

East African Community, African Regional Bodies

## Agreement establishing a Tripartite Free Trade Area among the Common Market for Eastern and Southern Africa, the East African Community and the Southern African Development Community

Legislation as at 10 June 2015

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East African Community

*Not commenced*

## **Agreement establishing a Tripartite Free Trade Area among the Common Market for Eastern and Southern Africa, the East African Community and the Southern African Development Community**

**Not commenced**

*[This is the version of this document at 10 June 2015.]*

### **Preamble**

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

**RECALLING AND AFFIRMING** the strong and indissoluble bonds of history, freedom, liberation struggles, friendship, solidarity, commerce, trade, shared natural resources, and culture among the people and Governments of the Member/Partner States of the Common Market for Eastern and Southern Africa, the East African Community, and the Southern African Development Community;

**RECOGNISING** the Kampala Communique of the Tripartite Summit of 22 October 2008 under which the Heads of State and Government representing the three regional economic communities agreed, *inter alia*, to establish a single Customs Union beginning with a Free Trade Area;

**FURTHER RECOGNISING** the Declaration Launching the Negotiations for the Establishment of the Tripartite Free Trade Area of Johannesburg, South Africa, 12 June 2011;

**RECALLING** the Tripartite Memorandum of Understanding signed on 19 January 2011 and its provisions on the establishment of the Tripartite Free Trade Area;

**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 Common Market of Eastern and Southern Africa Treaty, Treaty for the Establishment of the East African Community, and the Southern African Development Community Protocol on Trade;

**DETERMINED** to build upon the success and best practices achieved in trade liberalization within the three Regional Economic Communities;

**COMMITTED** to resolving the challenges of overlapping memberships of the Tripartite Member/Partner States to the three Regional Economic Communities;

**CONSIDERING** that trade in goods and services, infrastructure, cross-border investment, industrial development and movement of businesspersons should be major areas of co-operation;

**DETERMINED** to take the necessary measures for reducing the cost of doing business and creating a conducive environment for private sector development;

**MINDFUL** of the important role of micro, small and medium enterprises in job creation and income generation for the majority of the people in the Tripartite Member/Partner States;

**RECOGNISING** the significant contribution of trade in goods and services to national incomes of the Member/Partner States;

**DETERMINED** to progressively liberalize trade in goods and services, promote industrial development, facilitate movement of businesspersons, 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/Partner States;

**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/Partner States based on equality, fair competition and mutual benefit will contribute to the creation of a viable development community,

**MINDFUL** of the different levels of economic development and geographic specificities of the Tripartite Member/Partner States and the need to share equitably the benefits of regional economic integration;

**COMMITTED** to improving the competitiveness of Tripartite Member/Partner 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 duties and other trade barriers within the three regional economic communities;

**RECOGNISING** the initiatives undertaken by the regional economic communities in establishing themselves as single investment areas and building on this progress; and

**RECOGNISING** our international obligations under the existing agreements;

**HEREBY AGREE as follows:**

## **Part I – Interpretation, establishment, objectives and principles**

### **Article 1 – Interpretation**

In this Agreement, unless the context otherwise requires:

"**Agreement**" means this agreement establishing the Tripartite Free Trade Area;

"**COMESA**" means the Common Market for Eastern and Southern Africa as established by the Treaty Establishing the Common Market for Eastern and Southern Africa which entered into force on 8<sup>th</sup> December 1994;

"**Customs duties**" means duties laid down in the customs tariff to which goods are liable on entering or leaving the customs territory of the Member/Partner State;

"**EAC**" means the East African Community established by the Treaty for the Establishment of the East African Community which entered into force on 7<sup>th</sup> July, 2000;

"**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/Partner State to a consignee in another Tripartite Member/Partner State, but do not include any;

- a) charges equivalent to internal taxes imposed consistently with Article III (2) of the GATT 1994 and its interpretative notes in respect of like directly competitive or substitutable goods of the party or the signatory party or in respect of goods from which imported goods have been manufactured or produced in whole or in part;
- b) antidumping or countervailing duties imposed in accordance with Articles VI, and XVI of GATT 1994 and the WTO Agreement on Subsidies and countervailing measures and Article 17 of this Agreement;
- c) safeguard duties or levies imposed in accordance with Articles XIX of GATT 1994, the WTO Agreement on Safeguards and Articles 18 and 19 of this Agreement other fees or charges imposed consistently with Article VIII of GATT 1994.

"**Most Favored Nation treatment**" (MFN) means that advantages that any Tripartite Member/Partner State offers to third countries would be offered to other Tripartite Member/Partner States. The purpose is to ensure that Tripartite Member/Partner State trade amongst each other on terms as good as or better than that offered to non-FTA partners. These advantages would be extended on reciprocity.

**"Non-Tariff Barriers"** (NTB) means any laws, regulations, administrative and technical requirements other than tariffs imposed by a partner state whose effect is to impede trade; *Not commenced*

**"Quantitative restrictions"** means prohibitions or restrictions on imports into, or exports from a Tripartite Member/Partner State whether made effective through quotas, import licenses, or other measures and requirements restricting imports or exports;

**"REC"** means Regional Economic Community;

**"Region"** means the geographical territories of the Tripartite Member/Partner States collectively;

**"SADC"** means the Southern African Development Community as established by the Treaty of the Southern African Development Community which entered into force on 30<sup>th</sup> September 1993;

**"Special Economic Zones"** means a designated economic area in a Tripartite Member/Partner State with regulations that may be different from other areas in the same Tripartite Member/Partner State for the purpose of attracting foreign and domestic investments, know-how and technology;

**"SPS"** means Sanitary and Phyto-Sanitary Measures;

**"TBT"** means Technical Barriers to Trade;

**"Transit"** refers to Customs transit which means a Customs procedure under which goods are transported under Customs control from one Customs office to another, (Annex A and Specifically Annex E to the Istanbul Convention);

**"Tripartite Member/Partner States"** means the Member States of Common Market for Eastern and Southern Africa, the Partner States of the East African Community, and the Member States of the Southern African Development Community who are party to this Agreement and any other member of the African Union that would have become party to this Agreement;

**"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 Organization.

## **Article 2 – Establishment of the Tripartite Free Trade Area**

A Free Trade Area among the Member/Partner States of COMESA, EAC and SADC is hereby established.

## **Article 3 – Scope and coverage**

This Agreement shall, without derogating from the purpose already outlined herein comprise of:

- a) Trade in goods;
- b) Trade in services; and
- c) other trade-related matters.

## **Article 4 – General objectives**

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

- a) promote economic and social development of the Region;
- b) create a large single market with free movement of goods and services to promote intra-regional trade;
- c) enhance the regional and continental integration processes, and d) build a strong Tripartite Free Trade Area for the benefit of the people of the Region.

## **Article 5 – Specific objectives**

For purposes of fulfilling and realizing the objectives set out in Article 4 of this Agreement, Tripartite Member/ Partner States shall:

- a) progressively eliminate tariffs and Non-Tariff Barriers to trade in goods;
- b) liberalize trade in services;
- c) cooperate on customs matters and implementation of trade facilitation measures;
- d) establish and promote cooperation in all trade-related areas among Tripartite Member/Partner States; and
- e) establish and maintain an institutional framework for implementation and administration of the Tripartite Free Trade Area.

## **Article 6 – Principles**

The principles governing this Agreement shall be the following:

- a) REC and/ or Tripartite Member/Partner States driven;
- b) variable geometry;
- c) flexibility and special and differential treatment;
- d) transparency;
- e) building on the *acquis*;
- f) single undertaking with regard to the various phases of the Agreement;
- g) MFN treatment
- h) national treatment;
- i) reciprocity;
- j) substantial liberalization;
- k) consensus decision making; and
- l) best practices in the regional economic communities, the Tripartite Member/Partner States and international conventions binding Tripartite Member/Partner States.

## **Part II – Non-discrimination**

### **Article 7 – Most-Favored-Nation Treatment**

1. Tripartite Member/Partner States shall accord to one another the Most-Favored-Nation Treatment.
2. Nothing in this Agreement shall prevent a Tripartite Member/Partner State from maintaining or entering into new preferential trade agreements with third countries provided that any advantage, concession, privilege, or favor granted to a third country under such agreements are offered to the other Tripartite Member/Partner States on a reciprocal basis.
3. Nothing in this Agreement shall prevent two or more Tripartite Member/Partner States from entering into new preferential agreements which aim at achieving the objectives of this Agreement among themselves, provided that any preferential treatment accorded under such agreements is extended to the other Tripartite Member/Partner States on a reciprocal and non-discriminatory basis.

4. Any agreement entered into under paragraph 2 and 3 shall be notified to the Tripartite Sectoral Ministerial Committee responsible for Trade, Finance, Customs, Economic Matters and Home/internal Affairs. *Not commenced*

### **Article 8 – National treatment**

A Tripartite Member/Partner State shall accord to products imported from other Tripartite Member/Partner States treatment no less favorable than that accorded to like domestic products, after the imported products have passed customs, and that this treatment covers all measures affecting the sale and conditions for sale of such products in accordance with Article III of GATT 1994.

## **Part III – Liberalization of trade in goods**

### **Article 9 – Elimination of import duties**

1. Tripartite Member/Partner States shall not impose new import duties or charges of equivalent effect except as provided for under this Agreement.
2. The provisions of paragraph 1 shall not apply to goods that are not subject to liberalization.
3. The Tripartite Member/Partner States shall progressively eliminate import duties in accordance with schedules contained in Annex I on Elimination of Import Duties.

### **Article 10 – Non-Tariff-Barriers**

1. Tripartite Member/Partner States shall eliminate all existing Non-Tariff-Barriers to trade with each other and shall not impose any new ones in line with Annex III on Non-Tariff Barriers.
2. Tripartite Member/Partner States recognize the existing reporting, monitoring and elimination mechanisms on Non-Tariff-Barriers established by the three RECs and undertake to harmonize them into a single mechanism as provided for in Annex III.

### **Article 11 – Elimination of quantitative restrictions**

Tripartite Member/Partner States shall not impose quantitative restrictions on imports or exports in trade with other Tripartite Member/Partner States except as otherwise provided for in Article XI.2 of GATT1994, the WTO Agreement on Safeguards and Articles 17 and 18 and Annex II on Trade Remedies of this Agreement.

### **Article 12 – Rules of origin**

Goods shall be eligible for preferential treatment under this Agreement if they are originating goods in any of the Tripartite Member/Partner States in accordance with the criteria and conditions set out in Annex 4 on Rules of Origin.

## **Part IV – Customs cooperation and trade facilitation**

### **Article 13 – Customs cooperation**

Tripartite Member/Partner States shall take appropriate measures including arrangements regarding customs cooperation and mutual administrative assistance to ensure that the provisions of this Agreement are effectively applied in accordance with Annex 5 on Customs Cooperation and Mutual Administrative Assistance.

## **Article 14 – Trade facilitation**

1. Tripartite Member/Partner States agree to design and standardize their trade and customs documentation and information in accordance with internationally accepted standards, taking into account the use of electronic data processing systems.
2. Tripartite Member/Partner States shall ensure an efficient and effective application of this Article in accordance with Annex VI on Trade Facilitation.
3. Tripartite Member/Partner States undertake to initiate trade facilitation programme in accordance with Annex VI on Trade Facilitation aimed at:
  - a) reducing the cost of processing documents and volume of paperwork required in respect of trade among Tripartite Member/Partner States;
  - b) ensuring that the nature and volume of information required in respect of trade within the Tripartite Free Trade Area does not adversely affect the economic development of, or trade among, the Tripartite Member/Partner States;
  - c) adopting common standards of trade procedures within the Tripartite Free Trade Area where international requirements do not suit the conditions prevailing among Tripartite Member/Partner States;
  - d) ensuring adequate coordination between trade and transport facilitation within the Tripartite Free Trade Area;
  - e) keeping under review procedures adopted in international trade and transport with a view to simplifying and adopting them;
  - 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 instruments;
  - h) initiating and promoting the establishment of joint programmes, for the training of personnel engaged in trade facilitation; and
  - i) establishing and promoting one-stop border posts.

## **Article 15 – Transit**

Tripartite Member/Partner States agree to facilitate the movement of goods and means of transport in transit to other Tripartite Member/Partner States in accordance with Annex VII on Transit Trade and Transit Facilitation.

## **Part V – Trade remedies**

### **Article 16 – Transitional arrangements**

1. Where there is evidence of dumping, subsidization, or surge in imports into the territory of a Tripartite Member/Partner State, nothing in this Agreement shall prevent that Tripartite Member/Partner State from applying, in the interim, an anti-dumping, countervailing or safeguard measure governed by:
  - a) REC provisions among the Member/Partner State of the same REC;
  - b) The relevant WTO provisions across the RECs.

2. The Tripartite guidelines on the implementation of trade remedies shall be drafted by a Tripartite Committee of Experts as part of the built-in agenda and shall form an integral part of Annex II on Trade Remedies. *Not commenced*
3. Articles 17, 18 and 19 shall be suspended until Annex II on Trade Remedies is finalized and operational.

### **Article 17 – Anti-dumping and countervailing measures**

1. Subject to the provisions of this Agreement, nothing in this Agreement shall prevent Tripartite Member/ Partner States from adopting anti-dumping and countervailing measures in accordance with the relevant WTO Agreements and Annex II on Trade Remedies.
2. In applying this Article, Tripartite Member/Partner States shall be guided by provisions of the WTO Agreement on the Interpretation of Article VI of the GATT 1994, and the WTO Agreement on Subsidies and Countervailing Measures.

### **Article 18 – Safeguard measures**

1. A Tripartite Member/Partner State may apply a safeguard measure to a product only after determining that such product is being imported into its territory:
  - a) in such increased quantities, absolute or relative to domestic production; and
  - b) under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.
2. In applying this Article, Tripartite Member/Partner States shall be guided by the provisions of Article XIX of GATT 1994 WTO Agreement on Safeguard Measures and Annex II on Trade Remedies.

### **Article 19 – Preferential safeguards**

1. Preferential safeguard measures may be applied by a Tripartite Member/Partner States under the provisions in Annex II on Trade Remedies, if as a result of the obligations undertaken by that Tripartite Member/Partner State goods are imported into the territory of a Tripartite Member/Partner State under such conditions as to cause or threaten to cause serious injury to the domestic industry.
2. Preferential safeguard measures shall be applied only to the extent necessary to prevent or remedy serious injury.

### **Article 20 – Cooperation on trade remedies**

Recognizing that dumping, subsidization and import surges, whether originating from the Region or a Third Country, can adversely affect more than one Tripartite Member/Partner State within the Region, Tripartite Member/Partner States shall co-operate in the detection and investigation of dumping or subsidization or sudden imports urges and in the imposition of the appropriate measures to curb such practices.

## **Part VI – Trade-related areas**

### **Article 21 – Technical Barriers to Trade**

1. Tripartite Member/Partner States reaffirm their rights and obligations in respect of the WTO Agreement on Technical Barriers to Trade.



- Not commenced*
2. Tripartite Member/Partner States undertake to facilitate trade through cooperation in the areas of technical regulations, standards, metrology, conformity assessment and accreditation.
  3. Tripartite Member/Partner States shall, cooperate to eliminate unnecessary and unjustifiable Technical Barriers to Trade.
  4. Cooperation shall include but not be limited to:
    - a) the reinforcement of good regulatory and standards setting practices,
    - b) the implementation of various mechanisms to facilitate the acceptance of conformity assessment results,
    - c) promoting the use of relevant international standards as a basis for technical regulations,
    - d) identifying and assessing instruments for trade facilitation such as the harmonization, and or equivalence of technical regulations, and
    - e) mutual recognition of conformity assessment results.
  5. Tripartite Member/Partner States shall strengthen cooperation and agree on priority areas of mutual interest in matters relating to Technical Barriers to Trade.
  6. Tripartite Member/Partner States shall establish and implement a capacity building programme to support the implementation of Annex VIII on Technical Barriers to Trade.
  7. Tripartite Member/Partner States shall establish mechanisms and structures to enhance transparency in the development and implementation of standards, technical regulations, and conformity assessment requirements.
  8. The implementation of this Article shall be in accordance with the provisions of Annex VIII on Technical Barriers to Trade.

## **Article 22 – Sanitary and Phytosanitary measures**

1. Tripartite Member/Partner States reaffirm their rights and obligations in respect of the WTO Agreement on the application of Sanitary and Phytosanitary measures.
2. Tripartite Member/Partner States shall undertake to facilitate safe trade in animals and animal products, plants and plant products whilst safeguarding human, animal and plant life or health.
3. Tripartite Member/Partner States shall cooperate to eliminate unjustifiable SPS measures in order to facilitate safe trade in sectors of mutual economic interest.
4. Tripartite Member/Partner States shall establish and implement a capacity building programme to support the implementation of Annex IX on Sanitary and Phytosanitary Measures.
5. The implementation of this Article shall be in accordance with Annex IXn Sanitary and Phytosanitary Measures.

## **Article 23 – Special economic zones**

1. Tripartite Member/Partner States may support the establishment and operation of special economic zones for the purpose of accelerating development.
2. Products benefiting from special economic zones shall be subject to any regulations that may be made by the Tripartite Council of Ministers. Regulations under this paragraph shall be subject to paragraph 3 of this Article and in support of the Tripartite industrialization programmes.
3. The trade of products manufactured in special economic zones within the Tripartite Member/Partner States shall be subject to the provisions of Annex IV on Rules of Origin.



## **Article 24 – Infant industries**

1. 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, and that is experiencing high start-up costs and difficulties competing with like imports.
2. For the purposes of protecting an infant industry, a Tripartite Member/Partner 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/Partner States, provided that the measures are applied on a non-discriminatory basis.
3. The Tripartite Council of Ministers shall determine the period and the nature of the measures that may be adopted under this Article.
4. The Tripartite Committee of Experts, established under Article 29 of this Agreement, shall keep under constant review the operation of any restrictions imposed under this Article and regularly report to the Tripartite Council of Ministers with recommendations.

## **Article 25 – Balance of payments**

A Tripartite Member/Partner 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 in accordance with guidelines to be determined by the Tripartite Council of Ministers, provided that such measures shall be reviewed annually.

## **Part VII – Other areas of cooperation**

### **Article 26 – Cooperation in financial areas**

For the purposes of this Agreement, Tripartite Member/Partner States may cooperate and strengthen coordination in financial and payment systems, development of capital markets and commodity exchanges.

### **Article 27 – Cooperation in trade policies and negotiations**

Tripartite Member/Partner States may:

- a) cooperate with respect to their trade policies;
- b) enhance their cooperation with bilateral and multilateral partners; and
- c) enhance cooperation in international and multilateral negotiations.

### **Article 28 – Cooperation in research and statistics**

1. Tripartite Member/Partner States may cooperate in areas of research and statistics necessary for monitoring the performance and operation of the Tripartite Free Trade Area.
2. For purposes of this Article, cooperation shall include the following:
  - a) policy research and trade development;
  - b) establishment of a Tripartite statistical database;
  - c) joint capacity building including joint training;
  - d) harmonization of statistical systems and data management; and

- e) exchange of information.

*Not commenced*

## **Part VIII – Implementation of the Tripartite Free Trade Area**

### **Article 29 – Organs for the implementation of the Tripartite Free Trade Area**

1. The organs for the implementation of the Free Trade Area shall be:
  - a) the Tripartite Summit consisting of the Heads of State and/or Governments of Tripartite Member/ Partner States which shall give general direction and impetus for the Tripartite arrangement;
  - b) the Tripartite Council of Ministers consisting of ministers as designated by Tripartite Member/ Partner States for the purposes of the Tripartite Free Trade Area;
  - c) the Tripartite Sectoral Ministerial Committee on Trade, Finance, Customs and Economic Matters and Home/internal Affairs, and the Tripartite Sectoral Ministerial Committee on Legal Affairs each of which shall be responsible for policy direction and implementation in their respective sectors;
  - d) the Tripartite Task Force of the Secretariats of the three RECs which shall coordinate the implementation of the Tripartite work programme and shall provide secretariat services to the Tripartite arrangement;
  - e) the Tripartite Committee of Senior Officials which shall be responsible for overseeing and guiding technical work; and
  - f) the Tripartite Committee of Experts which shall carry out the technical work and report to the Tripartite Committee of Senior Officials.
2. The Tripartite Summit shall adopt its own rules of procedure.
3. The Tripartite Council of Ministers shall adopt its own rules of procedure.
4. Each Committee shall develop its rules of procedure which shall be approved by the Tripartite Council of Ministers.

## **Part IX – Dispute settlement**

### **Article 30 – Dispute settlement**

1. A Dispute Settlement Body is hereby established to administer the rules and procedure, as well as the dispute settlement provisions under this Agreement.
2. The Dispute Settlement Body shall have the power to:
  - a) establish panels and an Appellate Body;
  - b) adopt Panel and Appellate Body reports;
  - c) maintain surveillance of implementation of rulings and recommendations of panels and Appellate Body; and
  - d) authorize suspension of concessions under the Agreement.
3. The Dispute Settlement Body shall inform the Tripartite Council of Ministers and relevant Committees of any development in disputes related to provisions of this Agreement.
4. Any dispute arising from the interpretation or application of this Agreement shall be resolved in accordance with the provisions of this Article and Annex 10 on Dispute Settlement Mechanism.

5. The settlement of any dispute between or among Tripartite Member/Partner States shall, <sup>*Not commenced*</sup> 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.
6. No Tripartite Member/Partner State shall refer a dispute to the Dispute Settlement Body unless it has in good faith engaged in consultations and negotiations, with a view to resolve the dispute.
7. 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 – General and security exceptions**

### **Article 31 – 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 as preventing the adoption or enforcement of measures by any Tripartite Member/Partner State;

- a) necessary to protect public morals or to maintain public order;
- b) necessary to protect human, animal or plant life or health;
- c) relating to the importation or exportation of precious and semi-precious stones, precious and strategic minerals and metals including but not limited to gold, silver, platinum, diamonds, coltan, oil, gas, tanzanite, and uranium;
- d) relating to the products of prison labor;
- e) 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;
- f) imposed for the protection of national treasures of artistic, historic, or archaeological value;
- g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
- h) undertaken in pursuance of obligations under any intergovernmental commodity agreement approved by the Tripartite Council of Ministers;
- i) 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; and
- j) essential to the acquisition or distribution of foodstuffs 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/Partner 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 32 – Security exceptions**

Nothing in this Agreement shall be construed to:

- a) require any Tripartite Member/Partner State to furnish any information the disclosure of which it considers contrary to its essential security interests; or

- Not commenced*
- b) prevent any Tripartite Member/Partner 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) prevent any Tripartite Member/Partner State from taking any action in pursuance of its obligations under the Charter of the United Nations.

### **Article 33 – Notification of prohibited and restricted goods**

A Tripartite Member/Partner State taking measures pursuant to Articles 31 and 32 shall within twenty-one (21) days from the date the Tripartite Member/Partner State implements the measure notify such measures to the Tripartite Sectoral Ministerial Committee on Trade, Finance, Customs and Economic Matters and Home/internal Affairs.

## **Part XI – Financial provisions**

### **Article 34 – Funding**

Tripartite Member/Partner States shall institute appropriate modalities to fund their commitments in the implementation of this Agreement.

## **Part XII – General and final provisions**

### **Article 35 – Working languages**

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

### **Article 36 – Protocols and Annexes**

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

### **Article 37 – Amendment**

1. This Agreement may be amended at any time by consensus.
2. Any Tripartite Member/Partner State may submit proposals for amendment of this Agreement to the Chairperson of the Tripartite Task Force in writing. The Chairperson of the Tripartite Task Force shall, within 30days, submit the proposals to Tripartite Member/Partner States.
3. A Tripartite Member/Partner State that wishes to comment on the proposals may do so within 90days from the date of the dispatch of the proposal.
4. After the expiration of the period, the Chairperson of the Tripartite Task Force shall submit proposals and any comments to the Tripartite Council of Ministers for consideration and adoption.

5. Any amendment shall enter into force upon adoption by the Tripartite Summit by consensus. *Not commenced*

### **Article 38 – Sanctions**

A Tripartite Member/Partner State which defaults in meeting its obligations under this Agreement shall be subject to such sanctions as the Tripartite Summit may, determine on the recommendation of the Tripartite Council of Ministers,.

### **Article 39 – Signature, ratification and entry into force**

1. This Agreement shall be signed by the Tripartite Member/Partner States.
2. This Agreement shall be ratified by Tripartite Member/Partner States in accordance with their national laws.
3. This Agreement shall enter into force on the Thirtieth day after the deposit of the fourteenth instrument of ratification by Member/Partner States of COMESA, EAC and SADC.

### **Article 40 – Obligation not to defeat the object and purpose of this Agreement prior to its entry into force**

A Tripartite Member/Partner State shall refrain from acts which would defeat the object and purpose of this Agreement when it has:

- a) signed the Agreement or has exchanged instruments constituting the Agreement subject to ratification until it shall have made its intention clear not to become a party to the Agreement; or
- b) expressed its consent to be bound by the Agreement, pending the entry into force of the Agreement, provided that such entry into force is not unduly delayed.

### **Article 41 – Accession**

1. This Agreement shall remain open for accession by any Member/Partner State of COMESA, EAC or SADC.
2. The Agreement shall also remain open for accession to other member states of the African Union.
3. 3. The Tripartite Council of Ministers shall adopt accession regulations.

### **Article 42 – Withdrawal**

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

### **Article 43 – Depositary and registration**

1. This Agreement and all instruments of ratification, accession, and notification of entry into force or withdrawal thereof shall be deposited with the Tripartite Task Force.
2. The Tripartite Task Force shall transmit certified copies of the Agreement to the Tripartite Member/Partner States.
3. The Tripartite Task Force shall notify the Tripartite Member/Partner States of the dates of deposit of instruments of ratification and accession.

4. The Tripartite Task Force shall notify this Agreement to the United Nations Secretary General and the WTO. *Not commenced*

### **Article 44 – Negotiations on outstanding issues on Phase I**

Tripartite Member/Partner States undertake to conclude negotiations on outstanding issues under Phase I as set out in Annex I on Elimination of Customs Duties, Annex II on Trade Remedies and Annex IV on Rules of Origin after the launch of the Tripartite Free Trade Area.

### **Article 45 – Phase II Negotiations**

1. Recognizing the need to conclude Phase II Negotiations, and to provide flexibility in the implementation of the Agreement, the Tripartite Member/Partner States agree to negotiate and endeavor to conclude the following protocols within 24 months upon entry into force of this Agreement:
  - a) A protocol on trade in services; and
  - b) Protocols on trade-related matters, including Competition policy, Cross-Border Investment, Trade and Development, and Intellectual Property Rights.
2. The Tripartite Member/Partner States may conclude protocols in any other traderelated matter agreed to by the Tripartite Member/Partner States.

**IN WITNESS WHEREOF, WE** the Heads of State and Government or duly Authorized Representatives of Tripartite Member/Partner States have signed and sealed this Agreement in four original texts in English, French, Arabic and Portuguese languages, all texts being equally authentic.

**DONE** at Sharm El Sheikh, in the Arab Republic of Egypt, on this 10<sup>th</sup> day of June in the year Two Thousand and Fifteen.