

**AGREEMENT**

**AMENDING**

**THE PROTOCOL ON TRIBUNAL**

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# **AGREEMENT AMENDING PROTOCOL ON TRIBUNAL**

## **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

**RECOGNISING** that the Protocol on Tribunal was adopted by Summit at Windhoek, Namibia, on 7<sup>th</sup> August 2000, and that the Protocol entered into force upon the adoption of the Agreement Amending the Treaty of the Southern African Development Community (SADC) at Blantyre, Malawi, on 14<sup>th</sup> August 2001;

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

**NOTING** that the provisions of the Treaty were amended following the restructuring of SADC;

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

**RECOGNISING** further that the amendment of the Protocol on Trade of SADC and the Annex VI thereto entails effecting amendments to the Protocol;

**HAVE AGREED**, pursuant to Article 37 of the Protocol on Tribunal, to effect the following amendment:

**ARTICLE 1  
AMENDMENT OF ARTICLE 1 OF THE PROTOCOL**

Article 1 of the Protocol is amended by adding the following new definition to paragraph 2:

“Appeal” means a dispute relating to the legal findings and conclusions of a panel established under a Protocol referred to the Tribunal for appellate decision by a party to a dispute in terms of Article 20A;”.

**ARTICLE 2  
AMENDMENT OF ARTICLE 3 OF THE PROTOCOL**

Article 3 of the Protocol is amended, in paragraph 6, by deleting the word “member” and substituting therefor the word “Member”.

**ARTICLE 3  
AMENDMENT OF ARTICLE 15 OF THE PROTOCOL**

Article 15 of the Protocol is amended by adding the following new paragraph 4:

“4. An appeal before the Tribunal pursuant to Article 20A shall be limited to issues of law and legal interpretations developed or covered in the report of a panel established in terms of the relevant Protocol.”.

**ARTICLE 4  
AMENDMENT OF ARTICLE 20 OF THE PROTOCOL**

Article 20 of the Protocol is amended, in the title, by adding the word “Opinions” immediately after the word “Advisory”.

**ARTICLE 5  
INSERTION OF NEW ARTICLE 20 A INTO THE PROTOCOL**

The Protocol is amended by inserting immediately after Article 20 the following new Article:

**“ARTICLE 20 A  
APPELLATE JURISDICTION**

1. The Tribunal shall have appellate jurisdiction in any dispute relating to the legal findings and conclusions of a panel established under a Protocol referred to it by a party to the dispute.

2. Only a party to a dispute, may appeal a panel report. Third parties which have notified the Registrar of a substantial interest in the matter pursuant to the Rules may make written submission to, and be given an opportunity to be heard by, the Tribunal.
3. The Tribunal may uphold, modify or reverse the legal findings and conclusions of the panel.
4. In cases of urgency, parties to a dispute and the Tribunal shall make every effort to accelerate the proceedings to the greatest extent possible.
5. An appeal shall be limited to issues of law covered in the panel report and legal interpretations developed by the panel.
6. The Tribunal may call an expert to address them during oral hearings on any matter for the Tribunal's benefit.
7. Disputes relating to the legal findings and conclusions of a panel established under the Protocol on Trade referred to the Tribunal for appellate review by a party to a dispute shall be dealt with in accordance with that Protocol."

#### **ARTICLE 6 ENTRY INTO FORCE**


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


#### **ARTICLE 7 DEPOSITORY**

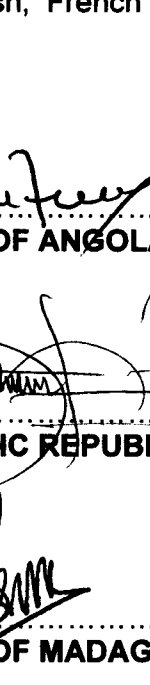
1. The original texts of this Agreement shall be deposited with the Executive Secretary of SADC, who shall transmit certified copies to all Member States.
2. The Executive Secretary shall register this Agreement with the Secretariat of the United Nations Organisation and the Commission of the African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

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

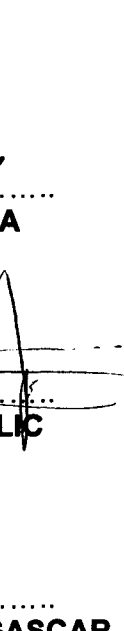
Done at Lusaka, Zambia, this 17<sup>th</sup> day of August 2007 in three original texts in the English, French and Portuguese languages, all texts being equally authentic.

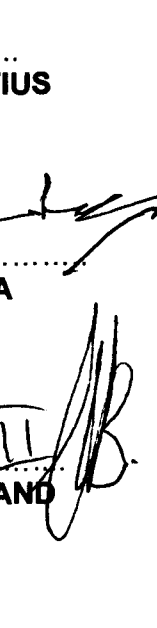
  
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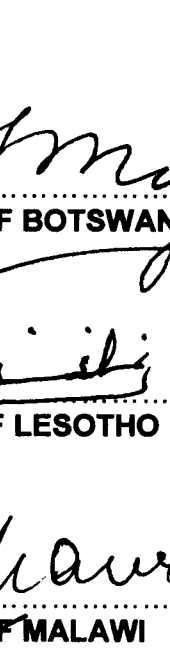
  
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**KINGDOM OF SWAZILAND**

  
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**UNITED REPUBLIC OF TANZANIA**

  
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**REPUBLIC OF ZAMBIA**

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**REPUBLIC OF ZIMBABWE**