



# TREATY

ESTABLISHING THE  
COMMON MARKET FOR EASTERN  
AND SOUTHERN AFRICA



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## **PREAMBLE**

The President of the Republic of Angola;  
The President of the Republic of Burundi;  
The President of the Federal Islamic Republic of the Comoros;  
The President of the Republic of Djibouti;  
The President of the State of Eritrea;  
The President of the Transitional Government of Ethiopia;  
The President of the Republic of Kenya;  
His Majesty the King of the Kingdom of Lesotho;  
The President of the Republic of Madagascar;  
The Life President of the Republic of Malawi;  
The Prime Minister of the Republic of Mauritius;  
The President of the Republic of Mozambique;  
The President of the Republic of Namibia;  
The President of the Republic of Rwanda;  
The President of the Republic of Seychelles;  
The President of the Somali Democratic Republic;  
The President of the Republic of Sudan;  
His Majesty the King of the Kingdom of Swaziland;  
The President of the United Republic of Tanzania;  
The President of the Republic of Uganda;  
The President of the Republic of Zaire;  
The President of the Republic of Zambia; and  
The President of the Republic of Zimbabwe:

**CONSCIOUS** of the overriding need to establish a Common Market for Eastern and Southern Africa;

**BEARING IN MIND** the establishment among their respective States of the Preferential Trade Area for Eastern and Southern African States as a first step towards the creation of a Common Market and eventually of an Economic Community for Eastern and Southern Africa;

**RECALLING** the provisions of Article 29 of the Treaty for the Establishment of the Preferential Trade Area for Eastern and Southern African States to the effect that steps should be taken to develop the Preferential Trade Area established by that Treaty into a Common Market and eventually into an Economic Community;

**RECALLING** further the decision of the Authority of the Preferential Trade Area for Eastern and Southern African States taken at its Tenth Meeting held in Lusaka, Zambia from 30 - 31 January, 1992 to transform the Preferential Trade Area for Eastern and Southern African States into a Common Market for Eastern and Southern Africa;

**INSPIRED** by the objectives of the Treaty for the Establishment of the African Economic Community and in compliance with the provisions of Article 28(1) of the said Treaty;



**DETERMINED** to mark a new stage in the process of economic integration with the establishment of a Common Market for Eastern and Southern Africa and the consolidation of their economic co-operation through the implementation of common policies and programmes aimed at achieving sustainable growth and development;

**RESOLVED** to strengthen and achieve convergence of their economies through the attainment of a full market integration;

**HAVING REGARD** to the principles of international law governing relations between sovereign states, and the principles of liberty, fundamental freedoms and the rule of law; and

In view of further steps which have to be taken in order to advance the economic integration of Eastern and Southern Africa;

**HEREBY AGREE AS FOLLOWS:**

## CHAPTER ONE

### THE COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA

#### *ARTICLE 1*

#### *Establishment and Membership*

1. **THE HIGH CONTRACTING PARTIES HEREBY** establish among themselves a Common Market for Eastern and Southern Africa herein referred to as the Common Market.
2. Membership of the Common Market shall be open to the following Member States of the Preferential Trade Area for Eastern and Southern African States:

The Republic of Angola;

The Republic of Burundi;

The Federal Islamic Republic of the Comoros;

The Republic of Zaire;

The Republic of Djibouti;

The Republic of Egypt;

The State of Eritrea;

The Government of Ethiopia;

The Republic of Kenya;

The Republic of Madagascar;

The Republic of Malawi;

The Republic of Mauritius;  
The Republic of Namibia;  
The Republic of Rwanda;  
The Republic of Seychelles;  
The Republic of Sudan;  
The Kingdom of Swaziland;  
The United Republic of Tanzania;  
The Republic of Uganda;  
The Republic of Zambia; and  
The Republic of Zimbabwe.

3. The following States of Eastern and Southern Africa may become Member States of the Common Market upon fulfilling such conditions as may be determined by the Authority:

The Republic of Botswana; and

The Republic of South Africa (Post-Apartheid).

4. The Authority may admit a State not referred to under paragraph 2 or 3 of this Article, which is an immediate neighbour of a member State as a member State of the Common Market for Eastern and Southern Africa, upon fulfilling such conditions as may be determined by the Authority.

## **CHAPTER TWO**

### **INTERPRETATION**

#### ***ARTICLE 2*** ***Interpretation***

In this Treaty unless the context otherwise requires:

“ARSO” means the African Regional Organisation for Standardisation;

“African regional standards” means technical standards issued by ARSO;

“Authority” means the Authority of the Common Market established by Article 7 of this Treaty;

“Bureau of the Council” means the Chairman, Vice-Chairman and Rapporteur elected in accordance with the Rules of Procedure of the meetings of the Council;

“Business community” means all commercial and industrial organisations or unions of national chambers of commerce and industry representing agriculture, tourism, commerce, finance, manufacturing, mining and transport, however styled and established under the laws of a Member State;

“CGIAR” means the Consultative Group on International Agricultural Research;

“C.I.F.” means Cost Insurance and Freight;

“Clearing House” means the Clearing House established by Article 1 of the Charter on the Establishment of the Clearing House;

“CMA” means Common Monetary Area of Southern Africa;

“Common Market” means the Common Market for Eastern and Southern Africa established by Article 1 of this Treaty;

“common external tariff” means an identical rate of tariff imposed on goods imported from third countries;

“Common carrier” includes a person or an undertaking engaged in the business of providing services for the carriage of goods and passengers for hire or reward and operating as such under the laws of a Member State;

“Company or firm” means a company or a firm constituted or registered under the laws of a Member State regulating companies and firms;

“Consensus” means general agreement, characterised by

the absence of objection to issues secured by a process that involves seeking to take into account the views of all parties concerned and to reconcile any conflicting arguments;

“Consultative Committee” means the Consultative Committee of the business community and other interest groups established by Article 7 of this Treaty;

“Co-operation” includes the undertaking by the Member States in common, jointly or in concert of activities undertaken in furtherance of the objectives of the Common Market as provided for under this Treaty or under any contract or agreement made thereunder or in relation to the objectives of the Common Market;

“Council” means the Council of Ministers of the Common Market established by Article 7 of this Treaty;

“Countervailing duty” means a specific duty levied for the purposes of offsetting any subsidy bestowed directly or indirectly upon the manufacture, production or export of any product;

“Court” means the Court of Justice of the Common Market established by Article 7 of this Treaty;

“Customs clearing agent” means a person, who provides

services at a fee, in connection with documentation and customs clearance of import and export of goods consignments;

“Customs duties” means import or export duties and other charges of equivalent effect levied on goods by reason of their importation or exportation and includes suspended duties and fiscal duties or taxes where such duties or taxes affect the importation or exportation of goods but does not include internal duties and taxes such as sales, turnover or consumption taxes, imposed otherwise than in respect of the importation or exportation of goods;

“Customs offence” means any breach or attempted breach of customs law;

“Customs law” means all the statutory provisions applied by the customs administration on the importation, exportation, transit or movement of goods whether or not they involve the collection of duties or taxes (or security thereof), on the enforcement of prohibitions, restrictions or control or exchange control regulations or on any other customs regime;

“Customs territory” means the territory in which the customs law of a Member State applies in full;

“Designated airline” means an airline which has been designated and authorized to operate the agreed services by a competent authority of a Member State;

“Economically depressed area” means any area so designated by the Council;

“Export duties” means customs duties and other charges of equivalent effect levied on goods by reason of their exportation;

“F.O.B.” means Free On Board;

“Free zone” means a part of the territory of a Member State where any goods introduced into that State are considered, in so far as import duties are concerned, as being outside its customs territory and are not subject to the usual customs control;

“Freight forwarder ” means a person engaged at a fee, either as an agent for other transport operators or on his own account in the management of transport services and related documentation;

“GNP” means Gross National Product;

“Goods declaration” means a statement made in the form



prescribed by the customs administration by which the persons concerned furnish the particulars which the customs administration requires to be declared for purposes of the application of the relevant customs procedure;

“Goods in transit” means goods being conveyed between two Member States or between a Member State and a third country and passing through another Member State or Member States and, “transit” shall be construed accordingly;

“IAEA” means the International Atomic Energy Agency;

“Import duties” means customs duties and other charges of equivalent effect levied on goods by reason of their importation;

“Importing State” means a Member State from which goods imported into that State are subsequently re-exported to another Member State;

“Intergovernmental Committee” means the Intergovernmental Committee of Experts established by Article 7 of this Treaty;

“International standards” means standards that are adopted by international standardising or standards organisations and made available to the public;

“Judge” means a Judge of the Court serving on the First Instance Division or Appellate Division;

“Least developed country” means any Member State so designated by the Authority;

“Member State” means a Member State of the Common Market;

“Monetary authority” means a Central Bank or any other institution authorised by a Member State to issue currency within its territory;

“Most favoured nation treatment” means any advantage, favour, privilege or immunity granted by any Member State to any product originating in or destined for any third country and shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other Member States;

“Multimodal transport” means the transport of goods and services from one point to another by two or more modes of transport on the basis of a single contract issued by the person organising such services and while such person assumes responsibility for the execution of the whole operation;

“Multimodal transport facilities” include items such as heavy lift swinging devices, twin deck cranes, gantry crane, elevators, large carriers, mechanized storage, low loaders, access facilities, low-profile straddle carriers, mobile cranes, container gantry cranes, side loaders, heavy duty forklifts, heavy duty tractors, heavy duty trailers, portable ramps, flat wagons (flats) for containers, low tare special user wagons and trucks for containers, pallets and web-slings for pre-slung cargoes for different commodities;

“Multinational industrial enterprise” means an industrial enterprise registered in two or more Member States and which is owned by a person or persons resident in a Member State;

“National standards bodies” means all national institutions whose main concern is with standardisation or quality assurance at the national level in the Member States;

“National standards” means standards that are adopted by national standards bodies and made available to the public;

“Other charges of equivalent effect” means any tax, surtax, levy or charge imposed on imports and not on like locally produced products and does not include fees and similar charges commensurate with the cost of services rendered;

“Person” means a natural or legal person;

“Preferential Trade Area” means the Preferential Trade Area for Eastern and Southern African States (hereinafter referred to as PTA) established by Article 1 of the Treaty for the Establishment of the Preferential Trade Area for Eastern and Southern African States;

“Receiving State” means a Member State into which re-exports consigned from another Member State are imported for domestic use in that State;

“Re-exports” means goods which are imported and kept under bonded warehouse for re-exportation from the importing state to the receiving state;

“Region” means the geographical area covered by the Common Market;

“Rules of Court” means the Rules of Court in force as adopted pursuant to Article 38;

“SACU” means the Southern African Customs Union;

“Secretariat” means the Secretariat of the Common Market established by Article 7 of this Treaty;

“Secretary-General” means the Secretary-General of the Common Market provided for by Article 17 of this Treaty;

“Services” means services provided for remuneration and are governed by the provisions relating to freedom of movement of goods, capital and persons;

“Shipping agent” means a local representative of a shipping company;

“Technical Committee” means any of the technical committees established by Article 7 of this Treaty;

“Telecommunications” means any form of transmission, emission or reception signals, writing, images and sounds or intelligence of any nature by wire, radio, optical or other electro magnetic systems;

“Telecommunications administrations” means the government designated organisations and recognised private operating agencies accepted by the Member States and offering telecommunication services;

“Temporary admission” means customs procedures under which certain goods brought within a customs territory are exempted from payment of import duties and are free of import prohibition and restrictions on condition that they

are, within a specified period re-exported from the Member State into which they were imported;

“Third country” means any country other than a Member State;

“Trade facilitation” means the co-ordination and rationalization of trade procedures and documents relating to the movement of goods from their place of origin to their destination;

“Trade procedures” means activities related to the collection, presentation, processing and dissemination of data and information concerning all activities constituting international trade;

“Transport operations” means the provision of services for the carrying of goods and passengers for hire or reward and all matters incidental to or connected therewith;

“Treaty” means the Treaty Establishing the Common Market for Eastern and Southern Africa;

“UNCED” means United Nations Conference on Environment and Development;

“UNEP” means United Nations Environmental Programme;

“UNESCO” means the United Nations Educational, Scientific and Cultural Organisation;

“UNIDO” means the United Nations Industrial Development Organisation;

“Unique situation of LNS countries” means the unique situation of Lesotho, Namibia and Swaziland arising from their membership of SACU, and CMA; and

“Valid travel document” means a passport or any other valid travel document establishing the identity of the holder, issued by or on behalf of the Member State of which he is a citizen and shall also include laissez passer issued by the Common Market to its officials.

## **CHAPTER THREE**

### **AIMS AND OBJECTIVES**

#### ***ARTICLE 3***

#### ***Aims and Objectives of the Common Market***

The aims and objectives of the Common Market shall be:

- (a) to attain sustainable growth and development of the Member States by promoting a more balanced and harmonious development of its production and marketing structures;
- (b) to promote joint development in all fields of economic activity and the joint adoption of macro-economic policies and programmes to raise the standard of living of its peoples and to foster closer relations among its Member States;
- (c) to co-operate in the creation of an enabling environment for foreign, cross border and domestic investment including the joint promotion of research and adaptation of science and technology for development;
- (d) to co-operate in the promotion of peace, security



and stability among the Member States in order to enhance economic development in the region;

- (e) to co-operate in strengthening the relations between the Common Market and the rest of the world and the adoption of common positions in international fora; and
- (f) to contribute towards the establishment, progress and the realisation of the objectives of the African Economic Community.

#### **ARTICLE 4**

##### ***Specific Undertakings***

In order to promote the achievement of the aims and objectives of the Common Market as set out in Article 3 of this Treaty and in accordance with the relevant provisions of this Treaty, the Member States shall:

1. In the field of trade liberalisation and customs co-operation:
  - (a) establish a customs union, abolish all non-tariff barriers to trade among themselves; establish a common external tariff; co-operate in customs procedures and activities;

- (b) adopt a common customs bond guarantee scheme;
- (b) simplify and harmonize their trade documents and procedures;
- (d) establish conditions regulating the re-export of goods from third countries within the Common Market;
- (e) establish rules of origin with respect to products originating in the Member States; and
- (f) recognise the unique situation of Lesotho, Namibia and Swaziland within the context of the Common Market and to grant temporary exemptions to Lesotho, Namibia and Swaziland from the full application of specified provisions of this Treaty.

2. In the field of transport and communications:

- (a) foster such co-operation among themselves as would facilitate the production of goods and facilitate trade in goods and services and the movement of persons;

- (b) make regulations for facilitating transit trade within

the Common Market; and

(c) adopt a Third Party Motor Vehicle Insurance Scheme.

3. In the field of industry and energy:

(a) eliminate rigidities in the structures of production and manufacturing so as to provide goods and services that are of high quality and are competitive in the Common Market;

(b) provide an appropriate enabling environment for the participation of the private sector in economic development and co-operation within the Common Market;

(b) co-operate in the field of industrial development;

(d) adopt common standards, measurements systems and quality assurance practices in respect of goods produced and traded within the Common Market; and

(e) provide an enabling stable and secure investment climate.

4. In the field of monetary affairs and finance:

- (a) co-operate in monetary and financial matters and gradually establish convertibility of their currencies and a payments union as a basis for the eventual establishment of a monetary union;
- (b) harmonise their macro-economic policies;
- (c) remove obstacles to the free movement of services and capital within the Common Market; and
- (d) recognise the unique situation of Lesotho, Namibia and Swaziland within the context of the Common Market and to grant temporary exemptions to Lesotho, Namibia and Swaziland from the full application of specified provisions of this Treaty.

5. In the field of agriculture:

- (a) co-operate in the agricultural development;
- (b) adopt a common agricultural policy;
- (c) enhance regional food sufficiency;
- (d) co-operate in the export of agricultural commodities;
- (e) co-ordinate their policies regarding the establishment of agro-industries;
- (f) co-operate in agricultural research and extension;  
and
- (g) enhance rural development.

6. In the field of economic and social development:
- (a) harmonise the methodology of collection, processing and analysis of information required to meet the objectives of the Common Market;
  - (b) harmonise or approximate their laws to the extent required for the proper functioning of the Common Market;
  - (c) promote the accelerated development of the least developed countries and economically depressed areas through the implementation of special programmes and projects in various fields of economic development;
  - (d) adopt a regional policy that will look into all possible economic problems that Member States may face during the implementation of this Treaty and propose ways and means of redressing such problems in a manner that will satisfy the conditions of equitable and balanced development within the Common Market;
  - (e) remove obstacles to the free movement of persons, labour and services, right of establishment for investors and right of residence within the Common

Market;

- (f) promote co-operation in social and cultural affairs between themselves;
- (g) co-operate in tourism and wildlife development and management;
- (h) co-operate in the development and management of natural resources, energy and environment; and
- (i) take, jointly, such other steps as are necessary to further the aims of the Common Market.

## **ARTICLE 5**

### ***General Undertakings***

1. The Member States shall make every effort to plan and direct their development policies with a view to creating conditions favourable for the achievement of the aims of the Common Market and the implementation of the provisions of this Treaty and shall abstain from any measures likely to jeopardize the achievement of the aims of the Common Market or the implementation of the provisions of this Treaty.
2. Each Member State shall take steps to secure the

enactment of and the continuation of such legislation to give effect to this Treaty and in particular:

- (a) to confer upon the Common Market legal capacity and personality required for the performance of its functions; and
  - (b) to confer upon the regulations of the Council the force of law and the necessary legal effect within its territory.
3. Each Member State shall:
- (a) designate a Ministry with whom the Secretary-General may communicate in connection with any matter arising out of the implementation and application of this Treaty, and notify such designation to the Secretary-General;
  - (b) transmit to the Secretariat copies of all relevant existing and future legislation and its official gazettes; and
  - (c) where it is required under this Treaty, supply or exchange information to or with another Member State and send copies of such information to the Secretariat.

4. The Member States undertake to accord the Common Market and its staff the privileges and immunities accorded to similar international organisations in their territories and in accordance with the Agreement on Privileges and Immunities.

## **ARTICLE 6**

### ***Fundamental Principles***

The Member States, in pursuit of the aims and objectives stated in Article 3 of this Treaty, and in conformity with the Treaty for the Establishment of the African Economic Community signed at Abuja, Nigeria on 3rd June, 1991, agree to adhere to the following principles:

- (a) equality and inter-dependence of the Member States;
- (b) solidarity and collective self-reliance among the Member States;
- (c) inter-State co-operation, harmonisation of policies and integration of programmes among the Member States;
- (d) non-aggression between the Member States;



- (e) recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights;
- (f) accountability, economic justice and popular participation in development;
- (g) the recognition and observance of the rule of law;
- (h) the promotion and sustenance of a democratic system of governance in each Member State;
- (i) the maintenance of regional peace and stability through the promotion and strengthening of good neighbourliness; and
- (j) the peaceful settlement of disputes among the Member States, the active co-operation between neighbouring countries and the promotion of a peaceful environment as a pre-requisite for their economic development.

## **CHAPTER FOUR**

### **ORGANS OF THE COMMON MARKET**

#### ***ARTICLE 7***

#### ***Organs of the Common Market***

1. There shall be established as organs of the Common Market:
  - (a) the Authority;
  - (b) the Council;
  - (c) the Court of Justice;
  - (d) the Committee of Governors of Central Banks;
  - (e) the Intergovernmental Committee;
  - (f) the Technical Committees;
  - (g) the Secretariat; and
  - (h) the Consultative Committee.
  
2. The Secretary-General, in consultation with the Bureau

of the Council may convene Sectoral Ministerial meetings to consider and take decisions on technical sectoral issues not having budgetary implications.

3. The decisions of the sectoral ministerial meetings taken in pursuance of the provisions of paragraph 2 of this Article shall take effect and shall be endorsed at the next meeting of the Council following the sectoral ministerial meeting.
4. The organs of the Common Market shall perform their functions and act within the limits of the powers conferred upon them by or under this Treaty.

## **ARTICLE 8**

### ***The Authority***

#### ***Composition and Functions***

1. The Authority shall consist of the Heads of State or Government of the Member States.
2. The Authority shall be the supreme Policy Organ of the Common Market and shall be responsible for the general policy and direction and control of the performance of the executive functions of the Common Market and the achievement of its aims and objectives and shall have such other powers as are vested in it under this Treaty.

3. Subject to the provisions of this Treaty, the directions and decisions of the Authority taken or given in pursuance of the provisions of this Treaty, shall as the case may be, be binding on the Member States and on all other organs of the Common Market other than the Court in the exercise of its jurisdiction, and on those to whom they may be addressed to under this Treaty.
4. The directions and decisions of the Authority shall be notified to those to whom they are addressed and shall take effect upon the receipt of such notification or on such date as may be specified in the direction or decision.
5. The Authority shall meet once every year and may hold extraordinary meetings at the request of any member of the Authority, provided that such a request is supported by one-third of the members of the Authority.
6. Subject to the provisions of this Treaty, the Authority shall determine its own Rules of Procedure.
7. The decisions of the Authority shall be taken by consensus.

## **ARTICLE 9**

### ***The Council of Ministers***

#### **Composition and Functions**

1. The Council of Ministers of the Common Market shall consist of such Ministers as may be designated by each Member State.
  
2. It shall be the responsibility of the Council to:
  - (a) monitor and keep under constant review and ensure the proper functioning and development of the Common Market in accordance with the provisions of this Treaty;
  
  - (b) make recommendations to the Authority on matters of policy aimed at the efficient and harmonious functioning and development of the Common Market;
  
  - (c) give directions to all other subordinate organs of the Common Market other than the Court in the exercise of its jurisdiction;
  
  - (d) make regulations, issue directives, take decisions, make recommendations and give opinions in accordance with the provisions of this Treaty;
  
  - (e) request advisory opinions from the Court in accordance with the provisions of this Treaty;

- (f) consider and approve the budgets of the Secretariat and the Court;
  - (g) consider what measures should be taken by Member States in order to promote the attainment of the aims of the Common Market;
  - (h) make Staff Rules and Regulations and Financial Regulations of the Secretariat;
  - (i) make recommendations to the Authority on the designation of Least Developed Countries;
  - (j) designate economically depressed areas of the Common Market; and
  - (k) exercise such other powers and perform such other functions as are vested in or conferred on it by this Treaty.
3. Subject to the provisions of this Treaty, the regulations, directives and decisions of the Council taken or given in pursuance of the provisions of this Treaty shall be binding on the Member States, on all subordinate organs of the Common Market other than the Court in the exercise of its jurisdiction and on those to whom they may under this Treaty, be addressed.

4. The Council shall meet once a year immediately preceding a meeting of the Authority. Extraordinary meetings of the Council may be held at the request of a Member State provided that such a request is supported by at least one-third of the Member States.
5. Subject to any directions that the Authority may give and to the provisions of this Treaty, the Council shall determine its own Rules of Procedure.
6. The decisions of the Council shall be taken by consensus, failing which by two-thirds majority of the members of the Council.
7. Where an objection is recorded on behalf of a Member State to a proposal submitted for the decision of the Council, the proposal shall, unless such objection is withdrawn, be referred to the Authority for its decision.

## **ARTICLE 10**

### ***Regulations, Directives, Decisions, Recommendations and Opinions of Council***

1. The Council may, in accordance with the provisions of this Treaty, make regulations, issue directives, take decisions, make recommendations or deliver opinions.

2. A regulation shall be binding on all the Member States in its entirety.
3. A directive shall be binding upon each Member State to which it is addressed as to the result to be achieved but not as to the means of achieving it.
4. A decision shall be binding upon those to whom it is addressed.
5. A recommendation and an opinion shall have no binding force.

#### **ARTICLE 11**

##### ***Reasons for Regulations, Decisions and Directives***

Regulations, directives and decisions of the Council shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Treaty.

#### **ARTICLE 12**

##### ***Entry into Force of Regulations, Directives and Decisions of the Council***

1. Regulations shall be published in the Official



Gazette of the Common Market and shall enter into force on the date of their publication or such later date as may be specified in the Regulations.

2. Directives and decisions shall be notified to those to whom they are addressed and shall take effect upon the receipt of such notification or on such date as may be specified in the directives or decisions.

### **ARTICLE 13**

#### ***The Committee of Governors of Central Banks Composition and Functions***

1. The Committee of Governors of Central Banks shall consist of the governors of the monetary authorities designated for that purpose by the Member States.
2. The Committee of Governors of Central Banks shall:
  - (a) be responsible for the development of programmes and action plans in the field of finance and monetary co-operation;
  - (b) monitor and keep under constant review and ensure the proper implementation of the programmes and plans adopted pursuant to the provisions of Chapter Ten of this Treaty on Monetary and Financial Co-

operation;

- (c) for the purposes of sub-paragraphs (a) and (b) of this paragraph, request the Secretary-General to undertake specific investigations;
  - (d) consider reports and recommendations from the Technical Committee on Finance and Monetary Affairs;
  - (e) submit from time to time, reports and recommendations to the Council concerning the implementation of the Finance and Monetary Co-operation programme; and
  - (f) have such other functions as are conferred upon it by or under this Treaty.
3. Subject to any directions which may be given by the Council, the Committee of Governors of Central Banks shall meet once a year and shall, subject to this Treaty, determine its own Rules of Procedure.

**ARTICLE 14**  
***Intergovernmental Committee***  
***Composition and Functions***

1. The Intergovernmental Committee shall consist of such Permanent or Principal Secretaries as may be designated by each Member State.
  
2. The Intergovernmental Committee shall:
  - (a) be responsible for the development of programmes and action plans in all the sectors of co-operation except in the finance and monetary sector;
  - (b) monitor and keep under constant review and ensure proper functioning and development of the Common Market in accordance with the provisions of this Treaty;
  - (c) oversee the implementation of the provisions of this Treaty and for that purpose may request a Technical Committee to investigate any particular matter;
  - (d) for the purposes of sub-paragraph (a) of this paragraph, request the Secretary-General to undertake specific investigations;
  - (e) submit from time to time either on its own initiative or upon the request of the Council reports and recommendations to the Council; and

- (f) have such other functions as are conferred upon it by or under this Treaty.
3. Subject to any directions which may be given by the Council, the Intergovernmental Committee shall meet once a year and shall, subject to this Treaty, determine its own Rules of Procedure.

## **ARTICLE 15**

### ***Technical Committees***

#### ***Composition and Functions***

1. The Technical Committees of the Common Market shall be the following:
- (a) the Committee on Administrative and Budgetary Matters;
  - (b) the Committee on Agriculture ;
  - (c) the Committee on Comprehensive Information Systems;
  - (d) the Committee on Energy;
  - (e) the Committee on Finance and Monetary Affairs;

- (f) the Committee on Industry;
  - (g) the Committee on Labour, Human Resources and Social and Cultural Affairs;
  - (h) the Committee on Legal Affairs;
  - (i) the Committee on Natural Resources and Environment;
  - (j) the Committee on Tourism and Wildlife;
  - (k) the Committee on Trade and Customs; and
  - (l) the Committee on Transport and Communications.
2. The Technical Committees shall be composed of representatives of the Member States designated for that purpose.
  3. The Council may establish such additional Technical Committees as may be necessary for the attainment of the objectives of this Treaty.
  4. The Technical Committees shall meet as often as necessary for the proper discharge of their functions and shall determine their own Rules of Procedure.

## **ARTICLE 16**

### ***Functions of the Technical Committees***

Each Technical Committee shall:

- (a) be responsible for the preparation of a comprehensive implementation programme and a time-table prioritising the programmes with respect to its sector;
- (b) monitor and keep under constant review the implementation of co-operation programmes with respect to its sector;
- (c) for the purposes of paragraphs (a) and (b) of this Article request the Secretary-General to undertake specific investigations;
- (d) except for the Committee on Finance and Monetary Affairs which shall submit its reports and recommendations to the Committee of Governors of Central Banks, submit from time to time reports and recommendations to the Intergovernmental Committee, either on its own initiative or upon the request of the Council, concerning the implementation of the provisions of this Treaty; and

- (e) have such other functions as are assigned to it by or under this Treaty.

## **ARTICLE 17**

### ***The Secretariat and the Secretary-General***

1. The Secretariat shall be headed by a Secretary-General of the Common Market who shall be appointed by the Authority to serve in such office for a term of five years and shall be eligible for reappointment for a further term of five years.
2. The Secretary-General shall be the chief executive officer of the Common Market and shall represent the Common Market in the exercise of its legal personality.
3. There shall be, in addition to the Secretary-General, two Assistant Secretaries-General who shall be appointed by the Authority, and such other staff of the Secretariat as the Council may determine.
4. The terms and conditions of service of the Secretary-General and the Assistant Secretaries-General shall be determined by the Authority. The terms and conditions of service of the other staff of the Secretariat shall be determined by the Council.

5. In appointing staff to offices in the Secretariat, regard shall be had, subject to the paramount importance of securing the highest standards of integrity, efficiency and technical competence, to the desirability of maintaining the principle of equal opportunities and an equitable distribution of appointments to such offices among citizens of all the Member States.
6. In the performance of their duties, the Secretary-General and Assistant Secretaries-General and the staff of the Secretariat shall not seek or receive instructions from any Member State or from any other authority external to the Common Market. They shall refrain from any actions which may adversely reflect on their position as international officials and shall be responsible only to the Common Market.
7. Each Member State undertakes to respect the international character of the responsibilities of the Secretary-General, Assistant Secretaries-General and the other staff of the Secretariat and shall not seek to unduly influence them in the discharge of their responsibilities.
8. The Secretary-General shall:



- (a) service and assist the organs of the Common Market in the performance of their functions;
- (b) submit reports in consultation with the Intergovernmental Committee on the activities of the Common Market to the Council and the Authority;
- (c) subject to the provisions of this Treaty, be responsible for the administration and finances of the Common Market;
- (d) submit the budget of the Common Market to the Intergovernmental Committee;
- (e) act as the secretary to the Authority and the Council;
- (f) ensure that the objectives set out in this Treaty are attained and shall, either on his own initiative or on the basis of a complaint, investigate a presumed breach of the provisions of this Treaty and report to the Council in accordance with an investigative procedure to be determined by the Council;
- (g) keep the functioning of the Common Market under continuous examination and may act in relation to any particular matter which appears to merit examination either on his own initiative or upon the

request of a Member State where appropriate and report the results of his examination to the Member State or the organ of the Common Market concerned;

- (h) subject to the provisions of this Treaty submit references to the Court concerning the alleged breach of any obligation under this Treaty in relation to the Common Market or as to any action or omission affecting the Common Market;
- (i) promote the adoption of joint positions by the Member States in multilateral negotiations with third countries or international organisations;
- (j) on his own initiative or as may be assigned to him by the Authority or the Council, undertake such work and studies and perform such services as relate to the aims of the Common Market and to the implementation of the provisions of this Treaty; and
- (k) for the performance of the functions conferred upon him by this Article, collect information and verify matters of fact relating to the functioning of the Common Market and for that purpose may request a Member State to provide information relating thereto.

9. The Member States agree to co-operate with and assist the Secretary-General in the performance of his functions set out in paragraph 8 of this Article and agree in particular to provide any information which may be requested under sub-paragraph (k) of paragraph 8 of this Article.
  
10. There may be established, such sub-regional offices or branch offices of the Secretariat in the Member States as the Council may determine.

#### **ARTICLE 18**

#### ***Consultative Committee of the Business Community and Other Interest Groups - Composition and Functions***

1. The Consultative Committee shall consist of such representatives, of the business community and other interest groups from the Member States as the Consultative Committee shall determine. The representatives may be accompanied by such experts and advisors as the Consultative Committee may deem necessary for its effective functioning.
  
2. For the purposes of paragraph 1 of this Article, the composition of the Consultative Committee shall be determined at a first meeting which shall be convened by the Secretary-General for that purpose.

3. The Consultative Committee shall provide a link and facilitate dialogue between the business community and other interest groups and other organs of the Common Market. The Consultative Committee shall:
- (a) be responsible for ensuring that the interests of the business community and other interest groups in the Common Market are taken into consideration by the organs of the Common Market;
  - (b) be responsible for monitoring the implementation of the provisions of Chapters Twenty Three and Twenty Four of this Treaty and make recommendations to the Intergovernmental Committee;
  - (c) consult and receive reports from other interest groups; and
  - (d) take part in the meetings of the Technical Committees and may make recommendations to the Intergovernmental Committee.
4. The Consultative Committee shall meet as often as necessary for the proper discharge of its functions and shall determine its own Rules of Procedure.

## **CHAPTER FIVE**

### **THE COURT OF JUSTICE**

#### **ARTICLE 19**

##### ***Establishment of the Court***

1. The Court of Justice established under Article 7 of this Treaty shall ensure the adherence to law in the interpretation and application of this Treaty.
2. The Court of Justice shall consist of a First Instance Division and an Appellate Division.

#### **ARTICLE 20**

##### ***Composition of the Court***

1. The Court shall be composed of twelve judges appointed by the Authority of whom seven shall be appointed to the First Instance Division and five shall be appointed to the Appellate Division.
2. The Judges of the Court shall be chosen from among persons of impartiality and independence who fulfill the conditions required for the holding of high judicial office in their respective countries of domicile or who are jurists of recognised competence:

Provided that no two or more Judges shall at any time be Nationals of the same Member State.

3. Notwithstanding the provisions of paragraph 1 of this Article, the Authority may, upon the request of the Court, appoint additional Judges.
4. The Authority shall designate one of the Judges of the Appellate Division as the President of the Court responsible for exercising such functions as are set out under this Treaty and the Rules of Court.
5. The Authority shall designate one of the Judges of the First Instance Division as the Principal Judge with such functions as are set out in the Rules of Court.

## **ARTICLE 21**

### ***Tenure of Office and Resignation***

1. The President and Judges shall hold office for a period of five years and shall be eligible for re-appointment for a further period of five years.
2. The President and the Judges shall hold office throughout the term of their respective appointments unless they resign or die or are removed from office in accordance with the provisions of this Treaty.

3. Where the term of office of a Judge comes to an end by effluxion of time or on resignation before a decision or opinion of the Court with respect to a matter which has been argued before the Court of which he was a member is delivered, such Judge shall, only for the purpose of completing that particular matter, continue to sit as a Judge.
4. The President may, at any time, resign his office by giving one year's written notice to the Chairman of the Authority, but his resignation shall not take effect until his successor has been appointed by the Authority and has taken office.
5. A Judge may, at any time, resign his office by letter delivered to the President for transmission to the Chairman of the Authority, and his resignation shall take effect on the date it has been accepted by the Authority.

## **ARTICLE 22**

### ***Removal from Office and Temporary Membership of the Court***

1. The President or a Judge shall not be removed from office except by the Authority for stated misbehaviour or for inability to perform the functions of his office due to infirmity of mind or body or due to any other specified

cause.

2. If a Judge is appointed by the Authority to replace the President or another Judge before the term of office of the President or a Judge expires, the Judge so appointed shall serve in that office for the remainder of the term of the replaced President or Judge.
3. If a Judge is temporarily absent or otherwise unable to carry out his functions, the Authority shall, if such absence or inability to act appears to the Authority to be likely to be of such duration as to cause a significant delay in the work of the Court, appoint a temporary Judge to act in place of the said Judge.
4. If a Judge is directly or indirectly interested in a case before the Court, he shall immediately report the nature of his interest to the President, and, if in his opinion the President considers the Judge's interest in the case prejudicial, he shall make a report to the Authority, and the Authority shall appoint a temporary Judge to act for that case only in place of the interested Judge.
5. If the President is directly or indirectly interested in a case before the Court he shall, if he considers that the nature of his interest is such that it would be prejudicial



for him to take part in that case, make a report to the Authority and the Authority shall appoint a temporary President, chosen in the same manner as the substantive President, to act as President for that case only in place of the substantive President.

## ***ARTICLE 23***

### ***General Jurisdiction of the Court***

1. The Court shall have jurisdiction to adjudicate upon all matters which may be referred to it pursuant to this Treaty.
2. The First Instance Division of the Court shall have jurisdiction to hear and determine at first instance, subject to a right of appeal to the Appellate Division under paragraph 2, any matter brought before the Court in accordance with this Treaty.
3. An appeal shall lie to the Appellate Division on:
  - (a) points of law;
  - (b) grounds of lack of jurisdiction; or
  - (c) procedural irregularity.

## **ARTICLE 24**

### ***Reference by Member States***

1. A Member State which considers that another Member State or the Council has failed to fulfill an obligation under this Treaty or has infringed a provision of this Treaty, may refer the matter to the Court.
2. A Member State may refer for determination by the Court, the legality of any act, regulation, directive or decision of the Council on the grounds that such act, regulation, directive or decision is ultra vires or unlawful or an infringement of the provisions of this Treaty or any rule of law relating to its application or amounts to a misuse or abuse of power.

## **ARTICLE 25**

### ***Reference by the Secretary-General***

1. Where the Secretary-General considers that a Member State has failed to fulfill an obligation under this Treaty or has infringed a provision of this Treaty, he shall submit his findings to the Member State concerned to enable that Member State to submit its observations on the findings.
2. If the Member State concerned does not submit

its observations to the Secretary-General within two months, or if the observations submitted are unsatisfactory, the Secretary-General shall refer the matter to the Bureau of the Council which shall decide whether the matter shall be referred by the Secretary-General to the Court immediately or be referred to the Council.

3. Where a matter has been referred to the Council under the provisions of paragraph 2 of this Article and the Council fails to resolve the matter, the Council shall direct the Secretary-General to refer the matter to the Court.

## **ARTICLE 26**

### ***Reference by Legal and Natural Persons***

Any person who is resident in a Member State may refer for determination by the Court the legality of any act, regulation, directive, or decision of the Council or of a Member State on the grounds that such act, directive, decision or regulation is unlawful or an infringement of the provisions of this Treaty:

Provided that where the matter for determination relates to any act, regulation, directive or decision by a Member State, such person shall not refer

the matter for determination under this Article unless he has first exhausted local remedies in the national courts or tribunals of the Member State.

#### **ARTICLE 27**

#### ***Jurisdiction Over Claims by Common Market Employees and Third Parties Against the Common Market or its Institutions***

1. The Court shall have jurisdiction to hear disputes between the Common Market and its employees that arise out of the application and interpretation of the Staff Rules and Regulations of the Secretariat or the terms and conditions of employment of the employees of the Common Market.
2. The Court shall have jurisdiction to determine claims by any person against the Common Market or its institutions for acts of their servants or employees in the performance of their duties.

#### **ARTICLE 28**

#### ***Jurisdiction under Arbitration Clauses and Special Agreements***

The Court shall have jurisdiction to hear and determine any matter:

- (a) arising from an arbitration clause contained in a contract which confers such jurisdiction to which the Common Market or any of its institutions is a party; and
- (b) arising from a dispute between the Member States regarding this Treaty if the dispute is submitted to it under a special agreement between the Member States concerned.

## **ARTICLE 29**

### ***Jurisdiction of National Courts***

1. Except where the jurisdiction is conferred on the Court by or under this Treaty, disputes to which the Common Market is a party shall not on that ground alone, be excluded from the jurisdiction of national courts.
2. Decisions of the Court on the interpretation of the provisions of this Treaty shall have precedence over decisions of national courts.

## **ARTICLE 30**

### ***National Courts and Preliminary Rulings***

1. Where a question is raised before any court or tribunal of a Member State concerning the application or

interpretation of this Treaty or the validity of the regulations, directives and decisions of the Common Market, such court or tribunal shall, if it considers that a ruling on the question is necessary to enable it to give judgment, request the Court to give a preliminary ruling thereon.

2. Where any question as that referred to in paragraph 1 of this Article is raised in a case pending before a court or tribunal of a Member State against whose judgment there is no judicial remedy under the national law of that Member State, that court or tribunal shall refer the matter to the Court.

### ***ARTICLE 31***

#### ***Judgment of the Court***

1. The Court shall consider and determine every reference made to it pursuant to this Treaty in accordance with the Rules of Court, and shall deliver in public session a reasoned judgment which, subject to the provisions of the said Rules as to review, shall be final and conclusive and not open to appeal:

Provided that, if the Court considers that in the special circumstances of the case it is undesirable that its judgment be delivered in open Court, the

Court may make an order to that effect and deliver its judgment before the parties privately.

2. The Court shall deliver one judgment only in respect of every reference to it, which shall be the judgment of the Court reached in private by majority verdict.
3. An application for revision of a judgment may be made to the Court only if it is based upon the discovery of some fact which by its nature might have had a decisive influence on the judgment if it had been known to the Court at the time the judgment was given, but which fact, at that time, was unknown to both the Court and the party making the application, and which could not, with reasonable diligence, have been discovered by that party before the judgment was made, or on account of some mistake or error on the face of the record.

## **ARTICLE 32**

### ***Advisory Opinions of the Court***

1. The Authority, the Council or a Member State may request the Court to give an advisory opinion regarding questions of law arising from the provisions of this Treaty affecting the Common Market, and the Member States shall in the case of every such request have the right to be represented and take part in the proceedings.

2. A request for an advisory opinion under paragraph 1 of this Article shall be made in writing and shall contain an exact statement of the question upon which an opinion is required and shall be accompanied by all relevant documents likely to be of assistance to the Court.
3. Upon the receipt of the request under paragraph 1 of this Article, the Registrar shall forthwith give notice thereof, to all the Member States, and shall notify them that the Court shall be prepared to accept, within a time fixed by the President, written submissions, or to hear oral submissions relating to the question.
4. In the exercise of its advisory function, the Court shall be governed by the provisions of this Treaty and the Rules of Court relating to references of disputes to the extent that the Court considers appropriate.

### ***ARTICLE 33***

#### ***Representation before the Court***

Every party to a reference before the Court shall be represented by Counsel appointed by that party.



## **ARTICLE 34**

### ***Acceptance of Court Judgments***

1. Any dispute concerning the interpretation or application of this Treaty or any of the matters referred to the Court pursuant to this Chapter shall not be subjected to any method of settlement other than those provided for in this Treaty.
2. Where a dispute has been referred to the Council or the Court, the Member States shall refrain from any action which might be detrimental to the resolution of the dispute or might aggravate the dispute.
3. A Member State or the Council shall take, without delay, the measures required to implement a judgment of the Court.
4. The Court may prescribe such sanctions as it shall consider necessary to be imposed against a party who defaults in implementing the decisions of the Court.

## **ARTICLE 35**

### ***Interim Orders***

The Court may, in any case referred to it, make any interim order or issue any directions which it considers necessary or

desirable. Interim orders and other directions issued by the Court shall have the same effect ad interim as decisions of the Court.

**ARTICLE 36**  
***Intervention***

A Member State, the Secretary-General or a resident of a Member State who is not a party to a case before the Court may with leave of the Court, intervene in that case, but the submissions of the intervening party shall be limited to evidence supporting or opposing the arguments of a party to the case.

**ARTICLE 37**  
***Proceedings***

1. The proceedings before the Court shall be either written or oral.
2. Records of each hearing shall be signed by the President and shall be kept and maintained by the Registrar.

**ARTICLE 38**  
***Rules of Court***

1. The Court shall make Rules of Court which shall, subject

to the provisions of this Treaty, regulate the detailed conduct of business of the Court.

2. The Rules of Court shall become effective upon approval by the Council.

### **ARTICLE 39**

#### ***Immunity of the President and Judges***

The President and the Judges shall be immune from legal action for any act or omission committed in the discharge of their functions under this Treaty.

### **ARTICLE 40**

#### ***Execution of Judgment***

The execution of a judgment of the Court which imposes a pecuniary obligation on a person shall be governed by the rules of civil procedure in force in the Member State in which execution is to take place. The order for execution shall be appended to the judgment of the Court which shall require only the verification of the authenticity of the judgment by the Registrar whereupon, the party in whose favour execution is to take place, may proceed to execution in accordance with the rules of civil procedure in force in that Member State.

## **ARTICLE 41**

### ***Registrar and Other Staff***

1. The Council shall appoint a Registrar from among nationals of the Member States qualified to hold high judicial office in their respective States.
2. The Court shall employ such other staff as may be required to enable it to perform its functions and who shall hold office in the service of the Court.
3. The terms and conditions of service of the Registrar and other staff shall, subject to this Treaty, be determined by the Council on the recommendation of the Court.
4. Subject to the overall supervision of the President, the Registrar shall be responsible for the day to day administration of the business of the Court. The Registrar shall also carry out the duties imposed upon him by this Treaty and the Rules of Court.

## **ARTICLE 42**

### ***Budget***

1. The budget of the Court shall be borne by the Member States.

2. The formula for contributions to the budget for the Court shall be the formula applicable to the determination of contributions by the Member States to the budget of the Secretariat.
3. The President shall present the budget of the Court to the Council for approval, through the Intergovernmental Committee.
4. The Council shall determine the payment and currencies of contributions by the Member States to the budget of the Court.

#### **ARTICLE 43**

##### ***Official Languages of the Court***

The official languages of the Court shall be English, French and Portuguese.

#### **ARTICLE 44**

##### ***Seat of the Court***

The Seat of the Court shall be determined by the Authority.

## **CHAPTER SIX**

### **CO-OPERATION IN TRADE LIBERALISATION AND DEVELOPMENT**

#### ***ARTICLE 45***

#### ***Scope of Co-operation in Trade Liberalisation and Development***

There shall be progressively established in the course of a transitional period of ten years from the entry into force of this Treaty, a Customs Union among the Member States. Within the Customs Union, customs duties and other charges of equivalent effect imposed on imports shall be eliminated. Non-tariff barriers including quantitative or like restrictions or prohibitions and administrative obstacles to trade among the Member States shall also be removed. Furthermore, a common external tariff in respect of all goods imported into the Member States from third countries shall be established and maintained.

#### ***ARTICLE 46***

#### ***Customs Duties***

1. The Member States shall reduce and ultimately eliminate by the year 2000, in accordance with the programme adopted by the PTA Authority, customs duties and other charges of equivalent effect imposed on or in

connection with the importation of goods which are eligible for Common Market tariff treatment.

2. Notwithstanding the provisions of paragraph 1 of this Article, where, by virtue of obligations under an existing contract entered into by a Member State and such a Member State is unable to comply with the provisions of this Article, the Member State shall, upon the entry into force of this Treaty, notify the Council of this fact. The Member State shall, however, not renew or extend such contract at its expiry.
3. Within the period specified in paragraph 1 of this Article, the Member States shall not impose any new duties and taxes or increase existing ones in respect of products traded within the Common Market and shall transmit to the Secretariat all information on import duties for study by the relevant institutions of the Common Market.
4. The Authority may at any time, on the recommendation of the Council, decide that any import duties shall be reduced more rapidly or eliminated earlier than is scheduled in paragraph 1 of this Article.

## **ARTICLE 47**

### ***Common External Tariff***

The Member States agree to the gradual establishment of a common external tariff in respect of all goods imported into the Member States from third countries within a period of ten years from the entry into force of this Treaty and in accordance with a schedule to be adopted by the Council.

## **ARTICLE 48**

### ***Rules of Origin***

1. For the purposes of this Treaty, goods shall be accepted as eligible for Common Market tariff treatment if they originate in the Member States.
2. The definition of products originating in the Member States shall be as provided for in a Protocol on the Rules of Origin to be concluded by the Member States.
3. The Intergovernmental Committee shall, from time to time, examine the rules referred to in paragraph 2 of this Article and propose amendments thereto to the Council.



## **ARTICLE 49**

### ***Elimination of Non-tariff Barriers on Common Market Goods***

1. Except as may be provided for or permitted by this Treaty, each of the Member States undertakes to remove immediately upon the entry into force of this Treaty, all the then existing non-tariff barriers to the import into that Member State of goods originating in the other Member States and thereafter refrain from imposing any further restrictions or prohibitions.
2. For the purposes of protecting an infant industry, a Member State may, provided that it has taken all reasonable steps to overcome the difficulties related to such infant industry, impose for the purposes only of protecting such industry for a specified period to be determined by Council, quantitative or like restrictions or prohibitions on similar goods originating from the other Member States:

Provided that the measures are applied on a non-discriminatory basis and that the Member State shall furnish to Council proof that it has taken all reasonable steps to overcome the difficulties faced by such an infant industry.

3. The Council shall adopt criteria for determining that an industry is an infant industry.
4. The Secretariat shall keep under constant review the operation of any quantitative or like restriction or prohibitions imposed under the provisions of paragraph 2 of this Article and deliver an opinion to the Member State concerned and report the matter to the Council with its recommendations.
5. Notwithstanding the provisions of paragraph 1 of this Article, if a Member State encounters balance-of-payments difficulties arising from the application of the provisions of this Chapter, that Member State may, provided that it has taken all reasonable steps to overcome the difficulties, impose for the purpose only of overcoming such difficulties for a specified period to be determined by the Council, quantitative or the like restrictions or prohibitions, on goods originating from the other Member States.

## ***ARTICLE 50***

### ***Security and Other Restrictions to Trade***

1. A Member State may, after having given notice to the Secretary-General of its intention to do so, introduce or continue or execute restrictions or prohibitions affecting:

- (a) the application of security laws and regulations;
  - (b) the control of arms, ammunition and other war equipment and military items;
  - (c) the protection of human, animal or plant health or life, or the protection of public morality;
  - (d) the transfer of gold, silver and precious and semi-precious stones;
  - (e) the protection of any item deemed to be of national importance provided that the Member State concerned shall furnish proof to the Council that the item is of national importance; and
  - (f) the maintenance of food security in the event of war and famine.
2. A Member State shall not so exercise the right to introduce or continue to execute the restrictions or prohibitions conferred by this Article as to stultify the free movement of goods envisaged in this Chapter.
3. Security and other restrictions imposed in accordance with paragraph 1 of this Article shall not extend for more than is necessary to achieve security aims and other risks

intended to be eliminated and shall be applied on the basis of non-discrimination.

## **ARTICLE 51**

### ***Dumping***

1. The Member States recognise that dumping, by which products of a Member State are introduced into the commerce of another Member State at less than the normal value of the products, is to be prohibited if it causes or threatens material injury to an established industry in the territory of the other Member State or materially retards the establishment of a domestic industry.
2. For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing Member State at less than its normal value, if the price of the product exported from one Member State to another:
  - (a) is less than the comparable price in the ordinary course of trade, for the like product when destined for consumption in the exporting Member State; or
  - (b) in the absence of such domestic prices, is less than either:

- (i) the highest comparable price for the like product for export to any third country in the ordinary course of trade; or
- (ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit:

Provided that due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation and for other differences affecting price comparability.

3. A Member State may, for the purposes of offsetting or preventing dumping, and subject to the provision of paragraph 4 of this Article, levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product. For the purposes of this Article, the margin of dumping is the price difference determined in accordance with the provisions of paragraph 2 (b) (ii) of this Article.
4. No Member State shall levy any anti-dumping duty on the importation of any product of another Member State unless it is determined that the effect of the alleged dumping is such as to cause or threaten material injury to an established domestic industry or such as to retard

materially the establishment of a domestic industry.

5. Dumping from a third country into a Member State shall be prohibited and any affected Member State may, pursuant to the provisions of paragraph 3 of this Article, levy an anti-dumping duty on any dumped products.
6. Proceedings initiated pursuant to the provisions of this Article shall be carried out in accordance with anti-dumping regulations made by the Council.

## **ARTICLE 52**

### ***Subsidies Granted by Member States***

1. Except as otherwise provided in this Treaty, any subsidy granted by a Member State or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between the Member States, be incompatible with the Common Market.
2. A Member State may, for the purposes of offsetting the effects of subsidies and subject to regulations made by the Council, levy countervailing duty on any product of any Member State imported into another Member State equal to the amount of the estimated subsidy

determined to have been granted directly or indirectly, on the manufacture, production or export of such product in the country of origin or exportation.

3. Except as otherwise provided in this Treaty, any subsidy granted by a third country or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between the Member States and the third country, be incompatible with the Common Market.
4. A Member State may, for the purposes of offsetting the effects of subsidies and subject to regulations made by the Council, levy a countervailing duty on any product of any third country imported into another Member State equal to the amount of the estimated subsidy determined to have been granted directly or indirectly, on the manufacture, production or export of such product in the country of origin or exportation.

### **ARTICLE 53**

#### ***Exceptions to Levying of Countervailing Duty***

No Member State shall levy a countervailing duty on the importation of any product of the territory of another Member State unless it determines that the effect of the

subsidisation is such as to cause or threaten material injury to an established domestic industry or is such as to materially retard the establishment of a domestic industry.

#### ***ARTICLE 54***

#### ***Co-operation in the Investigation of Dumping and Subsidies***

1. The Member States shall co-operate in the detection and investigation of dumping and subsidy practices and in imposing agreed measures to curb such practises.
2. Where there is evidence of dumping or export of subsidised goods by a third country to the territory of a Member State that threatens or distorts competition in the Common Market, the affected Member States may request the Member State in whose territory the goods are being dumped or exported to impose anti-dumping duties or countervailing duties on those goods from the third country.

#### ***ARTICLE 55***

#### ***Competition***

1. The Member States agree that any practice which negates the objective of free and liberalised trade shall be prohibited. To this end, the Member States agree



to prohibit any agreement between undertakings or concerted practice which has as its objective or effect the prevention, restriction or distortion of competition within the Common Market.

2. The Council may declare the provisions of paragraph 1 of this Article inapplicable in the case of:
  - (a) any agreement or category thereof between undertakings;
  - (b) any decision by association of undertakings;
  - (c) any concerted practice or category thereof;

which improves production or distribution of goods or promotes technical or economic progress and has the effect of enabling consumers a fair share of the benefits:

Provided that the agreement, decision or practice does not impose on the undertaking restrictions inconsistent with the attainment of the objectives of this Treaty or has the effect of eliminating competition.

3. The Council shall make regulations to regulate competition within the Member States.

## **ARTICLE 56**

### ***Most Favoured Nation Treatment***

1. The Member States shall accord to one another the most favoured nation treatment.
2. Nothing in this Treaty shall prevent a Member State from maintaining or entering into new preferential agreements with third countries provided such agreements do not impede or frustrate the objectives of this Treaty and that any advantage, concession, privilege and favour granted to a third country under such agreements are extended to the Member States on a reciprocal basis.
3. Nothing in this Treaty shall prevent two or more Member States from entering into new preferential agreements among themselves which aim at achieving the objectives of the Common Market, provided that any preferential treatment accorded under such agreements is extended to the other Member States on a reciprocal and non-discriminatory basis.
4. Copies of agreements concluded pursuant to paragraph 2 of this Article shall be transmitted to the Secretary-General by the Member States parties to them.

## **ARTICLE 57**

### ***National Treatment***

The Member States shall refrain from enacting legislation or applying administrative measures which directly or indirectly discriminate against the same or like products of other Member States.

## **ARTICLE 58**

### ***Customs Administration***

The Member States shall apply the provisions of Chapter Nine of this Treaty in order to simplify, harmonize and standardize their customs regulations, procedures and documents to ensure the effective application of the provisions of this Chapter and to reduce the costs of and facilitate the speedy movement of goods and services across their frontiers.

## **ARTICLE 59**

### ***Drawback***

The Member States may, at the end of the ten years specified in Article 45 of this Treaty, refuse to accept as eligible for Common Market tariff treatment goods in relation to which drawback is claimed or made use of in connection with their exportation from the Member States in the territory of which the goods have undergone the last process of production.

## **ARTICLE 60**

### ***Remedy for Loss of Revenue***

1. The Council shall, on the recommendation of the Intergovernmental Committee, determine what remedial steps shall be taken with respect to a Member State which has suffered substantial loss of revenue from import duties as a result of the application of this Chapter.
2. For the purposes of paragraph 1 of this Article, the Member States shall conclude a Protocol which shall, inter-alia, determine the machinery and formula to be used in carrying out the remedial steps with respect to a Member State which has suffered substantial loss of revenue from import duties as a result of the application of this Chapter.

## **ARTICLE 61**

### ***Safeguard Clause***

1. In the event of serious disturbances occurring in the economy of a Member State following the application of the provisions of this Chapter, the Member State concerned shall, after informing the Secretary-General and the other Member States, take necessary safeguard

- measures.
2. Safeguard measures taken under the provisions of paragraph 1 of this Article, shall remain in force for a period of one year and may be extended by the decision of the Council provided that the Member State concerned shall furnish to the Council proof that it has taken the necessary and reasonable steps to overcome or correct imbalances for which safeguard measures are being applied and that the measures applied are on the basis of non-discrimination.
  3. The Council shall examine the method and effect of the application of existing safeguard measures and take a decision thereon.

## **ARTICLE 62**

### ***Trade Promotion***

The Member States shall adopt measures designed to promote trade within the Common Market. In this regard, Member States shall:

- (a) ensure the development and dissemination of market intelligence and trade information with a view to providing the widest possible knowledge-base of intra-Common Market trade opportunities and encourage the development of exports and

markets to meet the public and private procurement needs;

- (b) actively encourage the undertaking of supply and demand surveys, the organisation of buyers and sellers meetings and other multi-country contact promotion events in order to further identify and exploit the potential of intra-Common Market trade;
- (c) undertake the removal of measures that have been identified during the market surveys, which restrict the flow of goods and services to their identified markets, including the establishment of agency offices, trade missions, free movement of samples and advertising;
- (d) identify the possibilities of product adaptation and diversification to broaden their respective export base with a view to expanding or introducing products to new markets in the Member States;
- (e) review and initiate programmes for the rationalisation and improvement of import operations and techniques to ensure that savings will accrue from such rationalisation of purchase operations;
- (f) seek to ensure that donor-funded import

procurement programmes allow as far as possible for the purchase of goods from other Member States;

- (g) organise frequent general and specialised trade fairs;
- (h) improve the performance of small-and-medium scale enterprises for export development such as marketing, business management and the provision of credits;
- (i) promote export-oriented joint ventures, by encouraging and facilitating enterprise-to-enterprise contacts;
- (j) support privatisation endeavours through the introduction of trade services or improvement of the trade promotion infrastructure to meet the special requirements of privatised companies; and
- (k) encourage the improvement of services relating to trade such as export financing, quality control and standardisation, packaging and specification aspects, warehousing and storage operations, and others that will increase the flow of goods within the Member States.

## **CHAPTER SEVEN**

### **COMMON MARKET CUSTOMS CO-OPERATION**

#### **ARTICLE 63**

#### ***Scope of Customs Co-operation***

1. The provisions of this Chapter shall apply to any activity being undertaken in co-operation among the Member States in the field of customs management and the organization of customs and shall include in particular:
  - (a) matters concerning the application of Common Market tariff treatment for their exports and imports;
  - (b) the simplification and harmonization of trade documents, customs regulations and procedures with particular reference to such matters as the valuation of goods, tariff classification, temporary admission, warehousing, re-exports, frontier trade and export drawback;
  - (c) the prevention, investigation and suppression of customs offences;
  - (d) national and joint institutional arrangements; and



- (e) training facilities and programmes for customs officials.
2. The provisions of paragraph 1 of this Article shall not affect the gradual establishment of a common external tariff in respect of goods imported into the Member States from third countries.

## **ARTICLE 64**

### ***Common Market Tariff Treatment***

1. The Member States undertake to co-operate in the implementation of the provisions of this Treaty concerning the treatment of goods eligible for Common Market tariff treatment and more particularly those relating to:
- (a) the evolution of uniform national customs legislation and procedures;
  - (b) the reduction and eventual elimination of import duties and non-tariff barriers on trade among themselves;
  - (c) the establishment of a common external tariff; and
  - (d) any other aspect of customs law and practice

concerning Common Market tariff treatment.

2. For the purposes of paragraph 1 of this Article, the Member States undertake where they have not already done so, to:
  - (a) adopt uniform, comprehensive and systematic tariff classification of goods with a common and specific basis of description and interpretation in accordance with internationally accepted standards;
  - (b) adopt a standard system of valuation of goods based on principles of equity, uniformity and simplicity of application in accordance with internationally accepted standards and guidelines;
  - (c) agree on common terms and conditions governing temporary admission procedures including the list or range of goods to be covered and the nature of manufacturing or processing to be authorized;
  - (d) implement the customs requirements for the re-exportation of goods provided for in this Treaty;
  - (e) implement the customs requirements for the transit of goods as prescribed in this Treaty;

- (f) harmonize and simplify customs formalities and documents in accordance with the provisions of this Treaty; and
  - (g) adopt common procedures for the establishment and operation of free zones, free ports, customs supervised factories and export drawbacks.
3. The Member States undertake to harmonize their customs and statistical nomenclature and standardize their foreign trade statistics to ensure comparability and reliability of the relevant information.

## **ARTICLE 65**

### ***Communication of Customs Information***

The Member States shall exchange information on matters relating to customs and more particularly to the following:

- (a) changes in customs legislation, procedures, duties and commodities subject to import or export restrictions; and
- (b) information relating to the prevention, investigation and suppression of customs offences as provided for in Article 66 of this Treaty.

## **ARTICLE 66**

### ***Prevention, Investigation and Suppression of Customs Offences***

1. The Member States undertake to co-operate in the prevention, investigation and suppression of customs offences.
  
2. For the purposes of paragraph 1 of this Article, the Member States undertake to:
  - (a) exchange lists of goods and publications the importation of which is prohibited in their respective territories;
  
  - (b) prohibit the exportation of goods and publications referred to in sub-paragraph (a) of this paragraph to each other's customs territories;
  
  - (c) exchange among themselves lists of goods known to be the subject of illicit traffic between their customs territories and maintain special surveillance over the movement of such goods;
  
  - (d) consult each other on the establishment of common border posts and take such steps as may be deemed appropriate to ensure that goods exported or

imported through common frontiers pass through the competent and recognized Customs Offices and along approved routes;

- (e) exchange among themselves lists of Customs Offices located along common frontiers, details of the powers of such offices, their working hours and any changes in these particulars for the effective operation of the provisions of sub-paragraph (d) of this paragraph;
- (f) endeavour to correlate the powers and harmonise the working hours of their corresponding Customs Offices referred to in sub-paragraph (e) of this paragraph; and
- (g) maintain special surveillance over:
  - (i) the entry into, sojourn in, and exit from their customs territories of particular persons reasonably suspected by a Member State of being involved in activities that are contrary to the customs law of any Member State;
  - (ii) the movement of particular goods suspected by any Member State to be the subject of illicit traffic towards the importing Member State;

- (iii) particular places where stocks of goods have been built up giving reason for suspicion that they may be used for illicit importation into any Member States; and
- (iv) particular vehicles, ships, aircraft, or other means of transport suspected of being used to commit customs offences in any Member State.

3. The Member States shall exchange:

- (a) as a matter of course and without delay, any information regarding:
  - (i) operations which it is suspected will give rise to customs offences in any Member State;
  - (ii) persons, vehicles, ships, aircraft and other means of transport reasonably suspected of being engaged in activities that may be in violation of the customs laws of any Member State;
  - (iii) new techniques of committing customs offences; and
  - (iv) goods known to be the subject of illicit traffic;

- (b) on the request from a Member State and as promptly as possible, any available information:
  - (i) contained in customs documents relating to such exchanges of goods between countries as are suspected of being in violation of the customs law of the requesting Member State;
  - (ii) enabling false declarations to be detected, in particular with respect to dutiable value; and
  - (iii) concerning certificates of origin, invoices or other documents, known to be, or suspected of being, false; and
- (c) on the request and if appropriate in the form of official documents from a Member State, information concerning the following matters:
  - (i) the authenticity of any official document produced in support of goods declaration made to customs authorities of the requesting Member State;
  - (ii) whether goods which were granted preferential treatment on departure from the territory of the requesting Member State, because they were

declared as intended for home use in the other Member State, have been duly cleared for home use in that State;

(iii) whether goods imported into the territory of the requesting Member State have been lawfully exported from that of the exporting Member States;

(iv) whether goods exported from the territory of the requesting Member State have been lawfully imported into that of the importing Member States, and in accordance with the importer's declaration; and

(v) special documents which may be issued by the customs authorities of the exporting Member State for surrender to the customs authorities of the importing Member State in order that they may certify that the goods were lawfully exported.

4. Each Member State undertakes, whenever expressly requested by another Member State, to:

(a) make enquiries, record statements and obtain evidence concerning a customs offence under



investigation in the requesting Member State and transmit the results of the enquiry as well as any documents or other evidence, to the requesting Member State; and

- (b) notify the competent authorities of the requesting Member State of actions and decisions taken by the competent authorities of the Member State where the customs offence took place in accordance with the law in force in that Member State.

## **CHAPTER EIGHT**

### **RE-EXPORTATION OF GOODS**

#### ***ARTICLE 67***

##### ***General Provisions***

1. The Member States agree that re-exports bound for a receiving State shall be exempted from the payment of import or export duties in the importing State:

Provided that this paragraph shall not preclude the levying of normal administrative and service charges applicable to the import or export of similar goods in accordance with their customs laws and regulations.

2. The Member States agree that:
  - (a) re-exports imported into any Member State shall be subjected to the same import duties as are applicable to similar goods imported directly into their territories from third countries; and
  - (b) there shall be no discrimination in the treatment of re-exports traded among the Member States.

3. Notwithstanding the provisions of paragraph 2 of this Article, the Member States agree that re-exported goods which qualify as originating in a Member State under the provisions of this Treaty shall be treated as if they were directly imported by the receiving State from the Member State where they originate. Such goods shall be accorded appropriate Common Market tariff treatment:

Provided that the re-exporter thereof produces documentary evidence certified by the authorities designated for that purpose, to the effect that the goods originated in the Member State from which they were originally imported.

4. The Member States undertake to facilitate the re-export of goods within the Common Market in accordance with the provisions of the Protocol on Transit Trade and Transit Facilities.

## **ARTICLE 68**

### ***Refund and Remission of Duties and Taxes***

1. Where import duties on goods have been charged and collected by the importing State, that State shall refund all such duties less import subsidies, if any, to the re-exporter of those goods in its territory when the goods are re-exported to another Member State in an unused

condition:

Provided that the re-export is made within twelve months from the date on which the goods are received in the importing State.

2. Where imported goods have been admitted with suspended customs duties for warehousing, transit or trans-shipment under customs bond without payment of customs duties, no import or export duties shall be charged in respect of such goods when they are subsequently re-exported by the importing State.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article and of Article 59 of this Treaty, the importing State shall, in accordance with its customs laws and regulations be free to withhold or charge part of the duties collected or collectable where the goods have been re-packed, assembled, preserved, blended or otherwise processed in the importing State:

Provided that no duties shall be refunded where the processed goods qualify as originating in the importing State under the provisions of this Treaty.

## **CHAPTER NINE**

### **SIMPLIFICATION AND HARMONISATION OF TRADE DOCUMENTS AND PROCEDURES**

#### **ARTICLE 69**

#### ***Trade Documents and Procedures***

The Member States agree to simplify and harmonize their trade documents and procedures in accordance with the provisions of this Chapter so as to facilitate trade in goods and services within the Common Market by:

- (a) reducing to a minimum the number of trade documents and copies thereof;
- (b) reducing to a minimum the number of national bodies required to handle documents referred to in sub-paragraph (a) of this paragraph; and
- (c) harmonizing the nature of the information to be contained in documents referred to in sub-paragraph (a) of this paragraph.

## **ARTICLE 70**

### ***Trade Facilitation***

The Member States undertake to initiate trade facilitation programmes aimed at:

- (a) reducing the cost of documents and the volume of paper work required in respect of trade among the Member States;
- (b) ensuring that the nature and volume of information required in respect of trade within the Common Market does not adversely affect the economic development of, or trade among the Member States;
- (c) adopting common standards of trade procedures within the Common Market where international requirements do not suit the conditions prevailing among the Member States;
- (d) ensuring adequate co-ordination between trade and transport facilitation within the Common Market;
- (e) keeping under review the procedures adopted in international trade and transport with a view to simplifying and adopting them for use by the Member States;

- (f) collecting and disseminating information on trade facilitation and documents;
- (g) promoting the development and adoption of common solutions to problems in trade facilitation among the Member States; and
- (h) initiating or promoting the establishment of joint programmes for the training of personnel engaged in trade facilitation among the Member States.

## **ARTICLE 71**

### ***Standardisation of Trade Documents and Information***

1. The Member States undertake, where appropriate, to design and standardise their trade documents and the information required to be contained in such documents in accordance with internationally accepted standards, practices and guidelines, and taking into account their possible use in computer and other automatic data programming systems.
2. The simplification, harmonisation and standardisation of customs regulations, documents and procedures and their computerisation will be facilitated by the regional Automated System for Customs Data Centre at the Headquarters of the Common Market.

3. For the purpose of implementing the provisions of this Chapter, the Member States agree to establish national trade facilitation bodies.



## **CHAPTER TEN**

### **MONETARY AND FINANCIAL CO-OPERATION**

#### **ARTICLE 72**

#### ***Scope of Co-operation***

The Member States undertake to co-operate in monetary and financial matters in accordance with the approved PTA monetary harmonisation programme in order to establish monetary stability within the Common Market aimed at facilitating economic integration efforts and the attainment of sustainable economic development of the Common Market by:

- (a) strengthening the clearing and payments system in order to promote the use of national currencies in the settlement of payments for all transactions among the Member States thereby economising on the use of foreign currency;
- (b) taking measures that would facilitate trade and capital movement within the Common Market;
- (c) the realisation of greater harmony in economic policies, particularly in fiscal and monetary policies, the management of the foreign sector and in the

development policies of the Member States;

(d) the integration of the financial structures of the Member States; and

(e) the mobilisation of financial resources for the expansion of trade and development projects and programmes.

### **ARTICLE 73**

#### ***Settlement of Payments***

For the purposes of sub-paragraph (a) of Article 72 of this Treaty, the Member States undertake, until a common central bank is established, to settle all payments in respect of all transactions in goods and services conducted within the Common Market through the Clearing House.

### **ARTICLE 74**

#### ***Unit of Account***

1. There shall be a unit of account of the Common Market to be known as the Eastern and Southern Africa Currency Unit (ESACU) whose value shall be equal to one Special Drawing Right (SDR) of the International Monetary Fund or any other unit of account that may be determined by the Council from time to time on the recommendation

of the Committee of Governors of Central Banks.

2. Each monetary authority shall communicate to the Clearing House the official exchange rate of its currency against its intervention currency or reference currency as the case may be.
3. Any change in the official exchange rate of the currency of a Member State shall be notified immediately by the monetary authority to the Clearing House.
4. All books of account of the Common Market and all monetary instruments issued by the Common Market shall be denominated in the unit of account of the Common Market.

## **ARTICLE 75**

### ***Establishment of a Payments Union***

1. There shall be established a Payments Union among the Member States.
2. The Council shall adopt measures which would be required to be implemented in order to establish the Payments Union. For this purpose, the Member States agree to set up a reserve fund for the provision of assistance to the Member States which may experience

difficulties regarding the settlement of their net debit balances in the Clearing House and general balance of payments.

## **ARTICLE 76**

### ***Monetary and Fiscal Policy Harmonisation***

1. The Member States undertake to adopt collective policy measures in accordance with the monetary harmonisation programme which is designed to achieve a harmonised monetary and fiscal system in the Common Market.
  
2. For the purposes of paragraph 1 of this Article, the Member States agree to:
  - (a) remove all exchange restrictions on imports and exports within the Common Market;
  
  - (b) make necessary adjustments in their exchange rates towards free market rates in order to improve their balance of payments positions and enhance the level of their international reserves;
  
  - (c) adjust their fiscal policies and domestic credit to the government and private sector designed to ensure monetary stability and the achievement of sustained

economic growth;

- (d) liberalise their financial sectors by freeing and deregulating interest rates or their equivalent with a view to achieving positive real interest rates or their equivalent in order to promote savings for investment and to enhance competition and efficiency in the financial system; and
- (e) harmonise their tax policies with a view to removing tax distortions affecting commodity and factor movements in order to bring about a more efficient allocation of resources within the Common Market.

## **ARTICLE 77**

### ***Establishment of Currency Convertibility***

1. The Member States undertake to establish, at a time to be determined by the Council, currency convertibility which shall make their currencies convertible into one another.
2. For the purposes of paragraph 1 of this Article, the

Member States shall abolish all restrictions on current transactions.

#### **ARTICLE 78**

##### ***Formation of an Exchange Rate Union***

1. The Member States undertake to establish, at a time to be determined by the Council, an Exchange Rate Union.
2. The Member States agree to the immutable fixing of the exchange rates of their currencies within a band to be prescribed by the Council.

#### **ARTICLE 79**

##### ***Regional Macro-economic Co-ordination***

1. The Member States undertake to co-ordinate their macro-economic policies and economic reform programmes with a view to promoting the economic and social balance of the Common Market and to develop a framework for macro-economic planning and programming.
2. The Member States undertake to evolve policies designed to improve the resource and production base of the economically weaker Member States in order to achieve balanced development within the Common

Market.

## **ARTICLE 80**

### ***Banking and Capital Market Development***

The Member States undertake to implement a region-wide capital market development programme to be determined by the Council and shall create a conducive environment for the movement of capital. To this end Member States shall:

- (a) take steps to achieve wider monetarization of the region's economies under a liberalised market economy;
- (b) establish national stock exchanges and an association of national stock exchanges to enable objectives to be pursued in a concerted and coordinated manner including promotional activities, training, standardisation and harmonisation of operational rules and regulations;
- (c) establish a Common Market rating system of listed companies and an index of trading performance to facilitate the negotiation and sale of shares within the Common Market and also external to the Common Market;

- (d) develop a region-wide network of national capital markets, with the purpose of facilitating the flow of information on national stock exchanges and their functioning, listed companies, availability of stocks, bonds, securities, treasury bills, notes, and other monetary instruments for the cross-border marketing of such instruments; and
- (e) ensure adherence by their appropriate national authorities to harmonised stock trading systems, promotion of monetary instruments, and permission for residents of the Member States to acquire and negotiate monetary instruments.

## **ARTICLE 81**

### ***Capital Movement***

The Member States shall, permit the free movement of capital within the Common Market and integrate their financial structures. In this regard, the Member States shall:

- (a) ensure the unimpeded flow of capital within the Common Market through the removal of controls on the transfer of capital among the Member States in accordance with a timetable to be determined by the Council;



- (b) ensure that the citizens of and persons resident in the Member States are allowed to acquire stocks, shares and other securities or to invest in enterprises in the territories of the other Member States; and
- (c) encourage cross border trade in government securities such as treasury bills, development and loan stocks within the Common Market.

## **ARTICLE 82**

### ***Joint Project Financing***

1. The Member States undertake to co-operate in financing projects jointly in each other's territory, especially those that facilitate regional integration.
2. The Member States undertake to co-operate in the mobilisation of foreign capital for the financing of national and regional projects.

## **ARTICLE 83**

### ***Safeguard Measures***

The Council may approve measures designed to remedy any adverse effects a Member State may experience by reason of the implementation of the provisions of this Chapter, provided that such a Member State shall furnish to the Council, proof that it has taken all reasonable steps

to overcome the difficulties, and that such measures are applied on a non-discriminatory basis.

## **CHAPTER ELEVEN**

### **CO-OPERATION IN THE DEVELOPMENT OF TRANSPORT AND COMMUNICATIONS**

#### ***ARTICLE 84***

#### ***Common Transport and Communication Policies***

The Member States undertake to evolve coordinated and complementary transport and communications policies, to improve and expand the existing links and establish new ones as a means of furthering the physical cohesion of the Member States, so as to facilitate movement of inter-State traffic and to promote greater movement of persons, goods and services within the Common Market. To this end the Member States shall take all necessary steps to:

- (a) maintain, upgrade, and rehabilitate the roads, railways, airports and harbours in their territories;
- (b) review and redesign their intermodal transport systems and develop new inter-territorial routes of the Common Market to link and to cater for the types of goods and services produced in the Member States;
- (c) maintain, expand and upgrade communications

and meteorological facilities that would enhance and improve contacts between persons and businessmen in the Member States and promote the full exploitation of the market and investment opportunities created by the Common Market;

- (d) grant special treatment to landlocked and island Member States in respect of the application of the provisions of this Chapter; and
- (e) provide security and protection to transport systems to ensure the smooth movement of goods and persons within the Common Market.

## **ARTICLE 85**

### ***Roads and Road Transport***

The Member States shall:

- (a) take measures to ratify or accede to international Conventions on Road Traffic and Road Signs and Signals, and take such steps as may be necessary to implement these Conventions;
- (b) harmonize the provisions of their laws concerning the equipment for and markings of vehicles used for inter-State transport within the Common Market;

- (c) adopt common standards and regulations for the issuance of driving licences;
- (d) harmonize and simplify formalities and documents required for the vehicles and cargo used in inter-State transport within the Common Market;
- (e) adopt minimum requirements for the insurance of goods and vehicles;
- (f) adopt common regulations governing speed limits on urban roads and highways;
- (g) adopt common regulations prescribing minimum safety requirements for the transport of dangerous substances;
- (h) establish common measures for the facilitation of road transit traffic;
- (i) harmonize rules and regulations concerning special transport requiring escort;
- (j) adopt common rules and regulations governing the dimensions, technical requirements, gross weight and load per axle of vehicles used in inter-State trunk roads within the Common Market;

- (k) construct inter-State trunk roads linking the Member States to common standards of design and maintain existing road networks to such standards as will enable the carriers of other Member States to operate to and from their territories in a reasonably efficient manner;
- (l) maintain, rehabilitate, upgrade and reconstruct the inter-State trunk road network;
- (m) ensure that inter-State roads once rehabilitated will not disintegrate and for this purpose shall make adequate provisions for funds and maintenance personnel;
- (n) adopt a coordinated approach in the implementation of inter-State trunk road projects;
- (o) agree on common policies for the manufacture and the maintenance of road transport equipment;
- (p) establish common road design and construction standards for the inter-State trunk roads that would promote the use as much as possible of local materials and resources;
- (q) adopt common procedures for the harmonisation of

road transit charges;

- (r) agree on measures for the gradual reduction and eventual elimination of all non-physical barriers to road transport within the Common Market;
- (s) ensure that common carriers from other Member States have the same opportunities and facilities as common carriers in their territories in the undertaking of inter-State transport operations;
- (t) ensure, as far as practicable, that transport rates of common carriers applicable within the Member States for inter-State transport of passengers and goods to and from other Member States shall not be less favourable than similar transport rates applicable within their own territories for similar transport;
- (u) ensure that the treatment of motor transport operators engaged in inter-State transport within the Common Market from other Member States is not less favourable than that accorded to the operators of similar transport from their own territories; and
- (v) make road transport efficient and cost effective by promoting competition and introducing regulatory framework to facilitate the road haulage industry

operations.

## **ARTICLE 86**

### ***Railways and Rail Transport***

1. The Member States agree to the establishment of an efficient and coordinated railway services which would interlink Member States within the Common Market, the connection of different railway gauges and the construction of required additional railway links.
  
2. The Member States in whose territories railways are operated shall, in particular:
  - (a) adopt common policies for the development of railways and railway transport in the Common Market;
  
  - (b) undertake to make their railways more efficient and competitive through, inter-alia, autonomous management;
  
  - (c) adopt common safety rules, regulations and requirements with regard to signs, signals, rolling stock and the transport of dangerous substances;
  
  - (d) harmonize their legal and administrative



requirements for inter-State railway transport within the Common Market with a view to eliminating related barriers and inconsistencies that exist among themselves;

- (e) adopt measures for the facilitation, harmonisation and rationalisation of railway transport within the Common Market;
- (f) harmonize and simplify documents required for inter-State railway transport among themselves;
- (g) harmonize procedures with respect to the packaging, marking and loading of goods and wagons for inter-State railway transport among themselves;
- (h) agree to charge non-discriminatory tariffs in respect of goods from their territories and goods from other Member States, except where their goods enjoy domestic transport subsidies, and apply the same rules and regulations in respect of railway transport among themselves without discrimination;
- (i) consult each other on proposed measures that might affect the railway transport of other Member States;
- (j) integrate the operations of their railway

administrations including the synchronization of train schedules and the operations of unit trains;

- (k) establish common standards for the construction and maintenance of railway facilities;
- (l) agree on common policies for the manufacture of railway transport equipment and railway facilities;
- (m) agree to allocate adequate space for the storage of goods from each other within their goods sheds;
- (n) take measures to facilitate the transfer of railway wagons used for inter-State railway transport within the Common Market from one railway network to another;
- (o) facilitate the deployment of railway rolling stock for the conveyance of goods to and from the territories of each other without discrimination;
- (p) endeavour to maintain the existing physical facilities of their railways to such standards as will enable other Member States to operate their own systems within the Common market in a reasonably efficient manner; and

- (q) provide good quality railway transport services among the Member States on a non-discriminatory basis.

## **ARTICLE 87**

### ***Air Transport***

1. In order to promote the provision of better and efficient air transport, the Member States shall promote the establishment of joint ventures for co-operation in the use of equipment, in the pooling of aircraft maintenance and training facilities, in the acquisition and use of fuel and spare parts, in insurance schemes, in the co-ordination of flight schedules and the improvement of managerial techniques and skills.
2. The Member States shall take necessary steps to promote the establishment of joint air services operations by their designated airlines on intercontinental routes and the joint use by them of wide body aircraft as steps towards the eventual establishment of a Common Market airline.
3. The Member States shall in particular:
  - (a) adopt common policies for the development of air transport in the Common Market in collaboration with other relevant international organisations

including the African Civil Aviation Commission, the African Airlines Association, the International Air Transport Association and the International Civil Aviation Organisation;

- (b) undertake to make air transport services efficient and profitable through, inter-alia, autonomous management;
- (c) liberalise the granting of air traffic rights for passengers and cargo operations with a view to increasing the efficiency and profitability of their airlines;
- (d) harmonise civil aviation rules and regulations by implementing the provisions of the Chicago Convention on International Civil Aviation, with particular reference to Annex 9 thereof;
- (e) establish common measures for the facilitation of passenger and cargo air services in the Common Market;
- (f) co-ordinate the flight schedules of their designated airlines;
- (g) consider ways to develop, maintain and co-ordinate

in common, their navigational, communications and meteorological facilities for the provision of safe air navigation and the joint management of their air space;

- (h) encourage the joint use of maintenance and overhaul facilities and other services for aircraft, ground handling equipment and other facilities;
- (i) agree to take common measures for the control and protection of the Common Market air space;
- (j) agree to charge the same rates and apply the same rules and regulations relating to scheduled air transport services among themselves;
- (k) take measures directed towards aircraft standardization including co-operation in the preparation of technical specifications for the type of aircraft to be operated; and
- (l) coordinate measures and cooperate in the maintenance of the high security of air services operations.

## **ARTICLE 88**

### ***Maritime Transport and Ports***

The Member States shall:

- (a) promote the co-ordination and harmonization of their maritime transport policies and the eventual establishment of a common maritime transport policy;
- (b) promote the development of efficient and profitable sea port services;
- (c) make rational use of existing port installations;
- (d) in the case of those that are coastal Member States, co-operate with those that are landlocked Member States in maritime transport so as to facilitate the trade of such landlocked Member States;
- (e) take measures to ratify or accede to International Conventions on maritime transport ;
- (f) establish a harmonious traffic organisation system for the optimal use of maritime transport services;
- (g) co-operate in the elaboration and application of

measures to facilitate the arrival, stay and departure of vessels;

- (h) promote co-operation among their port authorities in the management and operations of their ports and maritime transport so as to facilitate the efficient movement of traffic between their territories;
- (i) agree to charge non-discriminatory tariffs in respect of goods from their territories and goods from other Member States, except where their goods enjoy domestic transport subsidies, and apply the same rules and regulations in respect of maritime transport among themselves without discrimination;
- (j) agree to allocate space on board their ships for goods consigned to or from the territories of other Member States;
- (k) install and maintain efficient cargo handling equipment, cargo storage facilities and general operations and train related manpower;
- (l) agree to allocate adequate space for the storage of goods traded among themselves within their storage facilities;

- (m) coordinate measures with respect to, and co-operate in the maintenance of, the safety of maritime transport services.
- (n) provide adequate facilities with good communication systems that would receive and respond to signals promptly;
- (o) inter-link their national communication systems so as to identify polluted points in oceans for concerted regional marine pollution control;
- (p) encourage their respective national shipping lines to form sub-regional associations;
- (q) agree to provide cargo to vessels of the Member States in priority to other vessels and to cooperate in establishing a policy favouring the vessels of the Member States with regard to priority berthing and other port services and facilities; and
- (r) review their national maritime legislations in accordance with the existing international maritime conventions.



## **ARTICLE 89**

### ***Inland Waterway Transport***

The Member States which have common navigable inland waterways shall:

- (a) adopt, harmonize and simplify rules, regulations and administrative procedures governing their inter-State inland waterway transport;
- (b) install and maintain efficient cargo handling equipment, cargo storage facilities and general operations and train related manpower resources;
- (c) use, where feasible, joint maintenance facilities;
- (d) harmonise tariffs structure for their inter-State inland waterway transport;
- (e) adopt common rules to govern the packaging, marking, loading and other procedures for their inter-State inland waterway transport;
- (f) agree to charge the same tariffs structure in respect of goods from their territories and goods from other Member States except where their goods enjoy domestic transport subsidies, and apply the same

rules and regulations in respect of inland waterway transport among themselves without discrimination;

- (g) agree to provide space without discrimination on board vessels registered in their territories for goods consigned to and from the territories of other Member States;
- (h) wherever possible, promote co-operation among themselves by undertaking joint ventures in inland waterway transport including the establishment of joint shipping services; and
- (i) coordinate measures with respect to, and cooperate in the maintenance of, safety in inland water transport services including the provision and maintenance of the right communication equipment to receive distress position promptly.

## **ARTICLE 90**

### ***Pipeline Transport***

1. The Member States shall co-operate in the development of pipeline transport and in the utilisation of existing pipeline facilities.
2. Where common pipeline projects are feasible, the

Member States shall co-operate in all aspects of planning, financing, execution, management and maintenance of pipeline services and facilities.

## **ARTICLE 91**

### ***Multimodal Transport***

The Member States shall:

- (a) harmonize and simplify regulations, goods classification, procedures and documents required for their multimodal inter-State transport;
- (b) apply uniform rules and regulations with respect to the packaging, marking and loading of goods;
- (c) provide, where feasible, technical and other facilities for direct trans-shipment of goods at main trans-shipment points, including intermodal cargo exchange points, inland clearance depots, dry ports or inland container depots;
- (d) agree to allocate multimodal transport facilities for goods consigned to or from the territories of other Member States; and
- (e) take measures to ratify or accede to international

Conventions on Multimodal Transport and containerisation and take such steps as necessary to implement them.

#### **ARTICLE 92**

##### ***Freight Booking Centres***

1. The Member States shall establish freight booking centres where these are economically justified.
2. The Member States shall recommend to all their respective national enterprises or agencies, the contracting of exports or imports handled by them on c.i.f. and f.o.b. basis respectively.

#### **ARTICLE 93**

##### ***Freight Forwarders, Customs Clearing Agents and Shipping Agents***

1. The Member States shall allow any person to register, and be licensed, as a freight forwarder, customs clearing agent and shipping agent, provided that, that person fulfills the legal requirements of that Member State.
2. The Member States shall agree not to restrict the commercial activities, rights and obligations of a lawfully registered and licensed freight forwarder or clearing

agent.

## **ARTICLE 94**

### ***Meteorological Services***

1. Each Member State shall collect and disseminate to the other Member States meteorological information in order to facilitate the efficient operation of air navigation, coastal shipping, inland water transport and the issuing of cyclone warnings and other adverse weather phenomena. To this end, the Member States agree to establish a Regional Meteorological Centre.
2. The Member States shall co-operate and support each other in all activities of the World Meteorological Organization affecting the interests of the Common Market especially the monitoring of the atmosphere and climatic changes on the planet.
3. The Member States shall exchange information and expertise concerning new developments in meteorological science and technology including the calibration and comparison of instruments.

## **ARTICLE 95**

### ***Postal Services***

The Member States shall, in collaboration with the relevant international organisations including Universal Postal Union and Pan-African Postal Union, promote close co-operation between their postal administrations and devise ways and means to achieve fast, reliable, economic and efficient postal services among themselves, through the strengthening of Common Market postal sorting, routing, transit and distribution centres.

## **ARTICLE 96**

### ***Telecommunications***

The Member States shall:

- (a) adopt common telecommunications policies to be developed within the framework of the Common Market in collaboration with other relevant international organisations including the Pan-African Telecommunications Union and the International Telecommunications Union;
- (b) undertake to give full management autonomy to their telecommunications administrations in their operational functions and in the provision of the

telecommunications services;

- (c) make rational use of existing telecommunications installations;
- (d) improve and maintain their inter-State telecommunications networks and modernize equipment, to meet the common standards required for efficient inter-State traffic within the Common Market;
- (e) harmonize and apply non-discriminatory tariffs among themselves and where possible, shall agree on preferential tariff treatment applicable within the Common Market;
- (f) establish adequate direct telecommunications links among themselves;
- (g) cooperate and coordinate their activities in the maintenance of telecommunication facilities especially in the exchange of manpower and spare parts;
- (h) promote the establishment of joint ventures for the manufacture of telecommunication equipment;

- (i) develop their rural telecommunication so as to enhance socio-economic interaction between rural and urban centres; and
- (j) devise common frequency management and monitoring scheme, assign mutually agreed upon frequencies for cross-border mobile radio communication and issue operating licenses agreed upon by the Member States concerned.

## ***ARTICLE 97***

### ***Radio and Television***

The Member States shall:

- (a) co-operate in technical matters and the electronic media that will promote the development of the Common Market through the establishment of direct radio and television links with one another;
- (b) harmonize their technical equipment for the manufacture of radio and television equipment; and
- (c) apply non-discriminatory radio and television tariffs for the exchange of electronic media programmes.



## **ARTICLE 98**

### ***Common Provisions***

1. The Member States shall take measures directed towards the harmonization and maximum use of programmes within their existing institutions for the training of personnel in the field of transport and communications.
2. The Member States shall exchange information on new technical developments in all modes of transport and communications.
3. Each Member State shall take all necessary measures to prohibit the transportation of those products, mail and merchandise that are considered illegal in another Member State and are gazetted as illegal in accordance with the rules and regulations of that Member State.

## **CHAPTER TWELVE**

### **CO-OPERATION IN INDUSTRIAL DEVELOPMENT**

#### ***ARTICLE 99***

#### ***Scope of Co-operation in Industrial Development***

The objectives of co-operation in industrial development in the Common Market are to:

- (a) promote self-sustained and balanced growth;
- (b) increase the availability of industrial goods and services for intra-Common Market trade;
- (c) improve the competitiveness of the industrial sector thereby enhancing the expansion of intra-regional trade in manufactures in order to achieve structural transformation of the economy that would foster the overall socio-economic development in Member States; and
- (d) develop industrialists that would acquire ownership and management of the industries.

**ARTICLE 100**  
***Strategy and Priority Areas***

For the purposes of Article 99 of this Treaty, the Member States undertake to formulate an industrial strategy aimed at:

- (a) the promotion of linkages among industries through specialisation and complementarity, paying due regard to comparative advantage in order to enhance the spread effects of industrial growth and to facilitate the transfer of technology;
- (b) the facilitation of the development of:
  - (i) small-and-medium scale industries including sub-contracting and other relations between larger and smaller firms;
  - (ii) basic capital and intermediate goods industries for the purposes of obtaining the advantages of economies of scale;
  - (iii) food and agro industries;
- (c) the rational and full use of established industries so as to promote efficiency in production;

- (d) the promotion of industrial research and development, the transfer, adaptation and development of technology, training, management and consultancy services through the establishment of joint industrial support institutions and other infrastructural facilities;
- (e) the promotion of the linkage between the industrial sector and other sectors of the economies such as agriculture, transport, communications and other sectors;
- (f) the granting of investment incentives to industries particularly those that use local materials and labour;
- (g) the dissemination and exchange of industrial and technological information;
- (h) the improvement in the investment climate for both national and foreign investors and the encouragement of national savings and the re-investment of surpluses;
- (i) the development of human resources including training and the development of indigenous entrepreneurs and industrialists for sustained industrial growth;

- (j) the increased participation of the private sector in project development, promotion and implementation;
- (k) the rehabilitation, maintenance and upgrading of agro-industries and the metallurgical, engineering, chemical and building materials industries;
- (l) the development and promotion of integrated inter-State resource-based core and basic industries;
- (m) the promotion of multinational projects with the aim of increasing added value to raw materials in the Member States for export; and
- (n) the joint exploitation and utilisation of shared resources.

## **ARTICLE 101**

### ***Multinational Industrial Enterprises***

1. The Member States shall promote and encourage the establishment of multinational industrial enterprises in accordance with the laws in force in the Member States in which such enterprises shall be established, having due regard to the economic conditions and priorities of the particular Member States concerned.

2. The Member States concerned shall determine:

(a) the conditions and priorities that shall govern multinational industrial enterprises that:

(i) require the combined markets of more than one Member State to be profitable and which require for their consumption large quantities of the natural resources or raw materials of the Member States which are either exported to third countries or are unused;

(ii) require for their establishment and operation, large sums of money;

(iii) lead to the earning or saving of substantial amounts of foreign exchange;

(iv) through their activities, enhance the development or acquisition of modern technology, managerial and marketing experience; and

(v) through their activities, provide substantial employment or reduce unemployment within the territories of the Member States;

(b) the guidelines relating to the establishment and

operation of multinational industrial enterprises which shall include:

- (i) the location of multinational industrial enterprises and the criteria to be applied in that respect;
  - (ii) repatriation of funds;
  - (iii) regulations regarding ownership and management by the Member States in a multinational industrial enterprise; and
  - (iv) any other matter designed to ensure the attainment of the objectives of this Chapter.
3. For the purposes of paragraph 2 of this Article, the Member States may take into account any recommendations that the Sectoral Ministerial Meeting on Industry, may make for the purpose of assisting in the co-ordination of and the provision of advice on the process of establishing multinational industrial enterprises in the Member States.
4. The Member States agree that in order to provide a comprehensive inventory of raw materials required by multinational industrial enterprises, they shall give

consideration to the desirability of making an inventory of their potential natural resources.

### **ARTICLE 102**

#### ***Industrial Manpower Development, Training, Management and Consultancy Services***

1. The Member States shall take appropriate measures to establish, where necessary, joint training institutions and programmes, to share available national institutions and use African training institutions to meet the requirements for the training of skilled manpower for their industrial and technological development.
2. The Member States shall diligently endeavour to develop and make maximum use of their national entrepreneurs and technical managerial and marketing manpower and other human resources to promote and accelerate the process of their industrialization.
3. The Member States undertake to encourage the development and the use, as much as possible, of national industrial management and consultancy services in their industrial development and shall also use as much as practicable the services of any appropriate African institution for industrial management and consultancy services.



### **ARTICLE 103**

#### ***Industrial Research and Development and the Acquisition of Modern Technology***

1. The Member States shall share and make the best use of existing and future industrial and scientific research institutions, facilities and technical know-how. The institutions referred to herein include the Leather and Leather Products Institute and the Metallurgical Technology Centre.
2. The Member States shall endeavour to adopt a common approach to and determine the terms and conditions governing the transfer or adaptation and development of technology.
3. The Member States shall endeavour to co-ordinate their efforts and consult each other in matters relating to industrial property.

### **ARTICLE 104**

#### ***Exchange of Industrial and Technological Information***

1. The Member States shall exchange information on:
  - (a) the production of and requirements for capital, intermediate and consumer goods;

- (b) the availability of facilities for industrial manpower development and training;
  - (c) legislation and regulations concerning investment from third countries and related incentives;
  - (d) legislation on patents, trade marks and designs; and
  - (e) industrial investment opportunities, processes, technology and related information.
2. The Member States undertake to communicate to each other and exchange any information acquired as a result of industrial research, engineering and technological adaptation or innovation and managerial and marketing experience.
  3. The Member States shall disseminate and exchange any other information or documents deemed necessary by the Sectoral Ministerial Meeting on Industry.
  4. Notwithstanding the provisions of paragraphs 1, 2 and 3 of this Article, a Member State may withhold classified documents.
  5. The Member States undertake to strengthen their capability to compile, disseminate and absorb industrial

information.

6. The Member States agree that the provisions of this Article shall not apply where the communication of the information in question is prohibited under an agreement concluded before the entry into force of this Treaty, between a Member State and another party.

### **ARTICLE 105**

#### ***Mechanism for the Promotion of Industrial Development***

1. The Member States shall establish a centre for the promotion of industrial development, referred to in this Chapter as “the Centre”, as an institution of the Common Market whose constitution shall be determined by the Council.
2. The objectives of the Centre shall be to:
  - (a) promote co-operation in industrial development among the Member States;
  - (b) assist the Member States to establish or strengthen national industrial development institutions;
  - (c) assist in the training and development of various categories of industrial skills including management

and marketing;

- (d) organize and maintain a data bank for industrial information;
- (e) assist in the development of common standards and quality control in accordance with the provisions of Chapter Fifteen of this Treaty; and
- (f) co-operate with the national industrial development institutions of the Member States and with African regional institutions for industrial development.

3. The functions of the Centre shall include:

- (a) the undertaking of industrial surveys, project identification and prefeasibility studies;
- (b) the provision of advisory services for industrial development with particular reference to multinational enterprises;
- (c) working closely and exchanging information with the trade and investment promotion centers in the Member States; and

(d) any other function that the Council, on the

recommendation of the Sectoral Ministerial Meeting on Industry, may assign to it.

## **CHAPTER THIRTEEN**

### **CO-OPERATION IN THE DEVELOPMENT OF ENERGY**

#### ***ARTICLE 106***

##### ***Scope of Co-operation***

1. The Member States recognise that a secure supply of energy at competitive prices is a pre-condition for economic development and that to ensure competitively priced supplies of energy to all the Member States requires both the development of local or renewable energy resources and the rational management of existing resources.
  
2. For the purposes of paragraph 1 of this Article, the Member States undertake to co-operate in the joint development and utilisation of energy resources including hydro, fossil and bio-mass and shall, in particular, co-operate in the:
  - (a) joint exploration and exploitation of hydro and fossil fuel;
  
  - (b) creation of more favourable investment climate to encourage public and private investment in this sub-sector;

- (c) encouragement of joint utilisation of training and research utilities;
- (d) exchange of information on energy systems and investment opportunities; and
- (e) development of research programmes on renewable energy systems.

### **ARTICLE 107**

#### ***Trade in Energy Resources***

1. The Member States agree to develop a mechanism for facilitating trade in energy fuels, such as coal, natural gas, petroleum and electricity.
2. For the purposes of paragraph 1 of this Article, the Member States agree to co-operate in:
  - (a) joint procurement of products; and
  - (b) interconnecting national electricity grids.

### **ARTICLE 108**

#### ***Efficient Use of Energy in Transport***

The Member States shall develop a common strategy in the

more efficient use of energy in the transport sector such as the use of fuel efficient vehicles, the diversion of traffic to energy saving transport systems such as railways and water transport, the use of buses and urban mass transport facilities and the mixing of any imported fuel with local substitutes.

### ***ARTICLE 109***

#### ***International Agreements***

The Member States undertake to accede to international agreements that are designed to improve the management of energy resources, develop new renewable energy resources and coordinate the exchange of information on energy resources.



## **CHAPTER FOURTEEN**

### **CO-OPERATION IN HEALTH MATTERS**

#### **ARTICLE 110**

##### ***Scope of Co-operation***

1. The Member States agree to undertake concerted measures to co-operate in health through:
  - (a) the control of pandemics or epidemics, communicable and vector borne diseases that might endanger the health and welfare of citizens of the Common Market;
  - (b) the facilitation of movement of pharmaceuticals within the Common Market and control of their quality;
  - (c) joint action in the prevention of drug trafficking;
  - (d) the training of manpower to deliver effective health care; and
  - (e) the exchange of research, development and information on health issues.

2. For the purposes of paragraph 1 of this Article, the Member States undertake to:

- (a) devise and implement systems to ensure that pharmaceuticals entering the Common Market from third countries, produced in the Common Market or moving within the Common Market conform to internationally acceptable standards in terms of quality and therapeutic value;
- (b) evolve mechanisms for joint action in combating outbreak of epidemics such as aids, cholera, malaria, hepatitis and yellow fever as well as co-operation in facilitating mass immunization and other public health community campaigns;
- (c) designate national hospitals to be Common Market referral hospitals;
- (d) develop a national drug policy which would include establishing quality control capacities, national formularies and good procurement practices;
- (e) harmonise drug registration procedures so as to achieve good control of pharmaceutical standards without impeding or obstructing the movement of pharmaceuticals within the Common Market;

- (f) accord each other mutual recognition of drugs registered in the Common Market;
- (g) encourage research and development on drugs and medicinal plants;
- (h) co-operate, within the framework of co-operation in industrial development, in the local production of pharmaceutical products;
- (i) apply the World Health Organisation Certification on the quality of pharmaceutical products dealt with in international trade; and
- (j) establish an audit team to assist local pharmaceutical industries to produce high quality products that are safe, effective and free from harmful side effects and to assist the Member States in controlling the standards of pharmaceuticals manufactured within their territories in conformity with the WHO Certification.

### **ARTICLE 111**

#### ***Illicit Drug Trafficking and Use of Banned Ingredients***

The Member States agree to develop a common approach

through the education of the general public and in collaboration with their law enforcement agencies in controlling and eradicating illicit drug trafficking and the use of harmful or banned ingredients in drugs.

## **CHAPTER FIFTEEN**

### **STANDARDISATION AND QUALITY ASSURANCE**

#### **ARTICLE 112**

#### ***Role of Standardisation and Quality Assurance***

The Member States, recognising the importance of standardisation and quality assurance in the promotion of health, the enhancement of the standard of living, the rationalisation and reduction of unnecessary variety of products, the facilitation of interchangeability of products, the promotion of trade, consumer protection, the creation of savings in government purchasing, improved productivity, the facilitation of information exchange as well as in the protection of life, property, and the environment, agree to:

- (a) evolve and apply a common policy with regard to the standardisation and quality assurance of goods produced and traded within the Common Market, the relationship of their national standards bodies with regional, international and other organisations concerned with standardisation and quality assurance and in the development of activities in standardisation and quality assurance for the achievement of the objectives of the Common Market;

- (b) establish within their territories, national standards bodies, and develop their technical capacities so as to enable them to adequately carry out standardisation and quality assurance activities at the national level and to co-operate with other Member States;
- (c) promote and enforce standards relating to public health and safety and the protection of the environment by applying appropriate standards for goods produced and traded within the Common Market; and
- (d) recognise the African Regional Organization for Standardization as a leading co-operating partner in the implementation of appropriate provisions of this Chapter and agree to accede to the Agreement Establishing ARSO.

### **ARTICLE 113**

#### ***Establishment of Standards***

The Member States undertake to:

- (a) apply uniform rules and procedures for the formulation of their national standards;
- (b) adopt African regional standards and where these are

unavailable, adopt suitable international standards for products traded in the Common Market;

- (c) coordinate their views with regard to the selection, recognition, adaptation and application of regional and international standards in so far as the needs of the Common Market are concerned, and constantly endeavour to improve the standardisation of goods and services within the Common Market; and
- (d) apply the principle of reference to standards in their national regulations, so as to facilitate the harmonisation of their technical regulations.

#### **ARTICLE 114** ***Quality Assurance***

The Member States shall:

- (a) apply uniform standards and specifications for the inspection and testing of goods traded within the Common Market, so that the results may be more easily interpreted and coordinated in a uniform manner within the Common Market;
- (b) adopt regionally acceptable quality management systems standards, and develop capacities for quality

assurance of products traded in the Common Market;

- (c) use harmonised documentation for the evaluation of the quality of goods traded in the Common Market; and
- (d) in conjunction with customs and other relevant authorities, provide for the ease of movement of samples meant for testing within the Common Market.

#### **ARTICLE 115**

#### ***Certification and Laboratory Accreditation***

The Member States shall:

- (a) adopt and apply a harmonised scheme for the certification of goods manufactured and traded in the Common Market;
- (b) adopt and apply a harmonised scheme for the accreditation of laboratories used for the evaluation of goods produced and traded in the Common Market; and
- (c) adopt common rules and procedures for the certification marks to be applied on goods produced



and traded in the Common Market and for the mutual recognition of each others national certification marks, as well as certification and laboratory accreditation schemes.

## **ARTICLE 116**

### ***Metrology***

The Member States shall:

- (a) adopt a harmonised system for legal, scientific and industrial metrology activities in the Member States and formulate modalities for the mutual recognition of calibration certificates issued by the national metrology laboratories of the Member States;
- (b) promulgate national legal frameworks for legal metrology as well as the pre-packing and labelling of goods produced and traded in the Common Market;
- (c) adopt and systematically apply a uniform system of labelling goods to be traded within the Common Market;
- (d) agree to standardise all aids to the recognition and movement of goods and their containers such as labels and transit documents;

- (e) apply safety codes for the handling and shipment of goods traded within the Common Market; and
- (f) in conjunction with customs and other relevant authorities, provide for the ease of movement of metrology standards and equipment sent for calibration within the Common Market.

### **ARTICLE 117**

#### ***Co-operation in Testing***

The Member States undertake to encourage inter-laboratory comparison testing and mutual recognition of each others' accredited laboratories.

### **ARTICLE 118**

#### ***Documentation and Information***

The Member States agree to adopt compatible management systems for standardisation and quality assurance related documentation and information to facilitate easier exchange of information among themselves.

### **ARTICLE 119**

#### ***Training in Standardisation and Quality Assurance***

The Member States agree to:

- (a) consult one another through the Secretariat concerning their common training needs in the field of standardisation and quality assurance;
- (b) undertake to coordinate among themselves the use of existing facilities with a view to making them accessible to other Member States;
- (c) establish, in conjunction with the African Regional Organization for Standardization, training programmes designed to meet the specific needs of the Common Market; and
- (d) co-operate with the African Regional Organization for Standardization and through it with other international agencies concerned with standardization and quality assurance, in the implementation of training programmes established for the Common Market.

## **ARTICLE 120**

### ***Publicity of Standardisation Activities***

The Member States shall endeavour to make the activity of standardisation and quality assurance known to all concerned through seminars, advertisements, publications, films, discussions, participation of the national standardisation

institutions in trade fairs, special national awards and the creation of national quality associations within the Member States.

## ***ARTICLE 121***

### ***Administrative Procedures***

The Member States shall use harmonised documentation for the evaluation of the quality of goods for customs clearance for goods traded in the Common Market.

## **CHAPTER SIXTEEN**

### **CO-OPERATION IN THE DEVELOPMENT OF NATURAL RESOURCES, ENVIRONMENT AND WILDLIFE**

#### ***ARTICLE 122***

##### ***Scope and Principles of Co-operation***

1. The Member States agree to take for their mutual benefit, concerted measures to foster co-operation in the joint and efficient management and sustainable utilisation of natural resources within the Common Market.
2. The Member States recognise that economic activity is often accompanied by environmental degradation, excessive depletion of resources and serious damage to natural heritage and that a clean as well as an attractive environment is a prerequisite for long-term economic growth.
3. The Member States undertake, through a regional conservation strategy, to co-operate and coordinate strategies for the protection and preservation of the environment against all forms of pollution including atmospheric and industrial pollution, pollution of the water resources, and pollution from urban development.

4. The Member States undertake to co-operate and adopt common policies for the control of hazardous waste, nuclear materials, radioactive materials and any other materials used in the development or exploitation of nuclear energy.
  
5. Action by the Common Market relating to the environment shall have the following objectives:
  - (a) to preserve, protect and improve the quality of the environment;
  
  - (b) to contribute towards protecting human health; and
  
  - (c) to ensure the prudent and rational utilisation of natural resources.
  
6. Action by the Common Market relating to the environment shall be based on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay. Environmental protection requirements shall be a component of the Common Market's policy in all the fields of Common Market activity.

## **ARTICLE 123**

### ***Co-operation in Management of Natural Resources***

1. The Member States agree to take concerted measures to foster co-operation in the joint and efficient management and sustainable utilisation of natural resources within the Common Market for the mutual benefit of the Member States. In particular, the Member States shall:
  - (a) take necessary measures to conserve their natural resources;
  - (b) co-operate in the management of their natural resources for the preservation of the eco-systems and arrest environmental degradation; and
  - (c) adopt common regulations for the preservation of shared land, marine and forestry resources.
2. The Member States agree to take necessary measures to conserve and manage forests, through the:
  - (a) adoption of common policies for the conservation and management of natural forests, industrial plantations and nature reserves;

- (b) exchange of information on natural forests and industrial plantations development and management;
  - (c) joint promotion of a common forestry practice within the Common Market;
  - (d) joint utilisation of forestry training and research facilities;
  - (e) adoption of common regulations for the preservation and management of all catchment forests within the Common Market; and
  - (f) the establishment of uniform regulations for the utilisation of forestry resources in order to reduce the depletion of the natural forests and avoid desertification within the Common Market.
3. The Member States shall take measures to engage in Api-Agro-Forestry Systems.
4. The Member States agree to co-operate in the management of their fresh water and marine resources, through the:
- (a) establishment and adoption of common regulations



for the better management and development of marine parks, reserves and controlled areas;

- (b) adoption of common policies for the conservation, management and development of fisheries resources; and
  - (c) establishment of uniform fisheries investment guidelines for inland and marine waters.
5. The Member States undertake to accede to international conventions or agreements that are designed to improve the policies of development, management and protection of their natural resources.

#### **ARTICLE 124**

#### ***Co-operation in the Management of the Environment***

1. The Member States undertake to co-operate in the management of the environment and agree to:
- (a) develop a common environmental management policy that would preserve the eco-systems of the Member States, prevent, arrest and reverse the effects of environmental and industrial pollution, declining bio-diversity, loss of genetic diversity and land degradation;

- (b) develop special environmental management strategies to manage forests, terrestrial and marine resources, water resources, atmospheric emissions, water and hazardous toxic substances;
- (c) accede to the UNCED Agreements relating to the Conventions on climatic change and bio-diversity;
- (d) accede to the UNEP Convention for Eastern and Southern Africa on water and marine resources; and
- (e) take measures to control trans-boundary, air and water pollution arising from mining, fishing and agricultural activities.

2. For the purposes of paragraph 1 of this Article, the Member States undertake to:

- (a) adopt common environmental control regulations, incentives and standards;
- (b) develop capabilities for the assessment of all forms of environmental degradation and pollution and the formulation of regional solutions;
- (c) encourage the manufacture and use of biodegradable pesticides, herbicides and packaging materials;

- (d) discourage the excessive use of agricultural chemicals and fertilizers;
- (e) adopt sound land management techniques for the control of soil erosion, desertification and bush encroachment;
- (f) promote the use of ozone and environmental friendly chemicals;
- (g) promote the utilisation and strengthen the facilities of training and research institutions within the Common Market;
- (h) adopt common standards for the control of atmospheric industrial and water pollution arising from urban and industrial development activities;
- (i) exchange information on atmospheric, industrial and other forms of pollution and conservation technology;
- (j) adopt common regulations for the management of shared natural resources;
- (k) adopt measures and policies to address the existing

unsatisfactory demographic profiles such as high growth rates and fertility rates, high dependency ratio and poor social conditions in order to mitigate their adverse impact on environment and development; and

- (l) adopt community environmental management criteria.

### **ARTICLE 125**

#### ***Prevention of Illegal International Trade in Toxic and Hazardous Wastes***

1. The Member States undertake to co-operate and adopt common positions against illegal dumping of toxic and undesirable wastes within the Common Market from either a Member State or third country.
2. The Member States undertake to co-operate in sharing technological know-how on clean technologies and low-waste production systems for the energy and productive sectors.
3. The Member States undertake to accede to international environmental Conventions that are designed to improve the environmental policies and management. To this end, the Member States agree to accede to the

Montreal Protocol on the Environment.

4. The Member States agree to include environmental management and conservation measures in trade, transport, agricultural, industrial, mining and tourism activities in the Common Market.

#### **ARTICLE 126**

##### ***Wildlife Development and Management***

1. The Member States undertake to develop a collective and coordinated approach to sustainable development and management rational exploitation and utilisation and the protection of wildlife in the Common Market. In particular, the Member States shall:
  - (a) adopt common policies for the conservation of wildlife, natural reserves, national parks and marine parks;
  - (b) exchange information on wildlife development and management;
  - (c) exchange information on anti-poaching activities and suspected poachers and where feasible, carry out joint anti-poaching programmes;

- (d) establish wildlife ranches in arid and semi-arid regions of the Common Market as a compliment to agricultural and livestock production;
  - (e) develop common anti-poaching regulations and ensure the effective supervision of the implementation of such regulations;
  - (f) carry out joint-breeding programmes of selected wildlife species and domesticated animals so as to infuse disease resistance and hardiness qualities in the domesticated animals;
  - (g) encourage joint utilisation of training and research facilities;
  - (h) utilise proceeds from wildlife for the development and conservation of national parks and the development of adjacent areas; and
  - (i) establish uniform trophy hunting prices so as to reduce depletion of wildlife stocks in the Member States.
2. The Member States undertake to accede to international conventions or agreements that are designed to improve their policies for development, management

and protection of wildlife and national parks.

## **CHAPTER SEVENTEEN**

### **CO-OPERATION IN THE DEVELOPMENT OF SCIENCE AND TECHNOLOGY**

#### ***ARTICLE 127***

##### ***Scope of Co-operation***

Recognising the fundamental importance of science in socio-economic and cultural development and technological progress, the Member States agree to:

- (a) build up basic scientific and technological research capabilities in their universities and technology centres by appropriate training of scientists, engineers, technologists so as to assure a critical mass while maintaining regional and international contact;
- (b) build up at the same time expertise in conventional low and indigenous technologies emphasizing craftsmanship and fabrication techniques;
- (c) effect appropriate reforms in primary, secondary and tertiary education in respect of science and technology;



- (d) develop a comprehensive plan for the development of applied sciences related to agriculture, health, industry, energy, local materials and minerals, the environment, soil science, oceans, transport and communications;
- (e) enhance the training of personnel for research and development in the areas of conventional technology and science-based high technology as the quickest way to produce wealth;
- (f) allocate adequate resources on science and technology to the minimum of one per cent of GNP as recommended in the Lagos Plan of Action;
- (g) liaise with the IAEA, UNESCO and UNIDO in basic science and the CGIAR Network and other recognised regional institutions for applied science and technology including training facilities; and
- (h) ensure that research and development is closely inter-linked with production units to secure their integration with national development planning.

## **ARTICLE 128**

### ***Promotion of Science and Technology***

In order to promote co-operation in science and technology development, the Member States agree to:

- (a) jointly establish and support scientific and technological research and development institutions in the various disciplines including the strengthening of existing institutions;
- (b) create a conducive environment for the promotion of science and technology, socio-economic development and growth through the removal of impediments to pro-competitive collaboration in generic research and the swift transfer of technology and technical information from the government to the private sector;
- (c) facilitate the access of the indigenous scientists, engineers and technologists to international literature and publications on science and technology and promote their contacts with the international fraternity in the various relevant disciplines;
- (d) promote the exchange of expertise and research results and technical information sharing within

the Common Market on science and technology and develop appropriate links and exchange programmes;

- (e) jointly develop and implement suitable patent laws and industrial licensing systems for the protection of industrial property rights and encourage the effective use of technological information contained in patents;
- (f) encourage the use of indigenous science and technologies where appropriate and provide incentives for the development of indigenous science and technologies;
- (g) individually and collectively mobilise technical and financial support from the local and international organisations or agencies for the development of science and technology in the Common Market;
- (h) collaborate in the training of personnel in the various scientific and technological disciplines at all levels using existing institutions where feasible;
- (i) establish national centres for the commercialisation of research results and take appropriate political action to develop scientific enterprise through self-

reliance and adequate allocation of resources;

- (j) encourage collaboration in the establishment of innovative firms in biotechnology and energy generation including nuclear plants and in the production of scientific equipment; and
- (k) to set up regional internship and technical assistance programmes to promote the free movement of scientists, engineers and technologists within the Common Market.

## **CHAPTER EIGHTEEN**

### **CO-OPERATION IN AGRICULTURE AND RURAL DEVELOPMENT**

#### **ARTICLE 129**

#### ***Objectives of Co-operation in Agricultural Development***

The overall objectives of co-operation in the agricultural sector are the achievement of regional food security and rational agricultural production within the Common Market. To this end, the Member States undertake to adopt a scheme for the rationalisation of agricultural production with a view to promoting complementarity and specialisation in and sustainability of national agricultural programmes in order to ensure:

- (a) a common agricultural policy;
- (b) regional food sufficiency;
- (c) an increase in the productivity of crops, livestock, fisheries and forestry for domestic consumption, exports within and outside the Common Market and as inputs to agro-based industries; and
- (d) replacement of imports on a regional basis;

## **ARTICLE 130**

### ***Co-operation in Agricultural Development***

The Member States undertake to co-operate in specific fields of agriculture, including:

- (a) the harmonisation of agricultural policies of the Member States with a view to having a common agricultural policy;
- (b) research, extension and the exchange of technical information and experience;
- (c) agro-meteorology and climatology;
- (d) the production and supply of food-stuffs;
- (e) the coordination of the export and import of agricultural commodities;
- (f) the coordination of bulk purchases of imports of essential agricultural inputs;
- (g) the control of animal and plant diseases and pests;
- (h) the development and utilisation of land and water resources, particularly shared river and lake basins;

- (i) the exploitation and surveillance of the exclusive economic zones with regards to marine fisheries development; and
- (j) the marketing and stabilization of prices of agricultural commodities bearing in mind internal agricultural and exchange rate policies in individual member countries.

### **ARTICLE 131**

#### ***Co-operation in the Supply of Staple Foods***

1. The Member States undertake to:
  - (a) ensure the adequate supply and availability of food by the promotion of agricultural development that would lead to the production of surpluses in food, the establishment of adequate storage facilities and strategic grain reserves;
  - (b) promote co-operation in the production of foodstuffs which are rich in protein such as meat, fish, dairy products and legumes;
  - (c) ensure the prevention of pre- and post-harvest losses;
  - (d) establish a Common Market Early Warning System

to assess and supply information regarding the food security position within the Member States and the Common Market; and

(e) conclude such agreements amongst themselves as would facilitate the realisation of food security in the Common Market.

2. The Member States agree to provide the infrastructure and investment required to implement the undertakings in paragraph 1 of this Article.

## **ARTICLE 132**

### ***Co-operation in the Export of Agricultural Commodities***

The Member States shall:

(a) coordinate their policies and activities relating to the export of crops, livestock, livestock products, fish and fish products and forest products;

(b) harmonise their policies in relation to international commodity agreements for the export of crops, livestock and livestock products, fish and fish products and forest products;

(c) co-operate in solving specific problems relating to



the export of crops, livestock, livestock products, fish and fish products and forest products;

- (d) harmonise their policies and regulations relating to phyto-sanitary and sanitary measures without impeding the export of crops, plants, seeds, livestock, livestock-products, fish and fish-products; and
- (e) harmonise their agreements granting concessions for the exploitation of their agricultural resources, especially fisheries and forest products by third country nationals.

### **ARTICLE 133**

#### ***Co-operation in Agro-industries***

In order to foster strong linkages between agriculture and industry, the Member States shall:

- (a) promote on-farm processing of crop, livestock, fish and forest products so as to enhance the value and availability of finished or semi-processed products and to increase rural employment and incomes;
- (b) endeavour to consult one another concerning the establishment of large-scale agro-industries so as to avoid under-utilisation of existing and planned

processing capacities;

- (c) co-operate in jointly establishing any large-scale agro-industrial processing complexes where such collective processing of agricultural commodities is synergistically advantageous for the Common Market;
- (d) co-ordinate national agro-industry development policies and programmes so as to achieve balanced agro-industries development in the Common Market in line with the comparative advantages enjoyed by individual the Member States;
- (e) coordinate their policies and activities regarding the production of raw materials to sustain agro-industries within the Common Market; and
- (f) coordinate their policies regarding the importation of raw materials which can be produced within the Common Market.

#### **ARTICLE 134**

#### ***Co-operation in Agricultural Research and Extension***

The Member States shall:

- (a) give priority to research on food crops;
- (b) strengthen and effectively utilise existing national agricultural research and extension institutions on a network basis for the benefit of the Common Market;
- (c) exchange pertinent research findings and research and extension expertise for the benefit of the farming community within the Common Market;
- (d) strengthen extension services in order to establish effective liaison mechanisms between research systems and farmers; and
- (e) establish data banks and journals for the dissemination of research and extension information within the Common Market.

### **ARTICLE 135**

#### ***Co-operation in Drought and Desertification Management***

The Member States shall:

- (a) agree on appropriate policies on the utilisation of fragile lands in order to prevent land degradation;

- (b) institute appropriate measures to contain the effects of droughts by developing irrigation programmes, improved techniques in dry-land farming and the use of drought-tolerant crops; and
- (c) co-operate in the exchange of information and expertise regarding drought and desertification managements.

## ARTICLE 136

### Co-operation in Rural Development

The Member States shall promote rural development through the adoption of measures such as:

- (a) appropriate mechanisation;
- (b) improved water supply;
- (c) health services;
- (d) improved nutrition;
- (e) improved rural access roads and means of transport and telecommunications;
- (f) rural electrification and supply of wood fuel;

- (g) educational services;
- (h) rural resettlement to facilitate the rational utilisation of land; and
- (i) the development of rural industries.

### **ARTICLE 137**

#### ***Strengthening Farmers Participation in Agricultural Development***

The Member States agree to strengthen farmer organisations and coordinate their activities for the improvement of agriculture in the Common Market through:

- (a) the utilisation of such organisations as effective mechanisms for the marketing and processing of agricultural produce;
- (b) the provision of essential services to members of the organisations at a regional level;
- (c) the fostering of collaboration among the farming community by means of inter-regional visits, exchange of ideas and information, and trading;

- (d) training on risk management practices and promoting the development of agricultural insurance schemes and other loss minimisation measures within the Common Market; and
- (e) the promotion of rural insurance.

## **CHAPTER NINETEEN**

### **CO-OPERATION IN TOURISM**

#### **ARTICLE 138**

#### ***Promotion of Tourism***

1. The Member States undertake to develop a collective and coordinated approach to the promotion of tourism in the Common Market. To this end, the Member States shall:
  - (a) remove restrictions on the movement of tourists within the Common Market;
  - (b) promote regional tourist circuits and coordinate the policies governing the tourism industry;
  - (c) promote investment programmes in tourism;
  - (d) organise regional tourism promotional activities for the development of the tourism industry;
  - (e) co-operate in the organisation of, and participation in, regional and international tourism fairs and exhibitions;

- (f) exchange cultural groups among themselves in order to develop social and cultural tourism;
- (g) co-operate in research and exchange programmes and publications on tourism;
- (h) encourage joint utilisation of training, marketing and tourism research facilities;
- (i) encourage intra-Common Market tourism;
- (j) promote the participation of the private sector in the development of tourism;
- (k) provide the regulatory and institutional framework necessary for regional promotion, development, coordination and supervision of the operations of the tourism industry;
- (l) co-operate in the establishment of Regional Tourism Development Centres;
- (m) exchange statistics on tourism performance including projections of tourist trends;
- (n) harmonize and standardize statistics on tourism so that they are comparable in the region for research



purposes; and

- (o) co-ordinate inter-regional airline schedules and harmonize tourism development strategies for the region.
2. The Member States shall endeavour to establish a common code of ethics for private and public tour and travel operators, standardise hotel classification and harmonize the professional standards of agents in the tourism and travel industry within the Common Market.

## **CHAPTER TWENTY**

### **DEVELOPMENT OF COMPREHENSIVE INFORMATION SYSTEMS**

#### ***ARTICLE 139***

#### ***The Common Market Information System***

1. The Member States undertake to co-operate in providing information that would enable them to review the functioning and development of the Common Market and move efficiently in the implementation of the provisions of this Treaty. To this end, the Member States shall:
  - (a) collect and disseminate information on various sectors affecting the Common Market;
  - (b) provide the Secretariat with relevant information to facilitate the proper functioning of the Common Market;
  - (c) adopt an information policy that will include common operating standards, administrative and programming support, hardware and software standards and methodology of linking the Secretariat with the Member States; and

- (d) provide to the Secretariat material deemed essential for the operation of an information system.
2. The Member States undertake to improve the collection, analysis and dissemination of information necessary to enhance the achievement of the objectives of the Common Market, especially in respect of:
- (a) trade and customs: common external tariff, Rules of Origin, transit facilities, insurance schemes, trade and customs forms and documentation, monetary co-operation;
  - (b) agricultural development: research, extension and the exchange of technical information and experience;
  - (c) industrial information: production, requirements for capital, intermediate and consumer goods, industrial manpower development, investment and incentives;
  - (d) standardisation and quality assurance: national, sub-regional, regional and international standards, techniques, experiences, and consumer protection;
  - (e) natural resources, energy and the environment:

available technical options, consequences of industrial pollution, environmental control and impact assessment;

- (f) transport and communications: new technical developments in all modes;
- (g) macro-economic policy and planning; national planning concepts, methodology and techniques of the Member States; and
- (h) other areas that are necessary for achieving the programmes of the Common Market.

3. The Secretariat shall provide to the Member States:

- (a) the Common Market's Operational and Progress Reports;
- (b) Research Results, Analytical and Specialised Studies;
- (c) Statistical Series containing numerical nature, production, prices and indices of exports and imports; and
- (d) other publications as may be specified by the organs of the Common Market.

4. The Secretariat shall adopt necessary measures to enable the public and private sector enterprises to be fully aware and informed of the current and potential trade and investment opportunities that exist in the Member States. Steps shall also be taken to rationalise import and sourcing decisions from third countries through the provision of price data, alternative sources of supply and the availability of incentives of an import nature. The Secretariat shall also perform an external relations function through representation for press interviews, meetings and seminars, the production of press releases and newsletters and other general public relations tasks.

#### **ARTICLE 140**

#### ***Co-operation in Statistical Development***

The Member States undertake to co-operate in the field of statistics in order to create an enabling environment for the regular flow of up-to-date, reliable, harmonised and comparable statistical data on various sectors of economic activity, required for an efficient implementation of the objectives of the Common Market. To this end, the Member States shall:

- (a) provide regularly and timely to the Secretariat statistical data that are reliable, harmonised and comparable, through the harmonisation and

adoption of common methodologies, concepts and definitions to be used in collecting and compiling statistics;

- (b) harmonise and adopt common statistical classification to be used in compiling their statistics;
- (c) encourage co-operation among their national statistical offices in the exchange of statistical data covering various sectors of their economic activities such as external trade, agriculture, industry, energy, natural resources, transport, communications, tourism, population, manpower, money and banking, balance of payments, external debt, government finance, prices, purchasing power parities and national accounting investments;
- (d) promote the exchange of skills and personnel and enhance co-operation in statistical training through the use of existing training institutions;
- (e) co-operate in the field of data processing; and
- (f) adopt a Common Market strategy for the implementation of the Addis Ababa Plan of Action for Statistical Development in Africa in the 1990s.

**ARTICLE 141**  
***Trade Information***

The Member States shall co-operate in increasing the awareness of intra and extra Common Market trade opportunities, provision and exchange of computerised trade information in the region through the support of the sub-region-wide Trade Information Network (TINET), provision of company data, export or import opportunities, tender invitations issued by national authorities for public procurement, statistical profiles of general and specific product groups, restrictive trade practices, non-tariff barriers and others as stated in the TINET's region-wide standards. These standards contain special TINET instructions, ad hoc requests, and standing practices which are subject to change from time to time.

**ARTICLE 142**  
***Depository Library***

The Member States agree to recognise the status of the library situated at the Secretariat as the official depository library of the Common Market for the storage and retrieval of all documents, regulations, public notices, databases and other documents with regard to national development plans, official gazettes, central bank annuals, periodic reports and other documents as may be determined and notified by the

library from time to time, with respect to the Member State.



**CHAPTER TWENTY-ONE**  
**SOCIAL AND CULTURAL AFFAIRS**

**ARTICLE 143**

***Co-operation in Social and Cultural Affairs***

1. The Member States shall promote close co-operation between themselves in the social and cultural fields, particularly with respect to:
  - (a) employment and working conditions;
  - (b) labour laws;
  - (c) vocational training and the eradication of adult illiteracy in the region;
  - (d) cultural and sporting exchanges;
  - (e) the prevention of occupational accidents and diseases;
  - (f) the provision of facilities for the disabled;
  - (g) the right of association and collective bargaining between employers and workers; and

(h) radio and television programmes on matters that will promote cultural development of the Common Market.

2. The Council shall adopt a social charter, programmes and regulations, as the case may be, on the better implementation of the provisions of paragraph 1 of this Article.

## **CHAPTER TWENTY-TWO**

### **LEAST DEVELOPED COUNTRIES AND ECONOMICALLY DEPRESSED AREAS**

#### ***ARTICLE 144***

#### ***Strengthening Capacity for Co-operation***

1. The Member States, recognising the need for the promotion of harmonious and balanced development in the Common Market and in particular the need for reducing the disparities among various areas in the region and paying attention to the special problems of each Member State, particularly those of the least developed countries and economically depressed areas, agree to take several measures designed to strengthen the capacities of those groups of States of the Common Market to solve these problems. To this end, the Member States shall:
  - (a) encourage new investments in such areas thereby strengthening their economies so as to enable them to increase the production of exportable goods to other Member States of the Common Market;
  - (b) encourage the introduction of new technologies properly designed to meet the needs of such

areas so as to assist in the transformation of their economies from dependence on one or two primary commodities to a more diversified production and marketing structures;

- (c) promote special programmes and projects that would enable them to improve the supply side of their economies so as to participate more effectively in the Common Market; and
- (d) strengthen national and regional chambers of commerce and industry as well as other relevant bodies to enable them to play a leading role in the implementation of projects and programmes of the Common Market.

2. The Authority shall, upon the recommendation of the Council, designate a Member State as a least developed country.

## **ARTICLE 145**

### ***Development of Infrastructures***

The Member States agree that one of the major pre-requisites for sustained economic growth of the least developed countries and economically depressed areas of the Common Market is the development of adequate and reliable

infrastructure, especially transport and communications. The short- and-medium-term objectives for the development of the transport and communications infrastructure of the least developed countries and economically depressed areas shall include:

- (a) the completion of all inter-State missing links, especially the inter-state rail and road links, and the construction of local and domestic ones where these do not exist to enhance the much needed intra-regional co-operation with neighbouring countries;
- (b) special assistance to such areas in the development of adequate inter-State telecommunications facilities, which under certain circumstances, obviate the need for transport and movement of persons;
- (c) assistance in the maintenance and upgrading of all transport and communications infrastructure such as roads, rail, ports, airports and telecommunications;
- (d) the development of training facilities in the transport and communications sectors to cater for the increasing needs for skilled personnel at all levels and special assistance to enable such areas to acquire manufacturing capacity and capability for the maintenance of equipment required for transport

and communications facilities; and

- (e) special assistance for the development of other infrastructural facilities as may be deemed necessary for the accelerated development of such depressed areas. These facilities shall include those necessary for the supply of adequate utilities such as electricity and water.

#### **ARTICLE 146**

#### ***Industrial Development of the Least Developed Countries and Economically Depressed Area***

The Member States agree that special consideration shall be given to the least developed countries, and economically depressed areas of the Common Market in the sector of industry and energy development. In this regard, the Member States undertake to:

- (a) maximise the utilisation of existing capacities to meet local, national and regional demand;
- (b) improve the investment climate for both local and foreign investors;
- (c) increase investment in human resources development in particular, the development of

indigenous entrepreneurs;

- (d) develop industrial support services such as product design and adaptation, research and development, standardisation and quality assurance, market research, consultancy and contracting services, information dissemination, project identification, pre-feasibility and feasibility studies and industrial surveys; and
  
- (e) develop small-scale and medium-scale industries.

#### **ARTICLE 147**

#### ***Agriculture and Agro-Industrial Development of the Least Developed Countries and Economically Depressed Areas***

The Member States undertake to give special attention to the least developed countries and economically depressed areas of the Common Market in the sector of agriculture by:

- (a) the improvement of the production base of their agricultural products for trade and inputs to agro-industry;
  
- (b) the promotion of programmes aimed at processing primary agricultural products to enhance their value

and create rural employment;

- (c) the promotion of conservation and rational use of natural resources, and the enhancement of environmental friendly programmes; and
- (d) by increasing the income and standard of living of the populations of the economically depressed areas.

#### **ARTICLE 148**

#### ***Development of Services***

The Member States agree that special consideration should be given to the least developed countries and economically depressed areas of the Common Market in the service sector. In this regard, the Member States undertake to:

- (i) maximise the use of the existing potentials to respond to the needs of the sub-region;
- (ii) improve investment conditions for the service sector for nationals and foreigners; and
- (iii) develop support services including technical capacities, designing, adjustment of the service, market survey, advisory and contractual services.



## **ARTICLE 149**

### ***Other Areas of Co-operation***

The Council may from time to time adopt other priority areas to be considered in the context of the provisions of this Chapter.

## **ARTICLE 150**

### ***Special Fund for Co-operation, Compensation and Development***

1. The Council shall establish a special Fund for Co-operation, Compensation and Development for tackling the special problems of under-developed areas and other disadvantages arising from the integration process.
2. For the purposes of paragraph 1 of this Article, the Member States shall conclude a Protocol which shall, inter-alia, determine the machinery and formula to be used in granting compensation under this Article.

## **CHAPTER TWENTY-THREE**

### **DEVELOPMENT OF THE PRIVATE SECTOR**

#### ***ARTICLE 151***

#### ***Creation of an Enabling Environment for the Private Sector***

1. The Member States agree to provide an enabling environment for the private sector to take full advantage of the Common Market. To this end, the Member States undertake to:
  - (a) promote a continuous dialogue with the private sector organs at the national and regional levels to help create an improved business environment for the implementation of agreed decisions in all economic sectors; and
  - (b) provide an opportunity for entrepreneurs to participate actively in improving the policies, regulations and institutions that affect them so as to increase confidence in policy reforms, raise productivity and lower costs at enterprise levels.
2. For the purpose of implementing the objectives of paragraph 1 of this Article, the Member States undertake

to:

- (a) improve the business environment through the promotion of conducive investment codes, the protection of property and contract rights and the regularising of the informal sector;
- (b) stimulate market development through infrastructure linkages and the removal of barriers and constraints;
- (c) provide up to date commercial intelligence regularly to speed up market response through co-operation among the chambers of commerce and industry;
- (d) encourage sourcing of purchases by governments and parastatals within the sub-region;
- (e) facilitate and support the exchange of experience and pooling of resources through, inter alia, cross-border investments;
- (f) strengthen the role of chambers of commerce in national economic policy formulation;
- (g) in collaboration with the chambers of commerce and industries, establish lending institutions that shall

primarily cater for the entrepreneurs, especially the small-scale ones, which currently find it difficult to obtain credit from commercial banks and financing institutions; and

(h) encourage the use of the Eastern and Southern African Trade and Development Bank facility to finance the private sector.

3. The Consultative Committee established by Article 7 of this Treaty shall provide the main link in the dialogue between the private sector and other interest groups and organs of the Common Market.

## **ARTICLE 152**

### ***Strengthening the Private Sector***

1. The Member States shall endeavour to adopt programmes to strengthen and promote the role of the private sector as an effective force for the development, progress and reconstruction of their respective economies.

2. For the purposes of paragraph 1 of this Article, the Member States shall undertake to:

- (a) encourage the efficient use of scarce resources,

infrastructural and programme growth of private or business sector organisations which are engaged in all types of economic activity. These include the chambers of commerce, confederation and associations of industry, agriculture, manufacturers, farmers, external trade, commodities, services, professional development groups and others;

- (b) increase co-operation in the development of instruments and services which could be shared or absorbed through such organisations and which are currently handled by a Member State. By accepting to operate these transferred services, the organisations manifest both their legitimate concerns and interests of their constituency, and as a revenue source. These may include the issue and fee structure for: visa certification, certificate of origin, transit documentation, translation certification or services, notarisation and others deemed suitable for administration by the private sector organisations;
- (c) support a viable and autonomous central point for purposes of information operations, coordinating, production, administration, analytical and computerisation tasks. The technical infrastructure needs to be simple, well-understood by all its participants and meet the commercial and business

nature of the beneficiaries;

- (d) encourage and sponsor practical and resourceful methods of income generation and co-operation, with a view to reverse the trend of declining membership, poor services and lack of motivation for advancement; and
- (e) advocate programmes which will allow the collection, harmonised processing and speedy dissemination of information.

### **ARTICLE 153**

#### ***Co-operation Among Chambers of Commerce and Other Business Organisations***

The Member States undertake to co-operate in promoting common measures to ensure the strengthening of linkages among chambers of commerce. To this end, the Member States agree to:

- (a) support joint activities which will promote trade and investment, both among the Member States as well as global partners;
- (b) recognise and contribute to the efficient operations of region-wide or federation of business representation

organisations, professional and commercial interest groups and similar regional associations; and

- (c) encourage, promote and monitor decisions taken by the Consultative Committee and other relevant Common Market organs particularly in areas affecting business people, through their representative organisations.

## **CHAPTER TWENTY-FOUR**

### **WOMEN IN DEVELOPMENT AND BUSINESS**

#### ***ARTICLE 154***

#### ***Role of Women in Development***

The Member States agree that women make significant contribution towards the process of socio-economic transformation and sustainable growth and that it is impossible to implement effective programmes for rural transformation and improvements in the informal sector without the full participation of women. To this end, the Member States shall through appropriate legislative and other measures:

- (a) promote the effective integration and participation of women at all levels of development especially at the decision-making levels;
- (b) eliminate regulations and customs that are discriminatory against women and specifically regulations and customs which prevent women from owning land and other assets;
- (c) promote effective education awareness programmes aimed at changing negative attitudes towards



women;

- (d) create or adopt technologies which will ensure the stability of employment and professional progress for women workers; and
- (e) encourage and strengthen institutions which are engaged in the promotion and development of labour-saving devices aimed at improving the productive capacity of women.

#### **ARTICLE 155**

##### ***Role of Women in Business***

1. Having recognised the importance of women as a vital economic link within the chain of agriculture, industry and trade, the Member States agree to:
  - (a) increase the awareness of Women in Business issues at the policy level;
  - (b) create an enabling environment for the effective participation of women in Common Market trade and development activities;
  - (c) promote special programmes for women in small and medium-size enterprises;

- (d) eliminate such laws and regulations that hinder women's access to credit;
  - (e) initiate changes in educational and training strategies to enable women to improve their technical and industrial employment levels through the acquisition of transferable skills offered by various forms of vocational and on-the-job training schemes; and
  - (f) recognise and support the Federation of National Associations of Women in Business established to promote the effective participation of women in the Common Market trade and development activities.
2. The Federation of National Associations of Women in Business shall be represented at the Consultative Committee and be represented at the meetings of the Technical Committees of the Common Market.
  3. Implementation activities pursuant to the provisions of this Chapter shall be submitted to the appropriate Technical Committees depending on the technical items under consideration.

## **CHAPTER TWENTY-FIVE**

### **HUMAN RESOURCES DEVELOPMENT AND TECHNICAL CO-OPERATION**

#### **ARTICLE 156**

#### ***Development and Utilisation of Human Resources***

1. The Member States agree to undertake concerted measures to foster co-operation in human resources development and greater utilisation of human, technical know-how and institutional capabilities in all the fields of activity of the Common Market.
  
2. The Member States shall, in particular:
  - (a) coordinate their human resources development policies and programmes;
  
  - (b) adopt a regional plan for the joint development and exploitation of human resources in terms of knowledge, skills, technological inventiveness and entrepreneurial abilities;
  
  - (c) promote the development of a critical mass of well-trained personnel in all sectors relevant to the Common Market;

- (d) jointly utilise existing regional education and vocational training facilities in the Common Market and, where necessary, establish new ones;
- (e) harmonise the curricula of training institutions in the Common Market; and
- (f) encourage technical and student exchange programmes among the Member States.

## ***ARTICLE 157***

### ***Technical Co-operation***

The Member States agree:

- (a) to develop a pool of national expertise and capabilities to support the implementation of regional programmes funded from the regular budget and provide counterpart project personnel for donor-funded projects;
- (b) to develop a regional roster of all expertise, know-how and skills available in the region including those national experts not resident in the area;
- (c) to design a mechanism for mobilising and effectively utilising national expertise in the Member States

in the conceptualisation, design, implementation, monitoring and follow-up of regional projects approved by the Member States;

- (d) to provide readily available resources for financing technical co-operation programmes in the Member States related to regional programming and the implementation of common projects;
- (e) to provide resources to enable national experts from one Member State to assist other Member States to acquire skills and capabilities in specified areas related to regional co-operation; and
- (f) to enable the Common Market to tap and attract national experts residing outside the region to participate in co-operation programmes.

## **CHAPTER TWENTY-SIX**

### **INVESTMENT PROMOTION AND PROTECTION**

#### ***ARTICLE 158***

#### ***Scope of Co-operation in Investment Promotion and Protection***

The Member States recognise the need for effective resource mobilisation, investment and the importance of encouraging increased flow of private sector investment into the Common Market for development. To this end, the Member States agree to adopt harmonised macro-economic policies that shall attract private sector investment into the Common Market.

#### ***ARTICLE 159***

#### ***Investment Promotion and Protection***

1. In order to encourage and facilitate private investment flows into the Common the Market, Member States shall:
  - (a) accord fair and equitable treatment to private investors;
  - (b) adopt a programme for the promotion of cross-border investment;

- (c) create and maintain a predictable, transparent and secure investment climate in the Member States;
  - (d) remove administrative, fiscal and legal restrictions to intra-Common Market investment; and
  - (e) accelerate the deregulation of the investment process.
2. For the purposes of investment protection, the following activities shall be considered as investment:
- (a) movable and immovable property and other property rights such as mortgages, loans and pledges;
  - (b) shares and any other rights of participation in the management or economic results of a company or a firm, whether incorporated or not, including minority shares, corporate rights and any other kind of shareholding;
  - (c) stocks, bonds, debentures, guarantees or other financial instruments of a company or a firm, government or other public authority or international organisation;
  - (d) claims to money, goods, services or other

performance having economic value;

(e) intellectual and industrial property rights, technical processes, know-how, goodwill and other benefits or advantages associated with a business; and

(f) such other activities that may be declared by the Council as investments.

3. The Member States agree that part of the conducive climate to investment are measures aimed at protecting and guaranteeing such investment. To this end, the Member States shall:

(a) subject to the accepted principle of public interest, refrain from nationalising or expropriating private investment; and

(b) in the event private investment is nationalised or expropriated, pay adequate compensation.

4. For the purposes of paragraph 3 of this Article, expropriation shall include any measures attributable to the government of a Member State which have the effect of depriving an investor of his ownership or control of, or a substantial benefit from his investment and shall be interpreted to include all forms of expropriation such



as nationalisation and attachment as well as creeping expropriation in the form of imposition of excessive and discriminatory taxes, restrictions in the procurement of raw materials, administrative action or omission where there is a legal obligation to act or measures that frustrate the exercise of the investors rights to dividends, profits and proceeds of the right to dispose of the investment.

5. The benefits to private investors include the right to:
  - (a) repatriate investment returns including dividends and interest or other equivalent charges;
  - (b) repatriate royalties and other payments deriving from licences, franchises, concessions and other similar rights;
  - (c) repatriate funds for repayment of loans;
  - (d) repatriate proceeds from the liquidation or sale of the whole or part of the investment including an appreciation or increase of the value of the investment capital;
  - (e) payments for maintaining or developing the investment project, such as funds for acquiring raw or auxiliary materials, semi-finished products as well

as replacing capital assets;

(f) remit the earnings of expatriate staff of the investment project; and

(g) the right to enjoy exemption from customs duties and other fiscal exemptions for the period provided for in the investment package of a Member State and depending on the area of investment.

6. The Member States agree that a reasonable period of stability of investment climate is the period required to refinance the investment.

#### **ARTICLE 160**

##### ***Information on Investment Incentives and Opportunities***

The Member States undertake to increase awareness of their investment incentives, opportunities, legislation, practices, major events affecting investments and other relevant information through regular dissemination and other awareness - promoting activities.

#### **ARTICLE 161**

##### ***Double Taxation Agreements***

The Member States undertake to conclude between

themselves agreements on the avoidance of double taxation.

**ARTICLE 162**

***Multilateral Investment Agreements***

The Member States agree to take necessary measures to accede to multilateral agreements on investment dispute resolution and guarantee arrangements as a means of creating a conducive climate for investment promotion. To this end, the Member States undertake to accede to:

- (a) the International Convention on Settlement of Investment Disputes Between States and Nationals of Other States, 1965;
- (b) the Convention Establishing the Multilateral Investment Guarantee Agency; and
- (c) any other multilateral agreements designed to promote or protect investment.

## **CHAPTER TWENTY-SEVEN**

### **REGIONAL PEACE AND SECURITY**

#### ***ARTICLE 163***

##### ***Scope of Co-operation***

1. The Member States agree that regional peace and security are pre-requisites to social and economic development and vital to the achievement of regional economic integration objectives of the Common Market. In this regard, the Member States agree to foster and maintain an atmosphere that is conducive to peace and security through co-operation and consultations on issues pertaining to peace and security of the Member States with a view to preventing, better managing and resolving inter-State or intra-State conflicts.
2. The Member States undertake to promote and maintain good neighbourliness as a basis for promoting regional peace and security within the Common Market.

## **CHAPTER TWENTY-EIGHT**

### **FREE MOVEMENT OF PERSONS, LABOUR, SERVICES, RIGHT OF ESTABLISHMENT AND RESIDENCE**

#### ***ARTICLE 164***

#### ***Scope of Co-operation***

1. The Member States agree to adopt, individually, at bilateral or regional levels the necessary measures in order to achieve progressively the free movement of persons, labour and services and to ensure the enjoyment of the right of establishment and residence by their citizens within the Common Market.
2. The Member States agree to conclude a Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Right of Residence.
3. The Member States agree that the Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements within the PTA adopted under the PTA Treaty shall remain in force until such time that a Protocol on the Free Movement of Persons, Labour, Service, Right of Establishment and Residence enters into force.

## **CHAPTER TWENTY-NINE**

### **CO-OPERATION IN OTHER FIELDS**

#### **ARTICLE 165**

##### ***General Co-operation***

1. Subject to the provisions of this Treaty, the Member States undertake to consult with one another through appropriate organs of the Common Market for the purpose of harmonizing their respective policies in such fields as they may, from time to time, consider necessary or desirable for the efficient and harmonious functioning and development of the Common Market and the implementation of the provisions of this Treaty.
2. For the purposes of paragraph 1 of this Article, the Member States may take in common such other steps as are calculated to further the aims of the Common Market and the implementation of the provisions of this Treaty.

## **CHAPTER THIRTY**

### **FINANCIAL PROVISIONS**

#### ***ARTICLE 166***

##### ***Budget***

1. There shall be a budget of the Secretariat.
2. A draft budget for each financial year shall be prepared by the Secretary-General and approved by the Council.
3. All expenditures of the Secretariat shall be approved in respect of each financial year by the Council and shall be met from the budget.
4. The resources of the budget shall be derived from annual contributions of the Member States and such other sources as may be determined by the Council. The contributions of the Member States shall be based on the budget as approved by the Council.
5. In determining the annual contributions for each Member State, the Council shall assess the annual contributions for each Member State on the basis of the formula determined by the Council from time to time.

6. Fifty percent of the contributions due from a Member State shall be paid into the budget of the Secretariat within one month from the beginning of the financial year to which they relate and the remainder shall be paid within six months from the beginning of that financial year.
7. There shall be supplementary budgets approved by the Council to meet extraordinary expenditures of the Secretariat.

#### ***ARTICLE 167***

##### ***Contributions by Member States***

The Council shall determine the payment and currencies of contributions by the Member States to the budget of the Secretariat.

#### ***ARTICLE 168***

##### ***Common Market Levy and Other Resources***

1. There is hereby instituted a Common Market levy for the purpose of generating resources for financing Common Market activities.
2. The source, level and conditions for the applications of the Common Market levy shall be determined by the



Council.

3. Other resources of the Secretariat shall include such extra budgetary resources as:
  - (a) grants, donations, funds for projects and programmes and technical assistance; and
  - (b) income earned from activities undertaken by the Common Market.

#### **ARTICLE 169**

#### ***Accounts of the Secretariat and External Auditors***

1. The accounts of the Secretariat relating to each financial year shall be prepared in accordance with international accounting standards and shall be audited in the following financial year by External Auditors.
2. The External Auditors shall be appointed from time to time by the Council on the proposal of the Secretary-General. Such External Auditors shall be based in the Common Market and be qualified to practise in accordance with the national laws of the Member States. The External Auditors shall be persons of outstanding repute and integrity and who shall have demonstrated a high degree of professional skills.

3. The External Auditors shall act in accordance with any general or specific directions of the Council and, subject thereto, shall:
  - (a) determine its own procedure; and
  - (b) submit its report of the audit to the Secretary-General not later than six months from the expiry of the financial year to which the accounts so audited relate.
4. Upon receipt of the report of the External Auditors, the Secretary-General shall circulate copies thereof to every Member State and convene a meeting of the Intergovernmental Committee or Committee on Administrative and Budgetary Matters to examine the report and to make recommendations in relation thereto before the report is submitted to the Council for adoption.
5. The Council may make regulations for the better carrying out of the provisions of this Article and without prejudice to the generality of the foregoing, such regulations may provide for the terms and conditions of service and the powers of the External Auditors.

**ARTICLE 170**  
***Financial Regulations***

The Council shall make financial regulations for the application of the provisions of this Chapter.

## **CHAPTER THIRTY-ONE**

### **SANCTIONS**

#### ***ARTICLE 171***

##### ***Sanctions***

1. The Member States agree that for the attainment of the objectives of the Common Market, full commitment of each Member State to the fulfillment of the obligations contained in this Treaty shall be required. To this end, the Member States agree that specific sanctions may be imposed by the Authority to secure fulfillment by the Member States of their obligations under this Treaty.
2. For the purposes of paragraph 1 of this Article, the Authority may impose sanctions on a Member State:
  - (a) which defaults in performing an obligation under this Treaty; or
  - (b) whose conduct, in the opinion of the Authority, is prejudicial to the existence or the attainment of the objectives of the Common Market.
3. The Authority may in any of the events stipulated in paragraph 2 of this Article, impose any one or more of

the sanctions set out below:

- (a) suspend the exercise by such a Member State of any of the rights and privileges of membership to the Common Market;
  - (b) impose a financial penalty on such Member State;
  - (c) suspend from the Common Market a Member State on such conditions and for such period as the Authority may consider appropriate; or
  - (d) expel a Member State.
4. The Authority may expel a Member State:
- (a) whose rights and privileges have been suspended under sub-paragraph (a) of paragraph 3 of this Article who fails to remedy the default leading to such suspension within the period specified therefor; or
  - (b) which fails to pay the financial penalty imposed under sub-paragraph (b) of paragraph 3 of this Article.
5. A Member State suspended under sub-paragraph (c)

of paragraph 3 of this Article and which fails to meet the conditions imposed within the period specified shall automatically cease to be a Member State of the Common Market.

6. Where a Member State is in arrears for more than two years in the payment of its contributions for reasons other than those caused by public or natural calamity or exceptional circumstance that gravely affects its economy, such Member State may, by a resolution of the Authority, be suspended from taking part in the activities of the Common Market and shall cease to enjoy the benefits provided for under this Treaty.

## **ARTICLE 172**

### ***Continuation of Obligations and Re-admission***

1. A Member State suspended under Articles 171 (3)(a) and 171 (3)(c) of this Treaty shall continue to perform its outstanding obligations under this Treaty during the period of suspension.
2. A Member State expelled under Article 171 (3)(d) of this Treaty may apply for re-admission to the Common Market. The Authority may impose such conditions as it may consider necessary for re-admission.

## **CHAPTER THIRTY-TWO**

### **IMPLEMENTATION AND MONITORING ARRANGEMENTS**

#### ***ARTICLE 173***

##### ***Scope of Co-operation***

1. The Member States agree that the implementation of the provisions of this Treaty shall be prioritized on the basis of comprehensive and measurable programmes with clear implementation targets and effective evaluation mechanisms.
2. Subject to the provisions of this Treaty, the Secretariat shall be responsible for following up and monitoring the implementation by the Member States of the provisions of this Treaty and the regulations made, directives issued, recommendations made and decisions taken and opinions delivered by the Council.
3. The Secretary-General shall, within twelve months from the entry into force of this Treaty, submit to the Council a comprehensive and measurable implementation programme with clear targets.
4. The time-table of implementation shall be divided into

stages of two years each starting from the date of the entry into force of this Treaty and shall show a set of actions to be initiated and carried through concurrently.

5. The transition from one stage of implementation to the next shall be conditional upon a finding that the objectives specifically laid down in the time-table for that stage have been substantially attained and that the obligations have been fulfilled.
6. The findings shall be made at the end of the year of the time indicated in the time-table for that stage by the Council acting on reports prepared by the Secretariat and on the recommendations of the Intergovernmental Committee.
7. In the event that there is a deadlock in the decision to move on to the next stage, the current stage shall be automatically extended for a period of one year.
8. At the end of the year the Council shall make its finding acting on the reports of the Secretariat and the recommendations of the Intergovernmental Committee.
9. In the event that the Council fails to reach a decision, it shall refer the matter to the Authority for its decision



which shall be final and binding on all the Member States and on the organs of the Common Market.

10. A Member State may not rely on the non-fulfillment of its own obligations to prevent a decision from being taken or to reserve its position.

## **CHAPTER THIRTY-THREE**

### **EXISTING INSTITUTIONS AND AGREEMENTS**

#### ***ARTICLE 174***

#### ***Continuance in Force of Certain Institutions and Agreements***

1. The Member States shall recognise the institutions established under the Preferential Trade Area for Eastern and Southern African States which shall continue to be regulated by the respective Charters establishing them.
2. For the purposes of paragraph 1 of this Article, the Institutions are the:
  - (a) Eastern and Southern African Trade and Development Bank;
  - (b) Clearing House;
  - (c) Leather and Leather Products Institute;
  - (d) Re-insurance Company;
  - (e) Metallurgical Technology Center;

- (f) Council of Bureaux;
  - (g) Association of Commercial Banks;
  - (h) Centre for Commercial Arbitration;
  - (i) Federation of National Associations of Women in Business; and
  - (j) Federation of Chambers of Commerce and Industry.
3. Upon the entry into force of this Treaty, the institutions specified in paragraph 2 of this Article shall be deemed to be institutions of the Common Market and shall be designated as such.
  4. The rights and obligations arising from certain agreements concluded under the provisions of the PTA Treaty shall not be affected by the provisions of this Treaty.
  5. For the purposes of paragraph 4 of this Article, the agreements referred to in that paragraph are:
    - (a) the Agreement on Privileges and Immunities adopted by the PTA Member States in December 1983;

- (b) the Customs Bond Guarantee Agreement adopted by the PTA Member States in November 1990;
  - (c) the Charter on Multinational Industrial Enterprises adopted by the PTA Member States in November 1990;
  - (d) the Protocol on Third Party Motor Vehicle Insurance Scheme; and
6. Any references in the agreements referred to in paragraph 5 of this Article to the Preferential Trade Area or any officer or authority thereof shall have the effect as if references therein were substituted by the Common Market and the corresponding officer or authority thereof.

#### **ARTICLE 175**

#### ***Relationship Between the Institutions of the Common Market and the Common Market***

1. Each institution of the Common Market shall, in the implementation of the provisions of its Charter take into account the objectives, policies, programmes and activities of the Common Market.
2. The Secretary-General shall maintain such continuous

working relations with the institutions of the Common Market as would further the implementation of the provisions of this Treaty and shall for this purpose, make co-operation arrangements with each Institution of the Common Market.

3. Each institution of the Common Market shall, in accordance with its Charter, submit annual progress Reports to the Council on its activities and in response to which the Council may give its opinion.

#### **ARTICLE 176**

#### ***Dissolution of Certain Existing Institutions***

Upon the entry into force of this Treaty the following institutions shall cease to exist:

- (a) the PTA Tribunal established by Article 10 of the Treaty for the Establishment of the Preferential Trade Area for Eastern and Southern African States; and
- (b) the PTA Administrative Appeals Board established by Article 2 of its Statute.

## **CHAPTER THIRTY-FOUR**

### **ECONOMIC COMMUNITY FOR EASTERN AND SOUTHERN AFRICA**

#### **ARTICLE 177**

#### ***Gradual Establishment of an Economic Community for Eastern and Southern Africa***

1. At a date to be determined by the Authority after the entry into force of this Treaty, the Council shall propose to the Authority for its approval, measures which in addition to the provisions of this Treaty would be required to be implemented in order to assist in the eventual development and establishment of an Economic Community for Eastern and Southern Africa.
2. The functioning and development of the Common Market shall be reviewed in accordance with the provisions of this Treaty in order to establish an Economic Community for Eastern and Southern Africa.
3. The transition from the Common Market into an Economic Community for Eastern and Southern Africa shall be conditional upon a finding that the objectives of the Common Market have been substantially attained and that the obligations upon the Member States have been fulfilled.

## **CHAPTER THIRTY-FIVE**

### **RELATIONS WITH OTHER ORGANISATIONS AND CO-OPERATING PARTNERS**

#### **ARTICLE 178**

#### ***Relations with the African Economic Community***

1. The Member States agree that the final objective of the Common Market is to contribute to the implementation of the provisions of the Treaty Establishing the African Economic Community. To this end the Member States shall:
  - (a) negotiate, together with other regional economic communities, the Protocol on Relations between the African Economic Community and the Regional Economic Communities;
  - (b) implement the provisions of this Treaty with due consideration to the provisions of the Treaty Establishing the African Economic Community; and
  - (c) convert the Common Market or its successor, at a time to be agreed upon between the Common Market or its successor and the African Economic Community, into an organic entity of the African

Economic Community.

2. The Secretary-General shall coordinate the activities of the Common Market with those of the African Economic Community and shall, from time to time, submit reports to the Council.

#### **ARTICLE 179**

##### ***Relations with Other Regional Economic Communities***

1. In the context of realising its regional integration objectives, the Common Market may enter into co-operation agreements with other regional communities.
2. The co-operation referred to in paragraph 1 of this Article shall be subject to prior approval by the Council.

#### **ARTICLE 180**

##### ***Relations with other Intergovernmental Organisations***

1. Subject to the provisions of this Treaty, the Member States may be members of other regional or sub-regional organisations with other Member States or third countries for the purpose of strengthening co-operation among themselves.
2. The Secretary-General shall endeavour to co-ordinate



the activities of the Common Market with those of the organisations referred to in paragraph 1 of this Article.

3. The Common Market shall maintain such continuous working relations with the Organisation of African Unity, the United Nations and such intergovernmental or governmental organisations as would assist the Common Market in the implementation of the provisions of this Treaty.

#### **ARTICLE 181**

##### ***Relations with Co-operating Partners***

1. The Common Market shall establish such continuous and close working relations with relevant African organisations such as the United Nations Economic Commission for Africa, the African Development Bank and other intergovernmental and non-governmental organisations in Eastern and Southern Africa with a view to strengthening the institutional capacity of the Common Market and assisting it in the implementation of the provisions of this Treaty.
2. The Common Market shall accord special importance to co-operation with United Nations systems, other international organisations and bilateral and multi-lateral donor agencies whose policies and programmes

are compatible with the policies, programmes and activities of the Common Market.

3. The Secretary-General shall initiate and maintain dialogue with the organisations and agencies referred to in paragraph 2 of this Article and with any other organisation whose policies and programmes are compatible with those of the Common Market in order to facilitate closer co-operation with such organisations, agencies and multi-lateral and bilateral donor agencies.
4. Meetings may be held between the Member States and governmental and non-governmental organisations and bilateral donor agencies on the Common Market policies and strategies including the implementation thereof, with a view to enhancing the participation of these organisations and agencies in the implementation and development of the Common Market.
5. Recommendations from the meetings referred to in paragraph 4 of this Article shall be put before the organs of the Common Market for consideration.

## **ARTICLE 182**

### ***Specialised Agencies***

1. The Secretariat may, with the approval of the Council,

enter into arrangements with any organisation specialised in any of the fields of activity of the Common Market under which such organisation shall implement a specific field of activity for the Common Market.

2. Arrangements made under paragraph 1 of this Article shall provide for the scope and content of the activity, administration and financing of the services concerned.

### **ARTICLE 183**

#### ***Association with Other Countries***

The Member States may together negotiate with any third country with a view to the association of that country with the Common Market.

## **CHAPTER THIRTY-SIX**

### **GENERAL, TRANSITIONAL AND FINAL PROVISIONS**

#### ***ARTICLE 184***

##### ***Headquarters of the Common Market***

The Headquarters of the Common Market shall be in Lusaka in the Republic of Zambia or in such other place as may be determined by the Authority.

#### ***ARTICLE 185***

##### ***Official Languages***

The official languages of the Common Market shall be English, French, Portuguese and Arabic.

#### ***ARTICLE 186***

##### ***Status, Privileges and Immunities***

1. The Common Market shall enjoy international legal personality.
2. It shall have in the territory of each Member State:
  - (a) the legal capacity required for the performance of its functions under this Treaty; and

- (b) power to acquire or dispose of movable and immovable property in accordance with the laws and regulations in force in each Member State.
- 3. The Common Market shall, in the exercise of its legal personality, be represented by the Secretary-General.
- 4. Subject to the provisions of the Charters establishing the institutions of the Common Market which provide that the institution, as the case may be, shall be capable of being sued, the Agreement shall be extended to the institutions of the Common Market:

Provided that the Secretary-General shall make arrangements by which the administrative costs related to implementation of the provisions of the Agreement are equitably shared with the institutions of the Common Market.

- 5. The Secretary-General acting on behalf of the Common Market, shall conclude with the governments of the Member States in whose territory the headquarters or regional or country offices of the Common Market shall be situated, agreements relating to the legal capacity and the privileges and immunities to be recognized and granted in connection with the Common Market.

6. The Chief Executives of the institutions of the Common Market shall, acting on behalf of their institutions, conclude with the governments in whose territory the Headquarters or other offices of such institutions are situated, agreements relating to the legal capacity and privileges and immunities to be recognised and granted in connection with their respective institutions of the Common Market.

## **ARTICLE 187**

### ***Transitional Arrangements***

1. Until Rules of Procedure and Terms of Reference of the Authority, the Council and all subordinate Organs other than the Court of the Common Market are made under the provisions of this Treaty, the Rules of Procedure and Terms of Reference of the Authority, the Council of Ministers and subordinate Organs of the Preferential Trade Area other than the PTA Tribunal shall continue to apply.
2. Until Staff Rules and Regulations and the Financial Rules of the Common Market are adopted the Staff Rules and Regulations and Financial Rules of the Preferential Trade Area shall continue to apply.

## **ARTICLE 188**

### ***Dissolution of the Preferential Trade Area***

1. Upon the entry into force of this Treaty, hereinafter referred to as "the appointed day" the Preferential Trade Area established on the Thirtieth day of September 1982 by the Treaty for the Establishment of the Preferential Trade Area for Eastern and Southern African States, shall cease to exist.
2. The Secretary-General shall submit to the first meeting of the Council, a programme for the restructuring and re-organisation of the Secretariat including revision of job descriptions of the posts in the Secretariat to ensure that the Secretariat is more suitably structured to efficiently and adequately discharge the responsibilities entrusted upon it by or under this Treaty.

## **ARTICLE 189**

### ***Transfer of Assets and Liabilities***

1. On the appointed day there shall be transferred to and vested in the Common Market by virtue of this Article and without further assurance, all the assets and liabilities of the Preferential Trade Area and from that day, the Common Market shall, in respect of the assets and liabilities so transferred and vested, have all the rights,

and be subject to all the liabilities, which the Preferential Trade Area had, or is subject to, immediately before that day.

2. Every contract made by or on behalf of the Preferential Trade Area in writing and whether or not of such a nature that rights and liabilities thereunder can be assigned by the Preferential Trade Area, shall have effect as if made by or, on behalf of the Common Market and as if for references therein to the Preferential Trade Area or any officer or authority thereof, were substituted, in relation to anything falling to be done on or after the appointed day, references to the Common Market and to the corresponding employee or authority thereof.
3. Any proceedings by or against the Preferential Trade Area pending on the appointed day, shall be continued by or against the Common Market.
4. Reference to the Preferential Trade Area in any law or document shall on and after the appointed day be continued as references to the Common Market.

## ***ARTICLE 190***

### ***Amendment***

1. Any Member State or the Council may submit proposals



for the amendment of this Treaty.

2. Any proposals for the amendment of this Treaty shall be submitted to the Secretary-General in writing who shall, within thirty days of its receipt, communicate it to the Member States.
3. The Member States which wish to comment on the proposals shall do so within ninety days from the date of the dispatch of the proposal by the Secretary-General.
4. After the expiration of the period prescribed under paragraph 3 of this Article, the Secretary-General shall submit the proposals and any comments thereon received from the Member States to the Authority through the Committee on Legal Affairs.
5. Any amendment to this Treaty shall be adopted by the Authority and shall enter into force when ratified by two-thirds of the Member States, provided that in exceptional cases the Authority may provide for an Amendment of the Treaty to come into force upon adoption by the Authority.

## **ARTICLE 191**

### ***Withdrawal***

1. Any Member State wishing to withdraw from the Common Market shall give to the Secretary-General one year's written notice of its intention to withdraw and at the end of such year shall, if such notice is not withdrawn, cease to be a Member State of the Common Market.
2. During the period of one year referred to in paragraph 1 of this Article, a Member State wishing to withdraw from the Common Market shall nevertheless observe the provisions of this Treaty and shall remain liable for the discharge of its obligations under this Treaty.
3. The obligations assumed by the Member States under this Treaty shall, to the extent necessary survive the termination of membership of any Member State.
4. A withdrawing Member State shall be entitled to claim any property, assets or rights over any of the property and assets of the Common Market only upon the termination of the Common Market.
5. Any property and assets of the Common Market situated in the territory of a Member State whose membership

has been withdrawn shall continue to be the property of the Common Market and be available to the Common Market.

## **ARTICLE 192**

### ***Termination of Operations***

1. The Authority may, on the recommendation of the Council, terminate the operations of the Common Market.
2. The activities of the Common Market shall cease on the date appointed by the Authority to be the termination date except those activities incidental to the orderly relations, the conservation and preservation of its assets and settlement of its obligations.
3. The liability of all Member States for their share of the contributions due shall continue until all claims of creditors, including all contingent claims shall have been discharged.
4. The Council shall, before making any payments to creditors holding direct claims, make such arrangements as are necessary to ensure a pro rata distribution among holders of direct and contingent claims.

5. All creditors holding direct claims shall first be paid out of the assets of the Common Market and then out of the contributions owing.
6. No distribution of assets shall be made to the Member States on account of their contributions to the budget until all liabilities to creditors shall have been discharged or provided for and any such distribution shall be approved by the Council.
7. Any distribution of assets of the Common Market to the Member States shall be in proportion to their contributions to the budget and shall be effected at such time and under such conditions as the Council considers fair and equitable.
8. No Member State shall be entitled to receive its share in such distribution of assets until it has settled all its obligations to the Common Market.
9. Any Member State receiving assets distributed pursuant to this Article shall enjoy the same rights with respect to such assets as the Common Market enjoyed prior to their distribution.
10. A withdrawing Member State under the provisions

of Article 191 of this Treaty shall, for the purposes of distribution of assets, be treated as a Member State.

### **ARTICLE 193**

#### ***Annexes to the Treaty***

The Annexes to this Treaty shall form an integral part of this Treaty.

### **ARTICLE 194**

#### ***Entry into Force, Ratification and Accession***

1. This Treaty shall enter into force when signed by or on behalf of the High Contracting Parties and ratified by at least eleven signatory States.
2. Any State referred to in paragraph 2 of Article 1 of this Treaty may accede to this Treaty.
3. Any State referred to in paragraph 3 of Article 1 of this Treaty may accede to this Treaty on such terms and conditions as the Authority may determine.
4. This Treaty shall enter into force in relation to an acceding State on the date its instrument of accession shall be deposited.

## **ARTICLE 195**

### ***Depositary***

1. This Treaty and all Instruments of Ratification or Accession shall be deposited with the Secretary-General who shall transmit certified true copies of this Treaty to all the Member States.
2. The Secretary-General shall notify the Member States of the dates of deposit of Instruments of Ratification and Accession and shall register this Treaty with the United Nations, the Organisation of African Unity and such other organisations as the Council may determine.

## **ANNEX I**

### **PROTOCOL ON TRANSIT TRADE AND TRANSIT FACILITIES**

#### ***PREAMBLE***

#### **THE HIGH CONTRACTING PARTIES**

**RECALLING** the provisions of sub-paragraph (b) of paragraph 2 of Article 4 of the Treaty to the effect that the Member States shall make regulations for facilitating transit trade within the Common Market:

**RECALLING FURTHER** the provisions of paragraph (h) of Article 85 of the Treaty;

**HAVING REGARD** to the provisions of paragraph 4 of Article 67 of the Treaty;

**HEREBY AGREE AS FOLLOWS:**

#### ***ARTICLE 1***

##### ***Interpretation***

In this Protocol:

“Carrier” means the person actual transporting transit

goods or in charge of or responsible for the operation of the respective means of transport;

“Common Market Transit Document” means any type of customs document for transit declaration approved by the Council to be utilised within the Common Market;

“Container” means an article of transport equipment:

fully or partially enclosed to constitute a compartment intended for containing goods and capable of being sealed;

of a durable nature intended for repeated use;

specifically designed for the carriage of goods by one or more modes of transport without intermediate unloading and reloading of its contents;

fitted with devices for easy handling, particularly for its transfer from one mode of transport to another;

so designed as to be easy to fill and empty; and

having an internal volume of at least one cubic metre;

“Customs office of commencement” means any port, inland or frontier customs office of a Member State where the



provisions of this Protocol begin to apply;

“Customs office of destination” means any port, inland or frontier customs office of a Member State where the provisions of this Protocol cease to apply;

“Customs office en-route” means any customs office where goods are imported or exported in the course of a customs transit operation;

“Customs office of entry” means any customs office of a second or other subsequent Member States where, in relation to that State, the provisions of this Protocol begin to apply , and includes any customs office which, even when not situated on the frontier, is the first point of customs control after crossing the border;

“Customs office of exit” means any customs office, which, even when not situated on the frontier, is the last point of customs control before crossing the border;

“Goods” means all chattels personal other than things in action and includes wares, merchandise, mail, implement and industrial crops;

“Import or export duties and taxes” means customs duties and other charges of equivalent effect levied by reason of

importation or exportation of goods;

“Means of transport” include:

any railway stock, containers, water-going vessels, road vehicles and aircraft;

where the local situation so requires, porters and pack animals; and

pipelines and gas lines;

“Surety” means any person who gives an undertaking to the customs authorities of a Member State to answer for or be collaterally responsible for the debt, obligation, default or miscarriage of the transitor and for the payment to transit States of import duties and any other sums of money due and payable to them in the event of non-compliance with the terms and conditions of transit relating to transit traffic introduced into the transit States by carriers of such goods;

“RCTD Document” means the Common Market Road Customs Transit Declaration Document;

“Transit traffic” means the passage of goods including unaccompanied baggage, mail, persons and their means of transport through the territories of the Member States

in accordance with the itineraries set out in paragraph 1 of Article 2 of this Protocol;

“Transitor” means the person responsible for the conveyance of goods under the provisions of this Protocol or his authorised agent;

“Vessel” means any mechanically propelled ship, boat or craft with inboard engine power or any other craft moving through water carrying passengers or cargo.

## **ARTICLE 2**

### ***General Provisions***

1. The Member States undertake to grant all transitors and transit traffic freedom to traverse their respective territories by any means of transport suitable for that purpose when coming from:
  - (a) or bound for other Member States; or
  - (b) third countries and bound for other Member States; or
  - (c) other Member States and bound for third countries; or

(d) third countries and bound for third countries.

2. Notwithstanding the provisions of paragraph 1 of this Article, any Member State may, if it deems it necessary, prohibit, restrict or otherwise control the entry of certain persons, mail, merchandise or means of transport from any country for the protection of public morality, safety, health or hygiene, or animal or plant health, or in the public interest.
3. The Member States undertake not to levy any import or export duties on the transit traffic referred to in paragraph 1 of this Article. However, in accordance with paragraph 6 of Article 11 of this Protocol, a Member State may levy administrative or service charges.
4. For the purposes of this Protocol, the Member States undertake to ensure that there shall be no discrimination in the treatment of persons, mail, merchandise and means of transport coming from or bound to the Member States, and that rates and tariffs, for the use of their facilities by other Member States shall not be less favourable than those accorded to their own traffic.

## **ARTICLE 3**

### ***Scope of Application***

1. The provisions of this Protocol shall apply to any transitor, mail, means of transport or any shipment of bonded goods in transit between two points either in two different Member States or between a Member State and a third country.
  
2. The provisions of this Protocol shall only apply to transit transport if it is:
  - (a) operated by a carrier licensed under the provisions of Article 4 of this Protocol;
  
  - (b) performed under the conditions set out in Article 5 of this Protocol y means of transport approved by the customs office of commencement and issued with certificates which shall be in the form set out in Appendix III of this Protocol;
  
  - (c) guaranteed by a surety in accordance with the provisions of Article 6 of this Protocol; and
  
  - (d) undertaken under cover of the RCTD Document, or any other transit document approved by Council.

3. The provisions of this Protocol shall apply to transit goods being carried by whatever means of transport, except that in the case of air, water and rail transport, the aircraft, vessel or train in transit shall be exempted from the application of the provisions of this Protocol but goods, including baggage carried on them shall be subject to the provisions of this Protocol. However, the aircraft, vessel or train will be subject to the national laws and regulations of the transit country.
  
4. The provisions of this Protocol shall cease to apply to transit traffic referred to in Article 2(1)(a) of this Protocol when the customs duties and other charges of equivalent effect have been eliminated and common external tariffs established. In this regard, the Council will determine the transit regime and trade facilities to be applicable for Common Market produced goods.

#### **ARTICLE 4**

##### ***Licensing of Carriers***

1. Any person intending to be engaged in the operation of transit traffic under the provisions of this Protocol shall be licensed for that purpose by the competent authorities of the Member State in whose territory he is normally resident or established, and the competent authority shall inform all the other Member States of all

the persons so licensed.

2. The conditions for the issuance of the licences referred to in paragraph 1 of this Article to a person resident or established in a Member State shall be that:
  - (a) the requirements of Article 5 of this Protocol have been satisfied; and
  - (b) the applicant has not during the previous three years been convicted of a serious offence, including accepting, receiving or offering bribes, smuggling, theft, destroying documents or evidence, and failing or refusing to give information relating to inter-state transportation of goods.
3. The conditions for the issuance of the licences referred to in paragraph 1 of this Article to applicants who are not resident or established in a Member State shall be determined by each Member State in consultations with the other Member States:

Provided that such conditions shall not be more favourable than conditions accorded to persons resident or established in that Member State.

4. Licensed carriers who are convicted of customs

offences referred to in sub-paragraph (b) of paragraph 2 of this Article or who conceal their record of having been convicted of such offences in order to obtain a licence or who commit such offences after they have been licensed to operate transit traffic, shall have their licences suspended automatically or withdrawn by the issuing authorities who shall thereupon notify the customs authorities of the other Member States and the respective sureties of the action taken.

## **ARTICLE 5**

### ***Approval of Means of Transport***

1. The means of transport used in transit trade shall be licensed by the appropriate licensing authorities of the Member States in accordance with their national laws and regulations.
2. For the purpose of sub-paragraph (b) of paragraph 2 of Article 3 of this Protocol, means of transport, together with their cargo, shall be presented to the customs offices of commencement for examination to ensure that they comply with the technical conditions stipulated in Appendix II of this Protocol before each transit traffic operation is undertaken.



## **ARTICLE 6**

### ***Bonds and Sureties***

All Common Market transit traffic operations carried under the cover of the RCTD Document or any other transit document approved by Council shall be covered by customs bond and sureties arrangements.

## **ARTICLE 7**

### ***Common Market Transit Document***

1. Subject to such other conditions and regulations as the Council may deem necessary, each Member State undertakes to authorise a transitor or his authorised agent, to prepare in respect of each consignment of transit goods a Common Market Transit Document in accordance with the Rules laid down in Appendix I of this Protocol.
2. Common Market Transit Documents shall conform to the standard form approved by the Committee on Trade and Customs. Common Market Transit Documents shall be valid for only one transit operation and shall contain a sufficient number of copies for customs control and discharge required for the transport operation concerned.

3. All means of transport covered by the provisions of this Protocol shall be accompanied by relevant Common Market Transit Documents and such documents shall, on demand, be presented by the carriers, together with the respective means of transport and certificates to the customs offices en-route and the customs offices of destination for their appropriate actions.

## **ARTICLE 8**

### ***Exemption from Customs Examinations and Charges***

1. Provided the provisions of Articles 4 and 5 of this Protocol are satisfied, goods carried in approved sealed means of transport, sealed packages, or accepted by a customs office of commencement as goods not susceptible to tampering, substitution or manipulation, and permitted to be carried unsealed, shall not:
  - (a) be subject to the payment of import or export duties at customs offices en-route; and
  - (b) as a general rule, be subject to customs examination at such offices.
2. However, in order to prevent abuse, the customs authorities may, where they suspect an irregularity, carry out at such offices a partial or full examination of the goods.

## **ARTICLE 9**

### ***Transit Procedures***

1. All transit goods and means of transport shall be presented to the customs office of commencement together with duly completed relevant Common Market Transit Documents supported by appropriate bonds as necessary for examination and affixing of customs seals. The office of commencement shall decide whether the means of transport to be used provide enough safeguards to ensure customs security and whether the shipment may be made under cover of the relevant Common Market Transit Document.
2. Where it is not possible for goods to be transported in sealed means of transport to compartments, the customs authorities at the customs office of commencement may authorise their transportation in such unsealed means of transport or compartments and under such conditions as they may deem necessary, and endorse the relevant Common Market Transit Document accordingly.
3. A means of transport engaged in the transport of goods under the provisions of this Protocol shall not at the same time be used to transport passengers unless such passengers and their personal effects are carried

in a part of the means of transport which is adequately sealed off to the satisfaction of the customs authorities of the customs office of commencement from that part of the means of transport used for the transport of goods under the provisions of this Protocol, and otherwise complies with the provisions of Appendix II of this Protocol, unless the goods are such that sealing is dispensed with under the provisions of this Protocol.

4. Nothing may be added to, taken from, or substituted for goods consigned under cover of a Common Market Transit Document at times of off-loading, trans-shipment or collecting.
5. The means of transport, together with the respective Common Market Transit Document, shall be presented to the customs authorities at customs offices enroute and at customs offices of destination for such administrative action as may be required under the provisions of this Protocol.
6. Save where irregularities are suspected, the customs offices enroute within the Member States shall respect the seals affixed by the customs authorities of the other Member States. Such customs authorities may, however, affix additional seals of their own.

7. In order to prevent abuse, the customs authorities may, if they deem it necessary:
  - (a) require the means of transport to be escorted through the territory of their country, at the transitor's expense, when goods are transported in unsealed means of transport; or
  - (b) require that examination of the means of transport and their loads be carried out enroute in the territory of their country.
1. An unsealed shipment covered by an appropriate Common Market Transit Document shall have only one customs office of destination.
2. If the goods in a means of transport are examined at a customs office enroute or anywhere in the course of transportation, the customs authorities concerned shall affix new seals and make a certified declaration of the particulars of irregularities, if any, and of the new seals affixed by them.
3. In the event of an accident or imminent danger necessitating the immediate unloading in whole or in part of a means of transport, the carrier may on his own initiative take such steps as may be necessary to ensure

the safety of the goods being transported or the means of transport in which they are being transported. The carrier should, however, as soon as possible thereafter, inform the customs office of commencement. The carrier shall arrange where appropriate for the goods to be transferred to other means of transport in the presence of customs authorities concerned or any other accredited local authority. The customs authority or such other accredited authority shall endorse the Common Market Transit Document with the particulars of the goods transferred to the other means of transport and where possible apply the customs seal.

4. On arrival at the customs office of destination, the Common Market Transit Document shall be discharged without delay. If, however, the goods cannot be immediately entered under another customs regime, the customs authorities may reserve the right to discharge the document conditionally upon a new liability being substituted for that of the surety guaranteeing the said document.
5. If seals affixed by customs authorities are broken enroute otherwise than in the circumstances set out in paragraph 10 of this Article, or if goods are destroyed or damaged without breaking such seals, the procedure laid down in paragraph 11 of this Article shall, without

prejudice to the application of the provisions of national laws, be followed and a certified report drawn up in the form set out in Appendix IV of this Protocol.

6. When the customs authorities are satisfied that the goods covered by a Common Market Transit Document have been destroyed by force majeure an exemption from payment of the duties shall be granted.

## **ARTICLE 10**

### ***Obligations of the Member States and Sureties***

Subject to the provisions of Article 6 of this Protocol, the obligations of Member States and sureties are as follows:

- (a) each Member State undertakes to facilitate the transfer to the other Member States of the funds necessary for payment of premiums or other charges claimed from sureties under the provisions of this Protocol, or for payments of any penalties which the transitor may incur in the event of an offence being committed in the course of transit transport operations;
- (b) the Member States agree to ensure that the liabilities undertaken by sureties cover import or export duties due, any interest thereon, and other charges

and financial penalties incurred by the holder of a Common Market Transit Document and other persons involved in the transit transport operation under the customs laws and regulations of the Member State in which an offence has been committed. The surety and the persons charged with the offence shall be jointly and severally liable for payment of such sums. The fact that customs authorities might have authorised the examination of goods elsewhere than at a place where the business of the customs office of commencement or destination is usually conducted shall not affect the liability of the surety;

(c) for the purpose of determining the duties referred to in paragraph (b) of this Article, the particulars of the goods as entered in the Common Market Transit Document shall, unless the contrary is proved, be regarded as correct;

(d) the liability of the surety to the authorities of any Member State shall commence from the time when the Common Market Transit Document is accepted by the customs authorities of that Member State, and shall cover only the goods enumerated in the document;

(e) when the customs authorities of a Member State



have unconditionally discharged a Common Market Transit Document, they may not subsequently claim from the surety payment in respect of the duties referred to in paragraph (b) of this Article unless the certificate of discharge was issued erroneously or fraudulently;

(f) the transitor and surety shall be released from their undertaking to the customs authorities of each Member State entered when the goods carried have been duly exported or have otherwise been accounted for satisfactorily to the customs authorities of the Member State concerned;

(g) where a Common Market Transit Document has not been discharged or has been discharged conditionally, the competent authority of a Member State shall not claim from the surety the payments referred to in paragraph (b) of this Article unless such authority has, within a period of one year from the date on which the Common Market Transit Document was taken on charge, notified the surety of the non-discharge or conditional discharge of the document:

Provided that where the certificate of discharge was obtained erroneously or fraudulently, this paragraph shall not prevent the authorities of a Member State from taking the necessary

action against the person or persons concerned at any time thereafter in accordance with their national laws;

- (h) the claim for payment referred to in paragraph (b) of this Article shall be made within three years from the date when the surety was notified that the relevant Common Market Transit Document had not been discharged or had been discharged conditionally, or that the certificate of discharge had been obtained erroneously or fraudulently. However, if the period of three years referred to in this Article includes a period of legal proceedings, any claim for payment under the provisions of this Article shall be made within one year from the date when the decision of the court becomes enforceable; and
- (i) the Member States shall, where feasible, use the services available in other Member States in all transit traffic operations provided such services are competitive and not less efficient than those offered by other parties.

## **ARTICLE 11**

### ***Miscellaneous Provisions***

1. The Member States undertake to establish or facilitate the establishment of bonded, transit or customs areas

or bonded warehouses for the temporary storage of transit goods where the direct trans-shipment of goods from one means of transport to another is not possible. The management and operation of such bonded, transit or customs areas and such bonded warehouses shall be in accordance with the customs rules and regulations of the Member States concerned.

2. The Member States undertake to permit and facilitate the establishment of cargo, clearing and forwarding offices in their territories by persons, organisations or associations of other Member States or their authorised agents, for the purpose of facilitating transit traffic in accordance with their national laws and regulations.
3. Each means of transport engaged in international transit traffic operations under cover of an RCTD document or any other transit document approved by Council shall have affixed to its front and rear, a plate bearing the letters "COMESA-TRANSIT", the specifications of which are laid down in Appendix V of this Protocol. These plates shall be so placed as to be clearly visible, removable and capable of being sealed. The seals to such plates shall be affixed by the customs authorities of the customs offices of commencement and shall be removed by the authorities of the offices of destination.
4. The Member States shall communicate to each other

through the Secretariat facsimiles of the seals, stamps and date stamps they use.

5. Each Member State shall send to the other Member States through the Secretariat a list of its customs offices and stations including transit routes approved by it for Common Market Transit Document covered traffic and normal working hours of such offices. Contiguous Member States shall consult each other in determining the frontier customs offices to be included in such lists and where possible such offices shall be juxtaposed.
6. In all customs operations referred to in this Protocol, no charges shall be levied for customs attendance, save where it is provided on days or at times or places other than those appointed for such operations. Wherever possible customs frontier offices shall remain open for business for twenty-four hours a day or shall allow execution of customs formalities relating to the transportation of goods under the provisions of this Protocol outside the normal working hours.
7. Any breach of the provisions of this Protocol shall render a carrier liable in the Member State where the offence is committed to the penalties prescribed by law in that Member State.

8. Nothing contained in this Protocol shall prevent the Member States from enacting special legislation in respect of transport operations commencing or terminating in or passing through their territories:

Provided that the provisions of such legislation shall not conflict with the provisions of this Protocol, are extended to other Member States or do not confer benefits on third countries that are more favourable than those enjoyed by the Member States.

9. All Common Market Transit Documents may have an annex of a note explaining how that particular document should be used.

## **APPENDIX I**

### **NOTE FOR THE USE OF THE COMMONMARKET TRANSIT DOCUMENT**

1. The Common Market Transit Document herein after referred to as "document" shall be prepared in the country of commencement where the goods are first declared to be in transit.
2. The document shall be printed in the English, French and Portuguese languages but completed in the language of the country of commencement. The customs authorities of the other countries traversed reserve the right to require their translation into their own language. In order to avoid unnecessary delays which might arise from this requirement, earners are advised to supply the operator of the means of transport with the requisite translations.
3. A document remains valid until completion of the transit operation at a customs office of destination provided that it has been taken under customs control at the customs office of commencement within the time limit given by the issuing authorities.
4. (a) The document must be typed or multigraphed or printed legibly.

- (b) When there is not enough space on the manifest separate sheets to enter all the goods carried, separate sheets of the same model as the manifest may be attached to the latter, but all copies of the manifests must contain the following particulars:-
- (i) a reference to the sheets; and
  - (ii) the number and type of packages and goods in bulk enumerated on the separate sheets:
  - (iii) the total value and the total gross weight of the goods appearing on the said sheets.
5. Weight, volume and other measurements shall be expressed in units of the metric system and values in the currency of the country of commencement or in Eastern and Southern Africa Currency Unit (ESACU).
6. No erasures or over-writing shall be allowed on the document. Any correction shall be made by deleting the incorrect particulars and adding, if necessary, the required particulars. Any correction, addition or other amendment shall be acknowledged by the person making it and countersigned by the customs authorities.
7. When the document covers coupled means of transport

or several containers, the contents of each means of transport shall be Indicated separately on the manifest. This information shall be preceded by the registration or identification number of the means of transport or container.

8. If there is more than one customs office of destination, the entries concerning the goods taken under customs control at. or intended for. each office shall be clearly separated from each other on the manifest.
9. In the event of customs seals being broken or goods being destroyed or damaged accidentally en-route the operator of the means of transport shall ensure that a certified report is drawn up as quickly as possible by the authorities of the country in which the vehicle heated The operator shall approach the customs authorities. if there are any near at hand or if any other competent authorities. Operators shall accordingly provide themselves with copies of the certified report form laid down In Appendix V of this Protocol on Transit Trade and Transit Facilities within the Common Market.
10. In the event of accident involving immediate unloading of the whole or part of the part of the load en-route, the operator may take action on his own initiative without requesting or awaiting intervention by the authorities



mentioned in paragraph 9 of these notes. He must then furnish adequate proof that he was compelled to take such action the interests of the means of transport or of the load. Having taken such preventive measures as the emergency may necessitate, he shall at the first opportunity notify the authorities mentioned in paragraph 9 of these notes in order that the facts may be verified, the load checked, the means of transport sealed and a report drawn up.

**APPENDIX II**  
**REGULATIONS RELATING TO TECHNICAL**  
**CONDITIONS APPLICABLE TO MEANS OF**  
**TRANSPORT OTHER THAN PORTERS AND**  
**PACK ANIMALS WHICH MAY BE ACCEPTED FOR**  
**TRANSPORT OF GOODS WITHIN THE COMMON**  
**MARKET UNDER CUSTOMS SEAL**

1. Approval for the intra-Common Market transport of goods by means transport under customs seal may be granted only for means of transport constructed and equipped in such a manner that:
  - (a) customs seal can be simply and effectively affixed thereto;
  - (b) no goods can be removed from or introduced into the sealed part of the means without transport without obvious damage to it or without breaking the seals:
  - (c) they contain no concealed spaces where goods may be hidden.
2. The means of transport shall be so constructed that all spaces in the form of compartments, receptacles or other recesses which are capable of holding goods are readily accessible for customs inspection.
3. Should any empty spaces be formed by the different

layers of the sides, floor and roof of the means of transport, the inside surface shall be firmly fixed, solid, unbroken and incapable of being dismantled without leaving obvious traces.

4. Openings made in the floor for technical purposes, such as lubrication, maintenance and filling of the sand-box, shall be allowed only on condition that they are fitted with a cover capable of being fixed in such a way as to render the loading compartment inaccessible from the outside.
5. Doors and all other closing systems of means of transport shall be fitted with a device which shall permit simple and effective customs sealing. This device shall either be welded to the sides of doors where these are of metal, or secured by at least two bolts, riveted or welded to the nuts on the inside.
6. Hinges shall be so made and fitted that doors and other closing systems cannot be lifted off the hinge-pins, once shut: the screws, bolts, hinge-pins and other fasteners shall be welded to the outer parts of the hinges. These requirements shall be waived. However, where the doors and other closing systems have a locking device inaccessible from the outside which, once it is applied, prevents the doors from being lifted off the hinge-pins

7. Doors shall be so constructed as to cover all interstices and ensure complete and effective closure.
8. The means of transport shall be provided with a satisfactory device for protecting the customs seal. or shall be so constructed that the customs seal is adequately protected.
- 9 The foregoing conditions shall also apply to Insulated vehicles, refrigerator vehicles. Tank vehicles and furniture vehicles in so far as they are not incompatible with the technical requirements which such vehicles must fulfill in accordance with their use.
10. The flanges (filler caps), drain cocks and manholes of tank wagons shall be so conducted as to allow simple and effective customs sealing. .
11. Folding or collapsible containers are subject to the same conditions as non-folding or non-collapsible containers, provided that the locking devices enabling them to be folded or collapsed allow of customs sealing and that no part of such container can be moved without breaking the seals.

### **APPENDIX III**

#### **Certificate of Approval of Means of Transport**

1. Certificate No. ....Date of Expiry: .....
2. Attesting that the means of transport specified below fulfils the conditions required for admission to intra-Common Market transport of goods under customs seals.
3. Name and address of holder (owner or carrier)  
.....  
.....
4. Make: .....
5. Type: .....
6. Engine No: .....Chassis No. ....
7. Registration No. ....
8. Other particulars .....

9. Issued at .....(place) on ..... (date) .....

10. Signature and stamp of issuing office at .....

Note: This licence must be frame and exhibited in the can of the means of transport to which it relates and must be returned to the issuing office when the means of transport is not in use, or on a change of owner or carrier on expiry of the period of validity of the certificate, or if there is any material change, in any essential particulars of the means of transport.

**APPENDIX IV**  
**CERTIFIED DECLARATION OF EXAMINATION OF**  
**CONTENTS OF MEANS OF COMMON MARKET**  
**TRANSPORT**

**Front of Report Form**

1. Common Market Transit Document No: ..... Issued  
at .....
2. Information concerning the means of transport examined:  
Kind of means of transport .....

Registration No. ....Country in which  
registered .....

3. Reasons for making the examination (check where  
appropriate):

- Seals broken or missing
- Evidence of break in
- Vehicle involved in an accident
- Other

4. Results of examination (check where appropriate):

- All packages were intact and none of their contents were  
missing.

The following good/packages were missing/damaged

### MANIFEST

Serial No.	Consignmental and Identification	Number and kind of packages	Description of goods	Remarks

5. Explanation given by the carrier regarding the irregularities note (reply in the space provided on the back of this form)

6. Information concerning means of transport to which goods transferred:

Type of means of transport .....

Registration No. .... Country in which registered .....

7. Seals affixed ..... Quantity ..... Nos. ....

8. The goods were able to proceed towards their destination .....

9. I hereby certify that the information provided above is correct and complete.

-----  
Place and date      Signature of officer      Location of customs office

**Check the boxes applicable**



## Back of Report Form

Explanation provided by carrier

-----

Place and Date

-----

Signature

NOTE: *This form must be prepared in triplicate to be distributed as follows:*

**Original:** To be attached to the Common Market Transit Document.

**Duplicate:** If the inspection takes place at an office of entry, the duplicate should be attached to the copy of the Common Market Transit document of the office of entry.

If the inspection takes place at an office of exit, the duplicate should be attached to the corresponding voucher and returned to the office of entry.

**Triplicate:** To be returned at the office where the examination took place.

**APPENDIX V**  
**COMMON MARKET TRANSIT PLATES**

1. The plates shall measure 120 by 1000 millimetres.
2. The words "COMESA-TRANSIT" shall be 70 millimetres high.

Roman letters shall be used.

The letters shall be white on a blue background.

3. The letters shall be arranged as follows:

-----  
"COMESA-TRANSIT"  
-----

**ANNEX II**  
**PROTOCOL ON THIRD PARTY MOTOR**  
**VEHICLE INSURANCE SCHEME**

**PREAMBLE**

Whereas **IT IS PROVIDED IN SUB PARAGRAPH (E) OF Article 85** of the Treaty that the Member States shall adopt minimum requirements for the insurance of goods and vehicles;

**AND** Whereas it is desirable to prescribe by means of this Protocol a third party motor vehicle insurance scheme.

**NOW THEREFORE** it is hereby agreed as follows:

**PART ONE**  
**GENERAL PROVISIONS**

**ARTICLE 1**

***Interpretation***

For the purposes of this Protocol, the following terms and expressions shall have the meaning hereby assigned to them:

“accident” means a happening related to a motor vehicle causing personal injuries or material damage of both and therefore engages the third party liability of the policy holder;

“Council of Bureaux” means the Assembly of National Bureaux which shall co-ordinate and supervise the activities

of the National Bureaux;

“Common Market” means the Common Market established by the Treaty;

“Insurance policy” means a document issued by the insurer evidencing and agreement to insure and containing the conditions of the agreement concluded whereby the insurer undertakes for a specific fee to indemnify the insured for the losses arising out of the perils and accidents specified in the contract;

“Motor vehicle” means any motor vehicle which is constructed or adapted for the use of carriage of persons or goods by road and any trailer or semi-trailer designed to be drawn by such a vehicle;

“National Bureau” means a government designated agency in each Member State that shall be responsible for the management and control of the Common Market Yellow Card;

“policy holder” means a legal or a natural person holding an insurance policy on account of premium paid for the coverage of the liability in respect of the insured motor vehicle;

“the yellow card” means the insurance card that shall be issued by the National Bureaux of the Member States and shall be evidence of a third party liability cover obtained

in accordance with the laws and regulations in force in the country where the accident occurred;

“Treaty” means the Treaty for the Establishment of the Common Market for Eastern and Southern Africa.

## **ARTICLE 2**

### ***Objective***

By this Protocol there is hereby established a compulsory third party motor vehicle insurance scheme providing at least minimum guarantees as those required by the laws in force in the Member states when the vehicles insured are transiting the territories of other Member States.

## **ARTICLE 3**

### ***Structure of the Scheme***

1. The third party motor vehicle liability insurance scheme established by this Protocole shall have, as its legal technical and financial basis, the guarantees which are afforded to motorists proceeding to the Member States by taking out an insurance policy on the usual terms with an insurer authorised to undertake this type of business in the country which is the point of departure for the journey.

2. The scheme shall be based materially on a Common Market Yellow Card hereinafter referred to as the “Yellow Card” and as defined in Article 6 of this Protocole.
3. The Yellow Card shall be issued by a National Bureau in accordance with the provisions of Article 13 of this Protocol. The yellow Card shall be issued to motorists through the insurers with whom they have take out a valid liability insurance policy when driving in their country.
4. Each National Bureau shall settle, on behalf of its member insurers, claims arising from accidents caused abroad by holders of the cards it has issued and shall also handle claims arising from accidents caused in its country by holders of cards issued by the National Bureaux of the Member States.
5. The legal, administrative and financial operation of the scheme established by this Protocol shall be co-ordinated and supervised by the Council of Bureaux of which all the National Bureaux of the Member States shall be members in accordance with the provisions of Article 16 of this Protocol.

## **PART TWO**

### **REGULATIONS CONCERNING THE YELLOW CARD**

#### ***ARTICLE 4***

##### ***Participants in the Scheme***

1. The Member States shall participate in the scheme as principal participants.
2. Insurers, irrespective of their legal or financial structure, which are authorised by the competent authorities of their countries of activity to undertake insurance operations against liability risks in respect of motor vehicle accidents, shall participate in the scheme as subsidiary participants. The participation of such insurers in the present scheme shall be subject to their membership in the National Bureau of their countries of activity.

#### ***ARTICLE 5***

##### ***Obligations of the Participants***

1. The responsibilities of a Member State shall be, inter-alia:  
  
to recognise the validity of the Yellow Card in its territory and to enact laws and regulations for the establishment of the card scheme, and particularly for the designation of its National Bureau;

to ensure that its National Bureau is established and functions in accordance with the provisions of this Protocol and that it joins the Council of Bureaux and complies with its decisions;

to guarantee the solvency of its National Bureau; and

to ensure that either its government or the National Bureau deposits with its Central Bank or a designated Commercial Bank a minimum of ESACU 200,000 in the form of either a letter of credit or security, to guarantee its performance.

2. The obligations of a subsidiary participant shall be:

to issue to its policy holders Yellow Cards guaranteeing such policy holders adequate cover against motor vehicle third party risks they incur in the countries which they visit;

to undertake, by way of reimbursement to the National Bureau, payment of compensation for damages and any accessory or related expenses; and

to contribute to the operation of the National Bureau and, through the Bureau, to the operating expenses of the Council of Bureaux of Bureaux.

## **ARTICLE 6**

### ***The Common Market Yellow Card***

1. The Yellow Card is hereby established.



2. The Council of Bureaux shall determine from time to time matters of form related to the Yellow Card which shall be uniform.
3. The Yellow Card shall include but not be limited by the following particulars:
  - Name and address of the issuing National Bureau;
  - Name and address of the insurer;
  - Identification of the vehicle;
  - Name and address of the policy holder;
  - Date of issue and of expiry of the card;
  - Name and address, in each contracting party, of the National Bureau
  - which the policy holder is to notify in the event of an accident;
  - Number of the insurance policy;
  - Serial number of the card;
  - List of countries in which it is valid;
  - Signature and stamp of the insurer; and
  - Signature of the policy holder.

4. The Yellow Card which shall be the means of effecting a compulsory motor vehicle third party insurance scheme within the Common Market, shall be printed in English, French and Portuguese languages.
5. The guarantee provided by the Yellow Card shall cover the liability incurred by the holder of the card in accordance with the laws of each member country which he visits.
6. Notwithstanding the terms of the insurance policy under which it is issued, the Yellow card shall provide all the guarantees required by the laws of regulations governing compulsory motor vehicle insurance in the country in which the accident occurred.
7. The Yellow Card shall be recognised as a valid certificate of insurance in the territories of the Member States in which the production of such a certificate is required either within the national territory or at its frontiers, as a condition for circulation of motor vehicles.
8. For a Member State in whose territory insurance is not compulsory by law, the guarantee provided by the Yellow Card shall correspond to the third party liability on the motorist in accordance with the laws and regulations in force in the Member States where the accident occurred.

## **ARTICLE 7**

### ***Validity of the Yellow Card***

1. The Yellow Card shall be issued for a period of time determined in advance, irrespective of the number of journeys to be performed, the period in question not exceeding one year.
2. The Yellow Card shall be valid for one specific vehicle and shall in no circumstances be transferable to another vehicle.
3. During the period of its validity, the Yellow card shall constitute proof of the existence of an insurance policy.

## **PART THREE**

### **THE NATIONAL BUREAU**

## **ARTICLE 8**

### ***Designation of the National Bureau***

The designation of each National Bureau shall be determined by the legal provisions in force in the territory of each Member State. Its mode of operation shall be determined by the legal instrument by which it is designated.

## **ARTICLE 9**

### ***Composition of National Bureau***

In accordance with paragraph 2 of Article 4 of this Protocol, each National Bureau shall be composed of insurers authorised by the local supervisory authorities for insurance against motor vehicle liability risks. In a Member State where one single State-owned insurance company has the monopoly of all insurance operations, that Member State may designate that company to act as the National Bureau of that country.

## **ARTICLE 10**

### ***Financing of the National Bureau***

1. The National Bureau shall be financed by the contributions of its members. The amount and method of payment of contributions shall be determined by the National Bureau at the time of admission to membership.
2. The members shall undertake to place at the disposal of the National Bureau as advances, at its request, the sum necessary for its operation.

## **ARTICLE 11**

### ***Withdrawal of Designation***

and Replacement of the National Bureau

The withdrawal of designation of a National Bureau shall be at the initiative of the Member State, provided that before the withdrawal becomes effective, the Member State shall notify the Council of Bureaux at least six months prior to such withdrawal; and the notification shall be accompanied by the conditions and modalities of such withdrawal and replacement of the National Bureau with a new designated one.

## **ARTICLE 12**

### ***Functions of the National Bureau***

The National Bureau shall undertake the functions of issuing and handling agencies.

## **ARTICLE 13**

### ***The National Bureau as the issuing Agency***

As an issuing agency, the National Bureau:

provide the Yellow Card forms to insurers which are members of the National Bureau and which request them; the National Bureau shall arrange for the printing of the cards and shall allot to each of them a serial number. The insurers shall keep a record of card holders and shall undertake not to issue cards to persons other than their own policy holders;

arrange with each of the National Bureau of the Member States for the receipt of statements and claims concerning accidents caused in the territory of another Member State by its policy holders, to proceed with the investigation of such accidents and to pay compensation on request, supported by the usual documents of proof. In the case of claims for damages expected to exceed the amount to be determined by the Council of Bureaux the National Bureau shall obtain prior authorisation from the issuing Bureau before agreeing to any settlement;

shall reimburse free of transfer or exchange charges a handling agency which has paid compensation in the currency of its own country:

the total amount paid by way of damages, expenses and disbursement or, where the settlement is made by amicable agreement, the amount agreed in the settlement including agreed expenses. Fines shall on no account be reimbursed;

the expenses actually incurred in the investigation and settlement of the claim; and

the handling fee which shall be determined in advance and for all cases by the Council of Bureaux; and

may use the services of the Clearing House of the Common Market to effect such transfers.

## **ARTICLE 14**

### ***The National Bureau as a Handling Agency***

As a handling agency, the National Bureau shall perform the following operations:

It shall act in the best interests of the issuing Bureau as soon as it is informed of an accident caused in its country by the holder of a Yellow Card issued by the National Bureau of a Member State. In processing the claim, it shall undertake necessary verification concerning the circumstances of the accident and, on the basis of the findings, take any administrative or non-judicial action that it deems necessary. As provided by paragraph (b) of Article 13 of this Protocol, it may without the prior authorisation of the issuing Bureau, settle claims up to a limit to be fixed by the Council of Bureaux. It shall, in any case, advise the issuing Bureau of any claims it is handling on the latter's behalf. At the judicial level, the Bureaux, in its capacity as the handling agency, shall be entitled to take any steps to institute or to contest any legal action. In the case of claims for damages below a certain amount established by agreement with each of the other issuing Bureaux, the Bureau may agree to a settlement out of court.

It shall not knowingly entrust or relinquish the handling of a claim to one or more persons having interest in the settlement of the claim without the written consent of the issuing Bureau; and

When the compensation is equal or higher than the amount expected to be fixed by the Council of Bureaux, the handling Bureau can instruct the issuing Bureau to request its Bank to place immediately at its disposal an amount corresponding to the figure of compensation.

## **PART FOUR** **THE COUNCIL OF BUREAUX**

### ***ARTICLE 15***

#### ***Creation of a Council of Bureaux***

The contracting parties agree to set up a body to be known as the Council of Bureaux whose functions are defined in Article 18 of this Protocol.

### ***ARTICLE 16***

#### ***Composition of the Council of Bureaux***

1. The Council of Bureaux shall consist of one representative and alternate representative designated by each National Bureau.
2. The Chairman and Vice-Chairman of the Council of Bureaux shall be elected in rotation among the members of the Council of Bureaux for a term of one year.



## **ARTICLE 17**

### ***Meetings of the Council of Bureaux***

1. The Chairman shall convene the meetings of the Council of Bureaux.
2. The Council of Bureaux shall meet not later than 2 months after the entry into force of this Protocol.
3. The Council of Bureaux shall meet once a year. Extraordinary meetings shall be held at the request of any one of the National Bureaux.
4. Half the number of members of the Council of Bureaux shall constitute a quorum for both ordinary and extraordinary meetings.
5. The items to be proposed for the agenda shall be submitted in writing to the Chairman not later than 20 days before the meeting. Only items on the agenda shall be discussed.
6. The Secretariat of the Common Market shall provide secretarial services to the Council of Bureaux until such time as the Council of Bureaux shall have decided to have its own secretariat.
7. Each member of the Council of Bureaux shall have one vote and the decisions of the Council of Bureaux shall be

by simple majority.

## **ARTICLE 18**

### ***Functions of the Council of Bureaux***

The Council of Bureaux shall:

have, as general function, the orientation, co-ordination and supervision over the whole of the insurance scheme established by this Protocol;

orientate, co-ordinate and supervise the legal technical administrative and financial operations of the National Bureaux;

prepare an inter-Bureaux Agreement which shall be signed by all the National Bureaux and which the Council of Bureaux shall be entitled to amend. This Agreement shall in particular determine the maximum amounts of the delegation of the powers of settlement by one National Bureau to another, and the minimum handling fee payable for each case handled by them;

settle disputes between two or more National Bureaux as to the implementation of the provisions of this Protocol. The decisions of the Council of Bureaux shall be notified to the National Bureaux and the Council of Bureaux shall see to their execution. The decisions of the Council of Bureaux shall

be taken by simple majority. If no agreement is reached, the matter shall be referred for settlement in accordance with the provisions of Chapter Five of the Treaty;

In its own initiative or on the initiative of any of the Member States, consider and, if it deems it advisable, propose changes in the laws or regulations of the Member States with a view to improving the functioning of the Yellow Card Scheme, or to harmonising the systems of compensation for damages occasioned by road traffic accident or to improving accident prevention; and

Establish its annual budget and shall fix the annual contributions to be paid by members which shall be an equal amount among its members.

**ANNEX III**  
**PROTOCOL RELATING TO THE UNIQUE SITUATION**  
**OF LESOTHO, NAMIBIA AND SWAZILAND**

***THE HIGH CONTRACTING PARTIES***

Cognizant of the unique situation of Lesotho, Namibia and Swaziland (LNS) arising from the membership of the Southern African Customs Union and the Common Monetary Area.

Conscious that calling upon the LNS countries to implement immediately certain provisions of this Treaty may cause dislocation or fundamental disturbances to their economies.

**HAVE AGREED AS FOLLOWS:**

***ARTICLE 1***

***Scope of Exceptions***

1. Without derogation from the generality of the provisions of the Treaty, the provisions of this Protocol shall apply for the purposes of establishing a framework of special arrangements in regard to the participation of the LNS countries in the Common Market.
2. Pursuant to the provisions of paragraph 1 of this Article the Member States agree to grant to Lesotho, Namibia and Swaziland five (5) years derogation from the application of the provisions of the Treaty relating to

tariff reduction and the removal of non-tariff barriers; the establishment and maintenance of a common external tariff; most favoured nation treatment and monetary co-operation.

3. Nothing contained in this Treaty shall affect any decision taken or acts done under the Southern African Customs Union Agreement and the Common Monetary Area Agreement before the coming into force of this Protocol or the continued fulfilment of the obligations of the LNS countries under the said Agreements.

## ***Article 2***

### ***Obligations' of the LNS Countries***

The LNS countries undertaken to:

- (a) take such measure, including of a structural, economic and technical nature as will make possible the progressive increase in trade and economic co-operation with the other Member States;
- (b) pursue socio-economic policies that will be conducive to the fulfillment of the objectives of the Treaty;
- (c) provide the Secretariat with reports on progress made with respect to obtaining the concurrence of the other members of SACU and the CMA to extend concessions granted in the context of SACU and the CMA to the

other Member States;

- (d) provide the Secretariat with reports on progress made to increase trade and economic cooperation with the other Member States thereby ensuring that they work progressively towards the full application of the provisions of the Treaty.

### **ARTICLE 3**

#### ***Implementation***

1. The Council, acting on the proposal of the International Committee, may make recommendations to the LNS countries concerning the measures and projects to be undertaken in furtherance of the provisions of this Protocol.
2. For the effective implementations of the provisions of this Protocol the Secretary-General shall undertake studies and make appropriate recommendations to Council on the practical aspects of and any other matters relating to the implementation of this Protocol.

Done at .....in the Republic of .....  
on the.....day.....

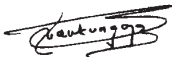
of ....., in the year one thousand nine hundred  
and....., in the English, French and Portuguese languages,

the three texts being equally authentic.

**IN FAITH WHEREOF the undersigned have**

**Placed their signatures at the end of this Treaty**

The President of the Republic of Angola



The President of the Republic of Burundi

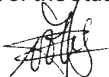


The President of the Federal Islamic Republic of the Comoros

The President of the Republic of Djibouti



The President of the State of Eritrea



The President of the Transitional Government of Ethiopia



The President of the Republic of Kenya



His Majesty the King of the Kingdom of Lesotho



The President of the Republic of Madagascar

The Life President of the Republic of Malawi

The Prime Minister of the Republic of Mauritius

The President of the Republic of Mozambique

The President of the Republic of Namibia

The President of the Republic of Rwanda

The President of the Republic of Seychelles

The President of the Somali Democratic Republic

The President of the Republic of Sudan

His Majesty the King of the Kingdom of Swaziland



The President of the United Republic of Tanzania



The President of the Republic of Uganda



The President of the Republic of Zaire



The President of the Republic of Zambia



The President of the Republic of Zimbabwe.