



**AGREEMENT**

**AMENDING**

**ANNEX VI TO THE PROTOCOL ON TRADE CONCERNING**

**THE SETTLEMENT OF DISPUTES BETWEEN THE MEMBER**

**STATES OF THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY**

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**AGREEMENT AMENDING ANNEX VI TO THE PROTOCOL ON TRADE  
CONCERNING THE SETTLEMENT OF DISPUTES BETWEEN THE  
MEMBER STATES OF THE SOUTHERN AFRICAN DEVELOPMENT  
COMMUNITY**

**PREAMBLE**

**WE**, the Heads of State or Government:

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

**AWARE** that the Protocol on Trade (hereinafter referred to as the "Protocol") entered into force on 25 January 2000;

**MINDFUL** that the Protocol was premised on the provisions of the Treaty;

**RECOGNISING** that the amendment of the Protocol entails effecting amendments to the Annex;

**ACTING** in pursuance of Article 32 of the Protocol on the settlement of disputes;

**HEREBY AGREE** as follows:

**ARTICLE 1  
INSERTION OF NEW ARTICLE 1 BIS INTO THE ANNEX**

The Annex is amended by inserting immediately after Article 1 the following new Article:

**"ARTICLE 1 BIS  
FORUM SHOPPING**

If a Member State has invoked the rules and procedures of this Annex or any other applicable international dispute settlement mechanism with respect to any matter, that Member State shall not invoke another dispute settlement mechanism on the same matter."

**ARTICLE 2  
AMENDMENT OF ARTICLE 3 OF THE ANNEX**

Article 3 of the Annex is amended by deleting the words "Sector Coordinating Unit" wherever they appear and substituting therefor the words "Registrar of the Tribunal".

**ARTICLE 3  
AMENDMENT OF ARTICLE 5 OF THE ANNEX**

Article 5 of the Annex is amended by deleting the words "Sector Coordinating Unit" wherever they appear and substituting therefor the words "Registrar of the Tribunal".

**ARTICLE 4  
AMENDMENT OF ARTICLE 6 OF THE ANNEX**

Article 6 of the Annex is amended by deleting the words "Sector Coordinating Unit" wherever they appear and substituting therefor the words "Registrar of the Tribunal".

**ARTICLE 5  
AMENDMENT OF ARTICLE 7 OF THE ANNEX**

Article 7 of the Annex is amended by adding the words "or international economics" immediately after the words "international law" as appear in paragraph (a).

**ARTICLE 6  
AMENDMENT OF ARTICLE 8 OF THE ANNEX**

Article 8 of the Annex is amended by:

- (a) in the first sentence of paragraph 3, adding the words "the Registrar of the Tribunal shall refer the matter to the Executive Secretary of SADC." Immediately after the words "or to select a panelist in the prescribed time,";

- (b) in the second sentence of paragraph 3, deleting the words “a list of twelve panelists” ” wherever they appear and substituting therefor with the words “the list of panelists nominated in the roster referred to in Article 6”; and
- (c) deleting paragraph 5.

**ARTICLE 7  
AMENDMENT OF ARTICLE 9 OF THE ANNEX**

Article 9 of the Annex is amended by deleting the words “Sector Coordinating Unit” wherever they appear and substituting therefor the words “Registrar of the Tribunal”.

**ARTICLE 8  
AMENDMENT OF ARTICLE 12 OF THE ANNEX**

Article 12 of the Annex is amended by deleting the words “Sector Coordinating Unit” wherever they appear and substituting therefor with the words “Registrar of the Tribunal”.

**ARTICLE 9  
AMENDMENT OF ARTICLE 15 OF THE ANNEX**

Article 15 of the Annex is amended by:

- (a) deleting the words “Sector Coordinating Unit” wherever they appear and substituting therefor the words “Registrar of the Tribunal”;
- (b) in paragraph 4, adding the words “or a disputing Member State notifies the CMT of its decision to appeal,” immediately after the words “not to adopt the report,”; and
- (c) in paragraph 4, adding the following new second sentence: “If a disputing Member State has notified the CMT of its decision to appeal, the report by the panel shall not be considered for adoption by the CMT until after completion of the appeal.”.

**ARTICLE 10  
INSERTION OF NEW ARTICLE 15A INTO THE ANNEX**

The Annex is amended by inserting immediately after Article 15 the following new Article:

**"ARTICLE 15A  
APPELLATE REVIEW OF PANEL REPORT**

1. Only disputing Member States may appeal a panel report. Third parties which have notified the CMT of a substantial interest in the matter pursuant to Article 12 may make written submission to, and be given an opportunity to be heard by, the Tribunal.
2. Subject to sub-article 4, the length of the appeal proceedings shall not exceed 90 days.
3. An appeal shall be limited to issues of law covered in the panel report and legal interpretations developed by the panel.
4. Working procedures for appellate review provided for under this Article shall be drawn up by the Tribunal in consultation with the Executive Secretary of SADC and shall not be less restrictive than the Working Procedures of the Appellate Body under the WTO "Understanding on the Rules and Procedures Governing the Settlement of Disputes".

**ARTICLE 11  
AMENDMENT OF ARTICLE 17 OF THE ANNEX**

Article 17 of the Annex is amended by:

- (a) deleting the words "Sector Coordinating Unit" wherever they appear and substituting therefor the words "Registrar of the Tribunal"; and
- (b) adding the following new second paragraph:

"2. The provisions of paragraph 1 and Article 19 shall apply *mutatis mutandis* to decisions taken by the Tribunal pursuant to Article 15A."

**ARTICLE 12  
AMENDMENT OF ARTICLE 18 OF THE ANNEX**

Article 18 of the Annex is amended by:

- (a) in the first sentence of paragraph 1, adding the words "or the decisions of the Tribunal in terms of Article 15A, as the case may be" immediately after the words "in the event that the recommendations of the panel, as adopted,";
- (b) in the second sentence of paragraph 1, adding the words "or the decisions of the Tribunal in terms of Article 15A, as the case may be," immediately after the words "Full implementation of the panel recommendations"; and

- (c) deleting the words "Sector Coordinating Unit" wherever they appear and substituting therefor the words "Registrar of the Tribunal".

**ARTICLE 13  
AMENDMENT OF ARTICLE 19 OF THE ANNEX**

Article 19 of the Annex is amended by:

- (a) in paragraph 2, adding the words "funded through the regular budget of the Community, in accordance with the criteria that the CMT may, from time to time determine, and from such other sources as may be determined by the CMT" immediately after the words "their travel and lodging expenses and all other general expenses of panels shall be";
- (b) in paragraph 2, deleting the words "borne in equal parts by the disputing Member States or in a proportion as determined by a panel"; and
- (c) adding the following new paragraph 4:

"4. Each disputing Member State shall be responsible for payment of its own costs arising from litigation. Where the panel determines that a disputing Member State has abused the process of the panel, it may require from that disputing Member State to pay for the costs reasonably incurred under the circumstances of the particular case by the other disputing Member State arising from the litigation."

**ARTICLE 14  
ENTRY INTO FORCE**

This Agreement shall enter into force on the date of its adoption by three-quarters of the Member of the Summit.

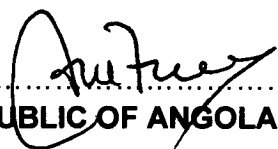
**ARTICLE 15  
DEPOSITORY**

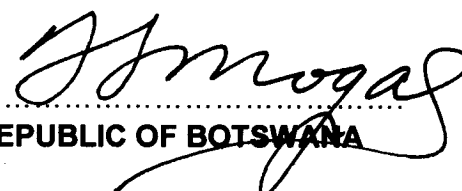
1. The original texts of this Agreement shall be deposited with the Executive Secretary of SADC, who shall transmit certified copies to all Member States.
2. The Executive Secretary shall register this Agreement with the Secretariat of the United Nations Organisation and the Commission of the African Union.

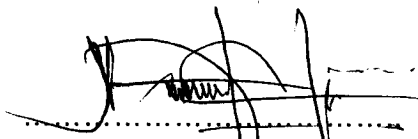



**IN WITNESS WHEREOF, WE**, the Heads of State or Government, or duly authorised representatives, of SADC Member States have signed this Agreement.

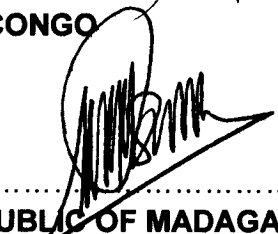
Done at Lusaka, Zambia, this 17<sup>th</sup> day of August 2007 in three original texts in the English, French and Portuguese languages, all texts being equally authentic.

  
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**REPUBLIC OF ANGOLA**

  
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**REPUBLIC OF BOTSWANA**

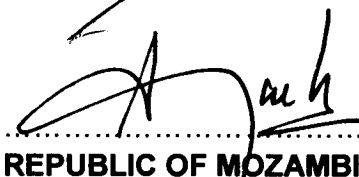
  
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**DEMOCRATIC REPUBLIC OF CONGO**

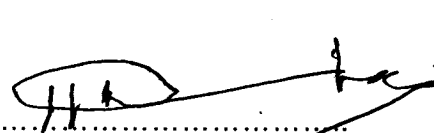
  
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**KINGDOM OF LESOTHO**

  
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**REPUBLIC OF MADAGASCAR**

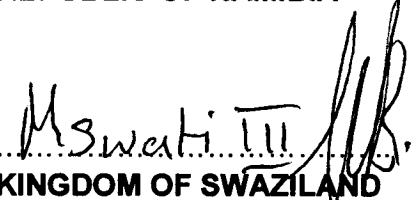
  
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**REPUBLIC OF MALAWI**

  
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**REPUBLIC OF MAURITIUS**

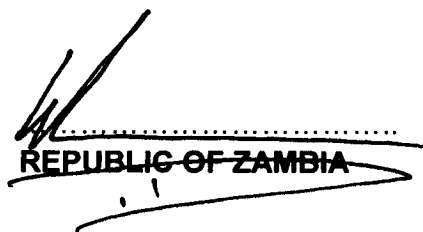
  
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**REPUBLIC OF MOZAMBIQUE**

  
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**REPUBLIC OF NAMIBIA**

  
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**REPUBLIC OF SOUTH AFRICA**

  
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**KINGDOM OF SWAZILAND**

  
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**UNITED REPUBLIC OF TANZANIA**

  
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**REPUBLIC OF ZAMBIA**

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**REPUBLIC OF ZIMBABWE**