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 therefore 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 1st day of August 2007 in three original texts in the English, French and Portuguese languages, all texts being equally authentic.

__________________________________________  __________________________________________
REPUBLIC OF ANGOLA  REPUBLIC OF Botswana

__________________________________________  __________________________________________
DEMOCRATIC REPUBLIC OF CONGO  KINGDOM OF LESOTHO

__________________________________________  __________________________________________
REPUBLIC OF MADAGASCAR  REPUBLIC OF MALAWI

__________________________________________  __________________________________________
REPUBLIC OF MAURITIUS  REPUBLIC OF MOZAMBIQUE

__________________________________________  __________________________________________
REPUBLIC OF NAMIBIA  REPUBLIC OF SOUTH AFRICA

__________________________________________  __________________________________________
KINGDOM OF SWAZILAND  UNITED REPUBLIC OF TANZANIA

__________________________________________  __________________________________________
REPUBLIC OF ZAMBIA  REPUBLIC OF ZIMBABWE