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By

MAGRET OLUFISAYO KADIRI

(Student No: 2773641)

Supervisor: Associate Professor Riekie Wandrag

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DECLARATION

I, Magret Olufisayo Kadiri hereby declare that this work is original and the result of my own efforts. It has never on any previous occasion been presented in part or whole to any board for any degree.

I further declare that all secondary information used has been duly acknowledged in the work.

STUDENT

Sign…………………… Date

SUPervisor

Sign …………………… Date

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UNIVERSITY of the WESTERN CAPE
DEDICATION

To the almighty God, who gave me wisdom and strength to start and complete this work. In the potter's hand, he makes something out of nothing. Thank you father, for your faithfulness, grace and mercy. To God, be all the Glory.
ACKNOWLEDGEMENTS

I would like to show much appreciation to all the people that played a significant role in this work, which aided me in bringing it to fruition. First on my list being my parents, Pastor and Pastor Mrs. Kadiri, for all their prayers, love, understanding, financial and material support. My sister Temitope Emmanuelle Kadiri, for her timeless efforts with corrections. Also to my dear friend, uncle and brother, Mr. Adeniyi Adekola, for his constant motivation. To my dearest, Dr. Kennedy Kauka, for his tremendous support. To my friends, Mercy Nwoguji, Sarah Mwangi and Feyisayo Solomon Dada, thank you so much for your prayers. Not forgetting my most precious siblings, Simileoluwa Kadiri, Olumuyiwa Kadiri and Bukola Williams. I would also like to show my profound gratitude to my supervisors, Prof. Riekie Wandrag and Prof. I. Leeman, thank you so much for your help, may the good Lord reward you abundantly. And to my friends in the Earth Science department, thank you very much for lending me your table, chair and your wireless internet.
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Keywords


Developing Countries

GATT......... General Agreement on Tariffs and Trade

Hague Conference

ITO.......... International Trade Organisation

NTBs..........Non Tariff Barriers

SADC.........Southern African Development Community

UNCITRAL......United Nations Commission on International Trade Law

UNIDROIT.......International Institute for the Unification of Private Law

WTO.............World Trade Organisation


ULF............Uniform Law on the Formation of Contracts for the International Sale of Goods

FTAs........... Free trade agreements

RTAs............Regional trade agreements
ECOWAS.................Economic Community of Western African States

COMESA................Common Market for Eastern and Southern African

SACU.....................Southern African Customs Union

EAC.........................East Africa Co-operation

IOC .........................Indian Ocean Commission

IOR.........................Indian Ocean Rim

CMA.........................Common Monetary Area

EU.........................European Union

AGOA.......................Africa Growth and Opportunity Act

PTA .........................Preferential Trading Arrangement
Chapter One

Introduction

1.1 Statement of the problem

Following the end of World War II (WWII), the winning side, the United States and its allies, decided that a prosperous and lasting peace depended not only on the creation of a stable international political order based on principles embedded in the United Nations (UN) Charter, but also on the creation of a stable liberal international economic order. An international trading system, built on free trade principles, was also considered as an alternative to the protectionist global trade regime that evolved in the post-WWI era, especially after the depression.¹

The United Nations Commission on International Trade Law (UNCITRAL) was established by the General Assembly in 1966 (Resolution 2205(XXI) of 17 December 1966). In establishing the Commission the General Assembly recognised that disparities in national laws governing international trade created obstacles to the flow of trade, and it regarded the Commission as the vehicle by which the United Nations could play a more active role in reducing or removing these obstacles.²

The development of an international sales law was at the forefront of the discussion. The drafting and negotiation process, for what ultimately became the CISG, was quite inclusive. UNCITRAL unanimously approved the draft CISG and referred it to the UN General Assembly. The Convention was finalised at a diplomatic conference in Vienna in 1980, where it was again unanimously approved.³

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² [www.uncitral.org](http://www.uncitral.org) ‘Origin, mandate and composition of UNCITRAL’[accessed on May 4 2008]
However, the problem is that developing countries are economically unstable with different priorities as a result of their development. This paper will examine how much improvement and relevance the CISG has had on the SADC region.

1.2 Aims of the study

This research paper aims to understand and analyse the CISG, its history, scope and structure, and to evaluate its impact on SADC.

(a) The main ideas that this paper will consider are: what is the CISG;
(b) Its history, scope and structure;
(c) Its impact on developing countries;
(d) Its relevance to developing countries within SADC; and
(e) How the implementation of the CISG improved these developing countries within SADC;

1.3 Scope of the study

The scope of this study is limited in terms of volume. Thus this study will examine the background of the CISG and an analysis of its content, dispute resolution mechanism and its strengths and weaknesses. This study will also focus on SADC, its structure and member countries. The regional agreements made by the SADC countries will also be analysed.

1.4 Literature review and research methodology

The research shall be confined to literature survey, which shall include constitutions, textbooks, journal, articles, newspaper reports and the Internet and other relevant literature sources. This approach will highlight the history, scope and structure of the CISG. Books and articles have been written on SADC and its regional trade agreements, but none have been written about or made mention of, the application of the CISG in these regions, and its impact. This is what this paper seeks to do.

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4 Maria de Lurdes Fatima Magneli, *Trade liberalization and poverty elevation in developing countries (2005)* (Unpublished LL.M mini-dissertation) University of the Western Cape
1.5 Overview of chapters
This study will focus on the impact of the CISG on SADC, and how it will impact on improving the standard of living in developing countries. This examination will start with the history and structure of the CISG, followed by a detailed analysis of the Convention and then make an analysis of the SADC, its origin, evolution and current status.

Chapter One
This chapter will be an introduction to the paper. Here the aim and scope of the study, the research methodology and literature review will be considered.

Chapter Two
In this chapter, the historical background to the development of international trade globally, and international sale of goods generally, will be examined. There will also be a brief look at the 1980 Vienna Conference and an introduction to the CISG, its history and structure. In addition, the 1977 draft of the Convention and the pre-Conference proposals will be considered.

Chapter Three
This chapter will contain an analysis of the CISG. Its general applications will be examined. Obligations of contracting parties too will be considered. There will be an examination of the dispute resolution mechanism, as well as the strengths and weaknesses of the Convention.

Chapter Four
This chapter will examine the evolution, and structure of SADC and the countries that are part thereof. There will be an introduction to each of the countries that make up SADC.

Chapter Five
There are only a few number of countries in Africa that have rectified the CISG, they are; Burundi, Egypt, guinea, Lesotho, Mauritania, Uganda and Zambia. Ghana and South Africa are considering adopting the CISG. Amongst these, it’s only Lesotho and Zambia that are
part of SADC. This chapter shall examine trading amongst these countries and how they have applied the CISG in their various countries. The CISG and the rules of origin shall be examined side by side.

Chapter Six
This chapter shall examine reasons why the remaining thirteen countries which are members of SADC should rectify the CISG and recommendations shall also be made.
Chapter Two

The conferences that gave birth to the CISG

2.1 Brief history of the United Nations Commission on International Trade Law (UNCITRAL)

The UN General Assembly is one of the five principal organs of the UN, and the only one in which all member nations has equal representation. Its powers are to oversee the budget of the UN, appoint the non-permanent members to the Security Council, receive reports from other parts of the UN, and make recommendations in the form of General Assembly Resolutions. UNCITRAL was established by the UN General Assembly in 1966.

UNCITRAL is a core international body, and its mandate is the unification and harmonisation of international trade law in order to eliminate legal obstacles to international trade and to ensure an orderly development of economic activities on a fair and equal basis. UNCITRAL embarked on a programme to foster adoption of uniform international rules in various areas, such as, sales, arbitration, negotiable instruments, and transport.

‘Since its creation, UNCITRAL has worked for the harmonisation of international commercial law, notably within the areas of international sale of goods international transport of goods with the so-called "Hamburg rules" of 1978 as a well-known example and commercial arbitration with the 1976 arbitration rules and the 1985 model law of commercial arbitration as good examples’. The UNCITRAL Secretariat has its seat in Vienna (Austria). In establishing the Commission the General Assembly recognised that disparities in national laws governing international trade created obstacles to the free flow of trade, and it regarded the Commission as the vehicle by which the United Nations could play a more active role in reducing or removing these obstacles'.

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5 Origin, mandate and composition of UNCITRAL
http://www.uncitral.org/uncitral/en/about/origin.html [accessed on 10 June 2008]


7 Mads Bryde Andersen The UNCITRAL draft model on EDI-its history and fate, http://www.lex-electronica.org/articles/v1-1/andersen.html [accessed on 15 July]
(with the 1980 Vienna Sales Convention, also known as the CISG, as the most predominant example)

8 See http://www.uncitral.org/uncitral/en/about/origin.html [accessed on 23 July]
Ten years of work by UNCITRAL resulted in the unanimous agreement by the participating states on a Convention that was submitted for signature in Vienna. The CISG was born, created to provide a uniform international sales law that would facilitate world trade and eliminate the uncertainty created by conflicting states' national laws.9

2.2 Pre-conference proposals

The pre-conference proposal is the document which analyses the comments and proposals of Governments and interested international organisations on the draft of the CISG and their comments and suggestions are submitted to the Conference in response to a decision of the General Assembly. The draft Convention constitutes a significant achievement in the unification of international commercial law. As a result, it will serve to facilitate international trade and diminish the risk of conflict between the parties to a sales contract.10 The origins of the CISG began before the Second World War when the International Institute for the Unification of Private Law (UNIDROIT) attempted to prepare a uniform law on the international sale of goods under the auspices of the League of Nations. The next great effort at unifying international sales law came with the adoption of two uniform laws under the 1964 Hague Conventions, the Uniform Law on the International Sale of Goods (ULIS), and the Uniform Law on the Formation of Contracts for the International Sale of Goods (ULF). However, due to a lack of world-wide participation in the drafting of the Hague Conventions, many of the concepts embodied in the drafts "could not be translated into words and ideas that were intelligible in other parts of the world".11

10 Legislative history, 1980 Vienna conference, Analysis of comments and proposals by governments and international organizations on the draft conventions on international sale of goods, and on draft provisions concerning implementation, reservation and other final clauses, prepared by the secretary-general, http://www.cisg.law.pace.edu/cisg/Fdraft.html [accessed 25 July 2008]
11 Volker Behr, commentary on oblandesgericht Frankfurt am main, 17 September 1991 reproduced with permission of 12 Journal of law and commerce 271-275(1993)
UNCITRAL created an initial Working Group comprising of representatives from a broad geographic, political, and cultural range of states. They were charged with the development of legislation that would be acceptable "by countries of different legal, social, and economic systems." The Working Group met in nine sessions from 1970 through 1977. While the Working Group initially proposed revisions to the ULIS and the ULF, UNCITRAL ultimately decided to consolidate the two treaties into a single document. A Drafting Committee was established for this purpose, composed of representatives from Chile, Egypt, France, Hungary, India, Japan, Mexico, Nigeria, the USSR, and the United Kingdom. That Committee completed its work in 1978. UNCITRAL approved the draft that resulted, and requested the UN to convene a Diplomatic Conference to consider it. That Conference was held at Vienna during a five week period in 1980. Two committees performed most of the work for what became known as the Vienna Conference. One committee prepared the substantive provisions of the CISG, while the other prepared the “final clauses,” which dealt with such issues as reservations, declarations, and ratification by Contracting States. Members of the Conference debated the text of each Article, but ultimately approved the CISG unanimously. The CISG was then submitted to states for their approval according to domestic processes for adopting international treaties.

2.3 The uniform law for the international sale of goods

The growth of international trade makes some kind of unification necessary. Black's Law Dictionary defines "uniform" as "conforming to one rule, mode, pattern, or unvarying standard; not different at different times or places". The purpose of a uniform statute is to

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provide a set of guidelines or rules from which all courts applying that statute will decide similar cases in the same way.¹⁵ Legal arguments could explain why the process of law unification stopped once the international sale of goods began. International sellers chose the sale as a legal Instrumental for their business, because of its simplicity (which could be expressed by the Latin summarising statement “do ut des”); and an easy law has a good economic effect on worldwide business. The main reason why it was not possible to establish a worldwide uniform law for national sales as well could be found in the inability of reaching a compromise: too many are the legal traditions and experiences all around the world, and each one of them has to look after national interests.¹⁶ Increased trade overseas has drawn attention to the problems that are caused by the different ways in which countries have chosen to regulate international sales.¹⁷ The work of creating a uniform law for the international sale of goods started in 1929 under pressure from a well known German jurist, Ernst Rabel, who is known as the “grandfather” of the CISG.¹⁸

2.4 The 1977 draft of the CISG Convention

The drafting history of the CISG lends some perspective on its interpretative policy. The process of obtaining consensus in international sales law proceeded in two stages.¹⁹ When the CISG was about to be established, a Committee was formed which was to be responsible for drafting the Convention. This committee was named Whole I. On 24 May 1977 the Committee established a drafting group The Committee also established several

¹⁶ Roberto Viano, A general approach to international sale of goods: creation of a uniform law http://www.jus.unitn.it/cardozo/Obiter_Dictum/Viano1in.htm [accessed 15 October 2008]
ad hoc groups for the purpose of reaching consensus or compromise on important legal issues dealt with in the draft Convention. The drafting group made deliberations and decisions on several areas of the draft convention. The sphere of applications of the convention was one of the areas that were deliberated upon. Article 1, stated that contracting parties should be from different states; the committee did not retain this part of the draft because the determination of nationality, particularly in relation to corporations, was a complex issue over which national laws differed.

2.5 Conclusion
In this chapter, the history of the UNICITRAL and the pre-conference proposals that lead to the establishment of the CISG were outlined. UNCITRAL was specifically established to deal with problems concerning international trade law it has placed much importance on promoting the CISG and encouraging all contracting states to participate in its development.

Chapter Three

The CISG: Key concepts

3.1 Introduction to the CISG

Amongst the most important conventions on uniform commercial law in force, the one that stands out, albeit for diverse reasons, is the 1980 CISG. This is the culmination of more than five decades of efforts to unify international sales law. This Convention focuses on the promotion of international trade by removing barriers to international trade. Preparation of a uniform law for the international sale of goods began in 1930 at the UNIDROIT in Rome. After a long interruption in the work as a result of the WW11, the draft was submitted to a diplomatic conference in The Hague in 1964, which adopted two Conventions, one on the international sale of goods, and the other on the formation of contracts for the international sale of goods.

The CISG is in force in more than 70 states from all parts of the world, among them both industrial nations and developing states. It has been widely applied in international commercial transactions in the past twenty years. More than 1700 decisions by state courts and arbitral tribunals have been reported so far; legal writing on the Convention is abundant. It is, therefore, fair to say that the CISG has in fact been one of the success stories in the field of the international unification of private law. The Convention is, of course, intended to supercede the uniform laws on international sales which were the subject matter of the two Conventions adopted at The Hague in 1964.

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23 Petra Sund-Norrgard, International trade law CISG, Autumn 2002


25 Barry Nicholas, The Vienna convention on international sales law,
The CISG is one of the most successful international instruments to produce uniform substantive rules for international trade. It is often pointed out that, worldwide, two-thirds of international sale transactions are conducted between parties based in a CISG country.26

The CISG attempts to bridge the gap between the different legal systems of the world, mainly between the civil law (French and German traditions) and the common law (English and American sub-traditions), by creating a uniform law for the international sale of goods (Preamble of the CISG). The CISG governs the formation of the contract of sale as well as the rights and obligations of the buyer and seller (including their remedies). It came into force on 1 January 1988 for those countries that were then parties to it.27 This Convention created a uniform international sales law by regulating the rights and obligations of buyers and sellers in international transactions for the sale of goods.28

3.2 History of the CISG

As we have seen, the history of the CISG dates from 1920 when UNIDROIT, under the auspices of the League of Nations, set up a drafting committee of European scholars to work on a uniform law for international sales.29 In 1965, the UN General Assembly created UNCITRAL to address important trade law issues on a more global basis. The development of an international sales law was at the forefront of its concerns. The drafting and negotiation process, for what ultimately became the CISG, was quite inclusive.

UNCITRAL unanimously approved the draft CISG and referred it to the UN General Assembly. The Convention was finalised at a diplomatic conference in Vienna in 1980,

26Dr. Loukas Mistelis, the buyer’s right to avoid the contract in case of non-conforming goods or documents CISG Advisory Council opinion No.5, London http://www.cisg.law.pace.edu/cisg/CISG-AC-op5.html [accessed 13 September 2008]
27 The application in Singapore of the CISG http://www.singaporelaw.sg/content/CISG.html [accessed 15 September 2008]
where it was again unanimously approved. The CISG is officially plurilingual in six languages; Arabic, Chinese, English, French, Russian and Spanish. The CISG provides a uniform text of law for international sales of goods.\(^{30}\)

The CISG is an extraordinary example of international legal co-operation that represents the culmination of more than fifty years of work to construct a codified lex mercatoria for transnational sales. The Convention’s origins may be traced to the late 1920s when scholars, lawyers and traders (primarily from Western Europe) began to explore the possibility of creating a uniform law to govern international trade. Draft uniform sales laws were presented and debated from 1926 through 1939 under the auspices of The Hague Conference on Private International Law and the UNIDROIT. Interrupted at various intervals by world events (including World War II), these efforts continued in the 1950s and 1960s.\(^{31}\) The CISG is not merely a codification of the status quo in international trade, but is part of a progressive effort toward harmonising diverse approaches to international law.\(^{32}\) As the CISG becomes the applicable law in many international transactions, case law on the Convention is increasing among courts in numerous countries.\(^{33}\) The CISG is a master piece of UNCITRAL, aiming at promoting uniformity of international sales law, in the belief that international sales contracts differ from domestic ones in several important ways, and that the recent state of international trade law has been far from satisfactory as crossborder transactions, including sales, continue to a large extent to be subject to national laws that may vary considerably in content, and are often ill-suited to the special needs of international trade.\(^{34}\) The rules in the Convention contain solutions from many legal systems.

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\(^{31}\) www.cisg.org [accessed on June 10]

\(^{32}\) Anita C. Esslinger and updated by Margaret miles and Carmen butler, September 2005; October 2005 Contracting in the global marketplace: the UN convention on contracts for the international sale of goods and the limitation period in international sale of goods pg 1  

\(^{33}\) The convention on the international sale of goods in the United States Court Houston journal of international law, fall 2000  

\(^{34}\) Dr. Ruangvichathorn, *Understanding the CISG*, unpublished PhD Thesis(vol 1) part 1, Sripatum University – Center for Commercial Law  
http://www.spu.ac.th/graduate/CISG/under.html [accessed on 15 July]
a symbiosis of common law and continental law; not always precisely defined “hard and fast” rules.35

3.3 Essential Mechanisms/ Analysis of the CISG

Article 6 grants the parties freedom of contract; this suggests that parties can trump the CISG’s remedial default rules, which provide for expectancy damages. However, Article 4 states that questions of “validity” are left to applicable domestic law. “Validity,” left undefined by the CISG appears to involve issues, such as, duress, unconscionability, and misrepresentation.36 According to Article 7(1), interpreters of the Convention should be guided by

(1) Its "international character;"
(2) "the need to promote uniformity in its application;" and
(3) "the need to promote . . . the observance of good faith in international trade."

The first two criteria, paying attention to the Convention's "international character" and promoting uniformity, require decision makers to avoid local definitions of the language, which would likely lead to narrow and conflicting interpretations of the Convention. Instead, tribunals should interpret provisions with an eye toward their purposes and policies and the more general principles of the Convention. Because most of the articles, if not all, manifest a purpose and policy, in a sense the entire Convention is a cross-reference to Article 7(1). These purposes and policies are discussed in the paragraphs below dealing with Article 7(2). An interpreter can also gain a feel for the "international character" of the Convention by consulting its rich legislative history.37

Article 44 deals with the only remedy possible when the buyer has delayed his communication to the seller by more than the reasonable time limits stated in Articles 39 and 43. Article 44 states: "Notwithstanding the provisions of paragraph (1) of article 39 and

paragraph (1) of article 43, the buyer may reduce the price in accordance with article 50 or
claim damages, except for loss of profit, if he has a reasonable excuse for his failure to give
the required notice.38

In examining Article 55, there are several considerations that must be borne in mind. First, it
is important to understand that the parties do not have to agree on a price, they merely have
to provide a method for determining the price.

Consequently, CISG Article 55 is merely a gap-filling provision designed to provide a
structure to determine a price term when the parties have validly concluded a contract but
have failed to create, or have created an indefinite, price term. The first sentence of the
Article makes it clear that the application of Article 55 is based on the state court or arbitral
tribunal determining that the offer did not fail for lack of definiteness. Indeed, Article 55 only
applies to those situations in which the gap-filling law permits a contract to be concluded
without fixing the price or providing a means for determining the price.39

An important feature of the CISG is Article 74, which provides a guide for the recovery of
foreseeable losses, including lost profits, as a consequence of a party's breach of contract.
This right to obtain damages is a primary mechanism of the CISG remedial scheme40 Article
90 deals with the relationship between the CISG and other international agreements. The
manner in which this Article has been drafted is indicative of the close nexus with
substantive provisions as well as with other final clauses of the CISG, Article 90 states,
"... does not prevail over any international agreement which has already been or may be
entered into and which contains provisions concerning the matters governed by this
Convention, provided that the parties have their places of business in States parties to such
agreement."

38 Dr Anselmo Martinez Canellas, The scope of Article 44 CISG pg 261
39 Loukas Mistelis, Article 55 CISG: The Unknown Factor pg 289 Loukas Mistelis, Article 55 CISG:
September 2008]
40 Damon Schwartz ,Nordic journal of commercial law, The recovery of lost profits under article 74 of
the U.N. Convention on the international sale of goods page 2 http://www.njcl.fi/1_2006/article1.htm
[accessed 15 September 2008]
The intent of this article is as follows:

"does not prevail over". This phrase indicates that the provisions of the CISG would not be dispositive in case of a conflict with similar provisions in other international agreements. The phrase is not precatory; its wording is clear, direct, unambiguous and imperative.

"any international agreement". Although the CISG does not define this phrase, it would seem that "international agreement" is used generically and applies to both bilateral and multilateral treaties. There is no cogent difference in international law between the terms "international agreement" and "treaty" or "convention".

"which has already been or may be entered into". This phrase refers to other treaties that CISG Contracting States have concluded or may conclude in the future. The other treaty must be in force at the time the issue arises in order to prevail over the CISG.

“and which contains provisions concerning the matters governed by this Convention". Pursuant to CISG Article 4, the "matters governed by this Convention" are "only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract . . ." To invoke CISG Article 90, the provisions of the other treaty must regulate the same matter. In case of a conflict with another treaty which regulates the same matter as the CISG, the CISG will not control.

"provided that the parties have their places of business in States parties to such agreement". CISG Article 1(1) states that "This Convention applies to contracts of sale of goods between parties whose places of business are in different States . . ." In other words, X, buyer, and Y, seller, from States A and B, have entered into a contract for the sale of goods. Assume the existence of treaty Z. Pursuant to CISG Article 90, if A and B have their relevant places of business in States parties to treaty Z, the Z treaty must be considered in applying the convention.41

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41Taken from Julio A. Baez Cross references and editorial analysis article 90 http://www.cisg.law.pace.edu/cisg/text/cross/cross-90.html [accessed August 6 2008]
3.4 General provisions and application of the CISG

The CISG is said to be a milestone in the movement to codify the private international law of the sale of goods, and has achieved strong worldwide approval. It represents a significant event in the development of a global uniform sales law with the important goal of promoting and achieving worldwide uniformity in the law of international sales contracts.\textsuperscript{42} The CISG basically deals with two aspects of the sales transaction, i.e., it governs
(1) the formation of contracts for international sale of goods, and
(2) the right and obligations of parties to these sales contracts.

The scope of the CISG is limited in four important respects:
(1) it governs only international sales;
(2) it applies only to the commercial sale of goods;
(3) it does not apply to specified types of questions; and
(4), the parties are free to exclude the application of CISG, or vary the effect of its provisions.

Generally applauded as the most successful international trade treaty so far, the CISG is law in fifty-seven countries to date.\textsuperscript{43} Articles 1 – 13; deals with the sphere of application of the Convention and general provisions.

The CISG applies to contracts of sale of goods between parties whose places of business are in different States when these States are Contracting States. Given the significant number of Contracting States, this is the usual path to the CISG’s applicability.

The CISG also applies if the parties are situated in different countries (which need not be Contracting States) and the conflict of law rules lead to the application of the law of a Contracting State. For example, a contract between a Japanese trader and a Brazilian trader may contain a clause that arbitration will be in Sydney under Australian law with the consequence that CISG would apply. It should be noted that a number of States have declared they will not be bound by this condition.

Interpretation of the CISG is to take account of the ‘international character’ of the Convention, the need for uniform application and the need for good faith in international trade. Disputes over the interpretation of the CISG are to be resolved by applying the ‘general principles’ of the CISG or where there are no such principles but the matters are governed by the CISG (a gap praeter legem) by applying the rules of private international law.

A key point of controversy had to do with whether or not a contract requires a written memorial to be binding. The CISG allows for a sale to be oral or unsigned but in some countries, contracts are not valid unless written. In many nations, however, oral contracts are accepted and those States had no objection to signing, so States with a strict written requirement exercised their ability to exclude those articles relating to oral contracts, enabling them to sign as well.44

3.5 Obligations of contracting parties

Articles 25 – 88; talks about obligations common to both buyer and seller.

The CISG defines the duty of the seller, ‘stating the obvious, as the seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract. Similarly, the duty of the buyer is to take all steps ‘which could reasonably be expected to take delivery of the goods, and to pay for them.

Generally, the goods must be of the quality, quantity and description required by the contract, be suitably packaged, and fit for the purpose. The seller is obliged to deliver goods that are not subject to claims from a third party for infringement of industrial or intellectual property rights in the State where the goods are to be sold. The buyer is obliged to promptly examine the goods and, subject to some qualifications, must advise the seller of any lack of conformity within ‘a reasonable time’, and no later than within two years of receipt.

Remedies of the buyer and seller depend upon the character of a breach of the contract. If the breach is fundamental, then the other party is substantially deprived of what it expected to receive under the contract. Provided that an objective test shows that the breach could not have been foreseen, then the contract may be avoided and the aggrieved party may claim damages. Where part performance of a contract has occurred, then the performing party may recover any payment made or good supplied; this contrasts with the common law where there is generally no right to recover a good supplied unless title has been retained or damages are inadequate, only a right to claim the value of the good.

If the breach is not fundamental, then the contract is not avoided and remedies may be sought, including, claiming damages, specific performance and adjustment of price. Damages that may be awarded conform to the common law rules in *Hadley v Blaxendale* (1854) 9 Exch 341 but it has been argued the test of foreseeability is substantially broader and consequently more generous to the aggrieved party.45

The CISG excuses a party from liability to a claim for damages where a failure to perform is attributable to an impediment beyond the party’s, or a third party sub-contractor’s, control, and could not have been reasonably expected. Such an extraneous event might elsewhere be referred to as force majeure, and frustration of the contract.

Where a seller has to refund the price paid, then the seller must also pay interest to the buyer from the date of payment. It has been said that the interest rate is based on rates current in the seller’s State. In a mirror of the seller’s obligations, where a buyer has to return goods, the buyer is accountable for any benefits received.46

3.6 Dispute resolution mechanism

In general, commercial contracts of international organisations are silent with respect to the application of the CISG. However, in practice, the terms of the CISG have been used as a

reference to solve contractual disputes between international organisations and sellers of goods. The ability to obtain damages for losses suffered in the course of trade is a critical and necessary requirement for parties to be willing to engage in commerce. Without legal recourse for losses as a consequence of other parties’ non-performance, the incentive to participate in trade is greatly diminished. The remedial provisions of the CISG reflect a deliberate balancing among the remedial approaches of the civil law, the common law, and other various legal systems of the Convention’s signatory nations. All these options are also available in international sales contracts under the CISG. In particular, Article 6 explicitly authorises contracting parties to exclude the application of the Convention to their agreement, or to derogate from or vary the effect of any of its provisions. Again, this authority does not confer absolute freedom of contract, because the parties will still be restrained by domestic legal rules relating to the contract’s validity, which are not governed or superseded by the CISG.

Sophisticated contract drafters will spend time thinking about whether to utilise litigation or arbitration as a dispute resolution mechanism. If litigation is chosen, the drafter will then consider which court the dispute can be taken to and whether that court should be the only court to hear the matter.

Article 15 allows the parties to fill in the following blank: "in case of dispute the courts of __________________________ (place) shall have jurisdiction". The contract drafter should consider whether this jurisdiction is to be exclusive or not. In an international sale, if litigation is clearly the dispute resolution mechanism, giving jurisdiction to one party’s local court, but not exclusive jurisdiction, may not fulfill the needs of the parties.

With regard to arbitration, the Model Contract permits the drafter to check off a box indicating "ICC arbitration" or "other". Article 16 permits the drafter to set out the details of the "other" choice of arbitration. In both of these clauses, the drafters of the Model Contract missed an opportunity to rectify an area of international contracting that is almost always inadequate. Seldom has any party to an international contract actually ever contemplated going to the ICC in Paris to arbitrate a dispute arising out of the agreement. Although there are many criteria to be considered in drafting an arbitration provision, the Model Contract should have included boxes permitting the parties to choose the location of the arbitration, the language of the arbitration and the number of arbitrators, at the very minimum. The Model Contract is limited to "manufactured goods intended for resale". This presumably was designed to exclude those large vital goods produced for single users (which have a host of additional complexities), and to exclude such goods as commodities which have widely fluctuating values. The model contract is not compulsory, its up to the parties to decide.

3.7 Strengths of the Convention

The Convention applies only to contracts for the sale of goods that are tangible and movable property. It does not apply to contracts of service. It applies only to contracts between businesses. It has no application to contracts for consumer goods. This is because there are special rules for certain type of goods, such as, ships, vessels, hovercraft and aircraft. The CISG does not apply to these contracts, nor does it apply to auction sales, sales of electricity, or to investment securities, such as, stocks and bonds. It does, however, apply to every other type of product or raw material in any contract between companies whose places of business are listed among the countries that have adopted the CISG called Contracting States.

First, a sale is international, and CISG will apply, if the parties to the contract have their places of business in different Contracting States (Article 1(1) (a)). Where a party has more

than one place of business, the relevant place of business is the one most closely
c connected to the sales transaction (Article 10(a). The CISG also applies when the parties'
places of business are in different states and conflict of laws rules point to the application of
the law of a Contracting State (Article 1(1)(b). Under Article 1(1)(b) the CISG could apply
where only one party has its place of business in a Contracting State and, conceivably,
where neither party has its place of business in a Contracting State. However, any
Contracting State is allowed to make a reservation under Article 95 that it will not be bound
by this Article1(1)(b)

3.8 Weakness of the Convention
The CISG applies to the commercial sale of goods with two exceptions. First, the CISG
expressly excludes from its coverage consumer sales (unless the seller neither knew nor
ought to have known that the goods were purchased for consumer use). Secondly, the CISG
also excludes securities transactions (including negotiable instruments) and sales of ships,
aircraft and electricity (Article 2). Thirdly, the CISG excludes sales in which (apart from
manufacturing or producing the goods) labour or other services constitute a preponderant
part, and manufacturing contracts where the buyer supplies a substantial portion of the
material (Article 3).

Furthermore, the CISG does not address certain questions which are questions of the
validity of contract (Article 4(a), questions of property (Article 4(b), and some questions of
product liability (Article 5).

Finally, as the dominant theme of the CISG is the role of the contract made by the parties,
i.e. the recognition by the CISG of the "principle of freedom of contract". The CISG provides
that parties are free to exclude the application of the Convention or derogate from or vary
the effect of any of its provisions (Article 6). In other words, the scope of the CISG is limited
(or expanded) by the recognition of the principle of freedom of contract according to its Article 6\textsuperscript{52}

\textbf{3.9 Conclusion}

To give substance to the CISG, an understanding of what the Convention attempts to achieve is important. Basically, the CISG is concerned with three aspects: the adoption of uniform rules, a contribution towards the removal of legal barriers in international trade, and the promotion and development of international trade. And that is what has been achieved in this chapter.

\textsuperscript{52}Ruangvichathorn, \textit{Understanding the CISG},(unpublished PhD Thesis(vol 1) part 1, Sripatum University – Center for Commercial Law \url{http://www.spu.ac.th/graduate/CISG/under.html} [accessed on 15 July]
Chapter Four

Development of SADC

4.1 Evolution of the Southern African Development Community (SADC)

The Southern African Development Coordination Conference (SADCC) was the forerunner of the socio-economic cooperation leg of today's SADC. The adoption by nine majority-ruled Southern African countries of the Lusaka declaration on 1 April 1980 paved the way for the formal establishment of SADCC in April 1980. Before 1992, the aim of SADCC was to forge close economic co-operation between Southern African countries excluding South Africa. The aim was to bolster the economy of South Africa's neighbours to reduce their dependence on the South African economy. SADCC focused on the development of key sectors like transport and communications, energy, mining, and industrial production. In 1989 the Summit of Heads of State or Government, meeting in Harare, Zimbabwe, decided that SADCC should be formalised to give it an appropriate legal status. In 1992 SADCC transformed itself into the Southern African Development Community (SADC). The SADC Treaty was signed in Windhoek, Namibia, on 17 August 1992 and entered into force on 30 September 1993. In Blantyre, Malawi, on 14 August 2001, Heads of State and Government signed an Agreement Amending the SADC Treaty to allow for the integration of the SADC Organ on Politics, Defence and Security Co-operation into SADC.

From 1993 when the organisation became SADC, its aims broadened to establish an open economy based on equality, mutual benefit and balanced development; to break down tariff barriers; to promote trade exchanges and mutual investment; to realise free movement of goods, personnel and labour services; to achieve the unification of tariffs and currencies

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54 SADC, history and present status, department of foreign affairs, south Africa http://www.dfa.gov.za/foreign/Multilateral/africa/sadc.htm [accessed 15 September 2008]
gradually in the Community; and the establishment of free trade zone by 2000.\textsuperscript{56} They also work to promote economic cooperation and integration among the member states and to preserve their economic independence. The member states are Angola, Botswana, Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe.\textsuperscript{57} SADC is an organisation aimed at regional integration to promote economic growth, peace and security, create common political values, systems and institutions, alleviate poverty, build social and cultural ties between member states and enhance the standard of living in Southern Africa. It advocates sovereignty of its member states, the presence of human rights, the rule of law and peaceful settlement of disputes.\textsuperscript{58}

4.2 Structure of SADC

During the 1960s, the struggle for political independence in the region gained momentum and strong bonds of solidarity grew out of a sense of common purpose and collective action against colonialism and racism. The countries of Southern Africa, however, ultimately achieved political independence against a backdrop of mass poverty, economic backwardness and the ever-present threat of powerful and hostile white minority-ruled neighbours.

The need to work together, rather than individually, became increasingly apparent to the leaders of Southern Africa as a pre-condition for political survival, economic development and social advancement. They began to seek out areas of mutual interest, first through the Frontline States grouping. The Frontline States became the vehicle through which the region could coordinate its efforts, resources and strategies to support national liberation movements, and at the same time, resist the aggression of apartheid South Africa.\textsuperscript{59} These are the bodies that make up the structure of SADC:

\textsuperscript{56} \url{http://www-old.itcilo.org/actrav/actrav-english/telelearn/global/ilo/blokit/sadc.htm} [accessed 15 September 2008]
\textsuperscript{57} \url{http://www.eia.doe.gov/emeu/cabs/sadc.html} [accessed 15 September 2008]
\textsuperscript{58} SADC, history and present status, department of foreign affairs, south Africa \url{http://www.dfa.gov.za/foreign/Multilateral/africa/sadc.htm} [accessed 15 September 2008]
\textsuperscript{59} \url{http://en.wikipedia.org/wiki/Southern_African_Development_Community} [accessed 15 September 2008]
Summit

1. The summit shall consist of Heads of States or Governments of all Member States, and shall be the supreme policy-making institution in SADC;
2. The summit shall be responsible for the overall policy direction and control of the functions of SADC.\(^{60}\)

Council of Ministers

The Council consists of Ministers from each Member State, usually those responsible for their country’s economic planning or finance. They are responsible for overseeing the functioning and development of SADC and ensuring that the policies are properly implemented. The Council advises the Summit on matters of overall policy and approves strategies and work programmes for SADC. One of the major tasks of the Council is the definition of sectoral areas of cooperation and the allocation to member States of responsibility for coordinating sectoral activities. The Council also meets at least once a year to review progress and operations of its subordinate institutions.\(^{61}\)

Sectoral Committees and Commissions

SADC has constituted Commissions and Sectoral Committees to guide and coordinate cooperation and integration policies and programmes in designated sectoral areas. The sectors are allocated to individual member States to coordinate and provide leadership. Sectoral activities are supervised by Sectoral Committees of Ministers.\(^{62}\)

Standing Committee of Officials

A Permanent Secretary or an official of equivalent rank of each Member State constitutes the Standing Committee. Usually the official comes from a Ministry responsible for economic planning or finance. The Standing Committee of Officials is a technical advisory committee

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\(^{60}\) SADC free trade agreement, consolidated text of the SADC as amended, article 1, pg 6, [http://www.worldtradelaw.net/fta/agreements/sadcfta.pdf](http://www.worldtradelaw.net/fta/agreements/sadcfta.pdf) [accessed October 15 2008]


to the Council and meets also at least once a year. Members thereof have a dual responsibility as they are also National Contact Points and Sectoral Contact points.63

**National Contact Points**
National Contact Points are located in the Ministry responsible for all SADC matters. Their responsibilities include regular consultation with and briefings of relevant government institutions, the enterprise community and media on matters relating to SADC.64

**Sectoral Contacts Points**
All government Ministries with responsibilities for SADC sector(s) are Sectoral Contact Points and work closely with the respective Sector Coordinating Units in the preparation of sectoral policies and strategies, and formulation of project proposals. Sectoral Contact Points attend and participate in sectoral meetings, and assist Sector Coordinating Units in the monitoring of projects.65

**Secretariat**
The Secretariat is the principal executive institution of SADC and is responsible for strategic planning and management of programmes of SADC, and the implementation of decisions of the Summit and the Council. Headed by the Executive Secretary, who is appointed by the Summit, it is also charged with the organisation and management of SADC meetings, the financial and general administration, as well as the representation and promotion of SADC.66

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64 See [http://www.saiea.com/calabash/html/sadc.html](http://www.saiea.com/calabash/html/sadc.html) for the location of these contact points. [accessed 15 September 2008]
**Tribunal**

A Tribunal shall be constituted to ensure adherence to and proper interpretation of the provisions of the SADC Treaty and subsidiary instruments and to adjudicate upon disputes referred to it. The composition, powers, functions, procedures and other related matters governing the Tribunal will be prescribed in a Protocol to be adopted by the Summit. Decisions of the Tribunal shall be final and binding.\(^67\)

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**Member states**

Angola
Botswana
Democratic Republic of Congo
Lesotho
Madagascar
Malawi
Mauritius
Mozambique
Namibia
Seychelles
South Africa
Kingdom of Swaziland
Tanzania
Zambia
Zimbabwe

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\(^{67}\)Tribunal of the Southern African Development Community [http://www.aict-citia.org/courts_subreg/sadc/sadc_home.html](http://www.aict-citia.org/courts_subreg/sadc/sadc_home.html) The Seat of the Tribunal has been designated by the Council to be Windhoek, in the Republic of Namibia [accessed 15 September 2008]
4.3 SADC member states at a glance.

ANGOLA

Brief History

Angola attained its independence from Portugal on 11 November 1975. The country known for its riches in natural resources did not know peace immediately as a bitter rebel war ensued. Rebels belonging to UNITA led by Dr Jonas Savimbi fought a bitter guerilla war which lasted until 2002 when the rebel leader was killed. This country has borders on the south Atlantic Ocean which stretch to a total of 5,198 kilometers. Its natural resources are: Petroleum, diamonds, iron ore, phosphates, copper, feldspar, gold, bauxite and uranium. It has a population of 12,127,071. The official languages are Portuguese, and other African Languages. Its capital city is Luanda.

Economic Overview

Angola's high growth rate is driven by its oil sector, with record oil prices and rising petroleum production. Oil production and its supporting activities contribute about half of GDP and 90% of exports. Increased oil production supported 12% growth in 2004 and 19% growth in 2005. A postwar reconstruction boom and resettlement of displaced persons have led to high rates of growth in construction and agriculture as well. Its major agricultural products are: Bananas, sugarcane, coffee, sisal, corn, cotton, manioc (tapioca), tobacco, vegetables, plantains, and livestock. In terms of export commodities, Angola tops some African countries in crude oil, diamonds, refined petroleum products, gas, coffee, sisal, timber, cotton and fish products. The country’s foreign currents is called the Kwanza (AOA).

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68  [http://www.infoplease.com/ipa/A0107280.html](http://www.infoplease.com/ipa/A0107280.html) [accessed 10 September 2008] The original inhabitants of Angola are thought to have been Khoisan speakers. After 1000, large numbers of Bantu speakers migrated to the region and became the dominant group. Angola derives its name from the Bantu kingdom of Ndongo, whose name for its king is *ngola*.

BOTSWANA

Brief History

Formerly the British protectorate of Bechuanaland, Botswana adopted its new name upon independence in 1966. Four decades of uninterrupted civilian leadership, progressive social policies, and significant capital investment have created one of the most dynamic economies in Africa. Mineral extraction, principally diamond mining, dominates economic activity, though tourism is a growing sector due to the country's conservation practices and extensive nature preserves. Botswana has one of the world's highest known rates of HIV/AIDS infection, but also one of Africa's most progressive and comprehensive programs for dealing with the disease. It has a population of 1,639,833 and diamonds, copper, nickel, salt, soda ash, potash, coal, iron ore, and silver as natural resources. Setswana is spoken by 78.2% of the population, Kalanga is spoken by 7.9%, Sekgalagadi is spoken by 2.8%, while English which is the official language is spoken by 2.1% of the population. Its capital city is Gaborone. The official currency is the Pula (BWP).

Economic Overview

Botswana has maintained one of the world's highest economic growth rates since independence in 1966. Through fiscal discipline and sound management, Botswana has transformed itself from one of the poorest countries in the world to a middle-income country with a per capita GDP of $10,000 in 2005. Two major investment services rank Botswana as the best credit risk in Africa. Diamond mining has fueled much of the expansion and currently accounts for more than one-third of GDP and for 70-80% of export earnings. Tourism, financial services, subsistence farming, and cattle rising are other key sectors. The country's agricultural produce are livestock, sorghum, maize, millet, beans, sunflowers, and groundnuts. Its export commodities are diamonds, copper, nickel, soda ash, meat, and textiles. Foodstuffs, machinery, electrical goods, transport equipment, textiles, fuel and

70http://www.botswanaodyssey.com/www.africanet.com/africanet/country/botswana/history.htm [accessed 10 September 2008] Setswana 78.2%, Kalanga 7.9%, Sekgalagadi 2.8%, English 2.1% (official), other 8.6%, unspecified 0.4% (2001 census)
petroleum products, wood and paper products; metal and metal products are some of the commodities that are imported in the country daily.\textsuperscript{71}

**DEMOCRATIC REPUBLIC OF CONGO**

**Brief History**

Established as a Belgian colony in 1908, the Republic of the Congo gained its independence in 1960 from Belgium, but its early years were marred by political and social instability. Col. Joseph Mobutu seized power and declared himself president in a November 1965 coup. He subsequently changed his name - to Mobutu Sese Seko - as well as that of the country - to Zaire. Mobutu retained his position for 32 years through several subsequent sham elections, as well as through the use of brutal force. Ethnic strife and civil war, touched off by a massive inflow of refugees in 1994 from fighting in Rwanda and Burundi, led in May 1997 to the toppling of the Mobutu regime by a rebellion led by Laurent Kabila. He renamed the country the Democratic Republic of the Congo (DRC), but in August 1998 his regime was itself challenged by an insurrection backed by Rwanda and Uganda. Troops from Angola, Chad, Namibia, Sudan, and Zimbabwe intervened to support the Kinshasa regime. A cease-fire was signed in July 1999 by the DRC, Congolese armed rebel groups, Angola, Namibia, Rwanda, Uganda, and Zimbabwe but sporadic fighting continued. Laurent Kabila was assassinated in January 2001 and his son, Joseph KABILA, was named head of state. In October 2002, the new president was successful in negotiating the withdrawal of Rwandan forces occupying eastern Congo; two months later, the Pretoria Accord was signed by all remaining warring parties to end the fighting and establish a government of national unity. A transitional government was set up in July 2003; Joseph Kabila remains as president and is joined by four vice presidents representing the former government, former rebel groups, and the political opposition. This country has a huge natural resources of Cobalt, copper, niobium, tantalum, petroleum, industrial and gem diamonds, gold, silver, zinc, manganese, tin, uranium, coal, hydropower, and timber. Its population is estimated at a total of 62,660,551. They speak French as an official language and Lingala as a lingua franca which

\textsuperscript{71} Neil parsons Botswana history page 5: Economy [http://ubh.tripod.com/bw/bhp5.htm](http://ubh.tripod.com/bw/bhp5.htm) [accessed 10 September 2008]
is used for trading purposes, Kingwana (a dialect of Kiswahili or Swahili), Kikongo, and Tshiluba. Its capital city is Kinshasa.\textsuperscript{72}

**Economic Overview**

The economy of the Democratic Republic of the Congo - a nation endowed with vast potential wealth - has declined drastically since the mid-1980s. The war, which began in August 1998, dramatically reduced national output and government revenue, increased external debt, and resulted in the deaths of perhaps 3.5 million people from violence, famine, and disease. Foreign businesses curtailed operations due to uncertainty about the outcome of the conflict, lack of infrastructure, and the difficult operating environment. Conditions improved in late 2002 with the withdrawal of a large portion of the invading foreign troops. The transitional government has reopened relations with international financial institutions and international donors, and President Kabila has begun implementing reforms. Much economic activity lies outside the GDP data. Economic stability improved in 2003-05, although an uncertain legal framework, corruption, and a lack of openness in government policy continue to hamper growth. In 2005, renewed activity in the mining sector, the source of most exports, boosted Kinshasa’s fiscal position and GDP growth. Most recently, a new IRC survey has found that 5,400,000 people have died from war-related causes in Congo since 1998 – the world’s deadliest documented conflict since WW II. The vast majority died from non-violent causes such as malaria, diarrhea, pneumonia and malnutrition—easily preventable and treatable conditions when people have access to health care and nutritious food.\textsuperscript{73} Agricultural products such as coffee, sugar, palm oil, rubber, tea, quinine, cassava (tapioca), palm oil, bananas, root crops, corn, fruits; and wood products are some of the major crops found in the country. Its export commodities are diamonds, copper, crude oil, coffee, and cobalt. Its legal tender is called the Congolese franc (CDF).

\textsuperscript{72} http://www.state.gov/r/pa/ei/bgn/2825.htm [accessed 10 September 2008]
LESOTHO

Brief History

Basutoland was renamed the Kingdom of Lesotho upon independence from the UK in 1966. The Basuto National Party ruled for the first two decades. King Moshoeshoe was exiled in 1990, but returned to Lesotho in 1992 and was reinstated in 1995. Constitutional government was restored in 1993 after 7 years of military rule. In 1998, violent protests and a military mutiny following a contentious election prompted a brief but bloody intervention by South African and Botswanan military forces under the aegis of the Southern African Development Community. Constitutional reforms have since restored political stability; peaceful parliamentary elections were held in 2002 and again in 2007. This country is rich in water, agricultural and grazing land, diamonds, sand, clay, and building stone. It has a population of 2,022,331 and its citizens speak English as an official language. They also have languages like Sesotho (southern Sotho), Zulu, and Xhosa which are also spoken by the South Africans. Its capital city is Maseru.  

Economic Overview

Small, landlocked, and mountainous, Lesotho relies on remittances from miners employed in South Africa and customs duties from the Southern Africa Customs Union for the majority of government revenue. However, the government has recently strengthened its tax system to reduce dependency on customs duties. Completion of a major hydropower facility in January 1998 now permits the sale of water to South Africa, also generating royalties for Lesotho. As the number of mineworkers has declined steadily over the past several years, a small manufacturing base has developed based on farm products that support the milling, canning, leather, and jute industries, as well as a rapidly expanding apparel-assembly sector. The latter has grown significantly, mainly due to Lesotho qualifying for the trade benefits contained in the Africa Growth and Opportunity Act. The economy is still primarily based on subsistence agriculture, especially livestock, although drought has decreased agricultural activity. The extreme inequality in the distribution of income remains a major

drawback. The country is mainly dependant on agricultural products such as: Corn, wheat, pulses, sorghum, barley and livestock. It exports clothing, footwear, wool and mohair, food and live animals. Its import commodities are: Food; building materials, vehicles, machinery, medicines and petroleum products. They make use of the South African Rand and Loti (LSL).\(^75\)

**MADAGASCAR**

**Brief History**

Formerly an independent kingdom, Madagascar became a French colony in 1896, but regained its independence in 1960. During 1992-93, free presidential and National Assembly elections were held, ending 17 years of single-party rule. In 1997, in the second presidential race, Didier Ratsiraka, the leader during the 1970s and 1980s, was returned to the presidency.\(^76\) The 2001 presidential election was contested between the followers of Didier Ratsiraka and Marc Ravalomanana, nearly causing secession of half of the country. The country is rich in graphite, chromite, coal, bauxite, salt, quartz, tar sands, semiprecious stones, mica, fish, and hydropower as a natural resource. It has a population of 18,595,469 and has two official languages which are French and Malagasy. Its capital city is Antananarivo.\(^77\)

**Economic Overview**

Having discarded past socialist economic policies, Madagascar has since the mid 1990s followed a World Bank- and IMF-led policy of privatisation and liberalisation. This strategy placed the country on a slow and steady growth path from an extremely low level. Agriculture, as well as fishing and forestry, are the mainstay of the economy, accounting for more than one-fourth of GDP and employing 80% of the population. Exports of apparel have

\(^75\) [http://www.infoplease.com/ipa/A0107714.html](http://www.infoplease.com/ipa/A0107714.html) [accessed 10 October 2008]

\(^76\) Stephen Ellis, *a history of Madagascar*, [http://www.iias.nl/iiasn/iiasn7/iswa/ellis.html](http://www.iias.nl/iiasn/iiasn7/iswa/ellis.html) [accessed 10 October 2008] Madagascar is home to one of the world’s less widely known human cultures. Situated in the Indian Ocean, over 400 kilometres from the coast of Mozambique, it cannot really be said to be part of Africa, especially as Malagasy cultures, and particularly the Malagasy language, have more in common with Asia, and specifically Indonesia, than they do with Africa.

\(^77\) [http://www.state.gov/r/pa/ei/bgn/5460.htm](http://www.state.gov/r/pa/ei/bgn/5460.htm) [accessed 10 October 2008]
boom in recent years primarily due to duty-free access to the US. Deforestation and erosion, aggravated by the use of firewood as the primary source of fuel, are serious concerns. President Ravalomanana has worked aggressively to revive the economy following the 2002 political crisis, which triggered a 12% drop in GDP that year. Poverty reduction and combating corruption will be the centrepieces of economic policy for the next few years. Coffee, vanilla, sugarcane, cloves, cocoa, rice, cassava (tapioca), beans, bananas, peanuts; and livestock products are some of its agricultural products. Its export commodities are coffee, vanilla, shellfish, sugar, cotton cloth, chromite, and petroleum products. Its import commodities are capital goods, petroleum, consumer goods, and food. While it’s legal currency to date is Madagascar Ariary (MGA).  

MALAWI  

Brief History  

Established in 1891, the British protectorate of Nyasaland became the independent nation of Malawi in 1964. After three decades of one-party rule under President Hastings Kamuzu Banda the country held multiparty elections in 1994, under a provisional constitution which came into full effect the following year. Current President Bingu wa Mutharika was elected in May 2004 after a failed attempt by the previous president to amend the constitution to permit another term. The country’s natural resources are limestone, arable land, hydropower, unexploited deposits of uranium, coal, and bauxite. The population was estimated at 12,884,000 in July 2005, but estimates for this country explicitly take into account the effects of excess mortality due to AIDS this can result in lower life expectancy, higher infant mortality and death rates, lower population and growth rates, and changes in the distribution of population by age and sex than would otherwise be expected (July 2006 est.). The official languages are Chichewa 57.2% (official), Chinyanja 12.8%, Chiyao 10.1%,  

78 http://www.infoplease.com/ipa/A0107743.html [accessed on 11 October 2008]  
79 http://en.wikipedia.org/wiki/Malawi [accessed on 1 October 2008]  
80 http://www.airninja.com/worldfacts/countries/Malawi/population.htm [accessed October 1 2008]
Chitumbuka 9.5%, Chisena 2.7%, Chilomwe 2.4%, Chitonga 1.7%, other 3.6% these are according to a census carried out in 1998.81

Economic Overview

Landlocked Malawi ranks among the world's least developed countries. The economy is predominately agricultural, with about 90% of the population living in rural areas. Agriculture accounted for nearly 36% of GDP and 80% of export revenues in 2005. The performance of the tobacco sector is key to short-term growth as tobacco accounts for over 60% of exports. The economy depends on substantial inflows of economic assistance from the IMF, the World Bank, and individual donor nations. In late 2000, Malawi was approved for relief under the Heavily Indebted Poor Countries (HIPC) program. The government faces strong challenges, including developing a market economy, improving educational facilities, facing up to environmental problems, dealing with the rapidly growing problem of HIV/AIDS, and satisfying foreign donors that fiscal discipline is being tightened. In 2005, President Mutharika championed an anticorruption campaign. Malawi's recent fiscal policy performance has been very strong, but a serious drought in 2005 and 2006 heightened pressure on the government to increase spending.82 This country is rich in tobacco, sugarcane, cotton, tea, corn, potatoes, cassava (tapioca), sorghum, pulses, groundnuts, Macadamia nuts; cattle, and goats as agricultural produce. Its export commodities are; tobacco, tea, sugar, sawmill products, cement, and consumer goods. Its export commodities are tobacco (60%), tea, sugar, cotton, coffee, peanuts, wood products, and apparel. Malawi earns major exportable earnings from the exports of tea, coffee, sugar, coconut, and wood products. Its exports partners are the US, Germany, Netherlands, and South Africa. It also imports commodities such as consumer goods, transportation machines, petroleum products and food. Its imports partners are Zambia, Zimbabwe, South Africa, Japan and Germany.83 Its legal tender is the Malawian Kwacha (MWK).

82 See the SADC’ official website, http://www.sadc.int/ [accessed October 1 2008]
MAURITIUS

Brief History

Although known to Arab and Malay sailors as early as the 10th century, Mauritius was first explored by the Portuguese in 1505; it was subsequently held by the Dutch, French, and British before independence was attained in 1968. A stable democracy with regular free elections and a positive human rights record, the country has attracted considerable foreign investment and has earned one of Africa's highest per capita incomes. Mauritius is a mountainous island in the Indian Ocean east of Madagascar. Its rich in arable land and fish with a population of 1,240,827 (estimated in July 2006). Its languages are; Creole 80.5%, Bhojpuri 12.1%, French 3.4%, English (official; spoken by less than 1% of the population), other 3.7%, unspecified 0.3% (2000 census). Its capital city is Port Louis.

Economic Overview

Since independence in 1968, Mauritius has developed from a low-income, agriculturally based economy to a middle-income diversified economy with growing industrial, financial, and tourist sectors. For most of the period, annual growth has been in the order of 5% to 6%. This remarkable achievement has been reflected in more equitable income distribution, increased life expectancy, lowered infant mortality, and a much-improved infrastructure. Sugarcane is grown on about 90% of the cultivated land area and accounts for 25% of export earnings. The government's development strategy centers on expanding local financial institutions and building a domestic information telecommunications industry.

Mauritius has attracted more than 9,000 offshore entities, many aimed at commerce in India and South Africa, and investment in the banking sector alone has reached over $1 billion. Mauritius, with its strong textile sector, has been well poised to take advantage of the Africa Growth and Opportunity Act (AGOA). Its major agricultural products are sugarcane, tea, corn, potatoes, bananas, pulses; cattle, goats, and fish. Its export commodities are clothing.

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84 See the SADC’ official website, http://www.sadc.int/ [accessed October 1 2008]
86 http://www.kreol.mu/Languages.htm[accessed October 10 2008]
and textiles, sugar, cut flowers, molasses which are mostly exported to India. Its import commodities are manufactured goods, capital equipment, foodstuffs, petroleum products and chemicals. Its legal tender is the Mauritian Rupee (MUR).

Mozambique

Brief History

Almost five centuries as a Portuguese colony came to a close with independence in 1975. Large-scale emigration by whites, economic dependence on South Africa, a severe drought, and a prolonged civil war hindered the country's development. The ruling Front for the Liberation of Mozambique (FRELIMO) party formally abandoned Marxism in 1989, and a new constitution the following year provided for multiparty elections and a free market economy. An UN-negotiated peace agreement between Frelimo and rebel Mozambique National Resistance (Renamo) forces ended the fighting in 1992. In December 2004, Mozambique underwent a delicate transition as Joaquim CHISSANO stepped down after 18 years in office. His newly elected successor, Armando Emilio Guebuza, has promised to continue the sound economic policies that have encouraged foreign investment.

Mozambique has more development potential than many African countries. Its natural resources are Coal, titanium, natural gas, hydropower, tantalum, and graphite. Its population is 19,686,505. The spoken languages are Emakhuwa 26.1%, Xichangana 11.3%, Portuguese 8.8% (official; spoken by 27% of population as a second language), Elomwe 7.6%, Cisena 6.8%, Echuwabo 5.8%, other Mozambican languages 32%, other foreign languages 0.3%, and unspecified 1.3% its capital city is Maputo.

89 See the SADC’ official website, http://www.sadc.int/ [accessed October 12 2008]
92 One of the country's greatest resources is its abundance of cheap energy - coal reserves, hydroelectric capacity and abundant natural gas reserves. However, energy provision has been poor as the bulk of these resources remain untapped, resulting in rapid environmental degradation.
93 http://www.african.gu.se/research/mozambique.html [accessed October 12 2008]
94 http://www.african.gu.se/research/mozambique.html [accessed October 12 2008]
Economic Overview

At independence in 1975, Mozambique was one of the world’s poorest countries. Socialist mismanagement and a brutal civil war from 1977-92 exacerbated the situation. In 1987, the government embarked on a series of macroeconomic reforms designed to stabilise the economy. These steps, combined with donor assistance and with political stability since the multi-party elections in 1994, have led to dramatic improvements in the country’s growth rate. Inflation was reduced to single digits during the late 1990s although it returned to double digits in 2000-06. Fiscal reforms, including the introduction of a value-added tax and reform of the customs service, have improved the government's revenue collection abilities. In spite of these gains, Mozambique remains dependent upon foreign assistance for much of its annual budget, and the majority of the population remains below the poverty line. Subsistence agriculture continues to employ the vast majority of the country's work force. A substantial trade imbalance persists although the opening of the Mozal aluminum smelter, the country's largest foreign investment project to date, has increased export earnings. In late 2005, and after years of negotiations, the government signed an agreement to gain Portugal's majority share of the Cahora Bassa Hydroelectricity (HCB) company, a dam that was not transferred to Mozambique at independence because of the ensuing civil war and unpaid debts. More power is needed for additional investment projects in titanium extraction and processing and garment manufacturing that could further close the import/export gap.

Mozambique's once substantial foreign debt has been reduced through forgiveness and rescheduling under the IMF's Heavily Indebted Poor Countries (HIPC) and Enhanced HIPC initiatives, and is now at a manageable level.\textsuperscript{94} The country’s agricultural products are cotton, cashew nuts, sugarcane, tea, cassava (tapioca), corn, coconuts, sisal, citrus and tropical fruits, potatoes, sunflowers; beef and poultry.\textsuperscript{95} Its export commodities are; Aluminum, prawns, cashews, cotton, sugar, citrus, timber; bulk electricity. Its import

\textsuperscript{94} See http://www.mbendi.co.za/land/af/mz/p0005.htm [accessed October 12 2008]

\textsuperscript{95} http://www.nationsencyclopedia.com/economies/Africa/Mozambique-AGRICULTURE.html [accessed October 12 2008]
commodities are; Machinery and equipment, vehicles, fuel, chemicals, metal products, foodstuffs, textiles\textsuperscript{96} and its Currency is the Metical (MZM).

**NAMIBIA**

**Brief History**

South Africa occupied the German colony of South-West Africa during World War I and administered it as a mandate until after World War II, when it annexed the territory. In 1966 the South-West Africa People's Organisation (SWAPO) freedom fighting group launched a war of independence for the area that was soon named Namibia, but it was not until 1988 that South Africa agreed to end its administration in accordance with a UN peace plan for the entire region. Namibia won its independence in 1990 and has been governed by SWAPO since.\textsuperscript{97} Namibia's natural resources are diamonds, copper, uranium, gold, lead, tin, lithium, cadmium, zinc, salt, hydropower, and fish. There are suspected deposits of oil, coal, and iron ore.\textsuperscript{98} The country has a population rate of 2,044,147. Its national languages are; English 7\% (official), Afrikaans common language of most of the population and about 60\% of the white population, German 32\%, and indigenous languages 1\% (include Oshimambo, Herero, Nama).\textsuperscript{99}

\textsuperscript{96}http://www.wto.int/english/tratop_e/tpr_e/tpr154_e.htm [accessed October 12 2008] Mozambique's export earnings, continue to be generated mainly from exports of primary agricultural products and seafood, including cashew nuts, prawns, cotton, sugar, timber, citrus and others. The major trading partners are South Africa, Portugal, Spain, the United States of America, and Japan.

\textsuperscript{97} http://www.historyworld.net/wrldhis/PlainTextHistories.asp?historyid=ad32 [accessed October 12 2008]

\textsuperscript{98} http://www.iss.co.za/AF/profiles/Namibia/NatRes.html [accessed October 12 2008] Namibia is endowed with abundant natural resources but it is susceptible to drought because of low rainfall and high evaporation rates. Spectacular deserts, where some of the most unusual flora and fauna can be found, canyons and mountains, mark much of Namibia.

Economic Overview

The economy is heavily dependent on the extraction and processing of minerals for export. Mining accounts for 20% of GDP. Rich alluvial diamond deposits make Namibia a primary source for gem-quality diamonds. Namibia is the fourth-largest exporter of nonfuel minerals in Africa, the world's fifth-largest producer of uranium, and the producer of large quantities of lead, zinc, tin, silver, and tungsten. The mining sector employs only about 3% of the population while about half of the population depends on subsistence agriculture for its livelihood. Namibia normally imports about 50% of its cereal requirements; in drought years food shortages are a major problem in rural areas. The Namibian economy is closely linked to South Africa with the Namibian Dollar pegged one-to-one to the South African Rand. Privatisation of several enterprises in coming years may stimulate long-run foreign investment. Increased fish production and mining of zinc, copper, uranium, and silver spurred growth in 2003-06. Its agricultural products are millet, sorghum, peanuts, grapes; livestock; fish. Export commodities are diamonds, copper, gold, zinc, lead, uranium; cattle, processed fish, karakul skins. Its import commodities are foodstuffs; petroleum products and fuel, machinery and equipment, chemicals. 100 Namibia has one currency, the Namibian Dollar (NAD), but it accepts the South African Rand (ZAR) as a legal tender.

SOUTH AFRICA

Brief History

After the British seized the Cape of Good Hope in 1806, many of the Dutch settlers trekked north to found their own Republics. The discovery of diamonds (1867) and gold (1886) spurred wealth and immigration and intensified the subjugation of the black people. The Boers resisted British encroachments, but were defeated in the Boer War (1899-1902). The resulting Union of South Africa operated under a policy of apartheid - the separate development of the races. The 1990s brought an end to apartheid politically and ushered in majority rule. “If the history of South Africa is in large part one of increasing racial divisiveness, today it can also be seen as the story

of - eventually - a journey through massive obstacles towards the creation, from tremendous diversity, of a single nation whose dream of unity and common purpose is now capable of realisation." South Africa, on the continent's southern tip, is bordered by the Atlantic Ocean on the west and by the Indian Ocean on the south and east. Its neighbours are Namibia in the northwest, Zimbabwe and Botswana in the north, and Mozambique and Swaziland in the northeast. Its natural resources are: Gold, chromium, antimony, coal, iron ore, manganese, nickel, phosphates, tin, uranium, gem diamonds, platinum, copper, vanadium, salt, and natural gas.

There were 44,187,637 people living in South Africa, according to the census held in 2001 but at present the population of this great country stands at over 47.9 million people. This country has 11 official languages which are IsiZulu 23.8%, IsiXhosa 17.6%, Afrikaans 13.3%, Sepedi 9.4%, English 8.2%, Setswana 8.2%, Sesotho 7.9%, Xitsonga 4.4%, other 7.2% (also according to the 2001 census).

The country's capital is located in Pretoria (administrative capital), which was recently renamed Tshwane.

Economic Overview

South Africa is a middle-income, emerging market with an abundant supply of natural resources; well-developed financial, legal, communications, energy, and transport sectors; a stock exchange that ranks among the 10 largest in the world; and a modern infrastructure supporting an efficient distribution of goods to major urban centers throughout the region. However, growth has not been strong enough to lower South Africa's high unemployment rate, and daunting economic problems remain from the apartheid era - especially poverty and lack of economic empowerment among the disadvantaged groups. South African economic policy is fiscally conservative, but pragmatic, focusing on targeting inflation and
liberalizing trade as a means to increase job growth and household income.\textsuperscript{104} South Africa has a dual agricultural economy, with both well-developed commercial farming and more subsistence-based production in the deep rural areas. Their agricultural products are: Corn, wheat, sugarcane, fruits, vegetables; beef, poultry, mutton, wool, and dairy products.\textsuperscript{105} It exports gold, diamonds, platinum, other metals and minerals, machinery and equipment and imports machinery and equipment; chemicals, petroleum products, scientific instruments, foodstuffs.\textsuperscript{106} Its legal tender is the South African Rand (ZAR).

KINGDOM OF SWAZILAND

Brief History

Swaziland is a landlocked country, bordered by South Africa on three sides except to the east, where it borders Mozambique. The country, inhabited primarily by Bantu-speaking Swazi people, is named after the 19th century king Mswati II, from whom the people also take their name. The head of state is the king or Ngwenyama (lit. Lion), currently King Mswati III, who ascended to the throne in 1986 after the death of his father King Sobhuza II in 1982 and a period of regency. By tradition, the king reigns along with his mother or a ritual substitute, the Ndlovukati (lit. She-Elephant).\textsuperscript{107} The Swazis have their origins in East Africa around the great lakes, speaking siSwati, which has its origin predominantly in the Nguni group of languages. Autonomy for the Swazis of southern Africa was guaranteed by the British in the late 19th century; independence was granted in 1968.\textsuperscript{108} This country is blessed with - asbestos, coal, clay, cassiterite, hydropower, forests, small gold and diamond deposits, quarry stone, and talc as natural resources.\textsuperscript{109} Swaziland has a population of 1,136,334 people\textsuperscript{110} Swazi (also known as SiSwati, Swati or Seswati) is a Bantu language of the Nguni Group spoken in Swaziland and South Africa. It has 1.5 million speakers and is

\textsuperscript{104} http://southafrica-travel.net/economy/economy.htm [accessed October 9 2008]
\textsuperscript{105} http://www.southafrica.info/business/economy/sectors/agricultural-sector.htm [accessed October 9 2008]
\textsuperscript{106} http://www.indexmundi.com/commodities/?commodity=coal-south-african [accessed October 9 2008]
\textsuperscript{107} http://en.wikipedia.org/wiki/Swaziland [accessed October 9 2008]
\textsuperscript{108} http://www.swaziweb.net/histr/ [accessed October 9 2008]
\textsuperscript{110} See the SADC’ official website, http://www.sadc.int/ [accessed October 9 2008]
taught in schools. It is an official language of Swaziland (along with English and Zulu) and one of the official languages of South Africa.\textsuperscript{111} Swaziland’s capital city is located in Mbabane.

Economic Overview

Swaziland is one of the wealthier nations in Africa, but one of the poorest in the world. Most of the high-level economic activity is in the hands of non-Africans, but ethnic Swazis are becoming more active. Small entrepreneurs are moving into middle management positions. In this small, landlocked economy, subsistence agriculture occupies more than 80% of the population. The manufacturing sector has diversified since the mid-1980s. Sugar and wood pulp remain important foreign exchange earners. Mining has declined in importance in recent years with only coal and quarry stone mines remaining active. Surrounded by South Africa, except for a short border with Mozambique, Swaziland is heavily dependent on South Africa from which it receives more than nine-tenths of its imports and to which it sends 60% of its exports. Customs duties from the Southern African Customs Union and worker remittances from South Africa substantially supplement domestically earned income. The government is trying to improve the atmosphere for foreign investment. Overgrazing, soil depletion, drought, and sometimes floods persist as problems for the future. More than one-fourth of the population needed emergency food aid in 2004-05 because of drought, and nearly two-fifths of the adult population has been infected by HIV/AIDS.\textsuperscript{112} This country’s agriculture products are; sugarcane, cotton, corn, tobacco, rice, citrus, pineapples, sorghum, peanuts; cattle, goats, and sheep. Its export commodities are soft drink concentrates, sugar, wood pulp, and cotton yarn, and refrigerators, citrus and canned fruit. And its import commodities are; Motor vehicles, machinery, transport equipment, foodstuffs, petroleum

\textsuperscript{111}http://www.oasys.com.na/Pages/display/pageid/116 [accessed October 9 2008] English (official, government business conducted in English), siSwati (official).

\textsuperscript{112}http://www.oasys.com.na/Pages/display/pageid/116 [accessed October 9 2008] In 2004, Swaziland acknowledged for the first time that it suffered an AIDS crisis, with 38.8% of the population infected with HIV (see AIDS in Africa). Prime Minister Themba Dlamini declared a humanitarian crisis due to the combined effect of drought and land degradation, increased poverty, and HIV/AIDS. The United Nations special envoy on AIDS, Stephen Lewis, said: “Swaziland stands alone with the world’s highest rate of HIV infection after nearby Botswana made headway against the deadly pandemic”.
products, and chemicals.\textsuperscript{113} Its legal tender is the Lilangeni (SZL) and South African Rand (ZAR).

**TANZANIA**

**Brief History**

Shortly after achieving independence from Britain in the early 1960s, Tanganyika and Zanzibar merged to form the United Republic of Tanzania in 1964. One-party rule came to an end in 1995 with the first democratic elections held in the country since the 1970s. on 26 April 1964; Tanganyika became independent on 9 December 1961 (from UK-administered UN trusteeship); Zanzibar became independent on 19 December 1963 (from UK); Tanganyika united with Zanzibar 26 April 1964 to form the United Republic of Tanganyika and Zanzibar; renamed United Republic of Tanzania (29 October 1964).\textsuperscript{114} Its natural resources are hydropower, tin, phosphates, iron ore, coal, diamonds, gemstones, gold, natural gas, nickel.\textsuperscript{115} This country has a population of 37,445,392, according to an estimate done in July 2002.\textsuperscript{116} Its capital city is called Dar es Salaam

**Economic Overview**

Tanzania is one of the poorest countries in the world. The economy depends heavily on agriculture, which accounts for almost half of GDP, provides 85% of exports, and employs 80% of the work force. Topography and climatic conditions, however, limit cultivated crops to only 4% of the land area. Industry traditionally featured the processing of agricultural products and light consumer goods. The World Bank, the International Monetary Fund, and bilateral donors have provided funds to rehabilitate Tanzania's out-of-date economic

\textsuperscript{113} See the SADC’ official website, http://www.sadc.int/ [accessed October 9 2008]
\textsuperscript{114}http://www.historyworld.net/wrldhis/PlainTextHistories.asp?historyid=ad23 [accessed October 10 2008]
\textsuperscript{115}http://www.faqs.org/docs/factbook/print/tz.html [accessed October 10 2008]
\textsuperscript{116}http://www.faqs.org/docs/factbook/print/tz.html [accessed October 10 2008] \textit{note:} estimates for this country explicitly take into account the effects of excess mortality due to AIDS; this can result in lower life expectancy, higher infant mortality and death rates, lower population and growth rates, and changes in the distribution of population by age and sex than would otherwise be expected (July 2002 est.)
infrastructure and to alleviate poverty. Long-term growth through 2005 featured a pickup in industrial production and a substantial increase in output of minerals, led by gold. Recent banking reforms have helped increase private-sector growth and investment. Continued donor assistance and solid macroeconomic policies supported real GDP growth of nearly 6% in 2006.\textsuperscript{117} In terms of agricultural products, Tanzania is known for its high production of coffee, sisal, tea, cotton, pyrethrum (insecticide made from chrysanthemums), cashew nuts, tobacco, cloves, corn, wheat, cassava (tapioca), bananas, fruits, vegetables and cattle, sheep and goats. There is a great disparity between women and men in the size of landholdings, as well as an overall trend of increasing landlessness and decreasing size of holdings due to population pressure. About 84\% of the land is cultivated by human labour, which limits the amount that can be cultivated.\textsuperscript{118} Its export commodities are gold, coffee, cashew nuts, manufactures and cotton; and its import commodities are consumer goods, machinery and transportation equipment, industrial raw materials and crude oil.\textsuperscript{119} Its currency is the Tanzanian shilling (TZS).

ZAMBIA

Brief History
The territory of Northern Rhodesia was administered by the [British] South Africa Company from 1891 until it was taken over by the UK in 1923. During the 1920s and 1930s, advances in mining spurred development and immigration. The name was changed to Zambia upon independence in 1964. In the 1980s and 1990s, declining copper prices and a prolonged drought hurt the economy. Elections in 1991 brought an end to one-party rule, but the subsequent vote in 1996 saw blatant harassment of opposition parties. The election in 2001 was marked by administrative problems with three parties filing a legal petition challenging the election of ruling party candidate Levy Mwanawasa. The new president launched an anticorruption task force in 2002, but the government has yet to institute a prosecution. The Zambian leader was re-elected in 2006 in an election that was deemed free and fair. The leader died recently and the Deputy President took over in an acting capacity until the

\textsuperscript{117} http://www.photius.com/wfb1999/tanzania/tanzania_economy.html [accessed on the 10 of October]
\textsuperscript{118} http://www.fao.org/docrep/V8192e/v8192e06.htm#P87_9260 [accessed on the 10 of October]
\textsuperscript{119} http://www.mfa.gov.lv/en/policy/bilateral-relations/4542/Tanzania/ [accessed on the 10 of October]
general election would be conducted to elect the new president. Its natural resources are copper, cobalt, zinc, lead, coal, emeralds, gold, silver, uranium, and hydropower. This country has a population of approximately 11,502,010, (according to the 2006 estimate). Zambia has English as its official language and major vernaculars such as Bemba, Kaonda, Lozi, Lunda, Luvale, Nyanja, Tonga, and about 70 other indigenous languages. Its capital city is Lusaka.

Economic Overview

Despite progress in privatisation and budgetary reform, Zambia's economic growth in 2005-06 remained somewhat below the 6%-7% per year needed to reduce poverty significantly. Privatisation of government-owned copper mines relieved the government from covering mammoth losses generated by the industry and greatly improved the chances for copper mining to return to profitability and spur economic growth. Copper output has increased steadily since 2004, due to higher copper prices and the opening of new mines. The maize harvest was again good in 2005, helping boost GDP and agricultural exports. Cooperation continues with international bodies on programs to reduce poverty, including a new lending arrangement with the IMF in the second quarter of 2004. A tighter monetary policy will help cut inflation, but Zambia still has a serious problem with high public debt.

It major agricultural products are corn, sorghum, rice, peanuts, sunflower seed, vegetables, flowers, tobacco, cotton, sugarcane, cassava (tapioca), and coffee; and cattle, goats, pigs, poultry,

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122 http://www.state.gov/r/pa/ei/bgn/2359.htm [accessed 10 October 2008] Zambia's population comprises more than 70 Bantu-speaking ethnic groups. Some ethnic groups are small, and only two have enough people to constitute at least 10% of the population. Most Zambians are subsistence farmers. The predominant religion is a blend of traditional beliefs and Christianity; Christianity is the official national religion. Expatriates, a majority of whom are British (about 15,000) and South African, live mainly in Lusaka and in the Copperbelt in northern Zambia, where they are employed in mines and related activities. Zambia also has a small but economically important Asian population, most of whom are Indians. The HIV/AIDS epidemic is ravaging Zambia. Almost 17% of Zambians are infected by HIV. Over 800,000 Zambian children have lost one or both of their parents due to HIV/AIDS. Life expectancy at birth is 37 years
123 http://www.state.gov/r/pa/ei/bgn/2359.htm [accessed 10 October 2008]
milk, eggs, hides. Its export commodities are copper/cobalt 64%, cobalt, electricity; tobacco, flowers, cotton. And its import commodities are machinery, transportation equipment, petroleum products, electricity, fertilizer; foodstuffs, and clothing. Its currency is the Zambian kwacha (ZMK).

**ZIMBABWE**

**Brief History**

The UK annexed Southern Rhodesia from the [British] South Africa Company in 1923. A 1961 constitution was formulated that favoured whites in power. In 1965 the government unilaterally declared its independence, but the UK did not recognise the act and demanded more complete voting rights for the black African majority in the country (then called Rhodesia). UN sanctions and an uprising finally led to free elections in 1979 and independence (as Zimbabwe) in 1980. Robert Mugabe, the nation’s first prime minister, has been the country’s president since 1987. The election of March 2008 remained the only hope of turning around the bad economy in which the inflation rate is as high as over 10,000%. The formation of the government of national unity by ZANU-PF, led by Mugabe, and, MDC by Tsvangirai is expected to bring the needed antidote for attracting foreign donors that stopped supporting because of the attitude of Mugabe to White citizens. Its natural resources are coal, chromium ore, asbestos, gold, nickel, copper, iron ore, vanadium, lithium, tin, and platinum group metals. The population of Zimbabwe was estimated by the UN in 2003 to be 12,891,000. It was estimated by the Population Reference Bureau that 35% of the population lived in urban areas in 2001. The capital city,

127 [http://www.historyworld.net/wrldhis/PlainTextHistories.asp?historid=ad28](http://www.historyworld.net/wrldhis/PlainTextHistories.asp?historid=ad28) [accessed 11 October 2008] In 2007, in the run up to the 2008 general and presidential elections, Tsvangirai is arrested on his way to a Harare prayer meeting and is severely beaten and tortured in prison. But with great courage he emerges from hospital to continue his political campaign against Mugabe, in a context in which the Zimbabwean economy has collapsed with inflation running at a level unheard of since Germany in the 1920s. When the elections are held, at the end of March 2008, it is announced that in the parliamentary contest Tsvangirai's party has defeated Mugabe's (MDC 99 seats, ZANU-PF 97 seats in the assembly). And exit polls suggest that, in spite of intimidation of MDC supporters, Tsvangirai has defeated Mugabe in the presidential election. But in spite of mounting international pressure Mugabe refuses to release the presidential results, saying merely that he will be contesting a second round. Tsvangirai, convinced that he has won, says that he will refuse to participate in an illegal second round.
Harare (formerly Salisbury), had a population of 1,686,000 in that year. Other large cities include Bulawayo, 621,000; Chitungwiza, 274,000; Gweru, 125,000; Kwekwe, 75,000; Kadoma, 67,000; and Masvingo, 52,000. According to the United Nations, the urban population growth rate for 2000-2005 was 2.9%. Its languages are English (official), Shona, Sindebele (the language of the Ndebele, sometimes called Ndebele), and numerous but minor tribal dialects. Zimbabwe’s agricultural products are corn, cotton, tobacco, wheat, coffee, sugarcane, peanuts; and sheep, goats and pigs. Zimbabwe exports cotton, tobacco, gold, ferroalloys, and textiles/clothing. Its imports Machinery and transport equipment, other manufactures, chemicals, and fuels. Its currency code is Zimbabwean Dollar (ZWD).

**Economic Overview**

Government of Zimbabwe faces a variety of economic problems after having abandoned earlier efforts to develop a market-oriented economy. Problems include a shortage of foreign exchange, soaring inflation, and supply shortages. Zimbabwe's involvement from 1998 to 2002 in the war in the Democratic Republic of the Congo drained hundreds of millions of dollars from the economy. Inflation rose from an annual rate of 32% in 1998 to an official estimated high of 231,000,000% in July 2008 according to the country's Central Statistical Office, a state of hyperinflation, and the central bank introduced a new 100 billion dollar note. Local residents have largely resorted to buying essentials from neighbouring Botswana, South Africa and Zambia. IMF economists estimated inflation at about 150,000% in Dec 2007. The lack of foreign exchange available to businesses has left most companies operating below capacity. Others have closed down. The negative international perceptions following the implementation of the land reform programme have compounded


the country’s economic difficulties. The government is aware that its response to the challenges of achieving macro-economic stability and increased economic production is critical.\textsuperscript{134}

\begin{center}
\textbf{SEYCHELLES}
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\textbf{Brief History}
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While Austronesian seafarers, also called Arab traders, may have been their first to visit the uninhabited Seychelles, the first recorded sighting took place in 1502, by the Portuguese Admiral Vasco da Gama, who passed through the Amirantes (named them after himself islands of the Admiral). The first recorded landing and first written account was by the crew of the English East Indiaman \textit{Ascension} in 1609. As a transit point for trading between Africa and Asia, they were occasionally used by pirates until the French began to take control of the islands starting in 1756 when a Stone of Possession was laid by Captain Nicholas Morphey. The islands were named after Jean Moreau de Séchelles, Louis XV’s Minister of Finance.

The British contested control over the islands with the French between 1794 and 1812. Jean Baptiste Quéau de Quincy, French administrator of Seychelles during the years of war with the United Kingdom, declined to resist when armed enemy warships arrived. Instead, he successfully negotiated the capitulation to Britain, which gave the settlers a privileged position of neutrality.

Britain eventually assumed full control upon the surrender of Mauritius in 1812 and this was formalised in 1814 at the Treaty of Paris. Seychelles became a crown colony separate from Mauritius in 1903 and independence was granted in 1976, as a republic within the Commonwealth. In 1977, a coup d'état ousted the first president of the republic, James Mancham, replacing him with France Albert René.\textsuperscript{135} Seychelles is located in Eastern Africa, a group of islands in the Indian Ocean, northeast of Madagascar. Its natural resources are

\begin{footnotesize}
\textsuperscript{134} \url{http://www.thedti.gov.za/econdb/raportt/zimbabweOverview.html} [accessed November 17 2008]
\textsuperscript{135} \url{http://www.infoplease.com/ipa/A0107955.html} [accessed October 29 2008]
\end{footnotesize}
fish, copra and cinnamon trees. According to a July 1994 estimate, the nation’s population was 72,113--double what it had been in 1951. The growth rate of 0.8 percent annually had slackened from the 2.1 percent rate recorded in the late 1970s. The infant mortality rate in 1994 was estimated at 11.7 per 1,000 live births. There were twenty-two births per 1,000 of population annually and only seven deaths per 1,000; the outward migration rate of seven per 1,000 helped stem population growth. In terms of language, English as an official language is spoken by 4.9% of the population while Creole is spoken by 91.8%, by other 3.1%, and unspecified 0.2%. (According to the 2002 census). The country’s capital city is called Victoria.

Economic Overview
Since independence in 1976, per capita output in this Indian Ocean archipelago has expanded to roughly seven times the old near-subsistence level. Growth has been led by the tourist sector, which employs about 30% of the labour force and provides more than 70% of hard currency earnings, and by tuna fishing. In recent years the government has encouraged foreign investment in order to upgrade hotels and other services. At the same time, the government has moved to reduce the dependence on tourism by promoting the development of farming, fishing, and small-scale manufacturing. A sharp drop illustrated the vulnerability of the tourist sector in 1991-92 due largely to the Gulf War, and once again following the 11 September 2001 terrorist attacks on the US. Growth slowed in 1998-2002, and fell in 2003, due to sluggish tourist and tuna sectors, but resumed in 2004, erasing a persistent budget deficit. Tight controls on exchange rates and the scarcity of foreign exchange have impaired short-term economic prospects. The black market value of the

137 http://countrystudies.us/seychelles/6.htm [accessed October 29 2008] about 90 percent of all Seychellois live on Mahé; most of the remainder live on Praslin (6,000) and La Digue (1,800). The population of the outer coralline group is only about 400, mostly plantation workers gathering coconuts for copra. To restrict population growth on Mahé, the government has encouraged people to move to Praslin and other islands where water is available.
Seychelles rupee is half the official exchange rate; without a devaluation of the currency the tourist sector may remain sluggish as vacationers seek cheaper destinations such as Comoros, Mauritius, and Madagascar. Seychelles export commodities are canned tuna, frozen fish, cinnamon bark, copra, petroleum products which are also re-exported. Its imports commodities are machinery and equipment, foodstuffs, and petroleum products, and chemicals. Its currency is the Seychelles rupee (SCR).

4.4 Conclusion
After several decades of political and military confrontation and unrest, marked by economic decline and social instability, Southern Africa is now experiencing a great deal of political stability, which can lead to economic recovery. On the average, SADC has a combined population of approximately 210 million people with a total GDP of USD 226.1 billion. In the year 2002, SADC average GNI per capita stood at USD 1,563. Seychelles, a SADC country with approximately only 82,000 inhabitants, has the highest GNI per capita at US $6,530. Other high income countries in the region include Mauritius (US $3,830), Botswana (US $3,100) and South Africa (US $2,820). The low per capita income countries in the SADC region, with income levels below USD $500, are DRC (US $80), Malawi US $160), Mozambique (US 210), Tanzania (US $270), Zambia (US $320), and Zimbabwe (US $480). As compared to the 1980s, most SADC countries have performed relatively well in stabilizing inflation rates, particularly since the early 1990s. The main challenge facing the SADC region is clearly to overcome the underdeveloped structure of the regional economy, improve macroeconomic performance, political and corporate governance and thus, unlock the untapped potential that lies in both the region's human and natural resources. In terms of economic challenges facing the region, there should be development of an environment conducive to regional integration, economic growth, poverty eradication and to the

141 To know the worth of Seychelles imports in dollars, see this website http://indexmundi.com/trade/imports/?country=se [accessed 15 October 2008]
establishment of a sustainable path of development. This is where the CISG comes in, if countries rectify the CISG, importing and exporting and other facets of international trade will be made easier. Instead of dealing with the regional laws for international trade in several foreign countries, companies can readily apply CISG. The convention is also a great way to build trust, thereby reducing poverty to the bearest minimum. Regional laws within a foreign country can be interpreted in different ways, while the interpretations of CISG are static. This will definitely improve most African countries economically.

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Chapter Five

Unification of laws

5.1 Trading amongst SADC Countries

With a few exceptions, Sub-Saharan Africa has failed to benefit adequately from globalization. Following a decade or more of liberalization and policy reform, however, regional players are now becoming competitive in international markets. SADC Member States have chosen regional integration as part of their strategy for global participation.\footnote{Prof. Frank Flatters., SADC rules of origin, undermining regional free trade, queens university, Canada \url{http://qed.econ.queensu.ca/pub/faculty/flatters/writings/ff_sadc_roo_tips_forum.pdf} [accessed 20 November 2008]}


In September 2000, the SADC FTA was launched wherein full liberalization of trade is expected by 2012. The SADC FTA is intended to act as a catalyst for increased regional integration. Africa has been experimenting with economic integration for quite a long time now (half a century). As a result Africa records around 11 economic blocs such as the Economic Community of Western African States (ECOWAS), the Common Market for Eastern and Southern African (COMESA) or the Southern African Development Community (SADC), Southern African Customs Union (SACU), East Africa Co-operation (EAC), Indian Ocean Commission (IOC), Indian Ocean Rim (IOR) and Common Monetary Area (CMA).\footnote{Sophia Chauvin and Guillaume Gaulier, Prospects for increasing trade among SADC Countries, Center d’études prospectives et d’information internationals (CEPII) \url{http://www.tips.org.za/files/555.pdf} [accessed 20 November 2008]}
Progress on African regional integration has nevertheless been slow due to several factors: overlapping membership, the lack of authority and bureaucratic sophistication to deal with bigger powers, political turmoil in some countries. All of these factors have contributed to slow down the process. Therefore, Africa’s alliances have concentrated more on liberalizing trade within the region than with the rest of the world. The SADC Free Trade Area is a product of the SADC protocol. 11 of the 14 SADC members signed on 7 August 2000 this regional Free Trade accord that took effect on first of September 2000.147

Producing healthy economies within SADC countries is complicated by the fact that some members experience prolonged dry spells with a accompanying drought, while others are victims of flooding. In Malawi, Zambia and Zimbabwe, for example, serious food shortages have resulted from weather related conditions, leading to necessity of importing food from other countries.148

5.2 Implementation of free trade protocol and the free trade area

A Trade Protocol was signed with the purpose of establishing a Free Trade Area early in 2008. Implementation of the SADC Trade Protocol began in September 2000. This is expected to provide significant impetus to the process of economic integration and development in SADC. In this regard, substantial work has been done relating to the determination of tariff reduction schedules, rules on the origin of goods and services, the elimination of non-tariff barriers, as well as harmonization of customs and trade documentation and dispute settlement mechanisms.149 The vision that has driven the development of the SADC Trade Protocol has been distinctly inward-looking. Rules of origin and other Provisions of the Trade Protocol have been far more responsive to fears of

147 Sophia Chauvin and Guillaume Gaulier, Prospects for increasing trade among SADC Countries, Center d’études prospectives et d’information internationals (CEPII)
148 Ashish k. Vaidya, Globalization, encyclopedia of Trade, Labour and Politics
149 Martine Visser and Trudi Hartzenberg, Trade liberalisation and regional integration in SADC: policy synergies assessed in an industrial organization framework
external (international and regional) competition in domestic markets rather than by a desire to capitalize on opportunities for improving international competitiveness.  

The list of countries that signed the Trade Protocol agreement in 1996 are; Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe. The countries that have rectified the trade protocol agreement and are within the free trade area are Botswana, Lesotho, Malawi, Mauritius, Madagascar, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe. Angola and Congo are yet to join. Almost four years to the day that the Maseru Trade Protocol was adopted, the majority of the SADC states put in place the final building blocks of a trade agreement that will liberalise trade within Southern Africa.

Today, SADC’s main goals are to form common political interests and support greater trade and investment flows between members. The SADC FTA is key to achieving these goals. The SADC FTA creates a regional market worth US$360 billion with a total population of 170 million and includes economies growing by up to 7% a year. Freeing trade in the region will create a larger market, releasing a potential for trade, economic growth and employment creation. The rules of origin of the FTA are to ensure that SADC states do not become conduits for goods made elsewhere in the world to enter South Africa; that was why specific 'rules of origin' have been developed. In other words, the “Protocol on Trade” has intensified bilateral as well as regional initiatives to promote regional economic advantages.

150 Prof. Frank Flatters, SADC Rules of Origin, Undermining Regional Free Trade, Queens University, Canada
151 Ratification of SADC Trade Protocol and Free Trade Area
152 Mark Bennett, The free trade agreement
Countries in Southern Africa have engaged in a variety of trade liberalization initiatives
153 Why SADC?
http://www.sadc.int/fta/index/browse/page/39 [accessed on 15 September 2008]
154 Introduction to the SADC FTA website
http://www.sadc.int/fta/index/browse/page/44 [accessed on 15 September 2008]
155 Aspect of the SADC free trade protocol December 2000 vol 3 no 4.
http://www.naledi.org.za/pbull/vol3no4/v3n4a5.htm [accessed 15 September 2008] For example, only the meat of an animal which is born, raised and slaughtered in a SADC state would qualify for duty privileges into the South African market. Manufactured goods would generally have to undergo two stages of transformation before they could be granted access to the South African market.
integration, cooperation to liberalize trade and fair competition in agricultural commodity trade.

The “Protocol on Trade” is expected to lead to significant changes in domestic economic policies and trade regimes, which in turn will have significant implications for the regional economy, especially in the production and exchange of agricultural commodities with influence on national and regional food security. Coupled with the worldwide drive for freer trade, this regional initiative is expected to reduce existing trade protection by eliminating tariff, non-tariff and technical barriers to trade in order to facilitate cross-border movement of goods and services. It is expected that implementation of the “Protocol on Trade” will increase economic growth in the region by directing scarce productive resources to their best uses. It is crucial for every SADC country to understand the intra-SADC agricultural trade pattern, trade policies, its challenges and implications.156

Under the SADC Trade Protocol, 85% of tariffs lines will be reduced to zero by 2008 and the remaining 15% by the year 2012. It is to be recalled that under the SADC Trade Protocol, it was agreed further that the SACU countries (Botswana, Lesotho, Namibia, Swaziland and South Africa) would liberalize tariffs by 2006 towards the non-SACU countries, whereas the latter would remove tariffs at a slower pace vis-à-vis South Africa but at a faster rate towards the rest of the SADC Members.157

5.3 Application of the CISG in the SADC region

There are only a small number of countries in Africa that have rectified the CISG, they are; Burundi, Egypt, Guinea, Lesotho, Mauritania, Uganda and Zambia. Ghana and South Africa are considering adopting the CISG. Amongst these, it’s only Lesotho and Zambia that are part of the CISG and also part of SADC.158

156 Trade polices and agricultural trade in the SADC region, challenges and implications

157 Evolution of trade between Mauritius and SADC Member states

In the beginning, Lesotho did not have a formal trade policy. Its trade policy was guided by various statutes on trade and the SACU trade policy. Consequently, Lesotho’s exports to the world increased significantly from 1999 to 2002. This increase in exports was mainly related to the introduction of the AGOA, (African Trade Opportunity Act). This organization focus on the promotion of stable and sustainable economic growth and development in sub-Saharan Africa. The AGOA gave Lesotho preferential market access to the US. Lesotho’s trading partners are; the US, which remains the largest recipient of exports from Lesotho. Imports from Asia are mainly linked to the sourcing of raw material for Lesotho’s textile industry.159

Lesotho rectified the CISG on the 18th of June 1981 and it became effective from the 1st of January 1988. Apart from this country being a member of the CISG, it is also a member of a number of organizations. It is a chartered member of the WTO. It is also a member of a number of regional trade arrangements, the most important of which is SACU. The second important regional arrangement that Lesotho is a member of is SADC. Lesotho is also a member of the Cotonou Convention that replaced the Lomé IV, and offers the African, Caribbean and Pacific (ACP) countries preferential trade and aid links with the European Union (EU). In addition, Lesotho is also a beneficiary of the US Africa Growth and Opportunity Act (AGOA)160 This country recently signed a bilateral cooperation with India. In this cooperation India agreed to share its experience in human resource development as well as high technology and industrial areas, in the spirit of South-South cooperation. India agreed to extend assistance, through training as well as supply of equipment, for establishing manufacturing units in the small scale industries sector.161

Zambia’s trade balance remained unfavourable from 1999 to 2003, despite the religious implementation of the stabilisation and structural adjustment programme since 1991 under the support of the International Monetary Fund, World Bank and bilateral donors. Zambia’s trade with South Africa and the rest of SADC has also remained unfavourable with the South Africa trade being worse off. Exports to South Africa grew slower at an average of 13% while imports grew faster at an average of 22% over the same period, resulting in a worsening trade balance of -US$544 million in 2003 compared to -US$189 million in 1999. While trade with the rest of SADC is relatively smaller, the trend is some what encouraging.

161 http://meaindia.nic.in/foreignrelation/08fr01.pdf [accessed 20 November 2008]
with exports increasing by an average of 27%, thereby performing marginally better than imports by a percentage point.\textsuperscript{162} Zambia rectified the CISG on the 16\textsuperscript{th} June 1986 and it became effective from the 1\textsuperscript{st} of January 1988 since then it has been implementing an economic reform programme. Trade liberalisation is an integral part of Zambia’s reform effort, thus indicating its confidence in the efficacy of open, competitive market economy and adherence to the principles of multilateral trade. To this effect, trade barriers have been substantially reduced and quantitative restrictions eliminated. Import controls are only maintained for health, security and associated reasons. Customs duties are now the main trade policy instrument, and even these have been substantially reduced over the years, with the highest tariff being 25 percent on finished products.\textsuperscript{163}

5.4 Examining the CISG and SADC’s rules of origin

The main aim of the rules of origin is to ensure that non-members do not benefit from market access privileges intended only for members. This can be thought of as the authentication function of rules of origin. The second is to encourage certain regional activities or to protect them from potential competition arising from the formation of the PTA. This is the protective effect (intended or unintended) of rules of origin.\textsuperscript{164}

The aim of the CISG is to promote uniformity of international sales law. It applies mainly to contracts of sale of goods between parties whose places of business are in different States. This is very similar to the scope of the rules of origin. The rules of origin states that non-members can not benefit from the FTA and members are different countries within the SADC. Rather than determining the application of the CISG by the movement of goods across State borders, the authors of the CISG chose to apply the criterion of 'place of business'.\textsuperscript{165} The CISG also deals only with commercial goods. It does not deal with

\begin{itemize}
\item \textsuperscript{162} Zambia country report, \url{http://web.mit.edu/urbanupgrading/upgrading/case-examples/overview-africa/country-assessments/reports/Zambia-report.html} [accessed 21 November 2008]
\item \textsuperscript{163} SADC trade, industry and investment review 2007/2008 \url{http://www.sadcreview.com/country_profiles/zambia/zambia.htm} [accessed 22 November 2008]
\item \textsuperscript{164} SADC rules of origin; Undermining Regional Free Trade, \url{http://www.tips.org.za/files/604.pdf} [accessed 27 November 2008]
\end{itemize}
domestic purchases. This makes it differ from the rules of origin, in that, the rules of origin deals with all trade transactions as long as it’s between member states. It is very obvious that the CISG and the rules of origin guiding the FTA, are pursuing the same goals. As earlier discussed, most of the countries in the SADC have signed up the FTA, and the rules guiding its sales transactions have just been examined. This goes to tell that the CISG is quite similar to the rules of origin.

The rules of origin is an instrument to promote development though import substitution—in particular, by forcing producers to source inputs in the region in order to qualify for regional trade preferences. The PTA is seen as an opportunity to expand the size of a protected market, and rules of origin are an element of a strategy to create a ‘fortress-like’ PTA, and promote regional development behind a variety of protective barriers. PTAs are seen as a platform from which the members can integrate successfully and increase their competitiveness in the world economy. The approach to rules of origin under this strategy is much different than that under the ‘fortress’ approach. In particular, it recognizes the importance of flexibility to source inputs internationally as well as domestically in order to promote investment and increase international competitiveness. 166 The CISG on the other hand shares the same goals, to create for its member states a common ground for trade and trade disputes. Another benefit is that members can easily opt out of the convention whether they have rectified or not.

Conclusion

Tribunals and courts should thus be able to look back at historical models and understand better the impact that ratification of international treaties, such as, the CISG, has on regional laws like the SADC’s FTA. “The merits of an international uniform sales law must be measured by the extent to which it removes important contractual issues from the domestic and into the international realm” these are words from the “grandfather” of the CISG, Ernst


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Goods and services are sold every day across national boundaries. These transactions are subject to a myriad of laws, regulations, restrictions and special arrangements. Some of the critics say that SADC should watch out for South Africa, which has the strongest economy; this gives that country the power to dominate. There are also fears that this agreement will lead to workers losing their jobs because, with much emphasis on customs and goods, there will be so many imported products that will reduce the rate of production locally, and, in so doing, workers will lose their jobs. The SADC rules of origin has been made to undo trade creating effects of trade liberalisation, with this on the table southern African has become a more attractive place to invest – not just for sales to protected regional markets, but as a base for competitive access to global markets. Constant negotiations, summits and conferences should be held on daily basis on the FTA to improve its goals and vision for a more stable economy in the SADC region.


168 Prof. Frank Flatters, SADC Rules of Origin, Undermining Regional Free Trade, Queens University, Canada http://qed.econ.queensu.ca/pub/faculty/flatters/writings/ff_sadc_roo_tips_forum.pdf [accessed 1 December 2008]
Chapter Six

6.1 Conclusion and Recommendations
The CISG and the process by which it was adopted, established the benchmark for the unification of commercial law in the post-war era. Its main purpose was to eliminate any ambiguity caused by different domestic laws concerning the international sale of goods. Through this agreement, international trade became increasingly hassle-free, and the potential for disputes was reduced. One of the main benefits of the CISG and SADC FTA is its unified code of rules and regulations, making importing and exporting and other facets of international trade easier. Instead of dealing with the regional laws for international trade in several foreign countries, contracting parties can readily apply the CISG. The Convention and the agreement is also a great way to build trust. Regional laws within a foreign country can be interpreted in different ways, while the interpretations of CISG and the rules of origin are static for member states. However, where the CISG has failed its members, the SADC’s rules of origin have covered up for its member states. Some of the failures of the CISG are; not all sales of goods are covered by the CISG. Issues of validity also are not clear cut, because there is no uniform definition as to what will be classified as an issue of validity. ‘With no clear channel markers to aid them, many lawyers tend to opt out of the CISG, according to the maxim, ‘The devil you know is better than the angel you do not know’. However, is fear of the unknown enough reason to avoid a body of law that was adopted to provide uniformity to private transactions between businesses in different countries? The efforts of the CISG should be commended in unifying sales law, but it is important to take into account the various writing of different authors that the scope of application of the CISG is quite limited; thereby making it difficult for contracting parties to decide when this Convention applies to them. On the other hand, the SADC free trade agreement aims to create growth, development and wealth amongst its members, This premise is based on the theory of comparative advantage, the basic principle of which is that

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member countries are able to specialise in goods and services that they can produce relatively more efficiently than their trading partners, and hence reap the benefits of mutual exchange. In other words, trade is a positive sum activity; both trading partners gain, and the pursuit of the gain provides the motivation for exchange. But the fact that trade liberalisation is very unpredictable cannot be ignored. The other thirteen member states, of the SADC, apart from Lesotho and Zambia, are advised to rectify the CISG as that will give them a more solid legal ground for dispute resolution. The convention contributes to the removal of legal barriers in international trade and it will promote the development of international trade between them and the rest of the world and other regions. Under the CISG, sellers can avoid difficulties of reaching agreement with foreign buyers on choice of law issues as the CISG text will be readily available for compromise. Also use of the CISG will decrease the time and legal costs otherwise involved in the research of unfamiliar foreign laws. The CISG will reduce the problems of proof of foreign law in domestic and foreign courts. Most of these rules binding sellers and buyers are not cover by the FTA. And on a final note there is free entry and exit from the convention, as contracting parties can opt out and decide what law should bind their transactions. Ratifying the CISG in addition to the benefits of the SADC FTA, (particularly the rules of origin) will enhance certainty in trade therefore facilitating economic growth.

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