

**DRAFT AGREEMENT ESTABLISHING  
THE COMESA, EAC AND SADC TRIPARTITE  
FREE TRADE AREA**

## Preamble

WE, the Member States of the Common Market for Eastern and Southern Africa, the East African Community, and the Southern African Development Community, **hereinafter** referred to as “Tripartite Member States”:

**Recalling and Affirming** the strong and indissoluble bonds of freedom, liberalisation struggles, friendship, solidarity, history and culture among the People and Governments of the Member states of the Common Market for Eastern and Southern Africa, the East African Community, and the Southern Africa Development Community;

**Recognising** the Kampala Communiqué of the Tripartite Summit of 22 October 2008 under which the Heads of State and Government representing the three regional economic communities agreed that the communities should merge into a single Customs Union beginning with a Free Trade Area;

**Recognising** the Tripartite Memorandum of Understanding and its provisions on the Tripartite arrangements;

**Committed** to championing and expediting the continental integration process under the Treaty establishing the African Economic Community and the Constitutive Act of the African Union through regional initiatives;

**Cognisant** of the provisions establishing free trade areas in the COMESA Treaty, EAC Customs Union Protocol and the SADC Protocol on Trade;

**Determined** to build upon the success and best practices achieved in trade liberalisation within the three RECs;

**Committed** to resolving the challenges of multiple memberships;

**Considering** that trade in goods and services, infrastructure and cross-border investment should be major areas of cooperation;

**Determined** to take the necessary measures required for reducing the cost of doing business and creating an environment that is conducive for private sector development;

**Mindful** of the important role of micro, small and medium enterprises in creating jobs and incomes for the majority of the population in the Tripartite Member States;

**Recognising** the significant contribution of trade in services to the gross national incomes and the importance of services such as communication, transport, finance, energy, business logistics and infrastructure;

**Recognising** that the development of trade and investment is essential to the economic integration of the region and will create new opportunities for a dynamic business sector;

**Convinced** that a framework of trade co-operation among Tripartite Member States based on equity, fair competition and mutual benefit will contribute to the creation of a viable development community;

**Mindful** of the different levels of economic development of the Tripartite Member States and the need to share equitably the benefits of regional economic integration;

**Committed** to improving the competitiveness of Tripartite Member States at enterprise, industrial and regional levels so as to fully derive benefits from regional and global trade opportunities;

**Recognising** the progress achieved in the elimination of import and export duties within their own regional economic communities, as well as in the elimination of other barriers to trade;

**Recognising** the progress made by the regional economic communities in establishing the communities as single investment areas, and building on this progress; and

**Recognising** our international obligations under existing agreements;

**HEREBY AGREE AS FOLLOWS:**

## **PART 1**

### **INTERPRETATION, ESTABLISHMENT, OBJECTIVES AND PRINCIPLES**

#### **Article 1 Interpretation**

In this Agreement, unless the context otherwise requires:

“**COMESA**” refers to the Common Market for Eastern and Southern Africa;

“**Chief Executive Officer**” means the Secretary General of COMESA or the Secretary General of the EAC or the Executive Secretary of SADC.

“**EAC**” refers to the East African Community;

“**Export Duties**” means any duties or charges of equivalent effect imposed on, or in connection with, the exportation of goods from any Tripartite Member State to a consignee in another Tripartite Member State;

“**Import Duties**” means customs duties or charges of equivalent effect imposed on, or in connection with, the importation of goods consigned from any Tripartite Member State to a consignee in another Tripartite Member State;

“**MoU**” means the Memorandum of Understanding on Inter-Regional Cooperation and Integration Amongst COMESA, EAC and SADC.

“**Non-Tariff Barrier**” (NTB) means any barrier to trade other than import and export duties;

“**Quantitative Restrictions**” means prohibitions or restrictions on imports into, or exports from a Tripartite Member State whether made effective through quotas, import licenses, foreign exchange allocation practices or other measures and requirements restricting imports or exports;

“**REC**” means Regional Economic Community;

“**Re-exports**” means goods that are imported and kept under bonded warehouse for re-exportation from the importing Tripartite Member State to the receiving Tripartite Member State;

“**Region**” means the geographical territory of the Tripartite Member States;

“**SADC**” refers to the Southern African Development Community;

“**Treaty**” means the Treaty Establishing the Common Market of the East African Community or the Common Market for Eastern and Southern Africa or the Southern African Development Community as appropriate;

“**Tripartite Council**” refers to the Tripartite Council of Ministers as designated by Tripartite Member States for the purposes of the Tripartite Free Trade Area.

“**Tripartite Secretariat**” means the Secretariat established under the Tripartite MoU

“**SPS**” refers to Sanitary and Phyto-Sanitary Measures.

“**SMCA**” refers to Standardisation, Metrology, Conformity Assessment and Accreditation.

“**Third country**” means a country that is not a party to this Agreement;

“**Variable Geometry**” means the principle of flexibility which allows for progression in cooperation amongst members in a larger integration scheme in a variety of areas and at different speeds;

“**WTO**” means the World Trade Organisation

## **Article 2**

### **Establishment of the Tripartite Free Trade Area**

There is hereby established a Free Trade Area among the Member States of the Common Market for Eastern and Southern Africa, the East African Community and the Southern African Development Community.

## **Article 3**

### **General Objectives**

The general objectives of the Tripartite Free Trade Area shall be:

1. to promote the rapid social and economic development of the region through job and wealth creation and the elimination of poverty, hunger and disease through building skills, innovativeness and hard and soft infrastructure; and through improving the location of factors for sustainable generation of national, regional and foreign investment and of trade opportunities.
2. to create a large single market with free movement of goods and services and business persons, and eventually to establish a customs union.
3. to resolve the challenges of multiple membership and expedite the regional and continental integration processes;
4. to build a strong people-based Tripartite Free Trade Area; and
5. to promote close cooperation in all sectors of economic and social activity among the Tripartite Member States.

#### **Article 4 Specific Objectives**

In order to fulfil and realise the objectives set out in Article 3 of this Agreement, Tripartite Member States shall:

1. eliminate all tariffs and non-tariff barriers to trade in goods;
2. liberalise trade in services and facilitate cross-border investment and movement of businesspersons ;
3. harmonise customs procedures and trade facilitation measures;
4. enhance co-operation in infrastructure development;
5. establish and promote cooperation in all trade-related areas among Tripartite Member States;
6. establish and maintain an institutional framework for implementation and administration of the Tripartite Free Trade Area and eventually a Customs Union;
7. build competitiveness at the regional, industry and enterprise level in order to promote beneficial utilisation of regional and global market and investment opportunities and beneficial participation in globalisation;
8. adopt and implement policies in all sectors of economic and social life that promote and consolidate an equitable society and social justice; and
9. undertake cooperation in other areas to advance the objectives of this Agreement.

#### **Article 5 Principles**

The principles governing this Agreement shall be the following:

- (a) Variable geometry;
- (b) Best practices in the regional economic communities and the Tripartite Member States and international conventions acceded to by Tripartite Member States; and
- (c) Solidarity, equity, fair play and social justice.

### **PART II**

#### **NON-DISCRIMINATION**

##### **Article 6 Most-Favoured Nation Treatment**

1. Tripartite Member States shall accord to one another the most favoured nation treatment.
2. Nothing in this Agreement shall prevent a Tripartite 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 Agreement and that any advantage, concession, privilege and favour granted to a third country under such agreements are extended to the Tripartite Member States on a reciprocal basis.

3. Nothing in this Agreement shall prevent two or more Tripartite Member States from entering into new preferential agreements among themselves which aim at achieving the objectives of this Agreement, provided that any preferential treatment accorded under such agreements is extended to the other Tripartite Member States on a reciprocal and non-discriminatory basis.
4. All agreements entered into under paragraphs 2 and 3 above shall be notified to the Tripartite Council, which shall monitor their operations in relation to this Agreement.

**Article 7**  
**National Treatment**

1. A Tripartite Member State shall not, directly or indirectly, subject products imported from another Tripartite Member State to internal taxes or other internal charges or levies of any kind in excess of those applied, directly or indirectly, to like domestic products.
2. The products of the territory of any Tripartite Member State imported into the territory of any other Tripartite Member State shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.

**PART III**

**LIBERALISATION OF TRADE IN GOODS**

**Article 8**  
**Elimination of Import duties**

1. Tripartite Member States agree to eliminate all import duties and charges of equivalent effect, on goods originating in the Tripartite Member States in accordance with provisions of paragraph 3 of this Article.
2. Tripartite Member States shall not impose new import duties or charges of equivalent effect except as provided for under this Agreement
3. The Tripartite Member States shall eliminate import duties and charges of equivalent effect in accordance with schedules contained in **Annex 1** to this Agreement.
  - (a) Tripartite Member States already in the regional FTAs (COMESA, EAC and SADC) shall automatically extend duty free quota free treatment to all other Tripartite Member States implementing regional FTAs, as set out in Schedule 1.
  - (b) Tripartite Member States not yet in the regional FTAs, or which have not completed implementing FTA tariff liberalization process, shall eliminate import duties on goods originating from other Tripartite Member States in accordance with their Schedules 2.
  - (c) Tripartite Member States already in the regional FTAs shall eliminate import duties on goods originating from countries that are not in any of the regional FTA in accordance with Schedules 3.

**Article 9**  
**Prohibition of Export Duties**

Tripartite Member States shall not apply any export duties on goods for export to the territories of the Tripartite Member States except as provided for in **Annex 6** on Trade Remedies

**Article 10**  
**Elimination of Non-Tariff barriers**

1. Tripartite Member States shall eliminate all existing non-tariff barriers to trade with each other and shall not impose any new ones.
  
2. Tripartite Member States recognise the existing reporting, monitoring and elimination mechanisms on non-tariff barriers established by the three RECs and undertake to harmonise them into a single mechanism as provided for in **Annex 14**.

**Article 11**  
**Elimination of Quantitative Restrictions**

Tripartite Member States shall not impose quantitative restrictions on imports or exports in trade with other Tripartite Member States except as otherwise provided for in this Agreement.

**Article 12**  
**Rules of Origin**

Goods shall be eligible for preferential treatment under this Agreement if they are originating goods in accordance with criteria and conditions set out in **Annex 4** on Rules of Origin.

**PART IV**  
**CUSTOMS COOPERATION AND TRADE FACILITATION**

**Article 13**  
**Simplification and Harmonisation of Customs Legislation and Procedures**

Tripartite Member States agree to simplify and harmonise their trade and customs documentation and procedures in order to facilitate trade in goods among the Tripartite Member States as provided for in **Annex 2** on Customs Cooperation.

**Article 14**  
**Trade and Customs Documentation and Information**

Tripartite Member States agree to design and standardise their trade information and documentation in accordance with internationally accepted standards, taking into account the use of electronic data processing systems in order to ensure the efficient and effective application of the provisions of this Agreement as provided for in **Annex 3** on Simplification and Harmonisation of Trade Information, Documentation and Procedures.

**ARTICLE 15**  
**Trade Facilitation**

Tripartite Member States undertake to initiate trade facilitation programs aimed at:

- (a) reducing the cost of processing documents and the volume of paper work required in respect of trade between Tripartite Member States;

- (b) ensuring that the nature and volume of information required in respect of trade within the free trade area does not adversely affect the economic development of, or trade among, the Tripartite Member States;
- (c) adopting common standards of trade procedures within the free trade area where international requirements do not suit the conditions prevailing among Tripartite Member States;
- (d) ensuring adequate coordination between trade and transport facilitation within the free trade area;
- (e) keeping under review the procedures adopted in international trade and transport with a view to simplifying and adopting for use by Tripartite Member States;
- (f) collecting and disseminating information on international development regarding trade facilitation;
- (g) promoting the development and adoption of common solutions to problems in trade facilitation among Tripartite Member States;
- (h) initiating and promoting the establishment of joint programmes, for the training of personnel engaged in trade facilitation among Tripartite Member States; and
- (i) promoting the establishment of one-stop border posts.

#### **Article 16** **Re-Exports**

1. Tripartite Member States agree that re-exports bound for a receiving Tripartite Member State shall be exempted from the payment of export or import duties in the importing State provided that this Article shall not preclude the levying of normal administrative and service charges applicable to the import or export of similar goods in accordance with the customs laws and regulations.
2. Tripartite Member States agree that:
  - (a) non-originating re-exports imported into any Tripartite 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 Tripartite Member States.
3. Tripartite Member States agree that re-exported goods which qualify as originating in a Tripartite Member State under the provisions of this Agreement shall be treated as if they were directly imported by the receiving State from the Tripartite Member State where they originate. Such goods shall be accorded appropriate tariff treatment under this Agreement, provided that the re-exporter produces documentary evidence certified by the designated authorities, to the effect that the goods originated in the Tripartite Member State from which they were originally imported.



**Article 17**  
**Transit Trade and Transit Facilities**

Tripartite Member States undertake to facilitate the movement of goods in transit within the Tripartite Member States in accordance with **Annex 5** on Tripartite Transit Trade and Transit Facilities.

**PART V**

**TRADE REMEDIES**

**Article 18**  
**Antidumping and Countervailing Measures**

1. Subject to the provisions of this Agreement, nothing in this Agreement shall prevent Tripartite Member States from adopting anti-dumping and countervailing measures in accordance with the relevant WTO agreements.
2. In applying this Article, Tripartite Member States shall be guided by provisions of the WTO Agreement on the Interpretation of Article VI of the General Agreement on Tariffs and Trade.
3. In applying this Article, Tripartite Member States shall be guided by provisions of the WTO Agreement on Subsidies and Countervailing Measures.
4. **Annex 6** to this Agreement shall govern the conditions and procedures Tripartite Member States shall use in applying anti-dumping and subsidies countervailing measures.

**Article 19**  
**Safeguard Measures**

1. A Tripartite Member State may apply a safeguard measure to a product only if that Tripartite Member State has determined that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.
2. **Annex 6** on Trade Remedies shall govern the conditions and procedures Tripartite Member States shall use in applying safeguard measures.
3. In applying this Article, Tripartite Member States shall be guided by provisions of the WTO Agreement on Safeguard Measures.

**Article 20**  
**Co-operation on Trade Remedies**

1. Tripartite Member States recognise that dumping, subsidisation and import surges can adversely affect more than one Tripartite Member State within the region, and shall co-operate in the detection and investigation of dumping, subsidisation and sudden import surges and in the imposition of the appropriate measures to curb such practices.
2. Where there is evidence of any sudden surge in imports from, or of dumping or export of subsidised goods by a third country into any of the territories of the Tripartite Member States that distorts trade or causes or threatens serious injury to a domestic industry, the affected Tripartite Member States may jointly or severally investigate and impose antidumping or countervailing duties or invoke safeguard measures on such goods.

**Article 21**  
**Infant industries**

1. For the purposes of protecting an infant industry, a Tripartite Member State may, provided that it has taken all reasonable steps to overcome the difficulties related to such infant industry, adopt appropriate measures on similar goods originating from other Tripartite Member States, provided that the measures are applied on a non-discriminatory basis.

2. The Tripartite Council shall determine the period and the nature of the measures that may be adopted under this Article.
3. The Trade and Customs Committee, established under Article 37 of this Agreement, shall keep under constant review the operation of any restrictions imposed under this Article and regularly report to the Tripartite Council with recommendations.
4. For purposes of this Article an infant industry shall be understood to refer to a new industry of national strategic importance that has not been in existence for more than five years, experiencing high start-up costs and difficulties competing with like imports.

**Article 22**  
**Balance of Payments**

A Tripartite Member State facing severe balance of payments and external financial difficulties, and that has taken all reasonable steps to overcome the difficulties, may adopt appropriate measures on goods originating from the other Tripartite Member States, in accordance with guidelines to be determined by the Tripartite Council.

**PART VI**  
**TRADE-RELATED AREAS**

**Article 23**  
**Competition**

1. The Tripartite Member States shall prohibit any practice that adversely affects free trade including any agreement, undertaking or concerted practice which has as its objective or effect the prevention, restriction or distortion of competition within the Tripartite Member States.
2. Paragraph 1 of this Article shall not apply in the case of:
  - (a) any agreement or category of agreements between undertakings;
  - (b) any decision by association of undertakings; or
  - (c) any concerted practice or category of concerted practices,

which improves production or distribution of goods, promotes technical or economic development or which has the effect of promoting consumer welfare and does not impose restrictions inconsistent with the attainment of the objectives of the FTA or has the effect of promoting competition.

3. Tripartite Member States shall comply with the provisions set out in **Annex 7** on Competition Policy and Consumer Protection.

**Article 24**  
**Cross-Border Investment**

1. Tripartite Member States undertake to market the Tripartite Member States as a single investment area.

2. Tripartite Member States undertake to develop policies and strategies which promote cross-border investment, reduce the cost of doing business in the region, and create a conducive environment for private sector development.

#### **Article 25**

##### **Standardisation, Metrology, Conformity Assessment and Accreditation (SMCA)**

1. Tripartite Member States recognise that lack of harmonisation of SMCA can hinder trade and industry and they recognise importance of SMCA in trade, industry, consumer protection, and all spheres of economic activity. Accordingly, Tripartite Member States shall adopt harmonised practices in SMCA in order to achieve mutual recognition.
2. Tripartite Member States shall establish a Tripartite Sub-Committee on SMCA, under the Trade and Customs Committee, for the technical elaboration of policy on and implementation of Tripartite SMCA, and its main functions shall include
  - (a) Harmonisation of standards and conformity assessment procedures relating to the most traded products in the Tripartite Member States
  - (b) Proficiency testing, measurement inter-comparisons and harmonisation of metrology practices in order to achieve mutual recognition;
  - (c) Harmonisation of accreditation practices and systems for the purpose of achieving mutual recognition of accreditation services in the Tripartite Member States with the long term objective of facilitating full international recognition of regional SMCA systems.
3. The Sub-Committee may establish expert working groups as appropriate.
4. Tripartite Member States recognise the importance of the physical and soft infrastructure for developing and harmonising SMCA in Tripartite Member States and shall cooperate in capacity building and establishment of centres of excellence.
5. Tripartite Member States shall promote cooperation with the international standard setting organisations by local SMCA institutions with international SMCA Bodies and utilize the regional quality infrastructure to enhance Tripartite Member states' compliance with WTO TBT Agreement provisions.
6. Tripartite Member States recognise the progress already made through collaboration among the regional economic communities including the adoption of joint programs and activities.
7. Tripartite Member States shall implement provisions on SMCA as outlined in **Annex 8** of this Agreement and shall harmonise and fully implement the technical areas of cooperation in SMCA.

#### **Article 26**

##### **Sanitary and Phyto-Sanitary Measures**

1. Tripartite Member States shall comply with the WTO Agreement on Sanitary and Phyto-Sanitary Measures in undertaking sanitary and phyto-sanitary measures.

2. Tripartite Member States shall harmonise their sanitary and phyto-sanitary measures, and shall initiate activities to achieve regional certification of products in accordance with a programme to be determined by Council. The programme shall be a part of **Annex15** to this Agreement.

#### **Article 27**

##### **Intellectual Property Rights**

1. Tripartite Member States shall protect intellectual property rights in a balanced manner that promotes the social economic welfare of society through ensuring that the people of the region meaningfully benefit from and participate in advancements in the arts, and science and technology in accordance with **Annex 9** on Intellectual Property Rights.
2. Tripartite Member States shall adopt policies on intellectual property rights including the protection and promotion of cultural industries in accordance with international agreements.
3. Tripartite Member States shall cooperate and develop capacity to implement and utilise the flexibilities in all relevant international agreements on intellectual property rights.

#### **Article 28**

##### **Infrastructure Development**

1. Tripartite Member States undertake to cooperate and develop infrastructure programs to support interconnectivity in the region and promote competitiveness.
2. Tripartite Member States agree that priority areas of regional infrastructure include energy, information and communications technologies and corridor development.
3. Tripartite Member States recognise the importance of air and marine transport in promoting regional and international trade and in consolidating regional markets including for island Member States. Accordingly Tripartite Member States shall cooperate in the development of ports and harbours, as well as air transport and civil aviation programmes.

#### **Article 29**

##### **Movement of Business Persons**

Tripartite Member States shall grant entry to business persons in accordance with **Annex 10** on Movement of Business Persons. Tripartite Member States shall implement the provisions on movement of business persons in their national measures.

#### **Article 30**

##### **Trade in Services**

1. Tripartite Member States undertake to liberalise trade in priority sectors subject to such flexibilities as the Tripartite Council may approve.
2. Tripartite Member States shall aim to attain a credible level and amount of services liberalisation, support the strengthening of infrastructure, promote competitiveness, build the capacity of micro, small and medium scale enterprises, and contribute to the deepening of integration in the Tripartite Member States.
3. A Committee on Trade in Services is hereby established, which shall oversee the tripartite services liberalisation programme.

4. Liberalisation of the other service sectors shall be progressive and shall take place on the basis of negotiations conducted in the Committee on Trade in Services. The schedules of specific commitments resulting from the negotiations shall be annexed to this Agreement as **Annex 11**.
5. Tripartite Council shall adopt guidelines on each successive round of the services negotiations.

**Article 31**  
**Productive Capacity and Competitiveness**

Tripartite Member States shall develop and adopt joint programmes that enhance cooperation and strengthen coordination in promoting productive capacity and competitiveness at the regional, industry and enterprise levels as provided for in **Annex 12**.

**Article 32**  
**Sector Strategies and Rural Trade Programmes**

Tripartite Member States shall develop sector strategies and create an enabling environment for the private sector to establish appropriate industry and trade associations including the rural based micro, small and medium enterprises.

**Article 33**  
**Export Promotion Schemes and Special Economic Zones**

1. Tripartite Member States support the establishment and operation of export promotion schemes and special economic zones for the purpose of accelerating development, promoting and facilitating export oriented investments, producing export competitive goods, developing an enabling environment for export promotion schemes and special economic zones, generating local and regional investment, and promoting foreign direct investment.
2. Products benefiting from export promotion schemes and special economic zones shall be primarily for export. The sale of such products within the Tripartite Member States shall be subject to regulations made by the Tripartite Council.

**Article 34**  
**Research and Statistics**

1. Tripartite Member States undertake to cooperate in the areas of research and statistics necessary for monitoring the performance and operation of the Tripartite Free Trade Area.
2. Cooperation for purposes of this Article shall include the following areas:
  - (a) Policy research and trade development;
  - (b) Joint capacity building including joint training;
  - (c) Harmonisation of statistical systems and data management; and
  - (d) Exchange of information.

## **PART VII**

### **OTHER AREAS OF COOPERATION**

#### **Article 35**

##### **Cooperation in Other Areas**

1. In order to attain the objectives of this Agreement, Tripartite Member States undertake to cooperate and strengthen coordination in industrial policy, financial and payment systems, development of capital markets and commodity exchanges.
2. Tripartite Member States shall closely cooperate in any other sectoral areas under the Treaty establishing the African Economic Community and the respective treaties establishing the regional economic communities.

#### **Article 36**

##### **Coordination of Trade Policies and Negotiations**

Tripartite Member States shall, to the extent possible:

- (a) coordinate their trade policies and negotiation positions; and
- (b) maintain common objectives and positions in international, regional and bilateral negotiations with third countries and other organisations.

## **PART VIII**

### **ORGANS FOR THE IMPLEMENTATION OF THE FTA**

#### **Article 37**

##### **Tripartite Committees on Trade and Customs**

1. Tripartite Committee and Sub -Committees on Trade and Customs, at Ministerial, Senior Officials and Technical Experts levels are hereby established to oversee the implementation of the Tripartite Free Trade Area. The functions of the Ministerial Committee on Trade and Customs shall include:
  - (a) to regularly review the status of the Tripartite Free Trade Area and make appropriate recommendations;
  - (b) to initiate policy analysis on key issues affecting the Tripartite Free Trade Area;
  - (c) to receive and consider reports on trade, trade related and customs issues under this Agreement;
  - (d) to resolve through consultation trade, trade related and customs matters referred to it by Tripartite Member States;
  - (e) to implement and monitor closely measures taken to promote trade within the Tripartite FTA;
  - (f) to decide on new annexes and to amend existing Annexes and regulations that may be required to facilitate the implementation of this Agreement and

- (g) to discharge any other functions as may be required by the Tripartite Council or Tripartite Summit as established by the Tripartite MoU. (To be finalized by lawyers)
2. The Tripartite Ministerial Committee on Trade and Customs shall be assisted by a Sub-Committee of Senior Officials, which will oversee and guide the overall technical work required to facilitate the implementation of this Agreement. The Sub-Committee of Technical Experts will be responsible for undertaking all the technical work associated with the implementation of this Agreement and shall report to the Sub-Committee of Senior Officials.
  3. The three committees shall adopt their own rules of procedure.
  4. Each REC shall within its Secretariat establish a dedicated Coordination Unit for the coordination of the activities under this Agreement

## **PART IX**

### **DISPUTE SETTLEMENT**

#### **Article 38 Dispute Settlement**

1. Tripartite Member States shall endeavour to agree on the interpretation and application of this Agreement, and shall make every effort, through co-operation and consultation, to arrive at a mutually satisfactory solution.
2. The settlement of any dispute among Tripartite Member States shall, whenever possible, imply removal of a measure not conforming with the provisions of this Agreement or causing nullification or impairment of a benefit under such provision.
3. As a last resort, disputes regarding the interpretation and application of this Agreement shall be settled in accordance with the **Annex 13** on the Tripartite Dispute Settlement Mechanism.
4. In the event of inconsistency or a conflict between this Agreement and the treaties and instruments of COMESA, EAC and SADC, this Agreement shall prevail to the extent of the inconsistency or conflict.

## **PART X**

### **RELATIONS WITH THIRD COUNTRIES, REGIONAL AND INTERNATIONAL ORGANISATIONS**

#### **Article 39 Relations with the African Union, Other RECs and Organisations and Third Countries**

1. Tripartite Member States shall be part of the continental Community provided for under the Treaty establishing the African Economic Community, and to this extent the Tripartite Member States shall implement this Agreement with due regard to the provisions of the Treaty establishing the African Economic Community.

2. Tripartite Member States may enter arrangements with other organisations and third countries provided such arrangements are not in conflict or inconsistent with and promote the goals and specific objectives of this Agreement.

## **PART XI**

### **GENERAL AND SECURITY EXCEPTIONS**

#### **Article 40**

##### **General Exceptions**

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Tripartite Member State of measures:

- (a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the importation or exportation of gold or silver;
- (d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the protection of patents, trademarks and copyrights, and the prevention of deceptive practices;
- (e) imposed for the protection of national treasures of artistic, historic or archaeological value;
- (f) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
- (g) undertaken in pursuance of obligations under any intergovernmental commodity agreement approved by the Tripartite Council;
- (h) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; *Provided* that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination;
- (i) essential to the acquisition or distribution of food stuffs or any other products in general or local short supply; *Provided* that any such measures shall be consistent with the principle that all Tripartite Member States are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

#### **Article 41**

##### **Security Exceptions**

Nothing in this Agreement shall be construed:



- (a) to require any Tripartite Member State to furnish any information the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent any Tripartite Member State from taking any action which it considers necessary for the protection of its essential security interests
  - (i) relating to fissionable materials or the materials from which they are derived;
  - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; and
  - (iii) taken in time of war or other emergency in international relations;
- or
- (c) to prevent any Tripartite Member State from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

#### **Article 42**

##### **Notification of Prohibited and Restricted Goods**

A Tripartite Member State taking measures in pursuant to Articles 43 and 44 shall notify such measures to the Tripartite Council within 7 days.

### **PART XII**

#### **FINANCIAL PROVISIONS**

#### **Article 43**

##### **Budget**

1. There shall be a budget for the Tripartite Free Trade Area at the national and respective regional economic community levels. Tripartite Member States shall institute appropriate modalities to fund their commitments in the implementation of this Agreement.
2. Tripartite Member States shall adopt a Tripartite strategy for resource mobilisation.

#### **Article 44**

##### **Development Fund**

1. Tripartite Member States shall establish a Development Fund for trade and infrastructure development programmes within the context of existing regional trade and infrastructure development funds.
2. For the purpose of this Article, Tripartite Member States shall determine the machinery and formula for resource mobilisation and disbursement.

### **PART XIII**

#### **GENERAL AND FINAL PROVISIONS**

#### **Article 45**

##### **Working Languages**

The working languages under this Agreement shall be English, French and Portuguese.

**Article 46**  
**Annexes**

1. Tripartite Member States shall from time to time conclude such Annexes as are necessary for the implementation of this Agreement. Such Annexes shall be adopted by the Tripartite Council.
2. The Annexes shall form an integral part of this Agreement.

**Article 47**  
**Amendment**

1. This Agreement may be amended at any time by agreement of a two-thirds majority of the Tripartite Member States that are party to this Agreement.
2. Any Tripartite Member State that is a party to this Agreement may submit proposals for amendment of this Agreement. Proposals for amendment shall be submitted to the Chairperson of the Tripartite Council in writing who shall within 30 days submit the proposals to Tripartite Member States.
3. A Tripartite Member State which wishes to comment on the proposals may do so within 90 days from the date of the dispatch of the proposal.
4. After the expiration of the period, the Chairperson of the Tripartite Council shall submit the proposals and any comments to the Tripartite Summit through the Tripartite Council.
5. Any amendment shall enter into force upon ratification by two-thirds majority of the Tripartite Member States that are party to this Agreement.

**Article 48**  
**Sanctions**

A Tripartite Member State which defaults in meeting its obligations under this Agreement shall be subject to such sanctions as determined by the Tripartite Summit on the recommendation of the Tripartite Council.

**Article 49**  
**Accession**

This Agreement shall remain open for accession by any Tripartite Member State.

The Tripartite Council shall adopt accession regulations.

**Article 50**  
**Signature, Ratification and Entry into Force**

1. This Agreement shall be signed by the Tripartite Member States.
2. This Agreement shall be ratified by Tripartite Member States in accordance with their national laws.
3. This Agreement shall enter into force upon ratification by two-thirds of the Tripartite Member States that are party to this Agreement and Tripartite Member States undertake to do so timely..

**Article 51  
Withdrawal**

A Tripartite Member State wishing to withdraw from this Agreement, shall notify the Tripartite Council giving twelve (12) months' notice of its intention to do so. Such a Tripartite Member State shall discharge its existing obligations before withdrawing from this Agreement.

**Article 52  
Depositary and Registration**

1. This Agreement and all instruments of ratification and accession shall be deposited with the Tripartite Secretariat.
2. The Chief Executive Officer of each REC shall transmit certified true copies of the Agreement to the Tripartite Member States.
3. The Chief Executive Officer of each REC shall notify the Tripartite Member States of the dates of deposit of instruments of ratification.

**IN WITNESS WHEREOF, WE** the Heads of State and Government or duly Authorised Representatives of Tripartite Member States have signed this Agreement.

**DONE** at ..... this ..... day of ..... in the year two

thousand and ..... in three original texts in English, French and Portuguese languages, all texts being equally authentic.

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Republic of Angola

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Republic of Botswana

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Republic of Burundi

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Union of the Comoros

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Democratic Republic of Congo

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Republic of Djibouti

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Federal Republic of Ethiopia

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State of Eritrea

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Arab Republic of Egypt

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Republic of Kenya

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Kingdom of Lesotho

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Socialist People's Libyan Arab Jamahiriya

Republic of Madagascar

Republic of Malawi

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Republic of Mauritius

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Republic of Mozambique

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Republic of Namibia

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Republic of Rwanda

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Republic of The Seychelles

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Republic of South Africa

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Republic of Kingdom of Swaziland

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Republic of The Sudan

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United Republic of Tanzania

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Republic of Uganda

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Republic of Zambia

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Republic of Zimbabwe