

REVIEW OF LEGAL AND INSTITUTIONAL INSTRUMENTS  
TO FACILITATE INTRA-REGIONAL TRANSPORT AND TRADE  
WITHIN SUB-SAHARAN AFRICA

ANNEX VI-1a

**SOUTHERN AFRICA CUSTOMS UNION AGREEMENT**

(PRETORIA 1969)

**&**

**NEW SOUTHERN AFRICA CUSTOMS UNION AGREEMENT**

(GABORONE 2002)

No. 12324

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**BOTSWANA, LESOTHO, SOUTH  
AFRICA and SWAZILAND**

**Customs Union Agreement (with memorandum of understanding). Signed at Pretoria on 11 December 1969**

*Authentic texts: English and Afrikaans.*

*Registered by Lesotho on 8 March 1973.*

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**AFRIQUE DU SUD, BOTSWANA,  
LESOTHO et SOUAZILAND**

**Accord d'union douanière (avec mémorandum d'accord).  
Signé à Pretoria le 11 décembre 1969**

*Textes authentiques: anglais et afrikaans.*

*Enregistré par le Lesotho le 8 mars 1973.*

## CUSTOMS UNION AGREEMENT<sup>1</sup> BETWEEN THE GOVERNMENTS OF LESOTHO, BOTSWANA, SOUTH AFRICA AND SWAZILAND

The Governments of the Kingdom of Lesotho, the Republic of Botswana, the Republic of South Africa and the Kingdom of Swaziland—

Being desirous of maintaining the free interchange of goods between their countries and of applying the same tariffs and trade regulations to goods imported from outside the common customs area as hereinafter defined;

Recognising that the Customs Agreement concluded on 29th June, 1910, as amended from time to time, requires modification to provide for the continuance of the customs union arrangements in the changed circumstances on a basis designed to ensure the continued economic development of the customs union area as a whole, and to ensure in particular that these arrangements encourage the development of the less advanced members of the customs union and the diversification of their economies, and afford to all Parties equitable benefits arising from trade among themselves and with other countries:

Have agreed as follows:

### *Article 1.* DEFINITIONS

In this Agreement, unless inconsistent with the context—

- “additional duties” means duties imposed in terms of article 6 of this Agreement;
  - “Botswana” means the area of the Republic of Botswana;
  - “common customs area” means the combined areas of Botswana, Lesotho, South Africa and Swaziland;
  - “customs duties”, “excise duties” and “sales duties” mean customs duties, excise duties and sales duties as defined in the customs and excise legislation in force in the countries of the Contracting Parties;
  - “financial year” means the period of twelve months commencing on the first of April;
  - “Lesotho” means the area of the Kingdom of Lesotho;
  - “South Africa” means the area in respect of which the Government of the Republic of South Africa is a Contracting Party to the General Agreement on Tariffs and Trade;<sup>2</sup>
  - “Swaziland” means the area of the Kingdom of Swaziland;
- and cognate expressions shall be construed accordingly.

<sup>1</sup> Came into force on 1 March 1970, in accordance with article 22 (article 14 was deemed to have come into operation on the first day of April 1969).

<sup>2</sup> United Nations, *Treaty Series*, vol. 55, p. 189.

*Article 2.* INTERCHANGE OF DOMESTIC PRODUCTS

Except as elsewhere provided herein, a Contracting Party shall not apply quantitative restrictions or impose any duties on goods grown, produced or manufactured in the common customs area on importation of such goods from the area of any other Contracting Party.

*Article 3.* INTERCHANGE OF GOODS IMPORTED FROM OUTSIDE THE COMMON CUSTOMS AREA

Except as elsewhere provided herein a Contracting Party shall not impose any duties on goods which were imported from outside the common customs area on importation of such goods from the area of any other Contracting Party.

*Article 4.* CUSTOMS AND SALES DUTIES ON IMPORTED GOODS

(1) Except as elsewhere provided herein, the customs tariff and duties and the sales duties as in force in South Africa from time to time shall be applied to goods imported into the common customs area from outside such area.

(2) Any rebates, refunds or drawbacks of customs duty or sales duty on imported goods granted by the Government of Botswana, Lesotho or Swaziland in respect of such goods for use in or used in any industry shall be identical to any such rebates, refunds or drawbacks in force in South Africa in respect of such goods for use in or used in a corresponding industry in South Africa.

(3) Subject to paragraphs (2) and (4), all other rebates, refunds or drawbacks of customs duty or sales duty on imported goods granted by the Government of Botswana, Lesotho or Swaziland in respect of such goods shall be similar to any such rebates, refunds or drawbacks in force in South Africa.

(4) (a) A Contracting Party may grant a full rebate of the customs and sales duties in respect of goods imported into its area:

- (i) for the relief of distress of persons in cases of famine and other national disaster;
- (ii) under any technical assistance agreement; and
- (iii) in terms of an obligation under any multilateral international agreement to which such Contracting Party is or becomes a party.

(b) A Contracting Party may, with the prior approval of the other Contracting Parties, grant a full rebate of the customs and sales duties in respect of goods imported into its area for such other purposes as may be agreed upon by the Parties to this Agreement from time to time.

*Article 5.* IMPOSITION AND AMENDMENT OF CUSTOMS DUTIES

(1) Subject to the provisions of paragraph (2) of this article, the Government of South Africa shall give the other Contracting Parties adequate opportunity for

consultations before imposing, amending or abrogating any customs duty with respect to goods imported into the common customs area from outside such area.

(2) Paragraph (1) of this article shall not apply if the imposition of, or the removal of, or an amendment to any customs duty either forms part of the measures of the Government of South Africa designed primarily for fiscal purposes, or is resorted to as an interim measure designed to assist a local industry in the common customs area pending the completion of an investigation by the appropriate South African authorities.

*Article 6. IMPOSITION OF ADDITIONAL DUTIES FOR PROTECTIVE PURPOSES BY BOTSWANA, LESOTHO OR SWAZILAND*

(1) The Government of Botswana, Lesotho or Swaziland may levy additional duties on goods imported into its area to enable new industries in its area to meet competition from other producers or manufacturers in the common customs area, provided that such duties are levied equally on goods grown, produced or manufactured in other parts of the common customs area and like products imported from outside that area, irrespective of whether the latter goods are imported directly or from the area of any other Party to this Agreement and subject to payment of the customs duties applicable to such goods on importation into the common customs area.

(2) Before any such duties are imposed or amended the Government concerned shall consult the other Contracting Parties in terms of article 20, and such Parties may make recommendations thereon. If the recommendations of any such Parties are not acted upon, the Government concerned shall inform the other Contracting Parties of the reason for its decision.

(3) Protection which is afforded to a new industry in terms of this article shall not be given for a period exceeding eight years without the prior consent of the Contracting Parties.

(4) In this article, "new industry" in relation to any Contracting Party means an industry which has been established in the area of that Party for not more than eight years.

*Article 7. SPECIFICATION OF INDUSTRIES OF MAJOR IMPORTANCE TO BOTSWANA, LESOTHO OR SWAZILAND*

(1) The Government of Botswana, Lesotho or Swaziland may with the concurrence of the other Contracting Parties—

- (a) specify industries which are or are likely to be of major importance to its economy; and
- (b) specify periods in relation to such industries for the purposes of paragraph (2) of this article.

(2) The customs duties applicable to goods, imported from outside the common customs area and competing with those of any industry specified in terms of this article, shall not for the period specified in terms of paragraph (1) (b) above in relation to that industry be decreased or abrogated without the consent of the Government specifying the industry; and during such period the Government of South Africa shall with due regard to the interests of the other Contracting Parties and to the criteria usually applied by it in the consideration of

representations for tariff assistance and relief, give sympathetic consideration to proposals by any other Contracting Party to increase any customs duty applicable to such goods or to afford relief of customs duty applicable to any material, used directly in the production or manufacture thereof and to requirements for such industries, where the Government concerned regards such increase or relief necessary to assist the establishment of such industry or to prevent its contraction.

*Article 8.* EXCISE AND SALES DUTIES ON GOODS PRODUCED IN THE COMMON CUSTOMS AREA

(1) The excise duties and the sales duties as in force in South Africa from time to time shall be applied to goods grown, produced or manufactured in the common customs area.

(2) Any rebates, refunds or drawbacks of excise duty or sales duty granted by the Government of Botswana, Lesotho or Swaziland in respect of goods grown, produced or manufactured in the common customs area, for use in or used in any industry shall be identical to any such rebates, refunds or drawbacks in force in South Africa in respect of such goods for use in or used in a corresponding industry in South Africa.

(3) All other rebates, refunds or drawbacks of excise duty or sales duty granted by the Government of Botswana, Lesotho or Swaziland in respect of goods grown, produced or manufactured in the common customs area shall be similar to any such rebates, refunds or drawbacks in force in South Africa.

*Article 9.* DUTIES ON GOODS PRODUCED BY SPECIFIED INDUSTRIES

(1) If goods grown, produced or manufactured in Botswana, Lesotho or Swaziland, by an industry specified in pursuance of article 7 of this Agreement, are subject to excise duties, the margin of protection afforded by the customs duty applicable to such goods shall be maintained for the period specified under that article and may be changed only with the agreement of the Government specifying the industry.

(2) During the specified period the Government of South Africa shall with due regard to the interests of the other Contracting Parties and to the criteria usually applied by it in the consideration of representations for tariff assistance and relief, give sympathetic consideration to proposals by such a Government to reduce or abrogate any excise duty applicable to such goods where such a Government regards such duty as injurious to that industry.

*Article 10.* LAWS RELATING TO CUSTOMS, EXCISE AND SALES DUTIES

Subject to the provisions of articles 4 and 8, the Governments of Botswana, Lesotho and Swaziland shall apply laws relating to customs, excise and sales duty similar to such laws in force in South Africa from time to time.

*Article 11.* IMPORT AND EXPORT PROHIBITIONS AND RESTRICTIONS

(1) The Contracting Parties recognise the right of each Party to prohibit or restrict the importation into or exportation from its area of any goods for economic, social, cultural or other reasons.

(2) Except in so far as may be agreed upon between the Parties from time to time the provisions of this Agreement shall not be deemed to suspend or supersede the provisions of any law within any part of the common customs area which prohibits or restricts the importation or exportation of goods.

(3) The provisions of paragraphs (1) and (2) shall not be so construed as to permit the prohibition or restriction of the importation by any Contracting Party into its area of goods grown, produced or manufactured in other areas of the common customs area for the purpose of protecting its own industries producing such goods.

(4) A Contracting Party shall upon request by any other Contracting Party take such steps as may be agreed upon between the Parties concerned (including action to make such steps legally enforceable within its area) to prevent the exportation or unrestricted exportation from its area to the area of such other Contracting Party of such prohibited or restricted goods imported from outside the common customs area or grown, produced or manufactured in its area or to prevent the exportation or unrestricted exportation from its area to a country outside the common customs area of such prohibited or restricted goods imported from the area of such other Contracting Party.

(5) The Contracting Parties shall co-operate in the application of import restrictions with a view to ensuring that the economic objectives of any import control legislation in any country in the common customs area are attained.

*Article 12.* ARRANGEMENTS FOR REGULATING THE MARKETING OF AGRICULTURAL PRODUCTS

(1) Whenever an arrangement for regulating the marketing of an agricultural commodity is in operation in any area of the common customs area, such arrangement shall be applied on an equitable basis to similar commodities produced in any other area of the common customs area and marketed in the area where the marketing arrangement is in operation, and the Contracting Parties concerned, cognisant of the advantages deriving from the effective operation of these arrangements, shall co-operate in such arrangements on a basis to be mutually agreed upon.

(2) The Contracting Parties agree to consult from time to time on matters affecting production and consumption of agricultural commodities and the improvement and extension of marketing arrangements, for such commodities.

*Article 13.* POOL OF CUSTOMS, EXCISE, SALES AND ADDITIONAL DUTIES

Any customs, excise, sales and additional duties collected in the common customs area shall be paid quarterly into the Consolidated Revenue Fund of South Africa.

Article 14. THE POOL OF CUSTOMS, EXCISE, SALES AND ADDITIONAL DUTIES

(1) The common revenue pool of the common customs area shall consist of the gross amounts of customs, excise, sales and additional duties leviable and collected on goods imported into or produced in the common customs area, and any other duties collected in terms of article 19 (3), but shall not include any duties rebated or refunded under the provisions of any law relating to customs, excise and sales duty (including any rebate or refund specifically provided for in any such law but which is paid from voted funds and not deducted from customs, excise and sales duty revenue).

(2) The Contracting Parties agree that in determining the share of Botswana, Lesotho or Swaziland of the common revenue pool in respect of any financial year the following formula shall be used:

The cost-insurance-freight value at border of goods from all sources imported during the financial year into the area of each party, *plus* the value of excisable and sales duty goods produced and consumed in such area during such year, *plus* the excise and sales duties paid thereon during such year shall be expressed as a percentage of the cost-insurance-freight value of the goods imported during the financial year into the common customs area, *plus* the customs and sales duties paid thereon during such year, *plus* the value of excisable and sales duty goods, produced and consumed during such year in the common customs area, *plus* the excise and sales duties paid thereon during such year. The amount calculated by the application to the common revenue pool of the percentage so obtained, enhanced by a multiplying factor of 1.42, shall represent the share of each of the three countries in respect of that financial year.

(3) There shall be paid from the Consolidated Revenue Fund of South Africa to the Governments of Botswana, Lesotho and Swaziland, in respect of their share of the common revenue pool, amounts calculated on the following basis:

(a) in respect of the financial year 1972/73 and each financial year thereafter:

(i) an amount resulting from the application to the formula referred to in paragraph (2) above, of the relevant data for the financial year two years before the financial year in question;

*plus or minus*

(ii) a first adjustment in respect of the financial year two years before the financial year in question equal to the difference between the total amount actually received by each country in respect of that year and the amount due to each country in terms of the formula referred to in paragraph (2) above, recalculated on the basis of the latest available data for that particular financial year:

*plus or minus*

(iii) a final adjustment in respect of the financial year three years before the financial year in question equal to the difference between the total amount actually received by each country in respect of that year and the amount due to each country in terms of the formula referred to in



paragraph (2) above, recalculated on the basis of the final data for that particular financial year;

(b) in respect of the financial year 1971/72:

(i) an amount resulting from the application to the formula referred to in paragraph (2) above of the relevant data for the financial year 1969/70;

*plus or minus*

(ii) an amount in respect of the financial year 1969/70 equal to the difference between the total amount actually received by each country in respect of that year and the amount due to each country in terms of the formula referred to in paragraph (2) above, recalculated on the basis of the latest available data for the financial year 1969/70;

(c) in respect of the financial year 1970/71: an amount resulting from the application to the formula referred to in paragraph (2) above, of the relevant data for the financial year 1968/69 except that in the case of import values 1968 data shall be used and that agreed estimates of the values of sales duty goods produced and consumed in the financial year 1969/70 and the sales duties collected thereon shall be included;

(d) in respect of the financial year 1969/70: an amount equal to the difference between the total amount actually received by each country in respect of that year and the amount due to each country in terms of the formula referred to in paragraph (2) above, calculated on the basis of the relevant data for the financial year 1968/69, except that in the case of import values 1968 data shall be used, and that no imputed allowances for the values of sales duty goods produced and consumed and the sales duties thereon shall be included.

(4) The amounts referred to in subparagraphs (a) and (b) of paragraph (3) above shall be determined and agreed upon between the Contracting Parties approximately six months before the beginning of the financial year in question.

(5) The amounts referred to in subparagraphs (a), (b) and (c) of paragraph (3) above shall be remitted in equal quarterly instalments during the financial year in question.

(6) The payment referred to in subparagraph (d) of paragraph (3) above shall be made before the end of the financial year 1969/70.

(7) The Government of South Africa undertakes to consult the Governments of Botswana, Lesotho and Swaziland prior to the introduction of changes in the fiscal structure of South Africa where these are expected to have a substantial effect on the structure of taxation measures relating to the common revenue pool.

(8) This article shall be deemed to have come into operation on the first day of April, 1969, and to have been substituted from that date for the corresponding provisions of the Customs Agreement concluded on the 29th June, 1910.

#### *Article 15. RAIL AND ROAD TRAFFIC*

(1) The Contracting Parties undertake that the transit through their areas of goods imported from outside the common customs area to or exported to a

country outside the common customs area from the areas of the other Contracting Parties shall not be subject to transport rate discrimination.

(2) Each Contracting Party shall ensure that the tariffs applicable within its area to the conveyance of goods by publicly-owned transport to and from the other areas of the common customs area shall be no less favourable than the tariffs applicable to the carriage of similar goods within its area.

(3) Each Contracting Party undertakes to extend to the motor transport operators registered in the areas of the other Contracting Parties treatment no less favourable than that accorded to motor transport operators registered within its own area for the conveyance of goods or passengers for reward or in the course of any trade or business.

#### *Article 16.* FREEDOM OF TRANSIT

A Contracting Party shall afford freedom of transit without discrimination to goods consigned to and from the areas of the other Contracting Parties: provided, however, that a Contracting Party may impose such conditions upon such transit as it deems necessary to protect its legitimate interests in respect of goods of a kind of which the importation into its area is prohibited on grounds of public morals, public health or security, or as a precaution against animal or plant diseases, parasites and insects, or in pursuance of the provisions of a multilateral international convention to which it is a party: and provided, further, that a Contracting Party shall not be precluded from refusing transit, or from taking any measures deemed necessary by it in connection with such transit, for the purpose of protecting its security interests.

#### *Article 17.* BILATERAL CONSULTATIONS

Notwithstanding the provisions of article 2, if, as a result of unforeseen developments, any product is being introduced into the area of one of the Contracting Parties from the area of another Contracting Party in such increased quantities and under such conditions as to cause or threaten serious injury to producers or manufacturers of like or directly competitive products in the area into which such goods are so introduced, the Government of the latter area shall have the right to require the other Party to consult at the earliest possible opportunity and to co-operate with it in finding as soon as possible a mutually acceptable solution.

#### *Article 18.* CONSULTATIONS ON ZOO-SANITARY AND PHYTO-SANITARY MATTERS

Subject to the provisions of article 11, the Contracting Parties recognise the importance of measures prescribing zoo-sanitary and phyto-sanitary requirements aimed at the prevention of the spread of animal and plant diseases, parasites and insects and agree to consult from time to time to achieve such aim in the common customs area with due regard to the need to facilitate the flow of trade in products affected by such measures.

*Article 19.* TRADE AGREEMENTS WITH COUNTRIES OUTSIDE THE COMMON CUSTOMS AREA

(1) A Contracting Party shall not, without the prior concurrence of the other Contracting Parties and subject to such conditions as may be agreed upon by the Contracting Parties, enter separately into or amend a trade agreement with a country outside the common customs area in terms of which concessions on the duties in force in the common customs area are granted to that country.

(2) A Contracting Party may enter separately into or amend a trade agreement, other than a trade agreement mentioned in paragraph (1), with a country outside the common customs area, provided the terms of such an agreement or amendment do not conflict in any way with the provisions of this Agreement. Such Contracting Party shall, as soon as possible after the conclusion of the agreement or amendment, supply each of the other Contracting Parties with a copy of the agreement or amendment.

(3) (a) A Contracting Party, having an agreement with a country outside the common customs area which provides for the importation into its area from such country of goods at lower rates of duty than those applicable to like goods in the common customs area, shall collect the duties payable on importation into its area.

(b) Unless the Contracting Parties have otherwise agreed in respect of any such agreement, where such goods are to be removed from the area of such Contracting Party to the area of any of the other Contracting Parties the duties applicable in the common customs area shall become due and payable and the Contracting Party from whose area such goods are to be removed shall, prior to such removal, collect the differences between the lower duties paid and the duties applicable. If proof of payment of the differences in duty cannot be furnished in the area to which the goods are subsequently removed, the goods shall be liable to forfeiture.

(c) Any duties and differences in duties thus collected shall be paid into the Consolidated Revenue Fund of South Africa. Any payments due by that Contracting Party under such agreement with a country outside the common customs area, shall be paid on its behalf from the Consolidated Revenue Fund.

*Article 20.* GENERAL CONSULTATIONS

(1) A Customs Union Commission shall be established, comprising representatives of all the Contracting Parties, for the purpose of discussing any matter arising out of this Agreement.

(2) The Commission shall meet once a year. A Contracting Party may, however, at any time request a meeting of the Commission for the purpose of discussing a matter connected with this Agreement and the Commission shall meet as soon as possible thereafter.

(3) Where Contracting Parties have consulted on a matter which may affect the rights of the other Parties under this Agreement and arising under article 12, 17 or 18 or on a matter arising under paragraph (5) of this article, a report on the

results of these consultations shall be furnished to the Commission before its next meeting.

(4) Where a matter has been referred to the Commission for discussion, the Commission shall use its best endeavours to find a mutually agreeable solution to the particular problem or difficulty and the representatives shall report to their respective Governments for consideration of any remedial measures.

(5) Any difficulty or problem arising out of this Agreement which does not directly affect the interests of all the Contracting Parties may, with the concurrence of all the Contracting Parties, form the subject of direct consultation between the Parties affected with a view to seeking a solution thereof.

*Article 21.* TERMINATION OF 1910 AGREEMENT

The Customs Agreement concluded on the 29th June, 1910, as amended from time to time, shall terminate on the entry into force of this Agreement.

*Article 22.* ENTRY INTO FORCE OF, AND WITHDRAWAL FROM, AGREEMENT

This Agreement shall, subject to the provisions of article 14 (8) enter into force on the 1st March, 1970.

If a Contracting Party wishes to withdraw from this Agreement that Party shall give notice thereof to all the other Contracting Parties.

If after consultation the Contracting Parties fail to agree on the date and conditions of the withdrawal, this Agreement shall remain in force until twelve months from the date of such notice and shall then cease to apply to the withdrawing Party.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE at Pretoria, in quadruplicate, in Afrikaans and English texts, each of which texts shall be of equal authenticity, this eleventh day of December, 1969.

For the Government  
of the Kingdom of Lesotho:

[Signed—Signé]<sup>1</sup>

For the Government  
of the Republic of Botswana:

[Signed—Signé]<sup>2</sup>

For the Government  
of the Republic of South Africa:

[Signed—Signé]<sup>3</sup>

For the Government  
of the Kingdom of Swaziland:

[Signed—Signé]<sup>4</sup>

TEN BEWYSE WAARVAN die ondergetekendes, behoorlik deur hul onderskeie Regerings daartoe gemagtig, hierdie Ooreenkoms onderteken het.

GEDOEN te Pretoria, in viervoud, in sowel die Afrikaanse as die Engelse teks, waarvan albei ewe outentiek is, op hede die elfde dag van Desember 1969.

Namens die Regering  
van die Koninkryk van Lesotho:

Namens die Regering  
van die Republiek Botswana:

Namens die Regering  
van die Republiek van Suid-Afrika:

Namens die Regering  
van die Koninkryk van Swaziland:

#### MEMORANDUM OF UNDERSTANDING

With reference to the Customs Union Agreement dated the 11th December, 1969, between the Governments of Lesotho, Botswana, South Africa and Swaziland, it is desired to place on record the following additional understandings on which agreement has been reached among the four Governments and which shall be read with, and shall form part of the Agreement:

*ad* articles 3, 4, 8 and 10

*Administration of customs, excise and sales duty provisions*

(1) The Governments of Botswana, Lesotho and Swaziland undertake to establish customs and excise administrations capable of administering the terms of the

#### MEMORANDUM VAN VERSTANDHOUDING

Met verwysing na die Doeane-unie-ooreenkoms tussen die Regerings van Lesotho, Botswana, Suid-Afrika en Swaziland, van 11 Desember 1969, word dit wenslik geag om die volgende bykomende verstandhoudings tussen die vier Regerings waaroor eenstemmigheid bereik is en wat met die Ooreenkoms gelees moet word en deel daarvan vorm, te boekstaaf:

*ad* artikels 3, 4, 8 en 10

*Uitvoering van doeane-, aksyns- en verkoo-  
pregbepalings*

(1) Die Regerings van Botswana, Lesotho en Swaziland onderneem om doea-  
neen aksynsadministrasies in die lewe te  
roep wat bevoeg is om uitvoering te gee aan

<sup>1</sup> Signed by P. N. Peete—Signé par P. N. Peete.

<sup>2</sup> Signed by J. G. Haskins—Signé par J. G. Haskins.

<sup>3</sup> Signed by J. F. W. Haak—Signé par J. F. W. Haak.

<sup>4</sup> Signed by L. Lovell—Signé par L. Lovell.

Agreement and any arrangements thereunder, customs and excise storage and manufacturing warehouse provisions, excise provisions and the collection of excise duties and sales duty provisions and the collection of sales duties.

(2) The Contracting Parties agree that:

(a) goods (including goods for warehousing) destined for Botswana, Lesotho or Swaziland and imported through any place of entry in South Africa (including Lourenço Marques and Jan Smuts Airport) shall be entered for customs, excise or sales duty purposes through South African customs and for that purpose the laws relating to customs, excise and sales duty of South Africa will apply to such goods as if such goods were destined for South Africa: Provided that if the laws relating to customs, excise and sales duty of Botswana, Lesotho or Swaziland as the case may be, should, in relation to such goods, differ in respect of any restriction, prohibition, tariff or rebate under the Agreement, the relative law of the country of destination of such goods shall in that respect be deemed to be the law relating to customs, excise or sales duty, as the case may be, of South Africa in relation to such goods;

(b) goods destined for South Africa and imported other than by road through any place in Botswana, Lesotho or Swaziland shall be entered for customs, excise or sales duty purposes at the place of entry in South Africa. Goods so destined and imported by road shall be so entered at the place of entry into the common customs area;

(c) goods destined for Botswana, Lesotho or Swaziland and imported directly into the country in question shall, subject to the provisions of subparagraph (a), be entered for customs, excise or sales duty purposes in that country;

(d) goods for warehousing in any customs and excise storage warehouse established in the area of Botswana, Lesotho or Swaziland shall be cleared for warehousing at places of entry in South Africa for

die bepalings van die Ooreenkoms en enige reëlings daarkragtens, doeane- en aksyns-opberging- en vervaardigingspakhuisbepalings, aksynsbepalings en aan die invordering van aksynsregte en aan verkoopregbepalings en die invordering van verkoopregte.

(2) Die kontrakterende partye kom ooreen dat:

(a) goedere (insluitende goedere vir pakhuisopberging) bestem vir Botswana, Lesotho of Swaziland en ingevoer deur enige plek van binnekoms in Suid-Afrika (insluitende Lourenço Marques en Jan Smutslughawe) moet vir doeane-, aksyns- of verkoopregdoeleindes deur Suid-Afrika se doeane ingeklaar word en vir hierdie doel is die wette betreffende doeane-, aksyns- en verkoopregte soos van toepassing in Suid-Afrika ook op sodanige goedere van toepassing asof sodanige goedere vir Suid-Afrika bestem is:

Met dien verstande dat indien die wette betreffende doeane-, aksyns- en verkoopregte van Botswana, Lesotho of Swaziland, na gelang van die geval, wat sodanige goedere betref ten opsigte van enige beperking, verbod, tarief of korting kragtens die Ooreenkoms verskil, die betrokke wet van die land van bestemming van sodanige goedere in daardie opsig geag word die wet betreffende doeane-, aksyns- of verkoopreg, na gelang van die geval, van Suid-Afrika ten opsigte van sodanige goedere te wees;

b) goedere bestem vir Suid-Afrika en ingevoer op 'n ander wyse as per pad deur enige plek in Botswana, Lesotho of Swaziland moet vir doeane-, aksyns- of verkoopregdoeleindes ingeklaar word by die plek van binnekoms in Suid-Afrika. Aldus bestemde goedere wat per pad ingevoer word, moet ingeklaar word by die plek van binnekoms in die gemeenskaplike doeanegebied;

(c) goedere bestem vir Botswana, Lesotho of Swaziland en regstreeks in die betrokke land ingevoer, moet, behoudens die bepalings van subparagraaf (a) vir doeane-, aksyns- of verkoopregdoeleindes in daardie land ingeklaar word;

(d) goedere vir opberging in enige doeane aksynspakhuis wat in die gebied van Botswana, Lesotho of Swaziland opgerig is, vir pakhuisopberging by die plek van binnekoms in Suid-Afrika ingeklaar

removal to such warehouse without further entry, but any clearance ex such warehouse of such goods and collection of any customs, excise or sales duty thereon shall be the responsibility of the country in whose area the warehouse is situated;

(e) the administration of any customs and excise manufacturing warehouse (including the collection of any customs, excise or sales duty on any goods manufactured in such warehouse) in Botswana, Lesotho and Swaziland shall be the responsibility of the country in whose area the warehouse is situated; and

(f) provisions relating to drawbacks of duty on goods used in the manufacture of exported goods shall be administered by the Government in whose area the exporter is situated, but the Government of South Africa shall accept responsibility for the processing of claims for drawback of any duty emanating from exporters in Botswana, Lesotho or Swaziland in respect of goods exported from the common customs area and payment of such claims shall be effected from the Consolidated Revenue Fund of South Africa.

DONE at Pretoria, in quadruplicate, in Afrikaans and English texts, each of which texts shall be of equal authenticity, this eleventh day of December, 1969.

For the Government  
of the Kingdom of Lesotho:

[Signed—Signé]<sup>1</sup>

For the Government  
of the Republic of Botswana:

[Signed—Signé]<sup>2</sup>

For the Government  
of the Republic of South Africa:

[Signed—Signé]<sup>3</sup>

For the Government  
of the Kingdom of Swaziland:

[Signed—Signé]<sup>4</sup>

moet word vir verwydering na sodanige pakhuis sonder verdere klaring, maar enige uitklaring van sodanige goedere uit sodanige pakhuis en invordering van enige doeane-, aksyns- of verkoopregte daarop, is die verantwoordelikheid van die land in wie se gebied die pakhuis geleë is;

(e) die administrasie van enige doeane aksynsvervaardigingspakhuis (insluitende die invordering van enige doeane-, aksyns- of verkoopregte op enige goedere in sodanige pakhuis vervaardig) in Botswana, Lesotho en Swaziland die verantwoordelikheid is van die land in wie se gebied die pakhuis geleë is; en

(f) bepalings betreffende teruggawe van regte op goedere wat gebruik word by die vervaardiging van uitgevoerde goedere toegepas moet word deur die Regering in wie se gebied die uitvoerder geleë is, maar die Regering van Suid-Afrika aanvaar verantwoordelikheid vir die verwerking van eise ten opsigte van teruggawe van enige regte wat van uitvoerders in Botswana, Lesotho of Swaziland afkomstig is met betrekking tot goedere wat uit die gemeenskaplike doeanegebied uitgevoer is en betaling van sodanige eise word uit die Gekonsolideerde Inkomstefonds van Suid-Afrika gemaak.

GEDOEN te Pretoria, in viervoud, in die Afrikaanse en die Engelse teks, waarvan albei ewe outentiek is, op hede die elfde dag van Desember 1969.

Namens die Regering  
van die Koninkryk van Lesotho:

Namens die Regering  
van die Republiek Botswana:

Namens die Regering  
van die Republiek van Suid-Afrika:

Namens die Regering  
van die Koninkryk van Swaziland:

<sup>1</sup> Signed by P. N. Pecte—Signé par P. N. Peete.

<sup>2</sup> Signed by J. G. Haskins—Signé par J. G. Haskins.

<sup>3</sup> Signed by J. F. W. Haak—Signé par J. F. W. Haak.

<sup>4</sup> Signed by L. Lovell—Signé par L. Lovell.

REVIEW OF LEGAL AND INSTITUTIONAL INSTRUMENTS  
TO FACILITATE INTRA-REGIONAL TRANSPORT AND TRADE  
WITHIN SUB-SAHARAN AFRICA

ANNEX VI-1b

**SOUTHERN AFRICA CUSTOMS UNION AGREEMENT**

(GABORONE 2002)



- PREAMBLE
- PART ONE: DEFINITIONS AND OBJECTIVES
- PART TWO: ESTABLISHMENT AND LEGAL STATUS
- PART THREE: INSTITUTIONS
- PART FOUR: MEETINGS
- PART FIVE: TRADE LIBERALISATION
- PART SIX: COMMON REVENUE POOL
- PART SEVEN: REVENUE SHARING
- PART EIGHT: COMMON POLICIES
- PART NINE: FINAL PROVISIONS
- ANNEX A: REVENUE SHARING FORMULA

**BETWEEN THE GOVERNMENTS OF THE REPUBLIC OF BOTSWANA, THE KINGDOM OF LESOTHO, THE REPUBLIC OF NAMIBIA, THE REPUBLIC OF SOUTH AFRICA AND THE KINGDOM OF SWAZILAND**

**PREAMBLE**

**THE GOVERNMENTS OF THE REPUBLIC OF BOTSWANA, THE KINGDOM OF LESOTHO, THE REPUBLIC OF NAMIBIA, THE REPUBLIC OF SOUTH AFRICA AND THE KINGDOM OF SWAZILAND**

**RECOGNISING** that the Customs Union Agreement concluded on 11 December 1969 no longer adequately caters for the needs of a customs union in the 21st century and should therefore be aligned with current developments in international trade relations;

**BEARING IN MIND** the decision of the Ministers responsible for Southern African Customs Union matters of 11 November 1994, mandating the Governments to re-negotiate the 1969 Southern African Customs Union Agreement;

**AWARE** that the implementation of the 1969 Agreement is hampered by a lack of common policies and common institutions;

**RECOGNISING** the importance of tariffs as instruments for the implementation of industrial development policy;

**BEING** desirous of determining and applying the same customs tariffs and trade regulations to goods imported from outside the Common Customs Area;

**MINDFUL** of the different levels of economic development of the Member States and the need for their integration into the global economy;

**TAKING INTO ACCOUNT** the results of the Uruguay Round of Multilateral Trade Negotiations on global trade liberalization;

**RECOGNISING** the obligations of Member States in terms of existing regional trade arrangements and bilateral trade agreements;

**BELIEVING** that a dispute settlement mechanism will provide a mutually acceptable solution to problems that may rise between Member States;

**Hereby agree as follows:**

## **PART ONE DEFINITIONS AND OBJECTIVES**

### **Article 1 Definitions**

**In this Agreement, unless the context otherwise requires:**

**"additional duties"** means duties imposed in terms of Article 26;

**"Agreement"** means this Agreement, establishing SACU, and includes Annex A and such annexes as referred to in Article 42;

**"Botswana"** means the area of the Republic of Botswana;

**"Commission"** means the Customs Union Commission established by Article 7;

**"Common Customs Area"** means the combined areas of Botswana, Lesotho, Namibia, South Africa and Swaziland;

**"Common Revenue Pool"** means the Pool referred to in Article 32;

**"Council"** means the Council of Ministers established by Article 7;

**"customs duties"** means customs duties as defined in the customs legislation in force in the respective Member States;

**"excise duties"** means excise duties as defined in the excise legislation in force in the respective Member States;

**"financial year"** means a period of 12 months commencing on the 1st of April;

**"Lesotho"** means the area of the Kingdom of Lesotho;

**"Namibia"** means the area of the Republic of Namibia;

**"SACU"** means the Southern African Customs Union established by Article 3;

**"Secretariat"** means the Secretariat of SACU established by Article 7;

**"South Africa"** means the area of the Republic of South Africa;

**"Swaziland"** means the area of the Kingdom of Swaziland;

**"Tariff Board"** means the SACU Tariff Board established by Article 7;

**"Technical Liaison Committees"** means Committees established by Article 7;

**"Tribunal"** means an ad hoc Tribunal established by Article 7;

**"WTO"** means the World Trade Organisation.

## **Article 2**

### **Objectives**

The objectives of this Agreement are -

- (a) to facilitate the cross-border movement of goods between the territories of the Member States;
- (b) to create effective, transparent and democratic institutions which will ensure equitable trade benefits to Member States;
- (c) to promote conditions of fair competition in the Common Customs Area;
- (d) to substantially increase investment opportunities in the Common Customs Area;
- (e) to enhance the economic development, diversification, industrialization and competitiveness of Member States;
- (f) to promote the integration of Member States into the global economy through enhanced trade and investment;
- (g) to facilitate the equitable sharing of revenue arising from customs, excise and additional duties levied by Member States; and
- (h) to facilitate the development of common policies and strategies.

## **PART TWO**

### **ESTABLISHMENT AND LEGAL STATUS**

#### **Article 3**

##### **Establishment of the Customs Union**

1. There is established the Southern African Customs Union (hereinafter referred to as "SACU").
2. The Headquarters of SACU shall be in Windhoek in the Republic of Namibia.

#### **Article 4**

##### **Legal Status**

1. SACU shall be an international organization, and shall have legal personality with capacity and power to enter into contracts, acquire, own or dispose of movable or immovable property, and to sue and be sued.
2. SACU shall be accorded by each of the Member States such privileges and immunities as are necessary for the exercise of its functions.
3. The officials of the SACU Secretariat shall be similarly accorded by each of the Member States such privileges and immunities as are necessary for the independent exercise of their functions.
4. SACU shall conclude a headquarters agreement with the host Member State.

## **Article 5**

### **Membership**

The States mentioned in the Preamble to this Agreement shall, upon signature and ratification of this Agreement, become members of SACU.

## **Article 6**

### **Admission of New Members**

1. Any State not mentioned in the Preamble to this Agreement may become a member of SACU upon being admitted by the existing Member States and acceding to this Agreement.
2. The admission of any such State as a member of SACU shall be approved by a unanimous decision of the Council.
3. The Council shall determine the procedures and criteria for the admission of new members.

## **PART THREE INSTITUTIONS**

## **Article 7**

### **Establishment of Institutions**

The following institutions of SACU are hereby established -

- (a) Council of Ministers;
- (b) Customs Union Commission;
- (c) Secretariat
- (d) Tariff Board;
- (e) Technical Liaison Committees; and
- (f) *ad hoc* Tribunal.

## **Article 8**

### **Council of Ministers**

1. The Council shall consist of at least one Minister from each Member State and shall be the supreme decision making authority of SACU matters.
2. The Council shall be responsible for the overall policy direction and functioning of SACU institutions, including the formulation of policy mandates, procedures and guidelines for the SACU institutions.
3. The Council shall appoint an Executive Secretary of SACU
4. The Council shall appoint the members of the Tariff Board.
5. The Council shall approve the budgets of the Secretariat, the Tariff Board and the Tribunal.
6. The Council shall oversee the implementation of the policies of SACU.
7. The Council shall approve customs tariffs, rebates, refunds or drawbacks and trade related remedies.
8. The Council shall have the authority to create additional technical liaison

committees and other additional institutions and to determine and alter their terms of reference.

9. The Council shall meet at least once in each quarter of a financial year, unless agreed otherwise.

10. The Chair of the Council shall be held in turn by each Member State for a period of twelve months in the order to be decided by the Council.

## **Article 9**

### **Customs Union Commission**

1. The Commission shall consist of senior officials at the level of Permanent Secretaries, Directors-General, Principal Secretaries or other officials of equivalent rank, from each Member State.

2. The Commission shall be responsible to and report to the Council.

3. The Commission shall be responsible for the implementation of this Agreement.

4. The Commission shall ensure the implementation of the decisions of the Council.

5. The Commission shall be responsible for overseeing the management of the Common Revenue Pool in accordance with the policy guidelines decided by the Council.

6. The Commission shall supervise the work of the Secretariat.

7. The Chairperson of the Commission shall be appointed by the Member State chairing the Council.

8. The Commission shall meet at least once in each quarter of a financial year or at the request of a Member State.

## **Article 10**

### **Secretariat**

1. The Secretariat shall be responsible for the day-to-day administration of SACU.

2. The Secretariat shall coordinate and monitor the implementation of all decisions of the Council and the Commission.

3. The Secretariat shall arrange meetings, disseminate information and keep minutes of meetings of SACU institutions.

4. The Secretariat shall assist in the harmonization of national policies and strategies of Member States in so far as they relate to SACU.

5. The Secretariat shall be headed by an Executive Secretary who shall be a citizen of a Member State.

6. The Secretariat shall have such other staff as may be determined by the Commission from time to time.

7. The Secretariat shall be responsible for keeping a record of all transactions into and out of the Common Revenue Pool.

8. The Secretariat shall coordinate and assist in the negotiation of trade agreements with third parties.

9. The Secretariat shall perform such other duties as may be assigned to it from time to time by the Council and the Commission.

10. The Secretariat shall be the depositary of all records of SACU.

## **Article 11**

### **Tariff Board**

1. The Tariff Board shall consist of experts drawn from Member States. The Tariff Board shall be an independent institution made up of full-time or part-time members or both.
2. The Tariff Board shall make recommendations to the Council on the level and changes of customs, anti-dumping, countervailing and safeguard duties on goods imported from outside the Common Customs Area, rebates, refunds or duty drawbacks based on the directives given to it by the Council as provided for in Article 8.
3. The terms of reference, policy mandates, procedures and regulations of the Tariff Board shall be determined by the Council in accordance with Article 8.

## **Article 12**

### **Technical Liaison Committees**

1. There shall be four Technical Liaison Committees to assist and advise the Commission in its work. These shall be the following:
  - (a) Agricultural Liaison Committee;
  - (b) Customs Technical Liaison Committee;
  - (c) Trade and Industry Liaison Committee; and
  - (d) Transport Liaison Committee.
2. The Council shall have the authority to determine and alter the terms of reference of the Committees mentioned in paragraph 1.

## **Article 13**

### **Tribunal**

1. Any dispute regarding the interpretation or application of this Agreement, or any dispute arising there under at the request of the Council, shall be settled by an *ad hoc* Tribunal.
2. The Tribunal shall be composed of three members, except as otherwise determined by the Council.
3. The Tribunal shall decide by majority vote and its decision shall be final and binding.
4. The Tribunal shall, at the request of the Council, consider any issue and furnish the Council with its recommendations.
5. In any matter referred to the Tribunal, the parties to the dispute shall choose the members of the Tribunal from amongst a pool of names, approved by the Council, and kept by the Secretariat.
6. Member States party to any dispute or difference shall attempt to settle such dispute or difference amicable before referring the matter to the Tribunal.
7. The Tribunal shall be assisted by the Secretariat in its work.
8. The Tribunal shall determine its own rules of procedure.

## **Article 14**

### **National Bodies**

1. Member States shall establish specialized, independent and dedicated National Bodies or designate institutions which shall be entrusted with receiving requests for tariff changes and other related SACU issues. The National Bodies will carry out preliminary investigations and recommend any tariff changes necessary to the Tariff Board.
2. The National Bodies will study, investigate and determine the impact of tariffs within respective Member States and periodically propose such changes as may be deemed necessary and make recommendations to the Commission through the Secretariat. The National Bodies shall adhere to similar procedures in all Member States.
3. SACU will assist Member States with the establishment of common procedures and technical capacity to ensure effective, efficient and transparent functioning of National Bodies.

## **Article 15**

### **General Consultations**

Any difference or dispute arising out of this Agreement, which does not directly affect the interests of all Member States, may form the subject of direct consultation between the affected parties with a view to finding a solution thereto. Such affected parties shall report the results of their consultations to the Commission before its next meeting.

## **PART FOUR MEETINGS**

## **Article 16**

### **Quorum**

Except as otherwise provided in this Agreement, the quorum for all meetings of the institutions of SACU shall be all Member States.

## **Article 17**

### **Decisions**

Except as otherwise provided in this Agreement, decisions of the institutions of SACU shall be made by consensus.

## **PART FIVE TRADE LIBERALISATION**

### **Article 18**

#### **Free Movement of Domestic Products**

1. Goods grown, produced or manufactured in the Common Customs Area, on importation from the area of one Member State to the area of another Member State, shall be free of customs duties and quantitative restrictions, except as provided elsewhere in this Agreement.

2. Notwithstanding the provisions of paragraph 1 above, Member States shall have the right to impose restrictions on imports or exports in accordance with national laws and regulations for the protection of -

- (a) health of humans, animals or plants;
- (b) the environment;
- (c) treasures of artistic, historic or archeological value;
- (d) public morals;
- (e) intellectual property rights;
- (f) national security; and
- (g) exhaustible natural resources.

### **Article 19**

#### **Goods Imported from outside the Common Customs Area**

Except as otherwise provided in this Agreement, a Member State shall not impose any duties on goods which were imported from outside the Common Customs Area on importation of such goods from the area of any other Member State.

### **Article 20**

#### **Customs Duties on Imported Goods**

1. The Council shall, on recommendation of the Tariff Board, approve customs duties to be applied to goods imported into the Common Customs Area from outside that Area.

2. Member States shall apply identical rebates, refunds or drawbacks of customs duty on imported goods.

3. Notwithstanding anything contained in this Article, a Member State may grant a rebate of the customs duties in respect of goods imported into its area where such rebates are -

- (a) for the relief of the distress of persons in cases of famine and other national disasters;
- (b) under a technical assistance agreement;
- (c) in compliance with an obligation under any multilateral agreement to which such a Member State is a party; or
- (d) for such other purposes as may be agreed upon by the Member States.



## **Article 21**

### **Specific Excise and *ad valorem* Excise Duties and Specific Customs and *ad valorem* Customs Duties on Imported Goods of the Same Class or Kind**

1. The Ministers responsible for Finance in all Member States shall meet and agree on the rates of specific excise and *ad valorem* excise duties and specific customs and *ad valorem* customs duties to be applied to goods grown, produced or manufactured in or imported into the Common customs Area.
2. Member States shall apply identical rebates, refunds or drawbacks of specific excise and *ad valorem* excise duties and of specific customs and *ad valorem* customs duties on imported goods in respect of such goods. Such rebates, refunds or drawbacks of specific excise and *ad valorem* excise duties and specific customs and *ad valorem* customs duties shall be determined by the Ministers responsible for Finance in the Member States through consultation.

## **Article 22**

### **Legislation Relating to Customs and Excise Duties**

Except as otherwise provided in this Agreement Member States shall apply similar legislation with regard to customs and excise duties.

## **Article 23**

### **Customs Co-operation**

1. Member States shall take appropriate measures, including arrangements regarding customs co-operation, to ensure that the provisions of this Agreement are effectively and harmoniously applied.
2. Member States shall take such measures as are necessary to facilitate the simplification and harmonization of trade documentation and procedures.

## **Article 24**

### **Freedom of Transit**

A Member State shall afford freedom of transit without discrimination to goods consigned to and from the areas of other Member States, provided that a Member State may impose such conditions upon such transit as it deems necessary to protect its legitimate interests in respect of goods of a kind of which the importation into its area is prohibited on grounds of public morals, public health or security, or as a precaution against animal or plant diseases, parasites and insects, or in pursuance of the provisions of a multilateral international agreement to which it is a party; and provided further that a Member State shall not be precluded from refusing transit, or from taking any measures deemed necessary by it in connection with such transit, for the purpose of protecting its security interests.

## **Article 25**

### **Import and Export Prohibitions and Restrictions**

1. Member States recognize the right of each Member State to prohibit or restrict the importation into or exportation from its area of any goods for economic, social,

cultural or other reasons as may be agreed upon by the Council.

2. Except in so far as may be agreed upon between the Member States from time to time, the provisions of this Agreement shall not be deemed to suspend or supersede the provisions of any law within any part of the Common Customs Area which prohibits or restricts the importation or exportation of goods.

3. The provisions of paragraphs 1 and 2 shall not be so construed as to permit the prohibition or restriction of the importation by any Member State into its area of goods grown, produced or manufactured in other areas of the Common Customs Area for the purpose of protecting its own industries producing such goods.

4. A Member State shall upon request by any other Member State take such steps as may be agreed upon between the Member States concerned (including action to make such steps legally enforceable within its area) to prevent the exportation or unrestricted exportation from its area to the area of such other Member State of such prohibited or restricted goods imported from outside the Common Customs Area or grown, produced or manufactured in its area or to prevent the exportation or unrestricted exportation from its area to a State outside the Common Customs Area of such prohibited or restricted goods imported from the area of such other Member State. The expression "prohibited or restricted goods" includes second hand goods imported from outside the Common Customs Area.

5. Member States shall co-operate in the application of import restrictions with a view to ensuring that the economic objectives of any import control legislation in any State in the Common Customs Area are attained.

## **Article 26**

### **Protection of Infant Industries**

1. The Government of Botswana, Lesotho, Namibia or Swaziland may as a temporary measure levy additional duties on goods imported into its area to enable infant industries in its area to meet competition from other producers or manufacturers in the Common Customs Area, provided that such duties are levied equally on goods grown, produced or manufactured in other parts of the Common Customs Area and like products imported from outside that area, irrespective of whether the latter goods are imported directly or from the area of another Member State and subject to payment of the customs duties applicable to such goods on importation into the Common Customs Area.

2. Infant industry means an industry which has been established in the area of a Member State for not more than eight (8) years.

3. Protection afforded to an infant industry in terms of paragraph 1 shall be for a period of eight (8) years unless otherwise determined by the Council.

4. The Council may impose such further terms and conditions as it may deem appropriate.

## **Article 27**

### **Rail and Road Transport**

1. Member States undertake that the transit through their areas of goods imported

from outside the Common Customs Area to or exported to a State outside the Common Customs Area from the areas of other Member States shall not be subject to transport rate discrimination by public authorities.

2. Each Member State shall ensure that the tariffs applicable within its area to the conveyance of goods by public owned transport to and from other areas of the Common Customs Area shall be no less favourable than the tariffs applicable to the carriage of similar goods within its area.

3. Each Member State undertakes to extend to the motor transport operators registered in the areas of the other Member States treatment no less favourable than that accorded to motor transport operators registered within its own area for the conveyance of goods or passengers for reward or in the course of any trade or business.

## **Article 28**

### **Technical Barriers to Trade**

1. Member States shall apply product standards and technical regulations in accordance with the WTO Agreement on Technical Barriers to Trade.

2. Member States shall strive to harmonize product standards and technical regulations within the Common Customs Area.

## **Article 29**

### **Arrangements for Regulating the Marketing of Agricultural Products**

1. Whenever a regulation for the marketing of an agricultural commodity is in operation in any part of the Common Customs Area, such a regulation shall be applied on a non-discriminatory basis to similar commodities produced in any other part of the Common customs Area and marketed in the area where the marketing regulation is in operation, and the Member States concerned, cognizant of the advantages derived from the effective operation of these regulations, shall co-operate in the application of such regulations on a basis to be mutually agreed upon.

2. Member States agree to consult from time to time on matters affecting the production and consumption of agricultural commodities and the improvement and extension of marketing arrangements for such commodities.

3. Notwithstanding paragraph 1, each Member State may impose marketing regulations for agricultural products within its borders, provided such marketing regulations shall not restrict the free trade of a agricultural products between the Member States, except as defined below:

(a) emergent agriculture and elated agro-industries as agreed upon by Member States; or

(b) any other purposes as agreed upon between Member States.

4. Each measure shall be subject to a negotiated sunset clause outlining its conditions and period.

5. Whenever possible, agricultural trade formalities and documents shall be simplified and harmonized, and all Member States shall work towards the harmonization of standards.

### **Article 30**

#### **Sanitary and Phyto-Sanitary (SPS) Measures**

1. Subject to the provisions of Article 18, Member States recognize the importance of measures prescribing zoo-sanitary and phyto-sanitary requirements aimed at the prevention of the spread of animal and plant diseases, parasites and insects and agree to consult from time to time to achieve such aim I the Common Customs Area with due regard to the need to facilitate the flow of trade in products affected by such measures.
2. Member States reserve the right to apply SPS measures in accordance with their national SPS laws and international standards.

### **Article 31**

#### **Trade Relations with Third Parties**

1. Member States may maintain preferential trade and other related arrangements existing at the time of entry into force of this Agreement.
2. Member States shall establish a common negotiating mechanism in accordance with the terms of reference to be determined by the Council in accordance with paragraphs 2 and 7 of Article 8 for the purpose of undertaking negotiations with third parties.
3. No Member State shall negotiate and enter into new preferential trade agreements with third parties or amend existing agreements without the consent of other Member States.
4. When goods imported by a Member State from outside the Common Customs Area under a preferential agreement are exported to another Member State, the normal import duty applicable to such goods when imported into the rest of the Common Customs Area will be charged. Any difference between the normal duty and the duty originally charged on these goods shall be paid into the Common Revenue Pool.

## **PART SIX**

### **COMMON REVENUE POOL**

#### **Article 32**

##### **Pool Of Customs, Excise and Additional Duties**

All customs, excise and additional duties collected in the Common Customs Area shall be paid into the Common Revenue Pool in accordance with Article 33 within three (3) months of the end of the quarter of a financial year.

#### **Article 33**

##### **Management of the Common Revenue Pool**

1. A Member State or SACU institution may be appointed by the Council to manage the Common Revenue Pool.
2. The appointed Member State or SACU institution shall specify the accounts

into which all SACU customs, excise and additional duties shall be paid and from which all SACU payments shall be made.

3. All transactions into and out of the Common Revenue Pool shall be reported to the Secretariat, and shall be subjected to regular audits.

4. South Africa shall manage the Common Revenue Pool for a transitional period of two years from the entry into force of this Agreement.

## **PART SEVEN REVENUE SHARING**

### **Article 34**

#### **Revenue Sharing Formula**

1. Member States agree that in determining their respective shares of the total customs, excise and additional duties collected in the Common Customs Area during any financial year, the share accruing to each Member State will be calculated from three distinct components as set out in the paragraphs below.

2. Member States agree that the budgeted cost of financing the Secretariat, the Tariff Board and the Tribunal for the related financial year will first be deducted proportionately from the gross amounts of customs, excise and additional duties collected, before distribution to Member States from the three components mentioned hereunder.

#### **The Customs Component**

3. (a) The customs component shall consist of the gross amount of customs duties and specific and ad valorem customs duties leviable and collected on goods imported into the Common Customs Area, and other duties collected on imported goods, less the deduction as provided for in paragraph 2, but shall not include any duties rebated or refunded under the provisions of any law relating to customs duties.

(b) Each Member State's share of the customs component shall be calculated from the value of goods imported from all other Member States in a specific year as a percentage of total intra-SACU imports in such year.

(c) The exact method and procedures for the calculation of each Member State's share of the customs component are specified in Annex A.

#### **The Excise Component**

4. (a) The excise component shall consist of the gross amount of excise duties, less the deduction as provided for in paragraph 2, leviable and collected on goods produced in the Common Customs Area, less the amount set aside to fund the development component, but shall not include any duties rebated or refunded under the provisions of any law relating to excise duties.

(b) Each Member State's share of the excise component shall be calculated from the value of its Gross Domestic Product (GDP) in a specific year as a percentage

of total SACU GDP in such year.

(c) The exact method and procedures for the calculation of each Member State's share of the excise component are specified in Annex A.

### **The Development Component**

5. (a) A development component shall be established and shall be funded from a fixed percentage of the excise component, less the deduction as provided for in paragraph 2.

(b) Each Member State shall receive a share of the development component and the distribution of this component shall be weighted in favour of the less developed Member States.

(c) The exact method and procedures for the calculation of each Member State's share of the development component are specified in Annex A.

### **Article 35**

#### **Revenue Forecasting**

Each Member State shall annually submit its forecast for customs and excise revenue to the Secretariat for use in the calculation of revenue shares.

### **Article 36**

#### **Trade Data Disputes**

Any dispute arising out of differences relating to trade data shall first be referred to customs and excise authorities of Member States for resolution. Should the customs authorities fail to resolve such a dispute or difference within thirty (30) days or such longer period as the Member States may agree then any Member State to the dispute shall refer the matter to the Council.

### **Article 37**

#### **Timing of Payments**

Payments shall be made on the first day of each quarter of a financial year to all Member States from the Common Revenue Pool in accordance with Articles 33 and 34.

## **PART EIGHT**

### **COMMON POLICIES**

### **Article 38**

#### **Industrial Development Policy**

1. Member States recognise the importance of balanced industrial development of the Common Customs Area as an important objective for economic development.

2. Pursuant to paragraph 1, Member States agree to develop common policies and strategies with respect to industrial development.

### **Article 39**

#### **Agricultural Policy**

1. Member States recognize the importance of the agricultural sector to their economics.
2. Member States agree to co-operate on agricultural policies in order to ensure the co-ordinated development of the agricultural sector within the Common Customs Area.

### **Article 40**

#### **Competition Policy**

1. Member States agree that there shall be competition policies in each Member State.
2. Member States shall co-operate with each other with respect to the enforcement of competition laws and regulations.

### **Article 41**

#### **Unfair Trade Practices**

The Council shall, on the advice of the Commission, develop policies and instruments to address unfair trade practices between Member States. These policies and measures shall be annexed to this Agreement.

## **PART NINE**

### **FINAL PROVISIONS**

### **Article 42**

#### **Annexes**

1. The Council may develop such annexes as may be necessary to facilitate the implementation of this Agreement.
2. All such annexes shall form an integral part of this Agreement.

### **Article 43**

#### **Amendments**

Any Member State desirous of amending this Agreement shall put forward its proposal for such amendment, together with its submissions in motivation of the proposed amendment, to the Council for consideration and decision. An amendment of this Agreement shall be adopted by a decision of the Council.

### **Article 44**

#### **Signature**

This Agreement shall be signed by all the States mentioned in the Preamble.

**Article 45****Ratification**

This Agreement shall be ratified by the signatory States in accordance with their respective constitutional procedures.

**Article 46****Entry Into Force**

This Agreement shall enter into force thirty (30) days after the deposit of the instruments of ratification by all the Member States.

**Article 47****Accession**

This Agreement shall, subject to Article 6, remain open for accession by any other State.

**Article 48****Depositary**

This Agreement and all instruments of ratification or accession shall be deposited with the Executive Secretary, who shall transmit certified copies thereof to all Member States.

**Article 49****Withdrawal**

If a Member State wishes to withdraw from this Agreement that Member State shall give notice thereof to all the other Member States. If after consultation the Member States fail to agree on the date and conditions of the withdrawal, this Agreement shall remain in force until twelve (12) months from the date of such notice and shall then cease to apply to the withdrawing Member State.

**Article 50**

**Transitional Provisions** A commission, technical liaison committee or any other institution, obligation or arrangement of SACU which exists immediately before the entry into force of this Agreement shall, to the extent that it is not inconsistent with the provisions of this Agreement, continue to subsist, operate or bind Member States of SACU as if it were established or undertaken under this Agreement, until the Council determines otherwise. The Council of Ministers shall determine, on the basis of updated figures, how payments of adjustments under the 1969 SACU Agreement revenue sharing formula will be made.

**Article 51****Termination of the 1969 SACU Agreement**

The Customs Union Agreement between the Governments of Botswana, Lesotho, South Africa and Swaziland concluded on 11 December 1969, and acceded to by Namibia, shall terminate on entry into force of this Agreement, except as provided for in Article 50.



**IN WITNESS WHEREOF, WE**, the Heads of State or Government or duly authorized representatives of Member States have signed this Agreement.  
(This document was signed on 21 October 2002 in Gaborone, Botswana by the leaders of the  
REPUBLIC OF NAMIBIA  
REPUBLIC OF SOUTH AFRICA  
KINGDOM OF SWAZILAND  
REPUBLIC OF BOTSWANA  
KINGDOM OF LESOTHO)

## **SACU Annex A**

### **REVENUE SHARING FORMULA**

#### **1. The Customs Component**

(a) Each Member State's share of the customs component shall be calculated from the Cost-Insurance-Freight (CIF) value at border posts of goods imported from all other Member States into the area of each state as a percentage of the total CIF value of intra-SACU imports.

(b) Each Member State shall submit the actual data of intra-SACU imports and intra-SACU exports, for the most recent financial year for which such data are available for all Member States, to the Secretariat at least six months prior to the beginning of any financial year. No future adjustments will be made for errors in or improvements to the trade data provided.

(c) All import and export data provided for the calculation of these shares shall exclude the re-exports of goods imported from within or outside of the Common Customs Area.

(d) All data will be converted to South African Rand value, using the average daily exchange rate for the financial year to which the data relate.

(e) Where Member States are unable to provide actual CIF data, then the value of any enhancement factor used to calculate CIF values of imports from Free-on-Board (FOB) values of imports must be provided to the Secretariat and agreed by all other Member States.

(f) If any Member State is unable to provide intra-SACU import data for the calculation of these shares, then the intra-SACU export data of other Member States shall be used to calculate its share. In such circumstances Member States will agree on an enhancement factor to calculate CIF import data from FOH export data.

(g) Where revenue forecasts for year (t) are used to calculate the size of the customs component to be distributed over the course of year (t), adjustments will be made in years (t+1) and (t+2) to account for differences between the forecast and actual revenue collected.

#### **2. The Excise Component**

(a) Each Member State's share of the excise component shall be calculated from the value of its GDP in a specific calendar year as a percentage of total SACU GDP in such year.

(b) Each Member State shall submit actual GDP data, for the most recent calendar year for which such data are available for all Member States, to the Secretariat at least six months prior to the beginning of any financial year. No future adjustments will be made for errors or improvements to the GDP data provided.

(c) All data will be converted to South African Rand value, using the average daily exchange rate for the calendar year to which the data relate.

(d) Where revenue forecasts for year (t) are used to calculate the size of the excise component to be distributed over the course of year (t), adjustments will be made in years

(t+1) and (t+2) to account for differences between the forecast and actual revenue collected.

### **3. The Development Component**

(a) The development component shall initially be set at 15% of the excise component, but shall be reviewed from time to time and will be adjusted if agreed to by all Member States.

(b) Each Member State shall submit actual GDP per capita data, for the most recent calendar year for which such data are available for all Member States, to the Secretariat at least six months prior to the beginning of any financial year. No future adjustments will be made for errors or improvements to the GDP per capita data provided.

(c) All data will be converted to a South African Rand value, using the average daily exchange rate for the calendar year for which the data are provided.

(d) Each Member State's share of the development component, as a percentage of the total development component, shall be calculated by the following formula:

(i) Calculate the relative difference of the Member State's GDP per capita (A) from that of the mean GDP per capita of all Member States (B), where the relative difference equals  $(A)/(B)-1$ ;

(ii) Deflate the relative difference by a factor of 10;

(iii) Subtract from 1;

(vi) Multiply by 20.

(e) Where revenue forecasts for year (t) are used to calculate the size of the excise and development components to be distributed over the course of year (t), adjustments will be made in years (1+1) and (1+2) to account for differences between the forecast and actual revenue collected.