cent to 65 per cent, the most commonly used being 55 per cent. MC criterion is used mostly in chapters 84-87, 90 and 94 and is also frequent in chapters 50-63 (textiles and clothing). The technical test criterion or

⁵⁶ MMTZ countries are Malawi, Mozambique, Tanzania and Zambia

⁵⁷ In the case of Ch. 71 (pearls and precious stones), specific materials are required to be used in some instances. For textiles, in some instance specific materials are also required to be used, though these rules are relaxed for the MMTZ countries exporting textiles to the SACU market as described in section 3.3.

⁵⁸ Definitions of "ex-works price" and "value of materials" are included in Rule 1.

process rule lists one or more processes to be performed on the materials for the final product to acquire originating status. This type of rule is found in textiles and clothing, and in some metals. Wholly obtained rules (i.e. requiring certain inputs to be wholly produced in the territory of the parties) are used widely for agricultural products.

Rule 2.1 provides that no outward processing is allowed. Rule 2.2(b) provides for the absorption principle – i.e. if non-originating material obtains originating status, it is counted as 100 per cent originating when incorporated into another product. Rule 2.3(b) provides that non-originating materials which would otherwise not be accepted may nevertheless be used, provided that (i) their value does not exceed 10 per cent of the ex-works price of the product, and (ii) any of the percentages provided for in Appendix I to Annex I are not exceeded. This rule does not apply to Chapters 87 and 98 in the case of SACU, nor to textiles and clothing (Chapters 50 to 63).⁵⁹

Rule 2.4 establishes that the SADC region shall be regarded as one territory, hence allowing for full cumulation between the Parties, (i.e. both in terms of materials and of production processes). A list of minimal, non-qualifying operations or processes carried out in the Parties that do not confer origin, are provided in Rule 3 of Annex I.⁶⁰

Rule 5 specifies how the materials in a consignment are to be counted, while Rule 6 details the procedure to follow in the event that it is impracticable to separate materials. Additional criteria in Rules 7 and 8 indicate how certain materials used in mixtures and packing are to be treated or valued when determining the origin of goods. Article 5.2(e) of Annex II (concerning Customs Co-operation within SADC) requires the Parties to adopt laws on duty drawback in their customs laws.⁶¹ Rule 11 provides for derogations to the rules of origin, which may be granted by the CMT upon request of a Party when justified by the development of existing industries or the creation of new industries.⁶²

In order for goods to qualify for SADC preferences, Member States are required to gazette the Revised Rules of Origin in their official publication and notify the SADC Secretariat accordingly. In addition, Member States are to contact the SADC Secretariat with the names of agencies authorized to issue Certificates of Origin as well as specimen signatures of officials authorized to sign the certificates. Table 3.9 provides an overview of the current status of implementation in Member States.

⁵⁹ Textiles benefit from different tolerance rules, detailed in notes 5 and 6 of Annex I (Amended).

⁶⁰ When determining whether the working or processing is beyond minimal operations, all operations carried out in the Parties on a given product are to be cumulated.

⁶¹ All SADC Member States have duty drawback laws or other incentives that provide for duty free exports for exporters, but no common SADC regulations have been adopted in this regard.

⁶² To date no derogations have been adopted by the CMT.

Table 3.11 Implementation – Revised Rules of Origin

Country	Gazette	Implement	Issuing Agency
Botswana	Yes	Yes	Exporters Association of Botswana
Lesotho	Yes	Yes	Revenue Authority
Malawi	Yes	Yes	Revenue Authority
Mauritius	Yes	Yes	Chamber of Commerce & Industry
Mozambique	Yes	Yes	Chamber of Commerce & Industry, Ministry of Trade and Industry (UTCOM)
Namibia	Yes	Yes	Customs Authority
South Africa	Yes	Yes	South Africa Revenue Service (SARS)
Swaziland	Yes	Yes	Trade Promotion Unit (MOFAT)
Tanzania	Yes	Yes	Chamber of Commerce
Zambia	Yes	Yes	Revenue Authority
Zimbabwe	Yes	Yes	Zimbabwe Revenue Authority

It is apparent from Table 3.9 that all Member States are implementing the Revised Rules of Origin. The Revised Rules of Origin have been gazetted formally, or in the case of Malawi and Mozambique ratified with the Protocol on Trade, which is equivalent to the gazetted process.

The Mid-Term Review highlighted the need for more clear, transparent and predictable rules of origin. The MTR noted that the current SADC Rules of origin are overly complex and contain many restrictions, which ultimately discourage more intra-SADC trade. The Mid-Term Review cited the original SADC intention to adopt simple and unrestrictive rules of origin based on the COMESA model.

The MTR also found problems with the procedures for updating the specimen signatures. Under the existing arrangements new specimen signatures are sent to SADC Secretariat who then forwards them to the Trade Contact Point in each Member State. The contact point in turn passes them on to the relevant ministry who is then responsible for distributing the information to customs and border posts. In some cases, customs officials also send copies directly to their counterparts. The MTR also noted how the lack of efficient communications resulted in shipments being delayed due to the use of invalid specimen signatures.

In the past three years some progress has been made towards revising the rules of origin. The 19th CMT meeting in Maseru adopted for implementation additional revised rules of origin. At this same meeting, the TNF was directed to finalise the review of the outstanding rules before the end of 2007.

During the Trade Audit the consultants found evidence that this continues to be a problem affecting Member States who have all adopted the SADC certificate of origin regulations. Malawi, for example, was reported as having issued 657 certificates to exporters between January and March 2007. Mozambique however, did not have copies of the Manuals because they are not available in Portuguese. Most countries did not have copies of the Rules of Origin Manuals for officers let alone for traders. Only South Africa had copies of the Manuals for both Customs officers and traders.

Furthermore the existence of multiple trading arrangements among the SADC Member states each with its own set of rules of origin may require exporters to tailor their products in accordance with the daunting array of product specific criteria in order to qualify for preferential treatment in the different markets. The exporters interviewed during the audit indicated that they forgo the preferential rates offered under the SADC Protocol on Trade when the margin of preference is not large enough to offset the administrative burden of complying with the complex product specific rules. The existence of simpler rules under bilateral agreements offers a better alternative for them.

A Study “ Rules of Origin in FTAs: A world Map” by Antoni Estevadeordal states that Rules of Origin can affect trade by inflicting two types of costs – production and administrative costs both of which can introduce a protectionist bias. With regard to administrative costs, such costs stem from procedures required for ascertaining compliance with the Rules of Origin. These involve bookkeeping costs –the costs for the exporter of certifying the origin of a good prior to its export to the territory of another preference extending country member-and the costs to the partner country customs of verifying the origin of goods. The different certification mechanisms impose divergent costs on firms and governments alike, particularly when a country belongs to several preferential trading arrangements with different types of rules of origin.

In another study by Herin (1986) puts the cost of obtaining the appropriate documentation to meet the rules of Origin at 3 to 5 percent of the FOB value of the good in the context of the EFTA. In a more recent study by Cadot et al (2002), rules of origin –related administrative costs are estimated to be approximately 2% of the Mexican export to the US market. The Audit however did not go into detail to calculate the rules of origin related administrative costs on SADC trade due to time constraint and unavailability of relevant data.

In Malawi, the business community indicated that the complexity of the SADC Rules of origin and the general lack of understanding were affecting the implementation of the SADC Protocol on Trade. To this end, the business community suggested that the Rules of origin be reviewed and made more relevant to Malawi manufacturers. Furthermore, it was suggested that MRA should have information desks at all its ports where the public could easily access Customs information including information on the SADC Protocol on Trade. The SADC Certificate of Origin is used in Malawi for intra-SADC trade but verification of the authenticity of the certificates is usually a problem. E-certification was suggested as a potential solution to this problem.

In Mauritius, the business community raised the issue of the complexity of the product-specific SADC Rules of origin relative to the COMESA Origin rules. Prior to joining SADC, Mauritius was already a member of COMESA and the Mauritian exporters had the experience of exporting under COMESA origin rules. Mauritius joined SADC so that it could increase its trade with South Africa, which is currently its third largest trading partner. Under SADC, its exports of textiles are required to satisfy double-stage transformation to qualify as originating. The National SADC Protocol on Trade Committee suggested that SADC Member States should review the current origin rules and come up with rules that are more practical for the region.

In order to facilitate the quick clearance of imports from SADC countries, the Mauritius Revenue Authority (MRA) advocated for the electronic transmission of authorized signatures and stamp impressions between the SADC Secretariat and the Member States. The MRA identified the need for an effective interface between the different electronic clearance systems in order to facilitate trade. The development of a database capable of linking with any Customs computerized system (ASYCUDA++, CMS, TIMS, etc) ensure an effective interface for reviewing the authorized signatures when processing Customs import declarations.

The MRA is using the new e-EUR1 form (for its trade with the EU under the Cotonou Agreement) computer application in its Customs Management System. This application allows for data to be uploaded onto the MRA website and allows the EU Customs authorities to verify authenticity on-line thereby preventing origin fraud. In their view, consideration could be given to sharing their experience on the E-EUR1 form with other SADC Member States.

In Mozambique, both the Ministry of Industry and Trade, and the private sector indicated that their producers found it difficult to meet the SADC rules of origin. In interviews they repeatedly described them as too complex and difficult to apply. The private sector suggested that the rules be revised and made simpler and suitable for application by Mozambican companies.

Rule 9.6 of Annex 1 to the SADC Protocol on Trade requires all Member States to deposit with the Secretariat the names of Departments and Agencies authorised to issue certificates of origin as well as specimen signatures of officials authorised to sign the certificates and the impression of the official stamps to be used for that purpose for circulation to the Member States by the Secretariat. There are problems of transmission of this information within Member States. For example, at the Regional MRA office in Manica, lists of authorized signatories and origin verification stamps were not updated on time and this caused delays in cargo release. In some cases the faxed copies received at border posts were not clear and one could hardly read them. The officers also noticed that the quality of the paper on which the SADC Certificate of Origin is printed was different within the SADC countries. In other cases, either the stamp or signature was missing. At the time of the audit, Certificates from Namibia, South Africa and Zimbabwe for exports into Mozambique had queries and importers or their Agents were being asked to pay monetary deposits of say USD2000 to secure release of their goods. Customs clearing agents complained about these costly delays.

In Swaziland the SADC certification process is centralised in Mbabane. The majority of Swaziland exporters are based in Matsapha, about 40km from Mbabane where the Trade Promotion Unit is located. This requires exporters to travel to Mbabane to have their SADC Certificates certified by both the TPU and Customs, which is both costly and time consuming. The business community complained about this arrangement and suggested that the Customs office in Matsapha, which processes AGOA Certificates be delegated the authority to certify the SADC Certificate of origin. In addition, they would like all certificates of origin (i.e. AGOA, SADC, COMESA) to be authenticated by Customs as was the case in other SADC countries.

In Zimbabwe, officials indicated that delayed updating of lists of SADC Certificates of Origin authorized signatories and origin verification stamps caused delays in cargo release.

The comments from our interviews with both government officials and the private sector in a number of SADC countries indicated that the existing SADC rules of origin are perceived as a constraint to companies benefiting from the preferential trade. In light of this it appears that the intent of the recommendation following from the MTR to simplify the rules of origin has not been met.

3.6 Patterns of Trade under the SADC Protocol on Trade (2004-2006)

To illustrate the full effects of trade liberalization and the accompanying tariff phase downs in SADC it is critical to have the capacity to correlate trade flows with tariff rates. However, the currently available data for SADC as reported from each country's respective ministry is insufficient to draw meaningful conclusions. It will be crucial that as integration proceeds it is accompanied by a rigorously controlled process to capture and report accurate trade statistics and reconcile any discrepancies between countries.

For this report we have reviewed the imports from the non-SACU countries to SACU and the exports of South Africa to SADC countries for the period 2004- 2006. By 2006 the SACU CET is zero for over 95 per cent of SADC imports. As noted in Section 3.2 the non-SACU Member States - Malawi, Mauritius, Mozambique, Tanzania, Zambia, and Zimbabwe- all reduce their duties over a much longer period. Significantly, the average annual growth rate of South African imports from SADC have grown at almost double the rate (17%) compared to South African exports to SADC (9%) over the last 10 years. However significant non-tariff barriers continue to impede the efficient flow of goods among SADC Member states.

South Africa: A continued reliance on traditional raw materials and modest diversification in the production of manufacturing goods are the two pre-dominant trends underlying growth in South Africa's imports from SADC countries. SADC exports to South Africa continue to be based on raw materials particularly in mining and agriculture. This trend has been exacerbated in recent years by sharp increases in the price of both copper and nickel, products that have long benefited from reduced or zero tariffs from South Africa. However, while SADC countries have benefited from accelerated tariff phase downs that brought almost all South African tariffs to zero by or before 2006, they continue to face difficulty in meeting the rules of origin standards necessary to diversify and export more manufactured goods. There has been increased trade concentrated in clothing exports from Mauritius in recent times.

South African exports to SADC continue to grow less dramatically than imports as SADC tariffs hinder the free flow of goods. The composition of exports is characterized by the continued strength of more manufacturing intensive goods with less reliance on raw materials relative to SADC. Of South Africa's top five exports to SADC, three are manufactured goods (machinery, vehicles, and electrical equipment), which represents nearly a third of all exports to SADC in 2006.

Malawi: has benefited from substantial apparel exports to South Africa, but has suffered from constraints on its ability to meet rules of origin criteria. While exports have not reached the pre-rules of origin levels, the combined apparel HS chapters 61 & 62 still represent Malawi's most significant export to South Africa. Other exports include coffee, tea tobacco and cotton.

Mauritius: the most notable improvement in diversification came from the apparel industry, where exports have grown by 104% in 2005 and by an additional 162% in 2006. Apparel now represents the most significant export to SA for Mauritius by a very wide margin and benefits almost entirely from the preference offering.

Tanzania: The steady growth of Tanzania's top export, un-worked semi-precious and precious stones, has driven the country's 20% export growth to South Africa in 2005 and 2006. In the apparel sector Tanzania has extremely modest exports to South Africa. However, it is important to note that while HS CH 61 apparel represents only \$2M of exports for Tanzania, the percentage of that falling under preference has increased dramatically from 1% in 2004 to 21% in 2005 and to 95% in 2006. This trend may be indicative of impact of the relaxed rules of origin criteria for MMTZ. Other exports include coffee/tea fruit, tobacco and machinery.

Zambia: Zambia's most crucial export to South Africa continues to be copper and other ores, which benefited from a significant price increase in 2006. However, diversification can be seen in Zambia's increase in its exports of electric and electronic equipment which grew at an average annual growth rate of over 50% during the past 6 years. South African tariffs for electric equipment were phased out by 2003. Another significant trend is the increase in sugar exports to South Africa that fall under the preference margin. It is not clear though if this change was due to new product being cleared under the sugar rebate agreement or if it represents a misclassification. Cotton is another significant export to South Africa.

Zimbabwe: Approximately 70% of South Africa's import growth from SADC between 2005 and 2006 can be attributed to the increase in the price of nickel coming from Zimbabwe. However, Zimbabwe also shows signs of a growing trade in apparel under HS Chapter 62 where growth has exceeded 100% in both 2005 and 2006 and textiles have grown from being the 25th to the 10th most import export to South Africa. Other major exports from Zimbabwe to South Africa include Ores, Cotton, Wood and Tobacco.

Chapter Four: Implementation and Conformity with Trade Facilitation Instruments

Chapter 4 outlines the trade facilitation instruments were prepared by SADC institutions for implementation by SADC Member States. The implementation of these instruments should contribute to the reduction of trade costs and facilitate the movement of goods within the region. The key trade facilitation instruments include the application of a common tariff nomenclature, legislation, procedures and practices, exchange of information and customs cooperation, the use of modern technologies in Customs processes and capacity building in Customs.

The preamble to Annex II, of the SADC Protocol on Trade, Concerning Customs Co-operation within SADC, notes that the implementation of harmonized Customs laws and procedures can effectively contribute to the development of intra-SADC trade and other intra-SADC exchanges. To achieve this objective, Article 11 to Annex II of the SADC Protocol on Trade provides for the establishment of the Sub Committee on Customs cooperation (SCCC). Their mandate is to promote Customs cooperation among Member States, simplify and harmonise Customs laws and procedures and to build customs administration capacity within SADC. The Sub-Committee on Customs Cooperation developed (through Working Groups on Trade Facilitation, IT, Transit, Customs Cooperation, Rules of Origin) a number of trade facilitation instruments and documents in line with its Indicative Strategic Plan (2000 – 2010) that was adopted at its 8th Meeting, based on international standards for implementation by Member States. Each of the Working Groups formed by the SCCC consists of representatives from the respective SADC Members' Customs administration.

The trade facilitation instruments include, Regulations on SADC Rules of Origin which were approved by the Integrated Committee of Ministers (ICM) during its 1st Meeting in 2003, SADC Transit Regulations, SADC Model Customs Act, SADC Tariff Nomenclature which was adopted at the 17th meeting of the SADC Ministers of Trade, Model SADC Customs MOU, SADC Transit Customs bond guarantee scheme, Rules of Origin manuals for officers and traders, respectively and Common Customs documentation, including, the Single Customs administrative document (SADC-SAD), the SADC Certificate of origin, Transit documentation, the Voucher of correction of SADC-SAD and Guidelines for the completion of SADC Customs documentation. In addition, a peer review mechanism for SADC Customs Administrations has been put in place. To fight corruption and achieve SADC' vision of establishing "World Class Customs Services" a SADC Code of Conduct for Customs Officials was also developed and adopted by SADC Member States.

A Model Memorandum of Understanding (MOU) for Customs Cooperation and Mutual Administrative Assistance was also developed by the SCCC and adopted by SADC Member States to facilitate the exchange of enforcement information and to enable SADC Customs Administrations to extend various forms of assistance to each other in the implementation of the SADC Protocol on Trade.

Through the EU funded SADC-EU RICB Technical Assistance Project the SCCC Working Group on Training developed the following training modules and a training strategy to be used by SADC Customs Administrations in their national training programmes: SADC Protocol on Trade; SADC Rules of origin, ACP-EU Rules of

origin, Post-clearance audit, WTO Customs Valuation Agreement, Trade Facilitation, Client care, Risk Management, Warehousing, and Transit.

Through the RICB Technical Assistance Project SADC Secretariat has conducted a number of regional Customs training programmes. The table below gives a summary of the regional Customs courses conducted by the SADC Secretariat since 2003.

Table 4.1 Regional Training conducted by the SADC Secretariat, 2003 – 2007

Course Number	Number of participants	Subjects covered	Venue
1.	28	SADC Protocol on Trade and Rules of origin	South Africa
2	15	Trade Facilitation, SADC Protocol on Trade and SADC Rules of Origin	South Africa
3.	20	Post clearance audit and Risk management	Zimbabwe
4.	44	SADC Protocol on Trade, Rules of Origin, Risk management	Angola
5.	23	SADC Protocol on Trade, Rules of Origin, Risk management, WTO Agreement on Customs Valuation, Post clearance audit techniques	Mozambique
6.	23	SADC Protocol on Trade, Rules of Origin, Risk management, WTO Agreement on Customs Valuation, Post clearance audit techniques	Zimbabwe
7.	24	SADC Protocol on Trade, Rules of Origin, Risk management, WTO Agreement on Customs Valuation, Post clearance audit techniques	Botswana

Source: SADC Secretariat

The SADC Summit noted in paragraph 2.2.7.1 of its Record of the SADC Extra-Ordinary Summit Meeting of 23 October 2006 that SADC had made progress in developing the necessary instruments for deepening Customs cooperation and enhancing trade facilitation benchmarks against international instruments such as the WCO' Revised Kyoto Convention, the Istanbul and Nairobi Conventions and the HS 2002 version as well as the WTO Agreement on Customs Valuation.

Article 4 of Annex II of the SADC Protocol on Trade encourages SADC Member States to adopt the WTO Agreement on Customs Valuation as part of their tariff law.

The Ministerial Task force on Accelerating the Implementation of the SADC Economic Integration Agenda noted in its Issues Paper (2006) that while there had been much success in developing the instruments, implementation had not been to the desired levels and this was attributed to the existence of parallel programmes and the need for keeping and updating data for different tariff and trading regimes. Multiple memberships to regional groupings was also cited as presenting SADC Customs Administrations with substantial implementation challenges.

The review carried out between April and June 2007 sought to assess the progress made by Member States in implementing the trade facilitation instruments.

4.1 Customs Procedures and Documentation

Trade facilitation instruments are adopted to reduce the cumbersome, time consuming and costly procedures that impede free and faster movement of goods. Within SADC the trade facilitation instruments include Regulations on SADC Rules of Origin, SADC Transit Regulations, Model SADC Customs MOU, SADC Transit Customs bond guarantee scheme, Rules of Origin manuals for officers and traders, Common Customs documentation (e.g., the Single Customs administrative document (SADC-SAD), transit documentation, the SADC Certificate of origin, the Voucher of correction of SADC-SAD and Guidelines for the completion of SADC Customs documentation. In addition, a peer review mechanism for SADC Customs Administrations has been put in place. To fight corruption and achieve SADC' vision of establishing "World Class Customs Services" a SADC Code of Conduct for Customs Officials was also developed and adopted by SADC Member States. Table 4.2 below provides the status of implementation of these instruments.

Table 4.2 Implementation of Trade Facilitation Instruments

Instrument	Bot	Les	Mal	Mau	Moz	Nam	RSA	Swz	Tan	Zam	Zim
WTO Valuation Agreement	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
HS Coding System	Y	Y*	Y	Y*	Y	Y*	Y*	Y	Y	N	Y
(a) Schedule of Concessions	On-going	Y	On-going	Y	N ⁶³	Y	Y	On-going	Y ⁶⁴	Y	Y
(b) Migration to 2007											
SADC Certificate of origin	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Regulations on SADC RoOs	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
RoOs Manual for customs	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y
RoOs Manual for Trader	N	N	N	N	N	N	Y	N	N	N	N
SADC SAD ⁶⁵	SAD 500	SAD 500	n/a	n/a	n/a	SAD 500	SAD 500	SAD 500	n/a	n/a	n/a
Voucher for correction of SAD	Y	Y	N	N	N	Y	Y	Y	N	N	N
Guidelines for completion of SADC Customs Documentation	Y	N	N	N	N	N	N	N	N	N	
SADC Transit Regulations	N	N	N	N	N	N	N	N	N	N	N
SADC Transit Documentation	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
SADC Transit Customs Bond Guarantee	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
SADC Integrity Plan to fight corruption	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y
MOU For SADC Customs Administrations	Y	Y	Y	N	Y	N	Y	Y	Y	Y	Y
Conformity Assessment	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

Notes:

n/a Not yet adopted for implementation

y* means the Offer/Schedule of Concessions has been reviewed by the Member states and is now based on HS 2007

SAD500 - Single Administrative Document 500 being implemented by SACU

⁶³ Mozambique's integrated tariff schedule is based on HS 2002, which incorporates the SADC tariff schedule.

⁶⁴ The East African Community Common External Tariff has been modified into a 2007 Version in conformity with the HS Version 2007.

⁶⁵ SACU member states have a common document the SADC 500 while the rest of SADC have national form which however are not very different from the SADC SAD and the SAD 500.

Malawi

The MRA suffers from a lack of capacity to administer the Agreements to which Malawi is a party, namely, the WTO Agreement on Customs Valuation, SADC, COMESA, Malawi-Botswana, Malawi-Mozambique, Malawi-South Africa and Malawi-Zimbabwe trade agreements. For example, it lacks adequate infrastructure and enforcement equipment at its border posts and the two border posts visited by the consultant are understaffed. Mwanza Border post is so understaffed that most goods are moved to Blantyre Port for final clearance. Out of a total staff of 121, the border post currently operates with only 48 members on duty. Mchinji Border Post is also under-staffed, with only 15 of its 26 posts filled.

Transiting across countries can be costly in terms of delays at border crossings and the fulfilment of different regulations in different countries. Transit costs and delays are particularly significant for landlocked countries. Among the fourteen members of SADC seven countries are landlocked: Botswana, DR Congo, Lesotho, Malawi, Swaziland, Zambia, and Zimbabwe. The Malawi business community complained about such delays caused by the number of stops at borders. To facilitate the fast clearance of cargo through borders and reduce transaction costs the business community suggested that one-stop border posts be implemented within the SADC region. In addition, Members of the Malawi Chamber of Commerce also needed assistance from the MRA to tackle the problems of smuggling and importation of counterfeit goods into Malawi that were affecting the viability of their businesses. The smuggling of flour was cited as one example requiring urgent intervention.

The provision of bonds guaranteeing goods transiting through a territory was cited by the private sector as a significant cost. Carriers are required in many cases to give separate guarantees for each country of transit. Harmonisation of requirements in a single Common Customs Transit Bond Guarantee System (CTBGS) provides more rapid clearance of vehicles at border posts, results in reduced freight charges, reduced financing charges and improved collection of duties and taxes. Together these changes would represent a major cost savings for businesses across the greater region and will enhance their competitiveness in world markets. The application of common transit procedures and documents facilitates cross-border trade. The Malawi business community also suggested that the COMESA and SADC transit management regimes be harmonized to avoid duplication, and that a single regional transit management regime be put in place.

Malawi Clearing and Forwarding Agents Association felt that there was a general lack of commitment by SADC Member States to implement agreed programmes and there was no consistency in following up issues. Furthermore, the frequent rotation of the officials attending SADC meetings was considered, by the Association, to impact on the implementation of the SADC Protocol on Trade. Since this resulted in a lack of continuity and understanding of the issues.

SADC publications are not generally available at both public and private sector organizations in Malawi, especially at the border posts, and this affects implementation of the SADC Protocol on Trade.

Mauritius

In interviews, government officials reiterated their commitment to the establishment of the SADC FTA and Customs Union but suggested that there was a need for a transition period to allow local industries to adjust to face the competition resulting from the opening up of its market. With the creation of the SADC FTA, some industries could end up closing down and donor assistance would be needed to finance the retooling of industries and to address the social costs of reform.

The private sector supported the implementation of the SADC Protocol on Trade and the creation of the SADC FTA. The main problem faced by Mauritian exporters is the issue of logistics particularly with respect to landlocked countries. According to the Chamber of Commerce, Mauritian exporters lack the necessary information from other SADC Member States to facilitate business transactions. While they found it easier to do business with South Africa, they found it difficult to deal with suppliers in other countries due to inadequate information.

According to the Customs House Brokers Association more publicity was required in order to facilitate the business community to take advantage of the opening up of the markets within SADC. In their view, "SADC has a product to sell but with very little marketing is carried out to sell it". They expressed a need for the SADC Secretariat to market SADC as most of their clients seemed to know more about COMESA than SADC.

According to the National SADC Protocol on Trade Committee, it was important to examine trade barriers (such as complex Rules of Origin, SPS, etc) that SADC Member States are facing in implementing the SADC Protocol on Trade, especially in view of the entry into force of the FTA in 2008. In the case of SPS measures, for example, a case was cited where South Africa had blocked imports of canned tuna from Mauritius which was only resolved after protracted negotiations at the bilateral level.

Mozambique

In interviews Mozambique government officials were committed to the effective implementation of the SADC FTA, although they were concerned about the possible competition from some of the more developed SADC countries and hoped that the lengthy implementation period would permit their domestic industries to become more competitive before tariffs were removed. Some representatives of the private sector felt that the establishment of the FTA would affect Mozambican industries adversely through foreign competition. They argued for improved access to cheaper finance for recapitalisation and working capital, as this was expensive in Mozambique compared to other SADC countries. According to the private sector, companies from the more developed economies in the region could also establish joint ventures with Mozambican companies and take advantage of Mozambique's geographical location by the sea, low labour costs and the cumulation provisions provided in the Protocol on Trade.

The National SADC Protocol on Trade Committee noted that there were no mechanisms at the SADC Secretariat to resolve trade queries on a day-to-day basis.

In addition, the Committee also suggested that the SADC Secretariat puts in place a monitoring mechanism at the SADC Secretariat which would assist in monitoring implementation of the SADC Protocol on Trade as Member States either delayed implementation of agreed programmes/instruments or did not implement them at all, which in fact would affect the establishment of the SADC FTA in 2008.

A major area of complaint by Mozambican authorities was the lack of translated documents or publications in Portuguese. This included discussion documents at meetings, adopted instruments and training modules, which are prepared in English by the SADC Secretariat. This affected the implementation of adopted instruments and documentation by Mozambique.

The Ministry of Industry and Trade also suggested that besides effecting the tariff reductions Member States needed to discuss subsidies, SPS measures and TBTs as these measures affected intra-SADC trade.

SACU

All SACU tariffs, including the publication of tariff handbooks and amendments are published by the South African Revenue Service. Lesotho, Namibia and South Africa have implemented the HS 2007 amendments. Botswana and Swaziland are in the process of gazetting the HS 2007 amendments.

A manual and electronic test of the Harmonised System at the border post at the Plumtree Border Post revealed a slight discrepancy between the published tariff book and the electronic version of the same tariff book on the ASYCUDA system. While the hard copy of the tariff book was updated on HS 2002, the electronic version on the ASYCUDA System was not compliant. Some tariff lines in the system were missing while others had different general and SADC tariff rates.

Botswana

The Exporters Association advised that its members lacked trade information about what to sell in each of the SADC countries and needed assistance to develop its capacity so that it could provide such information to the members. They requested assistance to upgrade their website to facilitate the dissemination of information. Lack of trade information and knowledge of Customs requirements were as seen as hampering the implementation of the SADC Protocol on Trade by SMEs in Botswana. The association also sought assistance to allow it to take business delegations, which are mainly small to medium business operators, to visit different SADC countries where they could secure markets for their products and hence benefit from tariff preferences provided under the Protocol.

The Freight Forwarders Association complained about the lack of uniformity within SADC of axle load requirements, which was different in, for example, Botswana, Namibia and South Africa. This created overload problems for carriers and caused delays as they moved goods across borders. Harmonisation was required in this area.

The Association also complained about the lack of uniformity in the application of Customs policies and procedures by the different Customs offices. The major concern appeared to relate to the valuation of imported used motor vehicles where different valuation procedures were applied leading to some Customs offices being preferred over others. At some offices, declared invoice values were accepted while the same values were rejected at other Customs offices resulting in revaluations. However, under the Protocol on Trade second hand products are excluded from SADC preferences.

Lesotho

Lesotho Revenue Authority (LRA) Customs division is still operating manual systems which have severely impaired processing efficiency and data integrity. The WCO carried out a diagnostic review of LRA in 2006 and preparations to implement the recommendations are underway. South Africa is financing a project to automate Customs procedures.

There was generally inadequate understanding of SADC trade issues and instruments by both the public and private sector officials. The private sector complained about the lack of information and poor communication on the implementation of the SADC Protocol on Trade. The private sector needed to participate more in SADC matters and required training in critical trade and Customs instruments such as the WTO Customs Valuation Agreement. There are plans to strengthen the relations between the Trade Ministry and Customs through the establishment of a public sector-private sector forum, a platform that would be used to discuss matters of interest to both parties.

Namibia

Namibia is not implementing all of the SADC instruments mainly due to capacity constraints. According to the Customs authorities, plans are underway to implement.

South Africa

South Africa is implementing all the existing SADC instruments relating to trade facilitation.

Swaziland

The Chamber of Commerce acknowledged the lack of knowledge by traders on both SADC and COMESA issues and stated that more education was needed. The Chamber was preparing to upgrade their website to enable it to provide more trade information to its members. Equally the Trade Promotion Unit (TPU) requested assistance to set up a website to facilitate the dissemination of trade information. Both government officials and the private sector stated that the dearth of information contributed to a lack of seriousness in contributing to national SADC TNF preparatory meetings. According to the Ministry of Trade and Industry, the private sector often failed to make meaningful contributions when invited to discussion meetings to comment on trade issues. Ministry of Trade and Industry officials would visit individual companies in order to talk to senior company officials.

This lack of information was further compounded by the fact that there is no umbrella body for Clearing Agents in Swaziland, which could provide Customs and trade information to its members. Furthermore, the Agents had no proper training and this affected the quality of their Customs declarations, which according to Customs, were generally not up to standard. This caused delays to the movement of cargo across the border. According to the Customs Controller most Agents operating at the border were recruited as school leavers and got their training on the job.

The change of Customs declaration form from CCA1 to the SAD 500 in October 2006 presented problems to both officers at the border as well as the Clearing Agents as up to now they both do not fully understand how the form should be completed. The Clearing Agents complained about the lack of education on the SAD 500 before its introduction and suggested that they needed more training from Customs on the proper completion of the new form.

Clearing Agents also complained about the lack of uniformity in the application of Customs policies at border posts. A case was cited where the Commissioner of Customs issued an instruction to all Heads of Sections, Controllers and staff which required all Controllers at border posts to ensure that all declarations clearly showed the C.I.F value as agreed by SACU Members. According to one of the Clearing Agents the playing field was not level at all as entries presented by another Clearing Agent were being accepted without complying with this requirement yet according to the Customs instructions such entries were supposed to be rejected.

Customs Officers at Lomahasha Border Post did not have the SADC Rules of Origin Manual, HS Explanatory Notes (the ones found at the station are outdated) and the Compendium on Customs Valuation, among others. In addition, there was only one Tariff handbook that is used by all officers at the border post and according to the Customs Controller the handbook had not been amended since 2006.

Furthermore, Clearing Agents at Lomahasha Border Post knew very little about SADC and they did not have any SADC publications such as the SADC Protocol on Trade and the Traders' Guide on SADC Rules of Origin as reference material.

Tanzania

Tanzania has not implemented most SADC trade facilitation agreements. So far, only the regulations on SADC Rules of Origin, SADC Certificate of origin, integrity plan and model Memorandum of Understanding for Customs Administrations have been implemented.

Tanzania did not indicate why the instruments have not been implemented and when they are likely to implement them.

Officers talked to were more conversant with EAC instruments than SADC instruments. There were virtually no books of reference on SADC instruments at Nakonde Border and the officer in charge confirmed that no officer at the border had been trained on SADC Trade Facilitation Instruments.

The original tariff offer by Tanzania was based on HS 1996 and there has been no migration to HS 2002. The EAC common external tariff rates are however based on the 2007 harmonized coding system of classification.

Zambia

Though Zambia is generally compliant on its tariff offer, she has not implemented fully all the SADC Trade Facilitation instruments as indicated in table 4.1. There was no indication of the exact time frame in which the rest of the instruments were going to be implemented. It was however evident that Zambia is over burdened by compliance requirements to the COMESA Treaty and SADC Protocol on Trade. Most if not all instruments are similar but are administered under different pieces of legislation and officers have to be trained.

SADC books of reference are available at Zambia Revenue head office, not all border stations audited during the study had copies of these reference materials. Zambia has reduced formalities and documentation requirements in connection with importation and exportation and has pre arrival clearance but needs to improve on post audit clearance. Publication and availability of information is one area where some work will be required by Zambia.

Zambia has updated its HS coding to version 2007, though the original tariff reduction offer still remains in HS version 1996. However, this has not impeded the realization of benefits by the trade in the sense that rare cases of non-correlation of the two HS versions are dealt with expeditiously by a dedicated unit within Customs. The migration of the offer to HS 2007 is planned within 2007 after necessary government approvals are obtained.

Zimbabwe

Zimbabwe is currently undertaking a trial run of the SADC Transit Management system at Beitbridge and Nyamapanda Border Posts. Based on the results of the pilot run, a decision will be made regarding implementation of the SADC Transit management system.

Clearing Agents at Plumtree Border Post complained about delays in cargo release caused by the shortage of staff at the ZIMRA commercial office.

The researcher noticed the large number of small-scale cross border traders at Forbes and Machipanda Border Posts (between Zimbabwe and Mozambique). It was the same at most border posts visited by the researcher. While there is a lot of informal trade going on between the SADC countries, such traders were not benefiting from the SADC tariff reductions since there are no special facilities for small-scale traders. Under COMESA for example, there are simplified Customs Declaration forms and Certificates of origin for use by small-scale traders.

Customs Officers and Clearing Agents at the borders did not have any SADC publications, for example, the SADC Rules of Origin Manual for officers and for traders, respectively. The manuals provide guidance on the application and administration of the SADC rules of origin.

4.2 WTO Customs Valuation

Article 4 of Annex II of the SADC Protocol on Trade, Concerning Customs Cooperation within SADC requires Member States to adopt a system of valuing goods for Customs purposes based on principles of transparency, equity, uniformity and simplification of application in accordance with the WTO Valuation System. In this section, we assess the status of implementation of the WTO Customs Valuation Agreement by SADC Member States. We also highlight the problems faced by the Member States in the application of the Valuation Agreement.

Customs valuation plays an important role in the assessment of import duties and taxes and forms an important component of SADC Member States' tariff systems. It is also an important component of other aspects of international trade, such as the collection of trade statistics, application of tariff quotas and in the application of rules of origin under the SADC Protocol on Trade.

The WTO Agreement on Customs Valuation is intended to provide a fair, uniform and neutral system for the valuation of goods for Customs purposes which conforms to commercial realities but outlaws the use of fictitious Customs values while in Article 17 allowing Customs to satisfy themselves as to the truth or accuracy of declared values using information available in the country of importation.

The Agreement provides six methods of determining the Customs value which are to be applied in a prescribed order, namely, the transaction value of the imported goods, the transaction value of goods identical to the goods being valued, the transaction value of goods similar to the goods being valued, the deductive method, the computed value method and the fall-back method. The Agreement also contains provisions on currency conversion, confidentiality of information, the rights of Customs administrations, right of appeal to a judicial authority, publication of valuation laws and regulations. The Agreement also allows some flexibility to developing countries in its application. For example, Article 21 of the Agreement allows developing countries to make a reservation to continue to use minimum values and allows them five years to delay implementation of its provisions, subject to extension.

Competence in this area is therefore critical for SADC Customs administrations in order to avoid arbitrary valuation which causes undue delays during the clearance process and also to ensure the proper application of other aspects of international trade.

The WTO Customs Valuation Agreement was implemented as follows by the SADC Member States:

Botswana

Botswana has been applying the WTO Customs Valuation Agreement since January 1995 without reservation. Prior to that Botswana was implementing the GATT Customs Valuation Agreement.

No separate valuation guide has been issued by BURS for use by Customs officers or the public. Instead, for officers, there are some guidelines contained in the Departmental Instructions while the public has access to the valuation provisions contained in Customs legislation.

The transaction value method is mostly used to clear goods imported into Botswana, while the fallback method was rarely used. However, the private sector complained about the revaluations by Customs on used imported vehicles.

Lesotho

Lesotho has been applying the GATT/WTO Valuation Agreement since 1983 without reservations. There is a valuation guide, which has been included in the Procedure Manual for officers who deal with extra SACU trade.

Malawi

Malawi has been applying the GATT/WTO Agreement on Customs Valuation since February 1990. Although the Agreement advocates for the application of the Transaction Value method for the majority of imported goods, in Malawi, alternative valuation methods are mostly used, as according to the Customs authorities, most goods imported into Malawi were undervalued hence it would be difficult to accept the declared invoiced values as the basis for the value for duty.

At Mchinji, the transaction value method is applied in about 20% of the import entries with 80% valued under alternative valuation methods, that is, the Transaction value of Identical goods and the Transaction value of Similar goods, respectively. (Methods 2 and 3).

Customs clearing agents in Malawi consider the WTO Agreement on Customs Valuation as a fair and objective system but the only problem is the appeals process where cases have to be referred to MRA Headquarters for resolution, which takes about 2-3 days to get a decision. Most appeals made by Customs Clearing Agents in Blantyre on Customs valuation relate to the valuation of used motor vehicles and goods from the Far East.

Members of the Chamber of Commerce based in Blantyre generally viewed the WTO Customs Valuation Agreement as a fair and objective valuation system, which takes into account commercial realities.

MRA seeks to have more officers trained in Customs valuation especially with the phasing out of Pre-shipment inspection (PSI) in June this year.

Mauritius

Mauritius has been applying the WTO Agreement on Customs Valuation since the year 2000.

The Transaction Value Method is the most widely used valuation method for imports into Mauritius, with about 99% of imports being valued under this method. The

Customs value for used motor vehicles is assessed by Customs, as according to them, importers usually under-declared their values. Clearing Agents complained about these assessments including the revaluation of used motor vehicle spares as they felt these were not in line with the provisions of the WTO Agreement on Customs Valuation.

The Independent Assessment Review Committee handles all tax appeals including Customs valuation appeals. Both Customs and the business community see the current appeal system as a fair and just system.

Mozambique

Mozambique has been applying the WTO Agreement on Customs Valuation since January 2003.

The Transaction Value Method is the most widely used valuation method for commercial imports into Mozambique. Assistance on the valuation of selected items such as used motor vehicles is provided by Intertek, a PSI company that has been operating in Mozambique for over ten years now.

The private sector generally views the WTO Customs Valuation Agreement as a fair and objective valuation system, which takes into account commercial realities.

Customs valuation appeals process needs improvement at Port level as reasons for rejection of declared values are not usually given in writing as required under the WTO Customs Valuation Agreement.

Namibia

Namibia has been applying the WTO Agreement on Customs Valuation since 1995

The Transaction Value Method is the most widely used valuation method for imports into Namibia estimated at 98% of all transactions.

Under valuations especially of second hand goods were confirmed to be the major challenge in Namibia.

The private sector at the border viewed the customs facilitation and the valuation system favourably due to the fact a high incidence of clearances are done through the green channel

The appeal process on valuation in Namibia is very elaborate and involves the legal department

South Africa

South Africa has been applying the GATT/WTO Customs Valuation Agreement since July 1983 without reservations. All Articles of the Agreement are applied in full with interpretative notes covered in Section 74(a) of the Customs and Excise Act.

At least 98% of imports into South Africa are valued on the basis of the transaction value method, with the fallback method being rarely used.

There are valuation guides for both officers and the public.

At branch level there is a Valuation Committee that deals with appeals before they are referred to the Head Office appeals Committee.

Swaziland

Swaziland has been applying the WTO Agreement on Customs Valuation since 1995.

The Transaction Value Method is the most widely used valuation method for imports into Swaziland. Undervaluation and the misdescription of imported goods were cited as the main problems experienced at Lomahasha Border Post. In addition to this, there is also the problem of smuggling of goods, especially cigarettes. To combat smuggling, the army is assisting in carrying out border patrols with Customs mounting check points along the main road to Manzini.

The private sector generally views the WTO Customs Valuation Agreement as a fair and objective valuation system, which takes into account commercial realities. They however complained about the revaluation of used motor vehicles by Customs.

Clearing Agents at Lomahasha need training in Customs valuation as well as the classification of goods under the HS including training on the proper completion of the SAD 500.

Tanzania

Tanzania implemented the GATT/WTO Agreement on Customs Valuation in 2001.

The Transaction Value Method is the most widely used valuation method except on second-hand goods.

The private sector generally views the WTO Customs Valuation Agreement as a fair and objective valuation system which takes into account commercial realities.

Customs valuation appeals process in Tanzania is transparent and allows importers to appeal to an independent Appeals Tribunal if they fail resolve with the Commissioner Customs

Zambia

Zambia implemented the WTO Agreement on Customs Valuation in the year 2000. This was after expiry of its reservation. As part of the Customs modernization process, Zambia automated its customs procedures in 1998 using ASYCUDA version 2.7.

After two years of operation, the system was upgraded to ASYCUDA ++ in the year 2000 with a Wide Area Network (WAN). The ASYCUDA system has a provision for risk management in the selectivity module. One of the key risk factors is customs value declarations. The system has four major lanes namely: Red, Green, blue and Yellow.

On examination of bills of entries and the system at the borders, it was established that the most commonly used valuation method was the transaction value method except for second hand goods especially motor vehicles.

The private sector generally views the WTO Customs Valuation Agreement as a fair and objective valuation system which takes into account commercial realities.

Clearing Agents complained about lack of communication and transparency by Customs on valuation decisions and new issues.

Customs valuation appeals process needs improvement even if Zambia has an independent Revenue Appeals Tribunal. But at port level, reasons for rejection of declared values should be given to the importer in writing as required under the WTO Customs Valuation Agreement.

Zimbabwe

Zimbabwe has been applying the GATT/WTO Agreement on Customs Valuation since January 1988.

The Transaction Value Method is the most widely used valuation method for imports into Zimbabwe.

The private sector generally views the WTO Customs Valuation Agreement as a fair and objective valuation system which takes into account commercial realities.

Private Sector complained about lack of communication and transparency by Customs on valuation decisions.

Customs valuation appeals process needs improvement at Port level as reasons for rejection of declared values are not usually given in writing as required under the WTO Customs Valuation Agreement.

4.3 Harmonized System

The International Convention on the Harmonized Commodity Description and Coding System [hereinafter referred to as the “Harmonized System” or “HS”] entered into force on 1st January 1988. The Harmonized System is both a multipurpose 6-digit nomenclature and a structured nomenclature based on a series of subdivided 4-digit headings (WCO, 1988). The HS nomenclature is comprised of more than 5000 categories of goods identified by a 6-digit code and is provided with appropriate definitions and General Interpretative Rules to ensure its uniform application.

For tariff classification purposes, the HS provides a legal and logical structure with more than 1200 headings grouped in 96 Chapters, which are arranged in 21 Sections. In addition, most of the headings are subdivided into two or more 1-dash subheadings, which where necessary, are themselves further subdivided into two or more 2-dash subheadings which are identified by a 6-digit code.

To keep the HS up to date the Convention provides in Article 16 for periodic amendments and requires all Contracting Parties to amend their Customs tariff nomenclatures or combined tariff and statistical nomenclatures accordingly. To date, the Convention has been amended four times, that is, in 1992, 1996, 2002 and 2007 to reflect new technology or new industry practice or changes in trade patterns.

The 11 SADC Members that were subject to audit based their original offers on the 1996 version of the HS. SADC Member States are required to update their original tariff offers each time they update their tariff or combined tariff and statistical nomenclatures.

The migration from one HS version to another has no effect on the tariff phase down offers as the changes made, in terms of the number of headings and subheadings have not been substantial. For example, the 1988 HS version had 5018 categories of goods at the 6-digit level and 1241 headings, and these numbers have not changed substantially over the years due to amendments (additions/deletions) made to the Convention. The only problem that may arise is the failure to trace a given commodity from one version to another where for example a heading/subheading has been deleted and the goods moved to another heading/ subheading. However, this problem is solved by means of a correlation table, which is published by the WCO each time amendments are made. For example, assuming that SADC country X had offered under its Category B, recorded magnetic tapes of a width not exceeding 4mm classified in the 2002 version of the HS in HS 6-digit code **8524.51**, these products are now classified in HS 6-digit code 8523.29 in the HS 2007 version. In the 2007 version, Headings 85.23 and 85.24 were merged and this resulted in the transfer of products from subheadings 8523.11, 8523.12, 8523.13, 8523.20, 8524.40, **8524.51**, 8524.52, 8524.53, 8524.91 and 8524.99 to new subheading 8523.29. This means that in the 2007 version of the HS, no goods can be classified in heading 85.24 as this heading was deleted. As another example, in HS 2002, subheading 7302.20 was deleted and this means that goods previously classified in this tariff code would be classified in the residual subheading, 7302.90. So any migration does not result in goods being totally removed from the HS, but goods are instead moved from one heading/subheading, as appropriate.

The way forward is to have SADC Member States aligning their original tariff offers with the updated HS version each time they update their tariff schedules. The practice appears to have been for the Members to just amend their tariff schedules and exclude the original phase down offers, hence making the matching of products in the published SADC Tariff Schedules and the original offers a bit difficult, especially where one does not have the relevant WCO correlation tables.

4.4 Capacity Building Initiatives

There are several capacity building initiatives targeting Customs officers in the region which are based on international conventions such as the Revised Kyoto Convention, which is an international convention adopted by the World Customs Organisation (WCO) to standardise and harmonise customs procedures worldwide. SADC Secretariat has developed training modules which are being used by member states to provide training for customs officials. Member states have also signed memorandums of understanding (MOUs) for cooperation and mutual administration assistance. These MOUs between Member states in the region facilitate Customs Administrations to ensure that their respective Customs law is properly observed and to prevent, detect, investigate and combat customs offences, including to cooperating in training of customs officials and exchange of staff as part of training.

In order to deal with problems related to delays at borders due to classification or valuation disputes, training in the WTO Valuation Agreement is necessary. Additionally training in SADC rules of origin is very important if intra SADC trade is to be facilitated.

The improper administration of SADC Rules of origin by SADC Customs administrations through lack of knowledge leads to delays in clearing goods through Customs. The understanding and ability to examine origin documents and the ability to apply the origin rules by Customs officers will result in expedited clearances and quick turn around times for traders.

The increasing levels of trade and travel in most countries mean that Customs administrations will find it increasingly difficult to cope without an advanced level of intelligence fed risk management system. Application of risk management at borders will facilitate trade as only high-risk cargo and travellers will be targeted for Customs control purposes. This means that low risk cargo and travellers will be allowed to pass through the border without delay. Hence training of officers in this area is important if SADC Customs administrations are to achieve more with fewer resources.

With the application of risk management techniques at the border, the examination of cargo and travellers will be conducted because the cargo or passengers represent a high risk to revenue or controls. It is critical that when cargo or passengers are selected for examination, the border officials are capable of conducting a thorough examination. Proper search methods when applied ensure that clients are not harassed or embarrassed by the officers as officers will be able to apply good client care principles.

The SCCC through its Training Working Group developed a number of training modules to facilitate the implementation of adopted trade facilitation instruments and documentation by SADC Member States. In this section we assess the status of implementation of the SADC training strategy by the SADC Member States.

Botswana

The Customs training unit under the former Department of Customs and Excise became inactive following the formation of the Botswana Unified Revenue Services (BURS) and the subsequent redeployment of its staff to the Human Resources Division of BURS. This reorganisation has generally affected the implementation of BURS's training programme. However, discussions held with BURS management (Customs Division) revealed that plans are underway to re-establish the Customs training unit with training being allocated a budget in the 2007/2008 fiscal year. A training programme for the 2007/2008 fiscal year was prepared on the basis of training needs analysis carried out last year. The Botswana Unified Revenue Services is benefiting from the SADC Regional Customs training programmes which are run by the SADC Secretariat.

BURS requires training assistance in the following areas: SADC Protocol on Trade, client care, risk management, warehousing, post clearance audit and excise management. To facilitate the re-establishment of the training unit, a Train the Trainer's course is also required.

Lesotho

There is a training centre for Lesotho Revenue Authority (LRA) and plans are underway to provide training to staff at three levels, namely, Basic, Intermediate and Advanced levels based on SADC approved modules. Furthermore, LRA is currently undergoing organisational review and among the projects, there is a Customs-Trade project, which will focus on various Customs instruments and procedures at the end of which there will be training for both staff and the private sector.

There is an urgent need for training in Customs Procedures, Valuation, Risk Management and Post Clearance audit. LRA is also benefiting from the SADC Regional Customs training courses organised by the SADC Secretariat.

Malawi

Malawi Revenue Authority has so far benefited from SADC's Regional Customs training programmes. MRA has so far benefited in HS, Origin, Risk management, Customs valuation, Post clearance audit, among others. Malawi has a Customs school offering various in-house training courses. The school has good ASYCUDA training facilities and offers residential accommodation to 40 students at a time and now requires assistance from the SADC Secretariat to have the institution accredited by the World Customs Organisation (WCO) so that it can also host regional training programmes. SADC training modules are being used to train Customs officers and in some cases workshops for the private sector are conducted.

Malawi will phase out Pre-shipment inspection (PSI) in June this year and this means that MRA will no longer receive any valuation information from the company providing PSI and the challenge now is to build Malawi Revenue Authority's human capacity to enable it to effectively carryout its mandate. There is need to train more officers in the WTO Valuation Agreement.

To strengthen MRA' capacity to implement the SADC Protocol on Trade, the Authority requested for training assistance in Rules of Origin, Customs valuation (especially the accounting aspects), IT, the drafting of legal instruments, Tariff classification and Physical examination/searches and Post clearance audit.

Mauritius

Mauritius Revenue Authority (MRA) has a Tax Training School where Tax and Customs training s provided. SADC training modules are being used to train Customs officers and in some cases workshops for the private sector are conducted. For example, MRA is sometimes invited by the Customs House Brokers Association to make presentations at its Freight Academy. MRA has also benefited from the SADC Regional Customs training courses conducted by the SADC Secretariat. The following table summarises the implementation of training modules developed by the SCCC.

MRA requires training assistance in the following areas: the WTO Agreement on Customs Valuation, legal drafting, risk management, basic legal training for managers and image interpretation.

Mozambique

Mozambique has no Customs school but has a Training Unit that offers a number of in-house training courses based on training needs analysis carried out in 2006. However, MRA will soon have a training school following the donation of a building to MRA by the Central Bank of Mozambique.

SADC training modules are being used to train Customs officers and in some cases workshops for the private sector are conducted, e.g. on SADC Rules of Origin.

The main problem in using the SADC modules is that the modules developed by the SCCC are in English and it is difficult for Mozambique Customs to use them until they are translated into Portuguese. Hence, only those that have been translated have been used in training. Mozambique Customs managed to obtain some translated modules from the Angolan Customs authorities. These include, SADC Rules of Origin, ACP-EU Rules of Origin, the WTO Agreement on Customs Valuation and Risk Management. This problem also affects the DRC and Madagascar which are only French-speaking compared to Mauritius where both English and French are spoken.

Mozambique Revenue Authority requires further training assistance in the WTO Agreement on Customs Valuation, the SADC Protocol on Trade, SADC Rules of Origin and Post-clearance audit. The need for Customs training was supported by the Mozambique business community as it noted that in the case of Customs valuation, only a few commodities imported into Mozambique were still subject to Pre-shipment inspection (PSI) and the business community felt that there was no need to continue with PSI otherwise what was required was to train the Customs officers to do the inspections and be able to establish the correct Customs values for themselves.

Namibia

Namibia Customs has a training unit that provides in-house training for Customs officers and has also benefited from the SADC Regional Customs courses conducted by the SADC Secretariat.

Only about 16% of the total Customs staff complement has been trained on Customs and trade issues in relation to the SADC Protocol on Trade. Customs officers at the border did not have SADC reference materials and demonstrated limited appreciation of the SADC Protocol on Trade. However customs at points of entry are equipped with the HS tariff books, the cargo processing manuals and the Namibian customs and Excise Act.

Namibia requested for urgent training in Customs Valuation, Risk Management and Post clearance audit.

South Africa

South Africa is one of the two SADC countries with a Regional Training Centre accredited by the WCO. SARS advised that all the SADC approved modules were used in the basic training provided to all staff. However, information on the number of officers trained in each SADC module was not provided. Proposals to develop a Customs degree are under consideration.

SARS has also benefited from the SADC Regional Customs training courses conducted by the SADC Secretariat.

Swaziland

Swaziland has no Customs training school but has a training unit that provides in-house training to Customs officers. Swaziland has benefited from the SADC Regional Customs training courses but requires training assistance in the following areas: Classification of goods under the HS, Management training (all levels), Post-clearance audit, Risk Management, SADC Rules of Origin, and ACP-EU Rules of Origin. In addition, training in Excise Management and management training (for all management levels) is also required.

Tanzania

Tanzania offers training to Customs officers through its Institute of Tax Administration. The Institute also offers training to Customs Clearing Agents and most of the SADC modules have been included in the syllabus. Tanzania has benefited from the SADC Regional Customs training programmes that are organised by the SADC Secretariat.

Zambia

Zambia Revenue Authority (ZRA) does not have a Customs training school but has benefited from the SADC Regional Customs training courses offered by the SADC Secretariat. Training has not been provided as intended due to capacity constraints.

Training needs assessment carried out by ZRA revealed that there was need for enhanced training and continuation of training for the benefit of new entrants. Officials indicated following areas for training; IT, WTO Customs Valuation Agreement, Client care and integrity, post clearance audit, management principles and tariff classification.

Zimbabwe

The Zimbabwe Revenue Authority (ZIMRA) has the second Regional Customs Training Centre. Modules developed by the SCCC are being used in its Customs training programmes. Workshops for the private sector are conducted by ZIMRA officials. In addition to providing basic training to its staff, ZIMRA entered into a partnership with the National University of Science and Technology to offer a Bachelor of Commerce Degree in Fiscal Studies. The Customs Management and Practice modules offered in this programme are similar to those offered by the Centre for Customs and Excise Studies based in Canberra, Australia. ZIMRA has also benefited from the SADC Regional Customs training courses conducted by the SADC Secretariat.

ZIMRA requires training assistance in Customs valuation, Rules of origin, risk management, post clearance audit (especially computer based audit), investigations techniques, legal drafting and excise management. Excise management training is important for all SADC Member States, especially in view of the current tariff reduction commitments as excise duty will become a more viable revenue source for governments compared to customs duty.

5.1 Overview

The audit of the Implementation of the Protocol on Trade has found significant non-compliance in conjunction with serious compliance constraints, which result in the majority of Member States selecting to trade under alternative preferential trade agreements. Four Member states namely Malawi, Tanzania, Mozambique and Zimbabwe are not fully compliant with the tariff phase down. Malawi and Tanzania have only implemented one tariff reduction since 2001. Zimbabwe has never implemented the differentiated tariff offer but has effected the 2007 tariff reductions for RSA which is being applied on all SADC products.

Bilateral trade agreements remain the most used trading arrangements among the SADC member states. A number of bilateral trading arrangements have been renegotiated after the entry into force of the SADC Protocol on Trade. The MFN principle is being violated by some of these arrangements.

The introduction of a Common external tariff by the East African Community to which Tanzania belongs has introduced a need by Tanzania to review their offer to SADC in order to comply fully with the provision of article 27 and 28 of the SADC Protocol on Trade.

The HS migration from 1996 to 2002 and 2007 respectively without amending the offers has created some difficulty with regard to the status of implementation and matching the original tariff offer with the new coding system.

With regard to trade facilitation instruments, most of the member states are implementing the instruments with South Africa being compliant with all the required trade facilitation instruments that have been adopted for implementation.

Therefore, significant commitment and implementation is required in order for the SADC Protocol on Trade to be implemented in accordance with the original schedule.

5.2 Recommendations:

5.2.1 *Dates for effecting tariff reduction:* there is need to ensure that all Member states effect their Tariff reduction on the first of January of each year in line with the Mid-Term Review recommendations.

5.2.2 *Dissemination of Information:* It is recommended that the SADC Secretariat increase efforts to disseminate trade information and distribute SADC publications through its website and through SADC business forums.

5.2.3 *Trade compliance monitoring:* Implement a monitoring mechanism in order to ensure that SADC Member States implement agreed programmes and instruments and to provide a facility for resolving problems on a day-to-day basis.

5.2.4 Translation of Document: Documents for SADC meetings and publications for distribution to SADC Member states to be issued in all the three official languages.

5.2.5 Publicising of regulations and procedure: Member states should publicise and make available all relevant publications (e.g. SADC Protocol on Trade, Manuals on Rules of Origin for officers and traders, etc) through their Contact points, relevant ministries and national websites.

5.2.6 Rules of origin: It is recommended that the complex rules be revised taking into account the key regional objective of promoting increased economic growth and development.

5.2.7 Simplification of Documentation: Consider the introduction of simplified Customs declaration documentation and Certificate of origin for use by small scale traders. The SCCC should finalise the simplified procedures and documents prepared by the Working Group on Customs Cooperation as a matter of urgency.

5.2.8 Multiple Trade Agreements: The Multiple Trade agreements signed by some SADC countries are a challenge to SADC Customs Administrations. It is important to continue to build trade analytical capacity.

5.2.9 Transposition of SADC Tariff Schedules (Offers): The SADC Offers (Schedules of Concessions) were negotiated on the basis of the Harmonised system (HS) because it is relevant in interpreting tariff concessions. SADC Member States should align their original tariff offers with the updated HS version each time they update their tariff schedules and subject them to further scrutiny either through negotiations or by the SADC Secretariat.

5.2.10 Border delays: The delays caused by the number of stops at borders are a cause of concern to the private sector. To facilitate the movement of cargo across borders and reduce transaction costs, it is recommended that the programme to build one-stop border posts be extended.

5.2.11 Transit Bonds: The current practice of raising a Customs bond in each country of transit is cumbersome, time consuming and costly. It is recommended that the SADC Transit Customs Bond Guarantee system be adopted following the successful completion of the trail runs.

5.2.12 Decentralisation of Rules of Origin Certificate issuance: The certification process be decentralised so as to reduce transaction costs and to avoid inconveniencing the business community. Exporters should not have to travel far from where they operate to have their SADC Certificates of origin certified by the designated authority.

5.2.13 Customs Valuation: SADC Customs authorities should have a policy of automatically communicating the reasons for rejecting values declared by importers and also explain how they could determine the value to be applied. This will ensure transparency in the valuation process.

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Annexes

Annex I: Border posts visited by consultants

	COUNTRY	BORDER POST
1.	Botswana	Ramokgwebana
2.	Zambia	Chirundu Livingstone Kazungula Katima mulilo Nakonde
3.	Tanzania	Tunduma
4.	Namibia	Wenela
5.	Zimbabwe	Forbes Plumtree Chirundu
6.	Malawi	Mwanza Mchinji
7.	Mozambique	Machipanda Zobue Namaacha
8.	Swaziland	Lomahasha

Annex II: Correlating the 2002 version to the 1996 version of the HS

Selected HS Codes used in the audit:

Ref.	2002 Version	1996 Version	Remarks
1.	0302.34 – Bigeye tunas 0302.35 -- Bluefin tunas 0302.36 -- Southern bluefin tunas 0302.39 -- Other	Ex0302.39 ex0302.39 ex0302.39 ex0302.39	Creation of new subheadings 0302.34 to 0302.36 for bigeye tuna, bluefin tuna and southern bluefin tuna, facilitating the monitoring of such fish
2.	0810.60 – Durians 0810.90 - Other	Ex0810.90 ex0810.90	Creation of a new subheading 0810.60 for durians
3.	1904.30 – Bulgar wheat 1904.90 – Other	Ex1904.90 ex1904.90	Creation of a new subheading 1904.30 for bulgar wheat
4.	4103.10 – Of goats or kids 4103.20 – Of reptiles 4103.30 – Of swine 4103.90 – Other	4103.10 ex4106.11 ex4106.12 4103.20 ex4107.21 ex4107.29 ex4103.90 ex4107.10 ex4103.90 ex4107.90	Creation of a new subheading 4103.30 for raw hides and skins of swine
5.	7302.90 – Other	7302.20 7302.90	Deletion of 7302.20 entails the transfer of that product to 7302.90
6.	8906.10 – Warships 8906.90 – Other	ex8906.00 ex8906.00	Creation of a new subheading 8906.10 for warships
7.	9613.80 – Other lighters	9613.30 9613.80	Deletion of subheading 9613.30 entails the transfer of that product to subheading 9613.80

(Source: WCO website)

Annex III: Assistance requested by SADC Member States

	Country	Assistance Required
1.	Botswana	<ul style="list-style-type: none"> • Upgrade Exporters Association' website • Re-establish its training unit • Training in: <ul style="list-style-type: none"> ➢ SADC Protocol on Trade ➢ Client care ➢ Risk management ➢ Warehousing ➢ Post-clearance audit ➢ Excise management ➢ Train the trainer
2.	Lesotho	<ul style="list-style-type: none"> • Assistance to provide training at Basic, Intermediate and Advanced Levels • Training in: <ul style="list-style-type: none"> ➢ Customs procedures ➢ Customs valuation ➢ Risk management ➢ Post clearance audit
3.	Malawi	<ul style="list-style-type: none"> • WCO accreditation of its training school • Training in: <ul style="list-style-type: none"> ➢ SADC Rules of origin ➢ ACP-EU Rules of origin ➢ Customs valuation ➢ IT ➢ Legal drafting ➢ Tariff classification ➢ Physical examinations/searches ➢ Post clearance audit
4.	Mauritius	<ul style="list-style-type: none"> • Training in: <ul style="list-style-type: none"> ➢ Customs valuation ➢ Legal drafting ➢ Risk management ➢ Basic legal training for managers ➢ Image interpretation
5.	Mozambique	<ul style="list-style-type: none"> • Training in: <ul style="list-style-type: none"> ➢ Customs valuation ➢ SADC Protocol on Trade ➢ SADC Rules of origin ➢ Post clearance audit
6.	Namibia	<ul style="list-style-type: none"> • Training in:

		<ul style="list-style-type: none"> ➤ Customs valuation ➤ Risk management ➤ Post clearance audit
7.	Swaziland	<ul style="list-style-type: none"> • Setting up of a website for the Trade Promotion Unit • Upgrading of the Chamber of Commerce' website • Implementation of the ASYCUDA++ by Customs • Training in: <ul style="list-style-type: none"> ➤ Classification of goods under the HS ➤ Post clearance audit ➤ Risk management ➤ SADC Rules of origin ➤ ACP-EU Rules of origin ➤ Excise management ➤ Management training (all levels)
8.	Zambia	<ul style="list-style-type: none"> • Setting up of a Customs Training School • Training in: <ul style="list-style-type: none"> ➤ IT ➤ Customs valuation ➤ Client care ➤ Post clearance audit ➤ Tariff classification ➤ Management principles
9.	Zimbabwe	<ul style="list-style-type: none"> • Upgrading of ST Lucia Park (WCO accredited training centre) • Acquisition of Excise equipment • Funding of one-stop-border posts establishment at Beitbridge, Nyamapanda and Forbes • Infrastructure development for new border posts at Cashel, Chidodo, Chikane, Chikwarara and Tuli Shashi • Training in: <ul style="list-style-type: none"> ➤ Customs valuation ➤ Rules of origin ➤ Risk management ➤ Post clearance audit ➤ Investigations techniques ➤ Legal drafting ➤ Excise management ➤ IT (Systems development)

Annex IV: List of Contacts

Botswana

Mr. Arnold Madikwe - Director, Development Cooperation, Ministry of Finance

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Ms. Mabel Gaborutwe – Europe Desk Officer, Ministry of Trade and Industry

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Mr Norman T. Moleele – Deputy Executive Director, Botswana Confederation of Commerce Industry and Manpower

Lesotho

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Mr. Swaley Duman - Treasurer, Customs House Brokers' Association

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The consultant met with the following members of the National SADC Protocol on Trade Committee:

Mr. Bhuglah – Chairman

Mr. L. Law – Legal Officer, Mauritius Chamber of Agriculture

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Swaziland

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Zimbabwe

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Mr R. Mangwiro - Commissioner, Finance and Corporate Planning, Zimbabwe Revenue Authority

Mr A. Mandizha - Director, Loss Control, Zimbabwe Revenue Authority

Mr T. Velempini - Director, Infrastructure Development, Zimbabwe Revenue Authority

Mr. W. Shumba -Head-International Affairs, Zimbabwe Revenue Authority

Mr. S. Pundo– Acting Commissioner, Human Resources and Administration, Zimbabwe Revenue Authority

Mr. P. Shayanowako – International Affairs Officer (SADC, WTO Valuation, HS, OSBP), Zimbabwe Revenue Authority

Mr Willie Chishakwe - Manager, Business Development, Zimbabwe Revenue Authority

Mr Christopher Zifunda - Manager, Appeals, Objections and Rulings, Zimbabwe Revenue Authority

Mrs Angeline Bare – Revenue Specialist, Zimbabwe Revenue Authority

Mrs Charity Nyaungwa – Revenue Specialist, Zimbabwe Revenue Authority

Mr Samuel Sithole – Training Officer, Zimbabwe Revenue Authority

Mr Chengetai Mapundu – Chief Training Officer, Zimbabwe Revenue Authority

Mr Tavengana Timire – Training Officer, Zimbabwe Revenue Authority

Mr Can Goredema – Software Administrator, Zimbabwe Revenue Authority

Mrs Caroline Chioza – Station Manager, Forbes Border Post

Mr Walter Dube – Revenue Supervisor, Plumtree Border Post

The consultant met with the following private sector officials:

Mr Joseph Musariri – Chief Executive Officer, Shipping and Forwarding Agents' Association of Zimbabwe

Mrs C. Moyosvi – Director, Tipwin Distributors (Pvt) Ltd

Mr Marko Soko – Toprider Investments

Mr Simon Mombe – Big Star Cargo Services

Mr Cain Mpofu – Chief Executive Officer, Zimbabwe National Chamber of Commerce

Annex V: Terms of Reference



DRAFT TERMS OF REFERENCE

FOR AN ASSESSMENT STUDY ON THE IMPLEMENTATION OF THE SADC PROTOCOL ON TRADE IN PREPARATION FOR THE ATTAINMENT OF THE SADC FREE TRADE AREA IN 2008

1 BACKGROUND

1.1 The SADC Protocol on Trade, which entered into force on 25 January 2000, commenced implementation on 1 September 2000. Its implementation is expected to usher in a Free Trade Area by 1st January 2008. Attainment of a Free Trade Area in terms of accepted WTO compliance benchmarks is when an arrangement between a group of countries confers preferential treatment on originating products, in this case zero duty status to a substantial portion of trade amongst themselves. "Substantial" for this purpose is taken to mean between 80% and 90% of trade.

1.2 Currently eleven member states are implementing the Protocol whilst Madagascar's tariff offer has been accepted and the depositing of an instrument of implementation is expected as soon as consultations with Namibia and Lesotho regarding improvement of the offer for specific products are finalised. Angola has acceded to the Protocol and is in the process of preparing its offer.

2 MID-TERM REVIEW OF THE PROTOCOL ON TRADE

2.1 A mid-term review of the implementation of the Protocol on Trade identified problem areas and impediments to the process such as rules of origin; back loaded tariff liberalisation schedules and inconsistency in effecting tariff reductions.

2.2 The following are some of the key recommendations and observations from the Mid Term Review that Member States adopted:

- (i) The current SADC Rules of Origin are complex and restrictive and SADC should strive for clear, straightforward, transparent, and predictable Rules of Origin that will encourage trade, (Options for reviewing the rules were presented to Member States and negotiations are still ongoing);
- (ii) For consistency and transparency in implementation, tariff phase down schedules should be effected on 1st January of each year;

- (iii) For the purpose of harmonisation, Member States should update their tariff offers, which originally were based on the Harmonised System (HS) 1996 tariff classification, to the current HS 2002;
- (iv) For countries that had back-loaded their tariff cuts, it was suggested that they should implement their tariff cuts twice a year;
- (v) As far as possible, tariffs below 5% should be eliminated;
- (vi) In cases where the Most Favoured Nation (MFN) rate has been reduced Member States are encouraged to also reduce the SADC preference rate in order to ensure a minimum preference margin;
- (vii) Initial phase down schedules for sensitive products should be reviewed in view of the decision by SADC to move towards a Customs Union by 2010 as well as the need to take into account latest economic developments.
- (viii) There is need for improvement of the capacity for monitoring and communication among all stakeholders on the implementation of the SADC Trade Protocol both at national and regional level. A section within the Trade, Industry, Finance & Investment (TIFI) Directorate, dedicated solely to implementation of the Trade Protocol, would be able to undertake the following:
 - * Improve the collection and dissemination of information including the status of implementation, trade flow data and changes in tariff regimes.
 - * Update and verify the original tariff phase down offers against the gazetted schedules in order to reflect any changes in coding systems or in the overall tariff regime.

3. RECENT DECISIONS ON IMPLEMENTATION OF THE PROTOCOL ON TRADE

3.1 Intra-regional trade was estimated at about 20% of total trade in 1997 and by 2003 it had risen to 25% and is expected to increase further by the time the FTA is fully implemented. A schedule on implementation of the Protocol on Trade is appended as Annex I. The status of implantation has recently come into focus following the recent decision of the SADC Council as well as the Extra-Ordinary Summit to commence work on a SADC Customs Union. Decisions taken by the Extra-Ordinary Summit are outlined in the following sections.

3.2 Summit considered the **implementation of the FTA** and endorsed the following:

- (i) That adopted recommendations from the Mid-Term Review be expeditiously implemented.
- (ii) That the Secretariat undertakes an assessment and outcomes audit of Member States' gazetted tariff schedules, planned for the first quarter of 2007. The results of the audit will inform SADC of compliance with their Protocol on Trade commitments ahead of the coming into force of the FTA in 2008.
- (iii) That negotiations on revised and more flexible rules of origin, be finalised by the first quarter of 2007.

- (iv) That Secretariat sets up an effective monitoring mechanism that will report annually to Summit as well as a support mechanism to assist Member States in the implementation of the Protocol on Trade.
- (v) That the Ministerial Task Force develops an Action Plan for the monitoring and elimination of NTBs in the first quarter of 2007.

3.3 On **Customs Cooperation** Summit noted that although there has been some progress in the development of Customs instruments, implementation has not been to the desired level due to existence of parallel national and regional programmes and the need for keeping and updating data for different tariff and trading regimes. In that regard Summit took the following decisions:

- (i) Directed the Ministerial Task Force on Regional Economic Integration to fast track adoption and implementation of developed Customs instruments.
- (ii) Directed that the [cited] implementation difficulties be addressed by Member States as soon as possible to facilitate attainment of the SADC Customs Union by 2010.

3.4 Summit discussed at length SADC's goal as stated goal in the RISDP to move to establish a **Customs Union by 2010**. The pros and cons of commencing preparations for the Customs Union before the FTA had been fully established were discussed. In the end Summit made the following decisions:

- (i) Noted that the Ministerial Task Force and the Secretariat will undertake and finalise, not later than March 2007, a study which will evaluate an appropriate model for the SADC Customs Union. The recommendations following from the study will be submitted to Summit at its next meeting.
- (ii) Endorsed an activity matrix to be used as a framework for the preparation of the SADC Customs Union Road Map.
- (iii) Directed the Ministerial Task Force to finalise the road map and submit it at its next meeting for adoption.

4. SCOPE OF WORK

4.1 The purpose of the study will be to inform of the status in the implementation of the Protocol on Trade and ahead of the 2008 date for the attainment of the FTA as well as the 2010 date for the establishment of the Customs Union. The study will focus on the following specific objectives:

- (i) To outline the progress made so far and lessons learned from the implementation of the Trade Protocol, following up on the findings of the Mid-Term Review.
- (ii) To assess and carry out an audit of the 2007 tariff reduction schedules of Member States and their conformity to the originally negotiated offers. Conformity will also have to be established between the notified tariff schedules and the applied rates at points of entry.
- (iii) Status of domestication of adopted Customs instruments in particular the Common SADC Customs Document, Common Tariff Nomenclature, SADC Transit regulations and Common Customs Training Modules.
- (iv) Status of implementation of the WTO Customs Valuation Agreement.

5. OUTPUT/ EXPECTED RESULTS

5.1 The report should provide for the following:

- An initial analysis of the status of implementation of the Protocol on Trade and the preparedness to of its Members to meet the FTA requirements on tariff liberalisation.
- Analysis of the status of implementation of other activities and commitments complementary to tariff liberalisation.
- The study should cover all the SADC Member States that are implementing the Protocol on Trade and those that have acceded to the Protocol.

5.2 The Secretariat will provide the consultant with all the necessary documentation and information at its disposal on the SADC Protocol on Trade and its implementation.

5.3 Consultants to work on the study should have sufficient knowledge of the SADC Protocol on Trade and its implementation. In conducting the study, the Consultants will be expected to visit as many of the countries concerned as possible within the time available.

6. TIMING/ REPORTING

6.1 The consultants will produce an inception report within four weeks on commencing work providing an outline on how they will approach the work. The first draft of the main report will be produced within two months of the Inception Report.

6.1. The Consultants will present their report to the Secretariat's Director for Trade, Industry, and Finance & Investment.