



PROTOCOL ON TRADE IN SERVICES

Contents

Preamble	4
PART ONE	6
Definitions, Objectives and Scope	6
PART TWO	9
General Obligations	9
PART THREE	15
Trade in Services	15
PART FOUR	17
Matters Related to Trade in Services	17
PART FIVE	20
Institutional Arrangements and Dispute Settlement Provisions	20
PART SIX	21
Final Provisions	21
Annex 1: Concerning the Settlement of Disputes Between the State Parties	24
Annex 2: Substantial Business Operations	33
Annex 3: Movement of Natural Persons (Mode 4)	34
Annex 4: Annex on Interim Arrangements Relating to Commitments on Subsidies	38
Annex 5: Financial Services	39
Annex 6: Telecommunication Services	44
Annex 7: Tourism Services	48
Annex 8: Postal and Courier Services	53

Preamble

WE, the Heads of State or Government of:

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 Seychelles

The Republic of South Africa

The Kingdom of Swaziland

The United Republic of Tanzania

The Republic of Zambia

The Republic of Zimbabwe

CONSIDERING Article 21 of the Treaty of the Southern African Development Community (SADC) which provides for areas of cooperation and Article 22 which provides for conclusion of Protocols which may be necessary in agreed areas of cooperation;

IN PURSUANCE of the promotion of interdependence and integration of our national economies for the harmonious, balanced and equitable development of the Region;

WITH A VIEW to ensuring, through common action, the progress and well-being of the people of Southern Africa, including through poverty alleviation, with the ultimate objective of its eradication;

DETERMINED to achieve deeper regional integration and sustainable economic growth and development and to meet the challenges of globalization;

RECOGNIZING the importance of services trade for growth and development and mindful of the need to diversify SADC economies through greater services trade;

CONVINCED that an integrated regional market for services, complemented by cooperative mechanisms, will create new opportunities for a dynamic business sector, and strengthen the Region's services capacity, its efficiency, and competitiveness and expand the Region's services exports;

ACKNOWLEDGING the existence of asymmetry as some Member States are disadvantaged by reason of their size, structure, vulnerability and levels of development of their economies;

REAFFIRMING the right of Member States to regulate and to introduce new regulations to meet national policy objectives, and in light of asymmetry in terms of services regulation, recognising the particular need for least developed countries to use this right;

MINDFUL of the need to allow for the appropriate pacing and sequencing of reform (regulatory, institutional and administrative) and liberalisation in the services sectors of the Region;

SEEKING to achieve coherence in the Region's intra-regional, inter-regional and multilateral commitments and negotiations on trade in services;

REAFFIRMING the rights and obligations that Member States have under the World Trade Organization's (WTO) General Agreement on Trade in Services (GATS); and

HAVING DECIDED upon the further liberalization of intra-regional trade in services on the basis of fair, mutually equitable and beneficial trade arrangements, complemented by and in consistency with Protocols in specific services sectors;

HEREBY AGREE as follows;

Definitions, Objectives and Scope

ARTICLE 1

Definitions

1. In this Protocol, unless the context otherwise requires:

“CMT” means the Committee of Ministers responsible for trade matters;

“Commercial presence” means:

- (i) In respect of nationals, setting up, acquiring and managing undertakings, which they effectively control in the territory of a State Party for the purpose of supplying a service;
- (ii) In respect of SADC juridical persons, taking up, acquiring and pursuing the economic activities covered by this Protocol, including by means of the setting up and managing of subsidiaries, branches or any other form of secondary establishment in the territory of a State Party for the purpose of supplying a service;

“Member State” means a Member State of SADC;

“National” means a natural person who is a national of one of the State Parties in accordance with their respective legislations. National includes a permanent resident treated as a national in accordance with the legislation of such State Party;

“Region” means the geographical area of the Member States of SADC;

“SADC juridical person” means a legal entity set up in accordance with the laws of a State Party, and engaged in “substantial business operations” in the territory of that State Party or any other State Party;

“Substantial business operations” means, inter alia, operations carried out by an entity incorporated in and licensed by a State Party to provide services, and shall be further developed through negotiations after adoption of this Protocol. The results of such negotiations shall be annexed to this Protocol.”

“Service supplier” means any natural or juridical person of a State Party that supplies a service;

“State Party” means a Member State that has ratified or acceded to this Protocol;

“Subsidiary” means a juridical person that is effectively controlled by another juridical person;

“Territory” means the geographical area of a State Party;

“Third Country”	means a country other than a State Party;
“TNF-Services”	means Trade Negotiating Forum for Services;
“Treaty”	refers to the Treaty of the Southern African Development Community.

- 2. All other terms relating to any matter directly regulated by this Protocol not defined herewith are deemed to have the same meaning as in the WTO General Agreement on Trade in Services (GATS).**

ARTICLE 2

Objectives

The objectives of this Protocol are to:

1. progressively liberalise intra-regional trade in services on the basis of equity, balance and mutual benefit with the objective of achieving the elimination of substantially all discrimination between State Parties and a liberal trading framework for trade in services with a view to creating a single market for trade in services;
2. promote sustainable economic growth and development, thereby raising the standard and quality of life of the people of Southern Africa, supporting the socially disadvantaged and alleviating poverty through regional integration in the area of services;
3. enhance economic development, diversification, local, regional and foreign investment in the services economies of the Region;
4. ensure consistency between liberalisation of trade in services and the various Protocols in specific services sectors;
5. pursue services trade liberalisation, while fully preserving the right to regulate and to introduce new regulations; and
6. enhance the capacity and competitiveness of the services sectors of State Parties.

ARTICLE 3

Scope and Coverage

1. This Protocol shall apply to all measures by State Parties affecting trade in services.
2. For the purposes of this Protocol, trade in services means the supply of a service:
 - (a) from the territory of a State Party into the territory of any other State Party;

- (b) in the territory of a State Party to the service consumer of any other State Party;
- (c) by a service supplier of a State Party, through commercial presence in the territory of any other State Party;
- (d) by a service supplier of a State Party, through presence of natural persons in the territory of any other State Party.

3. (a) The Protocol shall not apply to the following measures affecting air transport:

- (i) traffic rights, however granted; or
- (ii) services directly related to the exercise of traffic rights.

(b) This Protocol shall apply to measures affecting:

- (i) aircraft repair and maintenance services;
- (ii) the selling and marketing of air transport services;
- (iii) computer reservation system (CRS) services.

4. This Protocol shall apply to measures affecting trade in services taken by central, regional or local governments and authorities as well as by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities. In fulfilling its obligations and commitments under this Protocol each State Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory.

5. (a) "Services" includes any service in any sector except services supplied in the exercise of governmental authority.

(b) A "service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

6. Nothing in this Protocol shall be construed to prevent a State Party from adopting and implementing measures aimed at ensuring universal access to essential services.

General Obligations

ARTICLE 4

Most Favoured Nation Treatment

1. Upon entry into force of this Protocol, with respect to any measure covered by the protocol, each State Party shall accord immediately and unconditionally to services and service suppliers of any other State Party treatment no less favourable than it accords to like services and service suppliers of any other State Party or Third Country.
2. Notwithstanding paragraph 1, two or more State Parties may conduct negotiations and agree to liberalise trade in services for specific sectors or sub-sectors in accordance with the objectives in this Protocol. Other State Parties shall be afforded reasonable opportunity to negotiate the preferences granted therein on a reciprocal basis.
3. Nothing in this Protocol shall prevent a State Party from entering into new preferential agreements with third countries in accordance with Article V of GATS provided such agreements do not impede or frustrate the objectives of this Protocol. Prior to negotiating such an agreement, a State Party shall duly inform the other State Parties of its intention to do so and shall afford reasonable opportunity to the other State Parties to negotiate the preferences granted therein on a reciprocal basis.
4. Nothing in this Protocol shall prevent a State Party from maintaining any preferential agreement entered into with a third party, prior to the adoption of this Protocol. A State Party shall afford reasonable opportunity to the other State Parties to negotiate the preferences granted therein on a reciprocal basis.
5. A State Party may maintain a measure which is inconsistent with paragraph 1, provided it is listed in the Most Favoured Nation (MFN) exemption list. The agreed list of MFN exemptions shall be annexed to this Protocol. The TNF Services shall regularly review MFN exemptions, with a view to determining which MFN exemptions can be eliminated.

ARTICLE 5

Right to Regulate

1. Each State Party may regulate, and introduce new regulations, on services and services suppliers within its territory in order to meet national policy objectives, in so far as regulations do not impair any rights and obligations arising under this Protocol.
2. In light of the asymmetry in terms of State Parties services regulation, particular flexibility shall be granted to State Parties which are at a disadvantage by reason of size, structure, vulnerability and level of development of their economy to use this right. Specific measures shall be established by the CMT to ensure such flexibility.

ARTICLE 6

Domestic Regulation

1. In sectors where specific commitments are undertaken, each State Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective, transparent and impartial manner.
2. Each State Party shall maintain or institute, as soon as practicable, judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the State Party shall ensure that the procedures in fact provide for an objective and impartial review.
3. The provisions of paragraph 2 shall not be construed to require a State Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.
4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures allow for effective market access, the CMT shall develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, *inter alia*:
 - (a) based on objective and transparent criteria, such as competence and the ability to supply the service, ensuring the quality of the service;
 - (b) those required to achieve national policy objectives; and
 - (c) not in themselves a restriction on the supply of the service.

The disciplines developed shall seek to buttress the liberalisation commitments undertaken by State Parties while preserving their right to regulate and ensuring their continued capacity to use regulations for development purposes. In order to ensure consistency between liberalisation in the Region and their WTO obligations, State Parties will decide to take into account the disciplines developed under the GATS.

5. (a) Given the importance that a well operating professional services sector has for economic development, special attention is to be given to the management of the respective qualification requirements and procedures and licensing arrangements, with a view to ensuring that the respective requirements and procedures are not adopted or applied in a manner which creates obstacles to trade in services.
- (b) When developing future disciplines on domestic regulation, special priority will be given to disciplines for professional services.

ARTICLE 7

Mutual Recognition

1. No later than two (2) years following the entry into force of this Protocol, the TNF-Services shall establish the necessary steps for the negotiation of an agreement providing for the mutual recognition of requirements, qualifications, licences and other regulations, for the purpose of the fulfilment, in whole or in part, by service suppliers of the criteria applied by State Parties for the authorisation, licensing, operation and certification of service suppliers and, in particular, professional services.
2. Any such agreement shall be in conformity with the relevant provisions of the WTO and, in particular, Article VII of the GATS. In the development of such agreement, and any other possible arrangements or initiatives, account shall be taken of relevant processes and mechanisms under other SADC Protocols.
3. State Parties shall facilitate the access of Least Developed Country (LDC) State Parties to the Protocol. Recognizing the contribution technical assistance and capacity building can play in facilitating LDCs access to Mutual Recognition Agreements (MRAs), Members shall strive to provide such assistance, *inter alia* in accordance with mechanisms and initiatives carried out under other SADC Protocols.
4. In appropriate cases State Parties shall work in cooperation with relevant intergovernmental and professional bodies towards the establishment and adoption of common standards and criteria for mutual recognition for the practice of relevant services trades and professions.

ARTICLE 8

Transparency

1. Each State Party shall promptly publish, and except in emergency situations, through printed or electronic media, any law, regulation, judicial decision, administrative ruling of general application and any procedure relating to matters covered by this Protocol. International agreements pertaining to or affecting trade in services to which a Member is a signatory shall also be published.
2. Each State Party shall promptly and at least annually inform the TNF-Services of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Protocol.
3. (a) Each State Party shall designate within one (1) year from the date of entry into force of this Protocol an enquiry point to:
 - (i) facilitate communication between the State Parties;
 - (ii) answer all reasonable inquiries from any other State Party; and
 - (iii) provide relevant information on matters covered by this Protocol.

(b) There is appropriate flexibility with respect to the time-limit within which such enquiry points are to be established for the disadvantaged economies of the region. Enquiry points need not be depositories of laws and regulations.

4. Nothing in this Protocol shall require any State Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.
5. Any State Party may notify to the TNF-Services any measure, taken by any other State Party, which it considers affects the operation of this Protocol.

ARTICLE 9

Effective and Transparent Regulation

1. Each State Party shall make its best endeavours to provide in advance to all State Parties to this Protocol any measure of general application that the State Party proposes to adopt in order to allow an opportunity for each State Party to comment on the measure. Such measure shall be provided:
 - (a) by means of an official publication; or
 - (b) in other written or electronic form.
2. Each State Party's competent authorities shall make available, within a reasonable period of time to interested Members, its requirements relating to the supply of services.
3. In the context of a licensing, registration or similar procedure, on the request of an applicant, the competent authorities shall inform the applicant of the status of its application. If such authorities require additional information from the applicant, they shall notify the applicant without undue delay. Members shall strive to ensure prompt decision making with a view to ensuring due process.

ARTICLE 10

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 like conditions prevail, or a disguised restriction on trade in services, nothing in this Protocol shall be construed to prevent the adoption or enforcement by any State Party of measures:

- (a) necessary to protect public morals or to maintain public order and essential security interests;
- (b) necessary to protect human, animal or plant life or health;

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Protocol including those relating to:

- (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
- (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; and
- (iii) safety and security interests of State Parties.

(d) inconsistent with Article 4, provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which a State Party is bound, or domestic fiscal legislation.

ARTICLE 11

Subsidies

1. Nothing in this Protocol shall be construed to prevent State Parties from using subsidies in relation to their development programmes.
2. The CMT shall decide on mechanisms for information exchange and review of all subsidies related to trade in services that State Parties provide to their domestic service suppliers and shall negotiate disciplines to avoid any trade-distortive effects of subsidies.

ARTICLE 12

Monopolies and Exclusive Service Suppliers

1. Each State Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that State Party's MFN obligations and liberalisation commitments.
2. State Parties recognize the importance of cooperative mechanisms for enhancing State Parties institutional and regulatory capacities on competition related issues and State Parties shall enhance such cooperation, *inter alia* in accordance with mechanisms and initiatives carried out under other SADC Protocols.
3. Where a State Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that State Party's liberalisation commitments, the State Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

4. The CMT, at the request of a State Party which has a reason to believe that a monopoly supplier of a service of any other State Party is acting in a manner inconsistent with paragraph 1 or 2, shall request the State Party establishing, maintaining or authorizing such supplier to provide specific information concerning the relevant operations. If required, dispute settlement mechanisms provided for in Annex 1 shall apply.
5. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a State Party, formally or in effect, (a) authorizes or establishes a small number of service suppliers and (b) substantially prevents competition among those suppliers in its territory.

ARTICLE 13

Government Procurement

Procurements by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale are not covered by this Protocol.

Trade in Services

ARTICLE 14

Market Access

- In those sectors and modes of supply where specific commitments are undertaken pursuant to Article 16, in line with individual countries' levels of development, and subject to any conditions and limitations stipulated in the State Parties' lists of commitments¹, no State Party shall adopt or maintain:
 - (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
 - (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (c) limitations on the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test²;
 - (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or a requirement of an economic needs test;
 - (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier of any other State Party may supply a service; and
 - (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

ARTICLE 15

National Treatment

1. In those sectors and modes of supply which shall be liberalised pursuant to Article 16, in line with individual countries' levels of development, and subject to any conditions and limitations stipulated in the State Parties' lists of commitments, each State Party shall grant to services and service suppliers of another State Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.
2. A State Party may meet the requirement of paragraph 1 by according to services and service

¹ If a State Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2 (a) of Article 3 and if the cross-border movement of capital is an essential part of the service itself, that State Party is thereby committed to allow such movement of capital. If a State Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2 (c) of Article 3, it is thereby committed to allow related transfers of capital into its territory.

² Subparagraph (c) does not cover measures of a State Party which limit inputs for the supply of services.

suppliers of another State Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services and service suppliers of a State Party compared to like services and service suppliers of another State Party.
4. State Parties may maintain conditions and qualifications to national treatment provided that these conditions and qualifications are set out in their lists of commitments.

ARTICLE 16

Progressive Trade Liberalisation

- 1 State Parties shall enter into successive rounds of negotiations three years after completion of the previous one with a view to achieving an integrated regional market for services. Such negotiations shall be in conformity with Article V of the GATS and aim at promoting economic growth and development for all Member States.
- 2 State Parties shall negotiate the liberalisation of the six priority services sectors (communication, construction, energy-related, financial, tourism and transport services). Subsequent negotiations shall cover all services sectors subject to Article 3. These negotiations shall also include negotiations under Article 4.
3. This first round of negotiations shall be concluded no later than three (3) years after the commencement of such negotiations.
- 4 Negotiations shall be in conformity with the principle of asymmetry, reflecting individual State Parties' disadvantages by reason of size, structure, vulnerability and level of development of their economy. During the negotiations, State Parties shall not introduce new and more discriminatory barriers to trade in services. For each round of negotiations, the TNF-Services shall adopt negotiating guidelines.
- 5 State Parties' lists of commitments, upon adoption, shall be an integral part of this Protocol. Individual State Parties, which are disadvantaged by reason of size, structure, vulnerability and level of development of their economy shall benefit from flexibility for the implementation of the commitments negotiated under each round of negotiations.

ARTICLE 17

Temporary Movement of Natural Persons

1. Nothing in this Protocol shall prevent a State Party from applying its laws, regulations and requirements regarding entry and stay, work, labour conditions, and establishment of natural persons provided that, in so doing, it does not apply them in a manner as to nullify or impair the benefits accruing to another State Party under the terms of a specific provision or specific market access or national treatment commitment under this Protocol.
2. This Protocol shall not extend to measures affecting natural persons seeking or taking employment in the labour market of a State Party or confer a right of access to the labour market of another State Party.

Matters Related to Trade in Services

ARTICLE 18

Promotion of Trade and Investment in Services

1. The State Parties shall aim to promote an attractive and stable environment for the supply of services. Such promotion should take the form, in particular, of:
 - (a) mechanisms for information on, and identification and dissemination of, services business opportunities;
 - (b) development of model laws, regulations and uniform and simplified administrative procedures;
 - (c) development of mechanisms for joint investments, in particular with the small and medium-sized service suppliers of the State Parties.
2. No later than three (3) years following the entry into force of this Protocol, the TNF-Services shall establish the necessary steps for the development of such mechanisms. State Parties recognize the importance of cooperative mechanisms, technical assistance and capacity building, and Members shall enhance such cooperation *inter alia* in accordance with mechanisms and initiatives carried out under other SADC Protocols, such as the Finance and Investment Protocol.

ARTICLE 19

Business Practices

1. The State Parties agree that anticompetitive business conduct can hinder the fulfilment of the objectives of this Protocol. Accordingly, each State Party shall adopt or maintain measures to proscribe such conduct and take appropriate action with respect thereto.
2. The State Parties undertake to apply their respective competition laws so as to avoid the benefits of this Protocol being undermined or nullified by anticompetitive business conduct. The State Parties shall give particular attention to anti-competitive agreements, abuse of market position, cartel and anticompetitive mergers and acquisitions, in accordance with their respective competition laws. Nothing in this article shall prevent State Parties from putting in place their respective measures to combat anti-competitive practices.
3. State Parties recognize the importance effective competition frameworks for the development of services sectors and agree to take measures to strengthen cooperation between the national organs and authorities responsible for developing the competition laws of members.
4. The State Parties recognise the importance of co-operation on issues concerning competition law enforcement policy, such as notification, consultation and exchange of information related to the enforcement of their competition laws and policies. A State Party shall notify any other State Party of competition enforcement activities that may affect important interests of such State Party or State Parties, and it shall accord State Parties sympathetic consideration and afford adequate opportunity for, any matter affecting the operation of this Protocol.

5. State Parties recognize the importance of cooperative mechanisms, technical assistance and capacity building, and State Parties shall enhance such cooperation, *inter alia* in accordance with mechanisms and initiatives carried out under other SADC Protocols.

ARTICLE 20

Transfers

1. With regard to transactions covered by commitments under this Protocol, a State Party shall not apply restrictions to the right of free transfer, into and out of its territory, including of initial plus any additional capital, returns, payments under contract, royalties and fees, proceeds from the sale or liquidation of all or any part of an investment.
2. Where a State Party is in serious balance of payments difficulties, or under imminent threat thereof, the State Party concerned may adopt restrictive measures with regard to transfers and payments relating to services and investment. Such measures shall be equitable, non-discriminatory, in good faith, of limited duration; they may not go beyond what is necessary to remedy the balance of payments situation and shall be fully consistent with the provisions of GATS Articles XI and XII.
3. The State Party concerned shall inform all other State Parties forthwith and present, as soon as possible, a timetable for their removal. Such measures shall be taken in accordance with other international obligations of the State Party concerned.
4. Notwithstanding paragraph 1 a State Party may delay or prevent a transfer through the equitable, non-discriminatory and good faith application of measures:
 - (a) taken to protect the rights of creditors in case of bankruptcy, insolvency or other legal actions;
 - (b) relating to or ensuring compliance with the laws and regulations:
 - (i) on the issuing, trading and dealing in securities, futures and derivatives,
 - (ii) concerning reports or records of transfers, or
 - (c) in connection with criminal offences and orders or judgements in administrative and adjudicatory proceedings.

ARTICLE 21

Labour Market Integration Agreements

Nothing in this Protocol prevents the conclusion of Labour Market Integration Agreements as provided for in Article V bis of the GATS.

ARTICLE 22

Denial of Benefits

In accordance with the definitions set out in Article 1 and subject to prior notification and consultation, a State Party may deny the benefits of this Protocol to a service supplier of another State Party, where the State Party establishes that the service is being provided by an enterprise that is owned or controlled by persons of a non-State Party and that has no substantial business operations in the economy of a State Party.

ARTICLE 23

Waiver of Obligations

1. Notwithstanding any provision in this Protocol, and in case of an emergency, a State Party may apply to the CMT for a waiver of the obligations under this Protocol.
2. An application for a waiver within the meaning of paragraph 1 of this Article shall:
 - (a) identify the obligations in respect of which the waiver is required;
 - (b) set out the circumstances justifying the grant of the waiver; and
 - (c) indicate the period for which the waiver is required.
3. The CMT may require the applicant to furnish such additional information as it may specify.
4. Where the CMT agrees by consensus that the waiver should be granted, it shall, within 90 days, determine the maximum duration of the waiver, subject to such terms and conditions as the CMT may determine.
5. A State Party which has been granted a waiver within the meaning of paragraph 1 of this Article shall:
 - (a) at the termination of the period of the waiver, remove the restrictions and notify the CMT, or
 - (b) where the State Party removes the restrictions before the end of the period of the waiver, notify the CMT accordingly.

Institutional Arrangements and Dispute Settlement Provisions

ARTICLE 24

Institutional Arrangements

1. The institutional mechanisms for the implementation of this Protocol shall comprise the CMT, the Committee of Senior Officials and the TNF-Services.
2. The CMT shall be responsible for trade matters including the following:
 - (a) supervision of the implementation of this Protocol;
 - (b) supervision of the work of any committee or sub-committee established under this Protocol.
3. The Committee of Senior Officials shall:
 - (a) report to the CMT on matters relating to the implementation of the provisions contained in this Protocol;
 - (b) monitor the implementation of this Protocol;
 - (c) supervise the work of the TNF-Services.
4. The TNF-Services shall be responsible for the conduct of trade negotiations and shall report to the Committee of Senior Officials. Its functions shall include:
 - (a) regular reviews in which offers shall be made and where the removal of restrictions and conditions shall be requested or offered;
 - (b) the creation of a research capacity of experts to monitor the impact of measures already implemented, and offer advice on the potential impact of offers under discussion; and
 - (c) the monitoring of the services integration process, with a view to ensuring that, in the process of liberalisation of services, due account shall be taken of sectoral Protocols.

ARTICLE 25

Consultations and Dispute Settlement

The dispute settlement procedures of Annex 1 to this Protocol shall apply to any disputes regarding the interpretation or application of this Protocol.

Final Provisions

ARTICLE 26

Annexes

State Parties may develop Annexes for the implementation of this Protocol for adoption by the CMT. Upon adoption by the CMT, such Annexes shall be an integral part of this Protocol.

ARTICLE 27

Amendments

1. Any State Party may propose amendments to this Protocol.
2. Proposals for amendments to this Protocol shall be made to the Executive Secretary who shall duly notify all Member States of the proposed amendments at least thirty (30) days in advance of consideration of the amendments by the States Parties. Such notice may be waived by the Member States.
3. Amendments to this Protocol shall be adopted by a decision of three quarters of all the State Parties and shall become effective thirty (30) days after such adoption.

ARTICLE 28

Signature

This Protocol shall be signed by the duly authorised representatives of the Member States.

ARTICLE 29

Ratification

This Protocol shall be subject to ratification by the Member States in accordance with their respective constitutional procedures.

ARTICLE 30

Entry into Force

This Protocol shall enter into force thirty (30) days after the deposit of instruments of ratification by two-thirds of the Member States.

ARTICLE 31

Accession

This Protocol shall remain open for accession by any Member State.

ARTICLE 32

Withdrawal

1. Any State Party may withdraw from this Protocol upon the expiration of twelve (12) months from the date of giving written notice to the Executive Secretary to that effect.
2. Any State Party that has withdrawn pursuant to paragraph 1 shall cease to enjoy all rights and benefits under this Protocol upon the withdrawal becoming effective.
3. Any State Party that has withdrawn pursuant to paragraph 1 shall remain bound by the obligations under this Protocol for a period of twelve (12) months from the date of giving notice.

ARTICLE 33

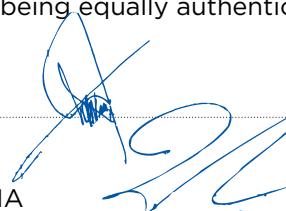
Depositary

1. The original texts of this Protocol and all instruments of ratification and accession shall be deposited with the SADC Executive Secretary, who shall transmit certified copies to all State Parties.
2. The Executive Secretary shall register this Protocol with the United Nations, African Union Commission and any other relevant organizations, which the Council of SADC may determine.

IN WITNESS WHEREOF, WE, the Heads of State and Government, or our duly Authorised Representatives have signed this Protocol.

DONE at MAPUTO, Mozambique this 18th day of August, 2012, in three originals, in English, French and Portuguese, 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 SEYCHELLES



REPUBLIC OF SOUTH AFRICA



KINGDOM OF SWAZILAND



UNITED REPUBLIC OF TANZANIA



REPUBLIC OF ZAMBIA



REPUBLIC OF ZIMBABWE



Concerning the Settlement of Disputes Between the State Parties

PREAMBLE

The State Parties

HAVING UNDERTAKEN to progressively liberalise intra-regional trade in services on the basis of fair, mutually equitable and beneficial arrangements;

AND HAVING REGARD to the provisions of Article 25 of this Protocol on the settlement of disputes;

HEREBY AGREE as follows;

ARTICLE 1

Scope and Application

The Rules and Procedures of this Annex shall apply to the settlement of disputes between State Parties concerning their rights and obligations under this Protocol.

ARTICLE 2

Forum Shopping

If a State Party has invoked the Rules and Procedures of this Annex or any other applicable international dispute settlement mechanism with respect to any matter, that State Party shall not invoke another dispute settlement mechanism on the matter.

ARTICLE 3

Cooperation

The State Parties shall:

- (a) at all times endeavour to agree on the interpretation and application of this Protocol;
- (b) make every attempt through cooperation to arrive at a mutually satisfactory resolution of any matter that may affect the operation of this Protocol; and
- (c) make use of the rules and procedures of this Annex to resolve disputes in a speedy, cost effective and equitable manner.

ARTICLE 4

Consultations

1. A State Party may request in writing consultations with any other State Party regarding any measure that it considers might affect its rights and obligations under the provisions of this Protocol.
2. The requesting State Party shall notify the other State Parties and the CMT of the request, through the Registrar of the Tribunal. Any request for consultations shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis of the complaint.
3. The requested State Party shall accord reasonable consideration to and afford adequate opportunity for consultations regarding any representations made by another State Party.
4. The requested State Party shall, unless otherwise mutually agreed, reply to the request within 10 days after the date of its receipt and shall enter into consultations in good faith within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution. If the requested State Party does not respond within 10 days after the date of receipt of the request, or does not enter into consultations within a period of no more than 30 days, or a period otherwise mutually agreed, after the date of receipt of the request, then the requesting State Party may proceed directly to request the establishment of a panel.
5. Whenever a State Party other than the consulting State Parties considers that it has a substantial interest in consultations being held pursuant to a request made under paragraph 1, such State Party may notify the consulting State Parties and the Registrar of the Tribunal, within 10 days after the date of circulation of the request for consultations, of its desire to be joined in the consultations. Such State Party shall be joined in the consultations, provided that the requested State Party agrees that the claim of substantial interest is well founded. In that event, the consulting State Parties shall also inform the CMT through the Registrar of the Tribunal. If the request to be joined in the consultations is not accepted, the applicant State Party shall be free to request consultations under this Article.
6. The consulting State Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter and, to this end, they shall
 - (a) provide sufficient information to enable a full examination of how the actual or proposed measure or other matter may affect the operation of this Protocol;
 - (b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the State Party providing the information; and
 - (c) seek to avoid any resolution that adversely affects the interests of any other State Party under this Protocol.
7. If the consulting State Parties fail to resolve a matter pursuant to this Article within:
 - (a) 60 days after the date of receipt of the request for consultations; or

(b) such other period as they may agree,

any such State Party may request in writing the establishment of a panel. The requesting State Party shall notify the other State Parties and the CMT of the request through the Registrar of the Tribunal.

8. In cases of urgency, State Parties shall enter into consultations within a period of no more than 10 days after the date of receipt of the request. If the consultations have failed to settle the dispute within a period of 20 days after the date of receipt of the request, the requesting State Party may request the establishment of a panel.

ARTICLE 5

Good offices, Conciliation and Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the disputing State Parties so agree.
2. Procedures involving good offices, conciliation and mediation shall be confidential, and may be requested at any time by a disputing State Party. These procedures may begin at any time and be terminated at any time.
3. The Chairperson of the CMT, or any other Member of the CMT designated by the Chairperson who is not a national of a disputing State Party, may offer good offices, conciliation or mediation with a view to assisting the disputing State Parties.

ARTICLE 6

Establishment of Panel

1. The Registrar of the Tribunal shall establish a panel within 20 days from the date of receipt of a request made pursuant to paragraph 4, 7 or 8 of Article 4.
2. The request for the establishment of a panel shall be made in writing to the Registrar of the Tribunal and shall indicate whether consultations were held, indicate the specific measures at issue and provide a brief summary of the legal basis of the complaint in the light of the relevant provisions of this Protocol sufficient to present the problem clearly.

ARTICLE 7

Roster of Panellists

The Registrar of the Tribunal shall maintain an indicative roster of panellists nominated by State Parties on the basis of their relevant expertise and qualifications as stipulated in Article 8. The roster, as well as any modifications thereto, shall be made known by the Secretariat to the State Parties.

ARTICLE 8

Qualifications of Panellists

All panellists shall:

- (a) have expertise or experience in international trade or international law, or international economics and other matters covered by this Protocol or the resolution of disputes arising under international trade agreements, and shall be chosen strictly on the basis of objectivity, reliability and sound judgment;
- (b) be composed of governmental and/or non-governmental individuals;
- (c) serve in their individual capacities and not as government representatives, nor as representatives of any organization. State Parties shall therefore not give them instructions nor seek to influence them as individuals with regard to matters before a panel; and
- (d) comply with a code of conduct and rules of procedures to be established by the CMT.

ARTICLE 9

Panel Selection

1. A panel shall be composed of three panellists.
2. The following procedures shall apply in the selection of panellists:
 - (a) The disputing State Parties shall endeavour to agree on the chair of the panel within 15 days of the delivery of the request for the establishment of a panel.
 - (b) Within 10 days of selection of the chair, each disputing State Party shall select one Panellist who is not a citizen of such State Party.
 - (c) Where there are more than two disputing State Parties, the State Party complained against shall select one panellist who is not a citizen of such State Party. The complaining State Parties shall jointly select one panellist who is not a citizen of such State Parties. This shall take place within 10 days of the selection of the chair.
3. When a State Party or Parties, in the selection of panellists pursuant to paragraph 2 fails to agree on the chair of the panel or to select a panellist in the prescribed time, the Registrar of the Tribunal shall refer the matter to the Executive Secretary of SADC. Such chair or panellist shall be selected by lot by the Executive Secretary of SADC from a list of panellists nominated in the roster referred to in Article 7 who are not citizens of the disputing State Parties. The Executive Secretary shall select the chair or panellist, as the case may be, within 5 days after the expiry of the prescribed time referred to in paragraph 2.
4. When a disputing State Party is of the opinion that a panellist does not comply with the requirements set out in Article 8, the disputing State Parties shall consult and, if they agree, the panellist shall be removed and another panellist shall be selected in accordance with this Article.

5. Panellists shall, as far as possible, be selected from the roster contemplated in Article 7.

ARTICLE 10

Terms of Reference of the Panel

Unless the disputing State Parties otherwise agree within 20 days from the date of establishment of the panel, the terms of reference for the panel shall be:

- (a) To examine, in the light of the relevant provisions of this Protocol, the matter referred to the Registrar of the Tribunal and to make findings, determinations and recommendations.
- (b) To determine whether the matter under dispute has nullified or impaired benefits of the disputing State Parties according to the provisions of this Protocol.
- (c) To make findings as and when appropriate on the degree of adverse effects on any State Party of any measure found not to conform to the provisions of this Protocol or to have caused nullification or impairment of the complaining State Party.
- (d) To recommend that the State Party complained against brings a measure into conformity with this Protocol where such a measure is found to be inconsistent with this Protocol.

ARTICLE 11

Panel Procedures

Unless the disputing State Parties otherwise agree, the Panel shall conduct its proceedings in accordance with the following rules of procedure:

- (a) the disputing State Parties shall have a right to at least one hearing before the panel as well as the opportunity to provide initial and rebuttal written submissions;
- (b) the Panel's hearings, deliberations and initial report, and all written submissions to and communications with the Panel shall be confidential; and
- (c) the disputing State Parties may be represented during the Panel procedures by legal representatives or other experts.

ARTICLE 12

Procedures for Multiple Complaints

1. Where more than one State Party requests the establishment of a panel related to the same matter, a single panel may be established to examine these complaints taking into account the rights of all State Parties concerned. A single panel should be established to examine such complaints whenever feasible.

2. The single panel shall organize its examination and present its findings to the CMT in such a manner that the rights which the disputing State Parties would have enjoyed, had separate panels examined the complaints, are in no way impaired. If one of the disputing State Parties so requests, the panel shall submit separate reports on the dispute concerned. The written submissions by each of the complaining State Parties shall be made available to the other complaining State Parties and each complaining State Parties shall have the right to be present when any one of the other complaining State Parties presents its views to the panel.
3. If more than one panel is established to examine the complaints related to the same matter, to the greatest extent possible, the same persons shall serve as panellists on each of the separate panels and the timetable for the panel process in such disputes shall be harmonised.

ARTICLE 13

Third Party Participation

A State Party that is not a disputing State Party having a substantial trade interest in a matter before a panel and having notified its interest in writing to the CMT, through the Registrar of the Tribunal, shall have an opportunity to attend all hearings, to make written and oral submissions to the panel and to receive the written submissions of the disputing State Parties.

ARTICLE 14

Role of Experts

On request of a disputing State Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate.

ARTICLE 15

Initial Report

1. Unless the disputing State Parties otherwise agree, the panel shall base its initial report on the submissions of the participating State Parties and on any information before it pursuant to Article 14.
2. Unless the disputing State Parties otherwise agree, the panel shall, within 90 days after the last panellist is selected or 45 days in the case of urgency, present to the disputing State Parties an initial report containing:
 - (a) findings of fact;
 - (b) its determination as to whether the measure at issue is or would be inconsistent with the obligations of this Protocol or cause nullification or impairment, or any other determination requested in the terms of reference; and

(c) its recommendations for resolution of the dispute.

3. The disputing State Parties may submit written comments to the panel on its initial report within 15 days of presentation of the initial report. In such an event, and after considering such written comments, the panel, on its own initiative or on the request of any disputing State Party, may:

- (a) request the views of any participating State Party;
- (b) reconsider its initial report; and
- (c) make any further examination that it considers appropriate.

ARTICLE 16

Final Report

1. A panel shall present to the disputing State Parties a final report within 30 days of presentation of the initial report, unless the disputing State Parties otherwise agree.
2. No panel shall, either in its initial report or its final report, disclose which panellists are associated with majority or minority opinions.
3. A panel shall transmit to the CMT, through the Registrar of the Tribunal, its final report.
4. Unless the CMT decides by consensus not to adopt the report, or a disputing State Party notifies the CMT of its decision to appeal, the final report of the panel shall be adopted by the CMT within 15 days after it is transmitted to the CMT and shall promptly be made public thereafter by the Registrar of the Tribunal. If a disputing State Party has notified the CMT of its decision to appeal, the report of the panel shall not be considered for adoption by the CMT until after completion of the appeal.

ARTICLE 17

Appellate Review of Panel Report

1. Only disputing State Parties may appeal a panel report. Third parties which have notified the CMT of a substantial interest in the matter pursuant to Article 13 may make written submissions to, and be given an opportunity to be heard, by the Tribunal.
2. Subject to Paragraph 4, the length of the appeal 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 18

Panel Recommendations

Where a panel concludes that a measure is not consistent with this Protocol, it shall recommend that the State Party complained against brings the measure into conformity with this Protocol. In addition, the panel may suggest ways in which the State Party complained against may implement the recommendations.

ARTICLE 19

Implementation of Panel Recommendations

1. The State Party complained against shall inform the Registrar of the tribunal of its intentions in respect of implementation of the recommendations of the panel. If it is impracticable to comply immediately with the recommendations, the State Party complained against shall have a reasonable period of time in which to do so. The reasonable period of time shall be the period of time proposed by the State Party complained against or a period mutually agreed by the disputing State Parties. In any case, the period shall not exceed 6 months from the date of adoption of the panel report.
2. The provisions of paragraph 1 and Article 21 shall apply mutatis mutandis to decisions taken by the Tribunal pursuant to Article 17.

ARTICLE 20

Compensation and Suspension of Concessions

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the recommendations of the panel, as adopted, or the decisions of the tribunal in terms of Article 17, as the case may be are not implemented within a reasonable period of time determined in accordance with Article 19. Full implementation of the panel recommendations or the decisions of the Tribunal in terms of Article 17, as the case may be, to bring a measure into conformity with this Protocol shall always be preferred.
2. If the State Party complained against fails to bring the measure found to be inconsistent with this Protocol into compliance within the reasonable period of time determined in accordance with Article 19, it shall enter into negotiations with the complaining State Party with a view to developing a mutually satisfactory solution. If no satisfactory solution has been agreed within 20 days after the expiry of the reasonable period of time determined in accordance with Article 19, the complaining State Party may request authorization from the CMT, through the Registrar of the Tribunal, to suspend concessions or other obligations of equivalent effect to the level of nullification or impairment.
3. Unless the CMT decides by consensus otherwise within 20 days from the date of receipt of the request for authorization to suspend concessions or obligations, such authorization shall be granted.

4. In considering what benefits to suspend, a complaining State Party shall first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the panel has found to be inconsistent with the obligations of this Protocol. A complaining State Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.
5. If the State Party complained against objects to the level of suspension proposed, the matter shall as far as possible be referred for arbitration to the original panel. Should the original panel not be available, the Executive Secretary of the SADC shall appoint a panellist. The original panel or panellist, as the case may be, shall be appointed within 10 days from the date of receipt of the request for arbitration. The arbitration shall be completed within 30 days after the date of appointment of the original panel or panellist, as the case may be. Concessions or other obligations may not be suspended during the course of arbitration.
6. The panel or panellist acting pursuant to paragraph 5 shall determine whether the level of the proposed suspension is equivalent to the level of impairment as a result of a measure not complying with this Protocol. The CMT shall be informed, through the Registrar of the Tribunal, of the decision of the panel or panellist and shall within 20 days after the date of receipt of the decision of the panel or panellist, unless it decides by consensus otherwise, grant authorization to suspend concessions or other obligations where the request is consistent with the decision of the panel or panellist.

ARTICLE 21

Expenses

1. The CMT shall determine the amounts of remuneration and expenses that will be paid to panellists and experts appointed in terms of this Annex.
2. The remuneration of panellists and experts, their travel and lodging expenses and all other general expenses of panels shall be 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.
3. Each panellist or expert shall keep a record and render a final account of his or her time and expenses and the panel shall keep a record and render an account of all general expenses. The Secretariat shall control such accounts and make all payments against the accounts of the disputing State Parties.
4. Each disputing State Party shall be responsible for payment of its own costs arising from litigation. Where the panel determines that a disputing State Party has abused the process of the panel, it may require from that disputing State Party to pay for the costs reasonably incurred under the circumstances of the particular case by the other disputing State Party arising from the litigation.

ARTICLE 22

Regulations

The CMT shall adopt Regulations to facilitate the implementation of this Annex.

Substantial Business Operations

PREAMBLE

The State Parties

CONSIDERING that Article 1 of the Protocol on Trade in Services requires the further definition of the phrase “substantial business operations”;

AWARE that Article 22 of the Protocol provides for denial of benefits of the provisions of the Protocol;

IN PURSUANCE of Article 1 of the Protocol, which defines “substantial business operations” and provides for further development of the definition through negotiations;

ACKNOWLEDGING that the use of the term “substantial business operations” in this Protocol, without further definition, may jeopardise State Parties’ rights and obligations under Article 22;

CONVINCED that defining the term “substantial business operations” will enhance transparency and protect State Parties’ rights and obligations under the Protocol;

HEREBY AGREE that:

ARTICLE 1

Objective

The objective of this annex is to elaborate further on the meaning of “substantial business operations” as referred to in Articles 1 and 22 of the Protocol.

ARTICLE 2

Scope and Coverage

This annex shall apply to the phrase “substantial business operations” as referred to in Articles 1 and 22 of the Protocol.

ARTICLE 3

Meaning of Substantial Business Operations

1. The phrase “substantial business operations” as referred to in Articles 1 and 22 of the Protocol shall have the same meaning as the phrase “substantive business operations” as referred to in Article V of the General Agreement on Trade in Services.
2. State Parties agree that, further to the definition of “substantial business operations” in Article 1 of the Protocol, a juridical person of a non-State Party will be considered not to have substantial business operations if it does not possess a real and continuous link to the economy of a State Party or maintains negligible or no business operations in that State Party.

Movement of Natural Persons (Mode 4)

PREAMBLE

The State Parties

PURSUANT to Article 26 of the SADC Protocol on Trade in Services allowing State Parties to develop Annexes for the implementation of the Protocol;

HAVING REGARD to the provisions of the Protocol and Paragraph 29 of the Negotiating and Scheduling Guidelines for the 1st Round of the SADC Trade in Services Negotiations, requiring State Parties to refer to the categories of natural persons typically included in the World Trade Organisation (WTO) General Agreement on Trade in Services (GATS) schedules of commitments in inscribing their commitments with respect to temporary movement of natural persons;

CONSIDERING the need to have a shared and common understanding of the meaning, definition and type of persons who fall under different categories of natural persons and the permissible conditions regulating their temporary movement;

AWARE of the provisions of Article 17 of the SADC Protocol on Trade in Services indicating that this Annex shall not apply to measures affecting natural persons seeking access to the employment market of a State Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis; and

TAKING NOTE that the provisions of this Annex shall not be construed to imply automatic commitments by State Parties, in whole or part, to guarantee market access and or national treatment of the categories defined, unless explicitly inscribed in individual State Parties' schedules of commitments.

HEREBY AGREE as follows:

ARTICLE 1

Objective

The objective of this Annex is to provide definitions and conditions for temporary movement of natural persons of a State Party seeking entry into the territory of another State Party for the purpose of supplying services within the scope of the Protocol on Trade in Services.

ARTICLE 2

Scope and Coverage

This Annex applies to measures affecting natural persons who are service suppliers of a State Party or natural persons of a State Party who are employed by a service supplier of a State Party, in respect of the supply of a service.

ARTICLE 3

General Principles

1. Where a State Party inscribes in its Mode 4 commitments, whether horizontal or sector specific, any of the categories defined in this Annex, such categories shall be interpreted within the meaning of this Annex, unless otherwise defined in that State Party's list of commitments.
2. A State Party undertaking commitments in any of the defined categories shall define the maximum period of temporary stay for each category and any other applicable conditions.

ARTICLE 4

Definitions

1. The definitions of categories of natural persons as they relate to trade in services shall be as follows:
 - a) Intra-corporate Transferee means a natural person employed by a SADC juridical person that provide services into the territory of a State Party through a branch, subsidiary or affiliate established in the territory of a State Party where the service is to be supplied;
 - b) Business Visitor means an individual service supplier or a representative of a SADC based service supplier who enters the territory of another State Party temporarily to supply a service;
 - c) Contractual Service Supplier means a natural person employed by a juridical person of a State Party which has no establishment in the territory of the other State Party and has concluded a bona fide contract to supply services with a final consumer in the other State Party requiring the presence on a temporary basis of its employees in that other Party in order to fulfil a contract to provide services; and
 - d) Independent Professional means a natural person engaged in the supply of a service and established as self-employed in the territory of a State Party who has no commercial presence in the territory of the other State Party and who has concluded a bona fide contract to supply services with a final consumer in the State Party concerned, requiring his or her presence on a temporary basis in that State Party in order to fulfil the contract to provide services.
2. Qualification means documentary evidence issued by an authority designated pursuant to legislative, regulatory or administrative provisions and certifying successful completion of academic or professional training.

ARTICLE 5

Intra-corporate Transferees

1. The categories of intra-corporate transferee as they relate to trade in services shall be as follows:

- a) Executive means a natural person working within a SADC juridical person who primarily directs the management and policies of a service supplier, exercises wide decision-making and who receives only general supervision from the board of directors or shareholders;
- b) Manager means a natural person working within a juridical person who supervises or controls the work of other employees; and
- c) Specialist means a natural person working within a juridical person who possesses specialized or technical knowledge essential to the commercial presence's production, research equipment, techniques, processes, procedures or management.

2. A State Party may require a natural person referred to in paragraph 1 to have been in prior employment of the juridical person for a specified period of time, immediately preceding the date of application for admission or transfer.

ARTICLE 6

Business Visitors

1. The categories of business visitors as they relate to trade in services shall be as follows:
 - a) A service seller or sales person who:
 - (i) enters to market services or negotiate or conclude agreements on the sale of a service; or
 - (ii) carries out other activities, including attending business meetings, holding and presenting at sales fairs, exhibitions and conferences; and
 - b) a natural person representing a service supplier who enters a State Party for the purpose of establishing a commercial presence.
2. The entry of a business visitor referred to in paragraph 1 shall be permitted on the following conditions that such a person shall not:
 - a) be engaged in making direct sales to the general public or in supplying services; or
 - b) receive any remuneration from a source located within the territory of the other State Party.

ARTICLE 7

Contractual Service Suppliers

1. A natural person who is a contractual service supplier shall have the following broad characteristics:

- a) be employed or contracted by a SADC juridical person with no commercial presence in the territory of the State Party where the service is to be supplied;
- b) be employed or contracted by a SADC juridical person that has obtained a service contract to supply a service in the territory of another State Party;
- c) not receive remuneration for the provision of services other than the remuneration paid by the contractual service supplier during their stay in the other State Party; and
- d) have the appropriate expertise, academic or professional qualifications and demonstrated experience relevant to the service to be supplied.

2. Access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract and does not confer entitlement to exercise the professional title of the State Party where the service is provided.

ARTICLE 8

Independent Professionals

A natural person who is an independent professional shall have the following broad characteristics:

- a) supplies a service as a self-employed person;
- b) has obtained a service contract in the territory of the State Party where the service is to be provided;
- c) possesses the necessary academic or professional qualifications relevant in the provision of the service to be supplied; and
- d) receives remuneration for the contract that is paid solely to that natural person.

ARTICLE 9

Visas, Passes and Permits

1. This Annex shall not be construed to prevent a State Party from applying measures to regulate the entry and temporary stay of natural persons in its territory, including those measures necessary to protect the integrity of its borders and to ensure the orderly movement of natural persons.
2. A requirement for visas, passes or permits, as may be applicable for natural persons of certain State Parties and not for those of others, shall not be regarded as a limitation on trade in services except in situations where it is applied in a manner to nullify or impair the benefits accruing to any State Party under the terms of a specific commitment.

Annex on Interim Arrangements Relating to Commitments on Subsidies

PREAMBLE

The State Parties

PURSUANT to Article 26 of the Protocol on Trade in Services allowing State Parties to develop Annexes for the implementation of the Protocol;

CONSIDERING that Article 11 of the Protocol on Trade in Services allows State Parties to use subsidies in relation to their development programmes;

RECOGNISING that Article 11 of the Protocol on Trade in Services provides for negotiations on disciplines to avoid any trade-distorting effects of subsidies;

HEREBY AGREE as follows:

ARTICLE 1

Objective

The objective of this Annex is to provide for interim arrangements relating to the scheduling of limitations on subsidies in State Parties' lists of commitments.

ARTICLE 2

Limitations on subsidies in lists of commitments

1. Pending entry into force of the legal instrument resulting from negotiations on disciplines to avoid any trade-distorting effects of subsidies, as foreseen in Article 11 of the Protocol, State Parties may maintain limitations on the use of subsidies related to trade in services.
2. Notwithstanding Articles 14 and 15 of the Protocol, such measures referred to in paragraph 1 may be maintained without being included as limitations in State Parties' lists of commitments.
3. Any State Party which considers that it is adversely affected by a subsidy of another State Party may request consultations with that State Party on such matters. Such requests shall be accorded sympathetic consideration.

ARTICLE 3

Cessation of the interim arrangement

Upon entry into force of the legal instrument resulting from the negotiations on disciplines referred to in Paragraph 1, this Annex and the arrangements contained therein shall lapse.

Financial Services

PREAMBLE

The State Parties

PURSUANT to Article 26 of the Protocol on Trade in Services allowing State Parties to develop Annexes for the implementation of the said Protocol;

HAVING REGARD to the provisions of the Protocol on Trade in Services and of the Protocol on Finance and Investment;

RECOGNISING the importance of building a common approach and shared understanding in the sector of financial services in the context of the Protocol on Finance and Investment;

REAFFIRMING State Parties' rights and obligations under the Protocol on Trade in Services and the Protocol on Finance and Investment;

RECOGNISING the importance of the development and strengthening of financial markets, and the role played by investment and the private sector in productive capacity and increased economic growth and sustainable development;

RECOGNISING the importance of having a stable financial sector and the right of Member States to introduce or maintain measures for prudential reasons in order to protect investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system;

RECOGNISING the importance of having sound banking and non-banking financial institutions and services; the increased need for internationalisation, harmonisation of financial institutions, and the interdependence of the activities of financial institutions due to the use of modern technology and closer cooperation between financial institutions;

RECOGNISING that payment systems are critical to the financial infrastructure and the circulation of money, and are integral to economic activity;

SEEKING to elaborate upon the provisions of their commitments to liberalisation in trade in services with respect to measures affecting access to and use of financial services;

HEREBY AGREE as follows:

ARTICLE 1

Scope and definitions

1. This Annex applies to measures affecting the supply of financial services.
2. For the purposes of this Annex:
 - (a) A financial service is any service of a financial nature offered by a financial service supplier of a State Party. Financial services include the following activities:

Insurance and insurance-related services

- (a) Life, accident and health insurance services;
- (b) Non-life insurance services;
- (c) Reinsurance and retrocession;
- (d) Services auxiliary to insurance, including broking and agency services.

Banking and other financial services (excluding insurance)

- (a) Acceptance of deposits and other repayable funds from the public;
- (b) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
- (c) Financial leasing;
- (d) All payment and money transmission services, including credit, charge and debit cards, travellers' cheques and bankers' drafts;
- (e) Guarantees and commitments;
- (f) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - money market instruments (including cheques, bills, certificates of deposits);
 - foreign exchange;
 - derivative products including, but not limited to, futures and options;
 - exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - transferable securities;
 - other negotiable instruments and financial assets, including bullion.
- (g) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
- (h) Money broking;
- (i) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (j) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(k) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;

(l) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (a) to (k), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

(b) A financial service supplier means any natural or juridical person of a State Party wishing to supply or supplying financial services but the term "financial service supplier" does not include a public entity.

(c) "Public entity" means:

- (i) a government, a central bank or a monetary authority, of a State Party, or an entity owned or controlled by a State Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
- (ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

3. Reference to the supply of a financial service in this Annex shall mean the supply of a service as defined in paragraph 2 of Article 3 of the Protocol on Trade in Services.

4. For the purposes of subparagraph 5(a) of Article 3 of the Protocol on Trade in Services, "services supplied in the exercise of governmental authority" means the following:

- (a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
- (b) activities forming part of a statutory system of social security or public retirement plans; and
- (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.

5. For the purposes of subparagraph 5(a) of Article 3 of the Protocol on Trade in Services, if a State Party allows any of the activities referred to in paragraph 4 (b) or (c) of this Article to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities.

6. Subparagraph 5(b) of Article 3 of the Protocol on Trade in Services shall not apply to services covered by this Annex.

ARTICLE 2

Domestic regulation (“prudential carve-out”)

1. Notwithstanding any other provisions of the Protocol on Trade in Services, a State Party shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform to the provisions of the Protocol on Trade in Services, they shall not be used as a means of avoiding the State Party’s commitments or obligations under the Protocol.
2. Nothing in the Protocol on Trade in Services shall be construed to require a State Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

ARTICLE 3

Recognition

1. A State Party may recognise prudential measures of any other State Party in determining how the State Party’s measures relating to financial services shall be applied. Such recognition may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the State Party concerned or may be accorded autonomously.
2. A State Party that is a party to such an agreement or arrangement referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for other interested State Parties to negotiate their accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a State Party accords recognition autonomously, it shall afford adequate opportunity for any other State Party to demonstrate that such circumstances exist.

ARTICLE 4

Harmonisation and standardisation of prudential supervision

In order to improve understanding on regulatory and supervisory matters to facilitate regional trade in financial services, State Parties agree, subject to their applicable domestic regulation, to mutual exchange of information in relation to the harmonisation and standardisation of prudential supervision of both banking and non-bank financial institutions, in line with international standards and best practices.

ARTICLE 5

Transfers of information and processing of Information

1. No State Party shall take measures that prevent transfers of information or the processing of financial information, including transfers of data by electronic means, or that, subject to importation rules consistent with international agreements, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier.
2. Nothing in this Annex restricts the right of a State Party to protect data, privacy and the confidentiality of records and accounts so long as such right is not used to circumvent the provisions of the Protocol on Trade in Services or the Protocol on Finance and Investment.

ARTICLE 6

Payment, clearing and settlement systems

1. Each State Party shall grant to duly licensed or authorised financial service suppliers access, on a non-discriminatory basis, to the relevant payment, clearing and settlement systems within the State Party.
2. Non-discriminatory access under paragraph 1 shall be understood to grant to services and service suppliers of another State Party access no less favourable than it accords to its own like services and service suppliers within the meaning of Article 15 of the Protocol.
3. Nothing in this Article shall prevent a State Party from taking measures relating to national payment, clearing and settlement systems for prudential reasons such as to protect against systemic risks including the financial and operational stability of the payment system, or from limiting access, as provided for in paragraph 1, to a particular form of financial service supplier.

ARTICLE 7

Official funding and refinancing

Nothing in this Annex shall prevent a State Party from limiting access either to official funding and refinancing facilities available in the normal course of ordinary business or a State Party's lender of last resort facilities.

ARTICLE 8

Amendment of the Annex

In view of the evolving regulation of the financial services sector, State Parties agree to review this Annex periodically and make such modifications as they deem necessary.

Telecommunication Services

PREAMBLE

The State Parties

PURSUANT to Article 26 of the Protocol on Trade in Services allowing State Parties to develop Annexes for the implementation of the said Protocol;

HAVING REGARD to the provisions of Article 2.4 of the SADC Trade in Services, that requires State Parties to ensure consistency between liberalisation of trade in services and the various Protocols in the specific services sectors;

RECOGNIZING the specificities of the telecommunications services sector and, in particular, its dual role as a distinct sector of economic activity and as the underlying transport means for other economic activities;

SEEKING to elaborate upon the provisions of their commitments to liberalisation in trade in services with respect to measures affecting access to and use of public telecommunications, transport networks and services;

NOTING that this Head Note provides notes and supplementary provisions to the liberalisation commitments in telecommunication services,

HEREBY AGREE as follows:

ARTICLE 1

Terms and definitions

For purposes of this Annex, the following terms and definitions shall apply on the regulatory framework for the basic telecommunications services:

“Users”	mean service consumers and service suppliers.
“Essential facilities”	mean facilities of a public telecommunications transport network or service that <ul style="list-style-type: none">(a) Are exclusively or predominantly provided by a single or limited number of suppliers; and(b) Cannot feasibly be economically or technically substituted in order to provide a service.
“Major supplier”	is a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of: <ul style="list-style-type: none">(a) control over essential facilities; or(b) use of its position in the market.

ARTICLE 2

Competitive safeguards

1. State Parties shall maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.
2. The anti-competitive practices referred to above shall include in particular:
 - (a) engaging in anti-competitive cross-subsidization;
 - (b) using information obtained from competitors with anti-competitive results; and
 - (c) not making available to other services suppliers, on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to provide service.

ARTICLE 3

Interconnection

1. This Article applies to linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier, where specific commitments are undertaken.
2. Interconnection with major suppliers will be ensured at any technically feasible point in the network. Such interconnection is provided:
 - (a) Under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;
 - (b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
 - (c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.
3. With respect to interconnection rates referred to in Paragraph 2(a) a State Party may reserve the right to determine different rates in respect of different services rendered in different areas under different circumstances on a non-discriminatory basis.

4. The procedures applicable for interconnection to a major supplier will be made publicly available.
5. State Parties shall ensure that a major supplier will make publicly available either its interconnection agreements or reference interconnection offers.
6. In the event of a dispute, a service supplier requesting interconnection with a major supplier will have recourse, either:
 - (a) At any time or
 - (b) After a reasonable period of time which has been made publicly known to an independent domestic body, which may be a regulatory body as referred to in Article 6 below, to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

ARTICLE 4

Universal service

Any State Party has the right to define the kind of universal service obligations it wishes to maintain. Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by a State Party.

ARTICLE 5

Licensing criteria

1. Where a licence is required, the following will be made publicly available:
 - (a) All the licensing criteria and, where practicable, the period of time normally required to reach a decision concerning an application for a licence and
 - (b) The terms and conditions of individual licences.
2. The reasons for the denial of a licence will be made known to the applicant upon request.

ARTICLE 6

Independent regulators

The regulator shall be separate from, and not accountable to any supplier of basic telecommunication services. The decisions of and the procedures used by regulatory bodies shall be impartial with respect to all market participants.

ARTICLE 7

Allocation and use of scarce resources

Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, will be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands will be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

Tourism Services

PREAMBLE

The State Parties

PURSUANT to Article 26 of the Protocol on Trade in Services allowing State Parties to develop Annexes for the implementation of the Protocol;

HAVING REGARD to the provisions of the Protocol on Trade in Services and to the provisions of the Protocol on the Development of Tourism;

RECOGNISING the importance of building a common approach and shared understanding in the sector of tourism services in the context of the Protocol on the Development of Tourism;

REAFFIRMING State Parties' rights and obligations under the Protocol on Trade in Services as well as those in the Protocol on the Development of Tourism;

AWARE of the contribution of the tourism sector in the SADC region and to the economies of State Parties, that a dynamic tourism sector is essential for the development of most countries, particularly developing countries, and that it is of primary importance for the increased participation of developing countries in regional and global trade in tourism services;

CONSIDERING the specificity of trade in tourism services including the comprehensive nature of the supply of services to visitors and to industries which give rise to tourism characteristic products the reliance on passenger transport and tourism distribution networks for effective access of visitors to tourism destinations and tourist destination services, in particular for the exercise of consumption abroad and the reliance on other services, in particular infrastructure-related, business, environmental and telecommunications services;

DESIRING to attract private sector investment and trade in the sector, by promoting fair competition in the provision of tourism services through better regulation by the State Parties and thereby achieving more open market regimes in the region;

SEEKING to elaborate upon the provisions of their commitments to liberalisation in trade in services with respect to measures affecting access to and use of tourism services;

ACKNOWLEDGING that sustainable tourism is imperative to tourism development

REALISING that tourism in the region has a strong emphasis on and relates strongly to the environment, and especially environmental services through the SADC Protocol on Environmental Management for Sustainable Development;

RECOGNISING that wildlife form a strong basis for tourism in the region that should be conserved and preserved by States Parties as supported by the SADC Protocol on Wildlife Conservation and Law Enforcement; and

ACKNOWLEDGING the vulnerability of Small Island Developing States,

HEREBY AGREE as follows:

ARTICLE 1

Definitions

For the purposes of this Annex:

“Tourism”	means the activities of persons travelling to and staying in countries outside their country of residence for not more than one consecutive year for leisure, business and other purposes;
“Tourism characteristic products”	means those services that would cease to exist in meaningful quantity or those for which the level of consumption would be significantly reduced in the absence of visitors, and for which statistical information seems possible to obtain;
“Tourism industries”	means the set of tourism characteristic products, as listed in the United Nations Central Product Classification (CPC);
“Sustainable development of tourism”	means the process of: <ul style="list-style-type: none">– involvement of local communities in the conception, development, enhancement, management and preservation of all destination resources used for tourism projects, in particular cultural and environmental resources;– implementation of environmental and quality standards agreed by relevant regional and international organizations for tourism projects, in accordance with the requirements of Article 6 of the Protocol on Trade in Services and Article 9 of the Protocol on the Development of Tourism; and– allocation of tourism revenues to prevent degradation of the destination resources and to meet the needs to supply tourism services in the future; and
“Tourism distribution networks”	means tour operators and other tourism wholesalers (both out-bound and in-bound), computer reservation systems and global distribution systems (whether or not connected to airlines or provided through the internet), travel agencies and other distributors of tourism service packages independently of whether or not they are primarily affiliated to the tourism sector.

ARTICLE 2

Objective

The objective of this Annex is to ensure equitable conditions for trade in tourism services in the region, consistent with Articles 16, 18 and 19 of the Protocol on Trade in Services and Article 12 of the Protocol on the Development of Tourism.

ARTICLE 3

Competitive Safeguards

1. Consistent with Article 19 of the Protocol on Trade in Services, State Parties shall adopt measures to prevent anticompetitive practices in the tourism industries, including those by suppliers of air transport services, within the scope of this Protocol, and tourism distribution network services, either individually or jointly.
2. Measures referred in Paragraph 1 shall address, *inter alia*, the following practices:
 - a) discriminatory use of information networks, including through unreasonable access charges, ancillary services to air transport, predatory pricing, or the allocation of scarce resources;
 - b) misleading or discriminatory use of information by any juridical person; and
 - c) abuse of dominance through exclusivity clauses refusal to deal, tied sales, quantity restrictions, or vertical integration.

ARTICLE 4

Consumer Protection

State Parties shall adopt adequate measures to ensure the protection of consumer rights in the territory of one State Party with respect to the service consumer of any other State Party.

ARTICLE 5

Access to and Use of Information

State Parties shall ensure that:

- a) the information provided by a State Party on tourism destinations of any other State Party is factually accurate and comprehensive; and
- b) the tourism service suppliers of any other State Party will have access on a commercial basis to computer reservation systems/global distribution systems according to transparent, reasonable and objective criteria, on a non-discriminatory basis.

ARTICLE 6

Access to Tourism-related Infrastructure and Ancillary Services

1. In liberalising trade in tourism services, State Parties undertake, *inter alia*, to:
 - a) promote the development of tourism-related transport infrastructure such as airports, sea ports and land-transport terminals and facilities;
 - b) cooperate in the development of the information, communication and technology (ICT) infrastructure such as smart electronic and online payments, necessary to support tourism development; and

- c) cooperate in the implementation of agreements in support of tourism related services such as those of trans-frontier conservation areas.
- 2. In promoting intra-regional tourism, State Parties shall take necessary steps to facilitate access to tourism attraction areas such as national parks, heritage sites etc. within their territories.

ARTICLE 7

Sustainable Development of Trade in Tourism Services

In liberalising trade in tourism services, State Parties shall promote:

- a) co-operation efforts for the sustainable development of trade in tourism services at the international, regional, sub-regional and bilateral levels;
- b) participation of all SADC Member States and their suppliers of network-related, business and environmental services in international, regional, sub-regional, bilateral and private financing programs in support of the sustainable development of tourism;
- c) collaboration in the exchange of information required for the competitive supply, regulation and sustainable development of tourism;
- d) equitable and pro-competitive trading conditions for the sustainable tourism development through the implementation of this Annex;
- e) compliance with environmental and high-quality standards established by relevant regional and international organizations; and
- f) consideration of the impact of climate change.

ARTICLE 8

Standards and Quality Assurance

- 1. State Parties recognize the importance of international standards for the sustainable development of tourism and undertake to promote the adoption and continued upgrading of such standards through the work of relevant regional and international bodies and non-governmental organizations.
- 2. In fulfilling the requirement of Paragraph 1, State Parties shall, in collaboration with the relevant regional organizations and in consultation with international tourism-related organizations, develop tourism standards and promote provision of quality products and services in the region.
- 3. State Parties recognize the role of national, regional, international organizations and non-governmental organizations in ensuring the safe and efficient operation of all activities in the tourism sector, in particular the International Civil Aviation Organization, the World Tourism Organization, the World Health Organization and the International Air Transport Association, State Parties shall consult, where necessary, with such organizations on matters arising from the implementation of this Annex.

ARTICLE 9

Education, Training and Human Resource Development

1. State Parties shall promote development of training curricula that respond to market demands, and develop exchange programmes among the public and private sector training institutions in the region.
2. Without prejudice to the conditions set out in the Annex 3 Movement of Natural Persons and individual State Parties' commitments in Mode 4, State Parties shall promote and facilitate movement of tourism professionals and personnel including the exchange of tourism staff such as graduate trainees, chefs, cooks and specialized tourism officers, into and across their territories, in order to develop the necessary human resource capacity to enhance competitiveness of the tourism industry in the region.

ARTICLE 10

Mutual Recognition

State Parties shall, in line with Article 7 of the Protocol on Trade in Services, enter into mutual recognition agreements in the tourism sector that address recognition of the following, *inter alia*:

- a) academic and professional qualifications or licences of tourism personnel;
- b) standards of accommodation and other tourism facilities;
- c) technical standards and registration of safari vehicles and other transport vessels; and
- d) vehicle and travel insurance covers.

ARTICLE 11

Development of Micro, Small, Medium-sized Service Suppliers

Recognizing the role of micro, small and medium-sized services supplier in the tourism sector and national economic development, State Parties agree to promote their involvement in the development of tourism services in the region pursuant to Article 18 of the Protocol on Trade in Services.

ARTICLE 12

Trans-Frontier Conservation and Regional Value Chains

1. In liberalizing trade in the tourism sector, State Parties shall take the necessary joint measures to ensure equitable and sustainable use of environmental and bio-diversity resources, in particular those located in the trans-frontier conservation areas.
2. State Parties agree to take measures in the promotion of regional tourism value chains, where practical, in order to harness the benefits of biodiversity, ecosystems, conservation areas, natural and cultural heritage and shared tourism attractions in the region.

Postal and Courier Services

PREAMBLE

The State Parties;

PURSUANT to Article 26 of the Protocol on Trade in Services allowing State Parties to develop Annexes for the implementation of the said Protocol;

RECOGNISING the importance of building a common approach and shared understanding in the sector of communications services, particularly in the area of postal and courier services;

RECOGNISING the importance of the postal and courier services in the global communication infrastructure;

SEEKING to elaborate upon the provisions of their commitments to liberalisation in trade in services with respect to measures affecting access to and use of postal and courier services;

HEREBY AGREE as follows:

ARTICLE 1

Definitions

“Individual licence” means an authorisation, granted to an individual supplier by a regulatory authority of a State Party, which is required before supplying a given service.

“Universal service” means the permanent provision of a postal service of specified quality at all points in the territory of a State Party, at affordable prices for all users.

ARTICLE 2

General Principles

For purposes of this Annex, the following principles shall apply:

1. State Parties shall maintain or introduce appropriate measures for the purpose of preventing suppliers who, alone or together, have the ability to affect materially the terms of participation (having regard to price and supply) in the relevant market for postal and courier services as a result of use of their position in the market, from engaging in or continuing anti-competitive practices.
2. A State Party shall have the right to define the kind of universal service obligations it wishes to maintain. Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the State Party.

3. An individual licence may only be required for services which are within the scope of the universal service. Where an individual licence is required, the following will be made publicly available:
 - (a) All the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and
 - b) The terms and conditions of individual licences.
4. The reasons for the denial of an individual licence will be made known to the applicant upon request and an appeal procedure through an independent body will be established at the State Party's level. Such a procedure will be transparent, non-discriminatory, and based on objective criteria.
5. Regulatory bodies are legally separate from, and not accountable to any supplier of postal and courier services. The decisions of, and the procedures used by, any regulatory body will be impartial with respect to all market participants.



SOUTHERN AFRICAN DEVELOPMENT COMMUNITY TOWARDS A COMMON FUTURE

The Southern African Development Community (SADC) is an inter-governmental organization headquartered in Gaborone, Botswana. Its goal is to further regional socio-economic cooperation and integration as well as political and security cooperation among 16 countries in southern Africa.



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SADC House
Plot No. 54385
Central Business District
Gaborone, Botswana



Tel: +267 395 1863



Fax: +267 397 2848
+267 318 1070



Private Bag 0095
Gaborone, Botswana

SADC SECRETARIAT