

**Regional Activity to Promote Integration  
Through Dialogue and Policy  
Implementation (RAPID)**



**Task Order 2.2 – Free Trade Activity**

**OCCASIONAL PAPER:  
PROPOSED SYSTEM FOR THE ELECTRONIC  
VALIDATION OF SADC CERTIFICATES OF ORIGIN**

**Submitted for:  
The Heads of Customs Working Group on Annex I of the SADC Trade Protocol  
Dates: 17-19 July, 2001**

**Submitted by:  
Peter Steele  
Chemonics International, Inc.**

**Submitted to:  
Regional Center for Southern Africa,  
U.S. Agency for International Development**

**Gaborone, Botswana**

**July 2001**

**Contract No. 690-I-00-00-00149-00**

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P.O. Box 602090 ▲ Plot 2914, Ext.10 ▲ Pudulogo Crescent ▲ Gaborone, Botswana ▲ Phone (267) 300 884 ▲ Fax (267) 301 027 ▲ Email [rapid@botsnet.bw](mailto:rapid@botsnet.bw)

Chemonics International Inc ▲ Africa Resources Trust ▲ Business Research and Information Group ▲ Complete Software Solutions Ltd ▲ Consilium Legis (Pty) Ltd  
▲ Crown Agents Consultancy Inc ▲ Dewey Ballantine LLP ▲ ECOFIN (Pvt) Ltd ▲ Economic Resources Ltd ▲ Independent Management Consulting Services  
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An Activity Funded by the United States Agency for International Development (Contract No. 690-I-00-00-00149-00)

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## DISCLAIMER

This paper has been prepared by the RAPID Project FTA team. Every effort has been made to check the accuracy of all statements made, but the FTA team assumes all responsibility for any errors. Similarly, the opinions and recommendations expressed herein are those of the FTA team alone and should not to be attributed to USAID/RAPID, the SADC Secretariat, SITCD, any SADC Member State or any other body.

## INTRODUCTION

1. This paper considers the feasibility of introducing a system for the electronic validation of SADC Certificates of Origin as a means of discouraging the use of forged certificates to secure the benefits of SADC originating status for goods that are not in fact produced in conformity to the Rules of Origin agreed in the SADC Trade Protocol. The work was undertaken following the decision of the CMT at their meeting in Maseru, Lesotho, in May, 2000, that further study should be made of this matter.
2. The paper is intended to be read in conjunction with a demonstration of the working of a proposed system for the electronic validation of Certificates of Origin by means of a pilot model. This model has been developed by Complete Software Solutions Ltd., of Sandton, RSA, again under the aegis of the SADC Trade Protocol Project.

## RECOMMENDATION

3. A review of experience of certification of origin regimes both within the SADC region and elsewhere convinces the SADC Trade Protocol Project team that there is an actual danger that forged Certificates of SADC Origin will be used to enable goods that do not qualify for SADC originating status to enjoy the benefits of preferential access to SADC markets under the SADC Trade Protocol. Furthermore, the suspicion likely to be entertained by Customs authorities in the region that such documents are being widely used could in itself create an impediment to legitimate intra-SADC trade.
4. It is recommended, therefore, that:
  - 4.1. Member-state governments introduce mechanisms calculated to inhibit the use of forgeries as an integral part of national systems for enforcing the SADC Trade Protocol Rules of Origin regime; and that they
  - 4.2. Consider the system for the electronic validation of Certificates of Origin developed under the SADC Trade Protocol Project as an effective means to this end.

## BACKGROUND AND JUSTIFICATION

### LIKELIHOOD OF FORGED CERTIFICATES OF ORIGIN BEING USED TO FACILITATE TRANSHIPMENT IN INTRA-SADC TRADE

#### The SADC Rule of Origin regime an incentive to circumvention

5. The Rule of Origin regime that was agreed under the SADC Trade Protocol introduces product-specific rules for most product categories traded within SADC with far-reaching local processing requirements. The objective of the member-states in adopting this approach was to encourage economic activity within the region. This was to be achieved by, as far as possible, excluding goods (including intermediate goods) of Third Country origin that might compete with local products from benefiting under the preferential market access provisions of the protocol.
6. The regime constitutes, therefore, a major distortion of the operation of the market. In addition, its implementation will require highly complex administrative procedures. On both these counts the regime creates incentives for traders both outside and within the SADC FTA to circumvent the Rules of Origin. The use of forged Certificates of Origin is one way in which they might attempt this. Documents falsely claiming to be SADC Certificates of Origin issued by the national Certification Agencies in member-states would seek to secure SADC originating treatment for shipments of goods that do not, in fact, qualify for preferential access to regional markets by reason of Third Country origin or inadequate processing within the SADC region.

#### The use of forged Certificates of Origin

7. The use of forged certificates is common under preferential trading regimes, especially where systems for administering the Rules of Origin are inadequate or poorly enforced.

8. This was particularly so under the Multifibre Arrangement that governed international trade in textiles and garments until end-1994 and continues under the WTO Agreement on Textiles & Clothing. In this case traders in materials from countries for which access to main importing markets is heavily restricted by export quotas have every incentive to attempt to secure documents attributing origin in countries not affected by such restrictions. Similarly, Generalised System of Preference regimes that offer reduced tariff access to metropolitan markets for materials from LDCs that conform to certain Rules of Origin induce traders to use forged documents to achieve the required originating status for goods that are, in fact, manufactured in Third Countries or are insufficiently processed locally.
9. Countries within the SADC region have expressed concern that the advent of the SADC Trade Protocol will create similar pressures within the SADC FTA. It is, of course, too early to determine how well founded this concern is. However, it seems likely that a number of the SADC member-states have had experience of the use of forged documents to confer originating status on non-qualifying goods under other preferential trade agreements. Furthermore, there is no reason to believe that the SADC Rule of Origin regime will be immune from the general tendency of regulations intended to distort the free operation of the market to generate incentives to evade or pervert the regulatory mechanism. The likelihood of this happening suggests that member-states should give early thought to the adoption of effective countermeasures.
10. In addition, it has to be anticipated that the far reaching requirements of the SADC Rules of Origin regime, its general complexity and the candidly admitted weaknesses of administrative agencies throughout the region will inevitably cause national Customs authorities to suspect the legitimacy of Certificates of Origin accompanying imported goods. The consequence of this will be that clearance of goods will be delayed, thus discouraging *bona fide* trade and creating an environment in which corruption and extortion will flourish. This again argues in favour of the development of adequate machinery to guarantee the validity of these documents.

## THE VALIDATION OF CERTIFICATES OF ORIGIN

### Internal measures

11. Certification Agencies usually attempt to guarantee the validity of their official documents by such measures as the use of special *pro forma* printed on security paper whose distribution is closely controlled. In practice such controls are seldom effective in preventing the ill intentioned from gaining access to blank *pro forma*. Even if modern printing procedures can make it difficult and expensive to counterfeit the *pro forma*, junior clerks with access to official stores can usually be suborned with the tacit connivance of their seniors and it is idle to suppose that this will not happen in one or more of the member-states that have agreed to use the common SADC *pro forma*.
12. The expense of producing the *pro forma* in adequate quantities and controlling their distribution must also be taken into account.
13. Additional measures to guarantee the validity of certificates include the use of official signatories and official stamps and the appending of unique reference numbers to each document issued. All of these devices are specified in the case of the SADC certificate.
14. Signatures and stamps are relatively easy to counterfeit and, in practice, do little to secure the validity of a document. The use of a unique number for each document does indeed make it impossible for forgeries to survive a reference to the Certifying Agency's records in the exporting country – assuming that these are kept in useful order. However, this is of little assistance to a Customs officer engaged in cargo clearance in an importing country unless he not only knows what numbers have been issued by the agency, but is also aware of the details of the cargo recorded on the certificates bearing those numbers.

### The need for cooperation between agencies in exporting and importing countries

#### Verification of suspect Certificates of Origin

15. It is envisaged in the design of the SADC Certificate of Origin *pro forma* that Customs authorities in importing countries will be able to request Certification Agencies in exporting countries to verify certificates presented for clearance purposes. It is likely that this provision will be effective in deterring regular traders from attempting to use forged documents. However, such traders are, as a general rule, those least likely to attempt to transship products not meeting Rule of Origin requirements.

16. In the case of shipments from unknown consignors to unknown consignees, it will be left to the discretion of the officials on duty to determine whether to clear the cargoes without effective queries being undertaken or to make them wait upon the verification process. This could mean that *bona fide* shipments will be habitually delayed with deleterious consequences for the expansion of intra-SADC trade. Such a situation will also create incentives for official corruption or extortion – particularly in the case of highly perishable cargoes or those where timely clearance is essential to the trade.

## Regular exchange of information

17. International experience of certification of origin has taught those concerned that only regular international cooperation – as opposed to the *ad hoc* approach described in the previous sub-section can have any impact in discouraging the use of forged documents.
18. Thus, it has long been the practice of both the European Commission and the US Government to require their trading partners in bilateral agreements entered into under the Multifibre Arrangement and the succeeding WTO Agreement on Textiles & Clothing to agree to provide on a monthly basis details of the certificates of origin they have issued on a monthly basis, giving both the reference numbers, the names of the consignors and consignees and the volumes of goods of each category covered. This makes it possible for Customs agencies to check that documents tendered by importers for clearance purposes coincide in all respects with data submitted independently by national Certification Agencies.
19. One disadvantage of this system is that information on particular documents will only be received by the importing Customs after the shipment has arrived. In these cases it will still be left to the discretion of the officers on duty to determine whether or not to accept a shipment. In the event of a forgery being identified *post hoc* it will still be possible for the Customs department to pursue the importer. However, experience has shown that, where the Certificate of Origin is discovered to be a forgery, the importer tends to be fly-by-night as well.
20. It is to be noted that the US Government has made the submission of such information a requirement for the preferential access to US textile markets provided for under the African Growth & Opportunities Act (AGOA). In countries that seek to take advantage of the AGOA the mechanism will, therefore, be available for use in the certification of SADC trade. However, the US Government has means at its disposal for coercing trading partners that fail to take effective measures to guarantee the validity of their documentation – i.e. the withdrawal of benefits - that SADC member-states would probably find it difficult to apply against each other.

21. Nevertheless, were it to be agreed that member-states would exchange information on Certificates of Origin issued on a monthly basis, it would go some way to discouraging the use of forged certificates in intra-SADC trade.

### Advantages of an electronic validation system

22. The object of an electronic system for the validation of Certificates of Origin is to ensure that the information on the documents issued by certifying agencies is transmitted immediately to the Customs authority in the relevant importing country. Thus it would deny officials responsible for clearing cargoes any discretion in determining whether or not to accept a particular shipment. Even more than the system of monthly reporting described in the previous sub-section, it removes any possibility of corruption creeping into the system. The hardcopy certificate submitted by the importer must agree in every detail with the information transmitted by the certifying agency in the exporting country otherwise the shipment is not accepted.
23. It is agreed that the advantages of an electronic system over the monthly report system in this respect is, to some extent, no more than marginal. However, it has been found by the US and EU Customs authorities in respect of textile garment shipments that it is preferable to be able to insist on an exact match of details as an essential condition for clearance of shipments in every instance rather than doing this on a *post hoc* basis in many instances.
24. In the case of textile and garment shipments the electronic system has the additional advantage that trading partners' usage of their export quotas can be monitored with immediate effect thus giving Customs authorities the option of taking action at an early stage in the event that the agreed restrictions are exceeded. In the SADC context this advantage would accrue to the RSA and the BSLN states in monitoring shipments of textile goods from the MMTZ states under the derogation those countries enjoy from the SADC Rules of Origin for these products.
25. However, perhaps the main advantage of an electronic validation system over alternative systems is that it could easily be adapted to do away with the need to use paper documents at all. Its adoption would, in effect, constitute a significant move towards wholly electronic cargo clearance procedures.

### What an electronic validation system cannot do

26. The electronic validation system would make it possible for Customs clearance officials to determine at once whether the document submitted with an incoming cargo purporting to be a certificate of SADC origin was in fact issued by the certifying agency in the exporting country. For the various reasons rehearsed above, it is advantageous to the effective enforcement of the Rule of Origin regime of the trade protocol that they are able to do this.

27. However, the system cannot guarantee that the document was properly issued by the Certification Agency after meaningful determination that the shipment concerned conformed to the relevant Rule of Origin. This requires the institution of other internal procedures by the agency. This subject is discussed at length in another paper.<sup>1</sup>

## THE RECOMMENDED SYSTEM

### BASIC PRINCIPLES

28. The principle of the system developed by the SADC Trade Protocol Project team that is now recommended for the attention of the JSC is that all Certificates of Origin issued by certifying agencies in exporting countries are immediately transmitted in electronic format to the Customs authority in the relevant importing country which then confirms receipt by retransmitting back to the certifying agency. The system allows for the Customs authority to request verification of certain points and also to reject the document in its entirety. (It is not anticipated that this will happen unless there is a major lapse of confidence in the effectiveness of the certifying agency). This means that hardcopy Certificates of Origin must agree in all particulars with the electronic facsimile as an essential condition for cargoes being cleared for entry.

### THE WORKING OF THE SYSTEM

29. The mechanism of the system is described in detail in the accompanying manual found in Annex A to this. It is envisaged that it will operate as follows:
- 29.1. The exporter electronically accesses the SADC Certification of Origin *pro forma* from a web site available to all SADC member-states and completes Boxes 1,2, 4, 6, 7, 8, 9 and 10. (If regional agreement can be reached on the acceptability of electronic signatures he may also complete the declaration in Box 11). The Certification Agency is alerted that a new Certificate of Origin is awaiting processing; Or, in the event the exporter is not connected to the internet
- 29.2. He completes a similar document on a paper *pro forma* that he submits physically to the Certification Agency. It is suggested that this should be known as the Exporter Declaration. The agency then itself transfers the information in the various boxes of the Exporter Declaration to the electronic version of the document;

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<sup>1</sup> See “The establishment of systems for certifying the originating status of goods seeking preferential access to SADC markets under the SADC Trade Protocol: Guidelines For Member-States”: SADC Trade Protocol Project Occasional Paper; November, 2000.

- 29.3. The agency carries out its normal vetting procedures (see the paper on Guidelines for member-states, *op. cit.*) and, if satisfied that the shipment meets the relevant Rule of Origin, it completes Box 3, thus causing a unique reference number to be automatically inserted and indicates in Box 11 and 12 that the document will be signed as appropriate and stamps applied. (This is in the event that there is no agreement on the acceptability of electronic signatures);
  - 29.4. The Certification Agency prints hardcopies of the document using the electronic version. This could be done on white paper, but, if this cannot be agreed by the member-states, one-sided security paper could be used or even a printed Certificate of Origin *pro forma*. After printing has been carried out no further changes can be made to the electronic document;
  - 29.5. The agency asks the exporter to complete Box 11 of the hardcopy and then signs Box 12 and applies the official stamp;
  - 29.6. The national Customs authority and the counterpart authority in the importing country are alerted that a new Certificate of Origin has been processed;
  - 29.7. The receiving Customs can either accept the document in which case it is simply confirmed to the certifying agency; or
  - 29.8. It can ask for verification of aspects of the document using the facsimile of the reverse of the *pro forma* that will have been transmitted together with side one; In this case
  - 29.9. The issuing agency can either verify the document or deny its validity as provided in Box B of the verification form. In either case it will so advise the receiving Customs;
  - 29.10. The receiving Customs can either accept the verified document or reject it. In both cases it returns the document to the issuing agency indicating its decision;
30. In the event a document has been accepted, electronic facsimiles of the printed hardcopies are then available to the Certification Agency in the exporting country and the Customs authority in the importing country. The latter will be able to use its version to check the validity of the hardcopy presented by the importer at the beginning of the cargo clearance process. If they agree in every detail, the hardcopy is a valid document, if not, not.

## LACK OF ADEQUATE TELECOMMUNICATIONS INFRASTRUCTURE

31. The question has to be considered how would an electronic validation system such as that recommended work in cases where Customs border posts are not linked telephonically to the headquarters in the capital cities – a not infrequent occurrence in many Member States. The lack of land-lines would, mean, of course, that such posts would be unable to receive the details of Certificates of Origin for goods destined for their countries by fax or e-mail and would not, therefore, be able to compare these with the hard copy documents that might come their way until the next mail delivery brought the printed details of the documentation not challenged by the central office as a result of its electronic correspondence with the exporting country. Thus the major benefit of the electronic validation system would be lost.
32. Possible solutions to this problem might be:
- 32.1. To limit entry points for consignments to major ports that are fully equipped with the latest telecommunications infrastructure. Such restrictions might apply to highly sensitive items such as textiles and clothing<sup>2</sup>. It would not, of course, be possible to treat all consignments in this way;
- 32.2. To require the border post to communicate with the central Customs office by radio to check the unique reference number carried by each Certificate of SADC Origin against that of the electronic version of the document held there. If these two numbers match – thus indicating that the electronic version is likely to reproduce the other details of the hard copy, it is suggested that the goods might safely be released without payment of a bond – subject, of course, to the hard certificates being checked with the electronic versions on a *post hoc* basis when the former reach the capital;
- 32.3. If the border post is not equipped with a reliable radio, to release the goods on payment of a bond that is refundable should the consignment subsequently prove to have been in order.
33. The above solutions are not, of course, mutually exclusive. It would be possible to limit sensitive items to a number of major entry points while adopting the suggested expedients at border posts not equipped with telephonic landlines.

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<sup>2</sup> This is the case for textiles and clothing traded between Malawi and the RSA under those countries' bilateral trade arrangement where ports of entry are limited to Beitbridge and Johannesburg International Airport.

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## ANNEX A - TECHNICAL DESCRIPTION OF THE SYSTEM FOR THE ELECTRONIC VALIDATION OF SADC CERTIFICATES OF ORIGIN

1. The proposed system is based on Lotus Notes and Lotus Notes messaging, which is available in RSA 128 encryption, an international description of the strongest encryption system available out side military or other high classification systems
2. A user of a Note system can work on-line - i.e. attached to a server - or can continue working off line if the link to the server is inoperable: in the latter case the system will automatically synchronize the data between the server and the user(s) once link(s) are re-established
3. The process would require Notes users (clients) with:
  - 3.1. OPTION 1: A SERVER IN EACH SADC COUNTRY; OR
  - 3.2. OPTION 2: A CENTRAL SERVER FOR ALL SADC COUNTRIES COULD BE SET UP.
4. In the first case the electronic document does not actually travel around, but remains on the server in the host (exporting) country.
5. Under the second option, the document would move between servers in the exporting and importing countries.
6. It is suggested that a once-nightly automated scheduled replication would be sufficient to advise all necessary recipients of new activity

## ANNEX B - THE SADC CERTIFICATE OF ORIGIN *PRO FORMA*

The SADC certificate of origin *pro forma* is reproduced on the following two pages. It should be noted that the document consists of a single sheet, the second page being printed on the reverse of the first.