THE REPUBLIC OF KENYA

LAWS OF KENYA

THE PREFERENTIAL TRADE AREA (IMPLEMENTATION) ACT

CAP. 4B

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Kenya

Preferential Trade Area (Implementation) Act

Cap. 4B

Legislation as at 31 December 2022

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Preferential Trade Area (Implementation) Act (Cap. 4B)

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PREFERENTIAL TRADE AREA (IMPLEMENTATION) ACT

CAP. 4B

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Assented to on 6 September 1991

Commenced on 13 September 1991

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An Act of Parliament to provide for giving effect to certain provisions of the Treaty for the establishment of the Preferential Trade Area for Eastern and Southern Africa States and for connected purposes

WHEREAS the Treaty for the establishment of the Preferential Trade Area for the Eastern and Southern African States (which is set out in the Schedule to this Act) was signed on the 21st December, 1981, on behalf of the Governments of the People's Republic of Angola, the Republic of Botswana, the Peoples Republic of the Comoros, the Republic of Djibouti, Socialist Ethiopia, the Republic of Kenya, the Kingdom of Lesotho, the Democratic Republic of Madagascar, the Republic of Malawi, Mauritius, the People's Republic of Mozambique, the Republic of the Seychelles, the Somali Democratic Republic, the Kingdom of Swaziland, the United Republic of Tanzania, the Republic of Uganda, the Republic of Zambia and the Republic of Zimbabwe:

AND WHEREAS it is expedient to make provisions for giving effect to certain provisions contained in the said Treaty.

NOW THEREFORE BE IT ENACTED by the Parliament of Kenya as follows:—

1. Short title

This Act may be cited as the Preferential Trade Area (Implementation) Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"Authority" means the Authority of the Preferential Trade Area established by Article 6 of the Treaty;

"Budget" means the Budget of the Preferential Trade Area referred to in Article 36 of the Treaty;

"Preferential Trade Area" means the Preferential Trade Area for Eastern and Southern African States established by Article 2 of the Treaty;

"Treaty" means the Treaty for the Establishment of Preferential Trade Area for Eastern and Southern African States which is set out in the Schedule to this Act, as from time to time amended under any provisions thereof or otherwise modified.

3. Preferential Trade Area to have capacity of body corporate

(1) The Preferential Trade Area shall, within Kenya, have the capacity of a body corporate with perpetual succession and shall have power to acquire, hold, manage and dispose of land and other property and to sue and be sued in its own name.

(2) The Preferential Trade Area shall have power to perform any of the functions conferred upon it by the Treaty and to do all things (including borrowing) that in the opinion of the Authority are necessary or desirable for the performance of those functions.

(3) Subsection (2) relates only to the capacity of the Preferential Trade Area as a body corporate, and nothing in that subsection shall be construed as authorizing the disregard by the Preferential Trade Area of any law, or as affecting any power of the Preferential Trade Area conferred by any law.

4. Provisions of the Treaty to have force of law

The provisions of the Treaty set out in the Schedule to this Act shall have the force of law in Kenya.

5. Amendments to the Treaty

(1) The provisions amending or repealing and replacing the Treaty shall have the force of law in Kenya.

(2) If the Treaty is amended or modified the Attorney-General shall cause a notice of the amendment or modification and of the date when the amendment or modification comes or is deemed to have come into operation to be published in the *Gazette* and a copy of the notice to be laid before the National Assembly without delay; and such amendment or modification shall, for the purposes of this Act, come into or be deemed to have come into operation on such date.

(3) The Interpretation and General Provisions Act (Cap. 2) shall not apply to the interpretation of the provisions of the Treaty.

6. Adaptation of laws

The Attorney-General may, by order published in the *Gazette*, from time to time after the commencement of this Act, make such amendment to any Act as may appear to him to be necessary or expedient for the bringing of the Act into conformity with the provisions of the Treaty or otherwise for giving effect to or enabling effect to be given to those provisions.

7. Financial provisions

(1) There shall be charged and paid out of the Consolidated Fund, without further appropriation, all payments required to be made from time to time by the Government to the Budget under the terms of the Treaty.

(2) For the purposes of providing any sums required for making payment under this section, the Cabinet Secretary for the time being responsible for finance may, on behalf of the Government, make such arrangements as are necessary, or raise loans by the creation and issue of securities bearing such rate of interest and subject to such conditions as to repayment, redemption or otherwise as he thinks fit, and the principal and interest of those securities and charges and expenses incurred in the connection with their issue shall be charged on and issued out of the Consolidated Fund.

(3) Moneys received by the Government under the Treaty or raised under subsection (2), shall be paid and form part of the Consolidated Fund and shall be available in any manner in which the Consolidated Fund is available.

8. Powers of the Authority

Notwithstanding the provisions of this Act, the Authority shall have power to make decisions with respect to—

(a) the gradual reduction and eventual elimination of customs duties and non-tariff barriers to trade conducted among member states and the evolution of a common external tariff in respect of goods imported from countries with a view to the eventual establishment of a common market among member States;

(b) co-operation in particular fields relating to transport and communications, industrial development, agricultural development, trade documents and procedures, standardization and quality control of goods; and

(c) co-operation in other fields taken in common to further the aim of the Preferential Trade Area and the implementation of the provisions of the Treaty.

9. The Tribunal

The procedure for the settlement of disputes made under Article 40 of the Treaty by the Tribunal established by Article 10 of the Treaty shall, in relation to summoning of witnesses and the conduct of proceedings of the Tribunal, have the force of law in Kenya.

SCHEDULE [s. 4]

TREATY FOR THE ESTABLISHMENT OF THE PREFERENTIAL TRADE AREA FOR EASTERN AND SOUTHERN AFRICAN STATES

PREAMBLE

The President of the People's Republic of Angola.

The President of the Republic of Botswana.

The President of the Federal Islamic Republic of the Comoros.

The President of the Republic of Djibouti.

The Chairman of the Provisional Military Administrative Council and of the Commission for Organizing the Party of the Working People of Ethiopia and Commander-in-Chief of the Revolutionary Army of Socialist Ethiopia.

The President of the Republic of Kenya.

His Majesty the King of the Kingdom of Lesotho.

The President of the Democratic Republic of Madagascar.

The Life President of the Republic of Malawi.

The Prime Minister of Mauritius.

The President of the People's Republic of Mozambique.

The President of the Republic of Seychelles.

The President of the Somali Democratic Republic and Secretary General of the Somali Revolutionary Socialist Party.

His Majesty the King of the Kingdom of Swaziland.

The President of the United Republic of Tanzania.

The President of the Republic of Uganda.

The President of the Republic of Zambia.

The President of the Republic of Zimbabwe.

Conscious of the overriding need to foster, accelerate and encourage the economic and social development of their States in order to improve the living standards of their peoples;

Convinced that the promotion of harmonious economic development of their States calls for effective economic co-operation largely through a determined and concerted policy of self-reliance;

Recalling the African Declaration on Co-operation, Development and Economic Independence adopted by the Tenth Assembly of Heads of State and Government of the Organization of African Unity, in May 1973 at Addis Ababa in Ethiopia;

Bearing in mind the Declaration of Intent and Commitment on the establishment of a Preferential Trade Area for Eastern and Southern African States adopted by the First Extraordinary Conference of Ministers of Trade, Finance and Planning held in Lusaka, Republic of Zambia, from the 30th to the 31st March, 1978;

Inspired by the decision contained in the Final Act of the Second Extraordinary Section of the Assembly of Heads of State and Government of the Organization of African Unity held at Lagos from 28th to 29th April, 1980, that there should be established an African Common Market by the year 2000;

Determined to foster closer economic and other relationships among their States and to contribute to the progress and development of the African continent and the achievement of an African Common Market;

Resolved to act in concert for the establishment of a Preferential Trade Area for Eastern and Southern African States as a first step towards the establishment of a Common Market and eventually of an Economic Community for Eastern and Southern African States; and

Having in mind the principles of international law governing relations between nations, such as the principles of sovereignty, equality and independence of all States and non-interference in the domestic affairs of States;

HEREBY AGREE AS FOLLOWS:

Chapter ONE
INTERPRETATION

ARTICLE 1 - INTERPRETATION

In this Treaty:—

"Authority" means the authority of the Preferential Trade Area established by Article 6 of this Treaty;

"Bank" means the Eastern and Southern African Trade and Development Bank established by Article 32 of this Treaty;

"Commission" means the Intergovernmental Commission of Experts established by Article 11 of this Treaty;

"Committee" means a Committee established by or under Article 11 of this Treaty;

“common customs tariff” means an identical rate of tariff imposed in the same manner;

"Common List" has the meaning assigned to it in Article 1 of Annex I of this Treaty;

"co-operation" includes the undertakings by the Member States in common, jointly or in concert of activities undertaken in furtherance of the objectives of the Preferential Trade Area as provided for under this Treaty or under any contract or agreement made thereunder or in relation to the objectives of the Preferential Trade Area;

"Council" means the Council of Ministers established by Article 7 of this Treaty;

"customs duties" means import or export duties and other charges of equivalent effect levied on goods by reason of their importation or exportation and includes suspended duties and fiscal duties or taxes where such duties or

taxes affect the importation or exportation of goods but does not include internal duties and taxes such as sales, turnover or consumption taxes, imposed otherwise than in respect of the importation or exportation of goods;

"goods in transit" means goods being conveyed between two Member States or between a Member State and a third county and passing through another Member State or Member States and "transit" shall be construed accordingly;

"Member State" means a Member State of the Preferential Trade Area;

"person" means a natural or legal person;

"Preferential Trade Area" means the Preferential Trade Area for Eastern and Southern African States established by Article 2 of this Treaty;

"Secretariat" means the secretariat of the Preferential Trade Area established by Article 9 of this Treaty;

"Secretary-General" means the Secretary-General of the Preferential Trade Area provided for by Article 9 of this Treaty;

"third country" means any country other than a Member State:

"Treaty" means the Treaty for the establishment of the Preferential Trade Area;

"Tribunal" means the Tribunal of the Preferential Trade Area established by Article 10 of this Treaty;

"unique situation", when used in respect of Botswana, Lesotho and Swaziland includes economic, geographic, monetary, migratory labour and transport and communications problems faced by these countries.

Chapter TWO
ESTABLISHMENT AND PURPOSES

ARTICLE 2 - ESTABLISHMENT AND MEMBERSHIP

1. THE HIGH CONTRACTING PARTIES hereby establish among their respective States a Preferential Trade Area for Eastern and Southern African States, referred to in this Treaty as "the Preferential Trade Area", as a first step towards the establishment of a Common Market and eventually of an Economic Community for Eastern and Southern African States.

2. Membership of the Preferential Trade Area shall be open to the following Eastern and Southern African States:—

   The People's Republic of Angola;

   The Republic of Botswana;

   The Federal Islamic Republic of the Comoros;

   The Republic of Djibouti;

   Socialist Ethiopia;

   The Republic of Kenya;

   The Kingdom of Lesotho;

   The Democratic Republic of Madagascar;

   The Republic of Malawi;

   Mauritius;

   The People's Republic of Mozambique;

   The Republic of Seychelles;

   The Somali Democratic Republic;

The Kingdom of Swaziland;

The United Republic of Tanzania;

The Republic of Uganda;

The Republic of Zambia;

The Republic of Zimbabwe.

3. The Member States of the Preferential Trade Area shall be the Eastern and Southern African States set out in paragraph 2 of this Article that sign, ratify or accede to this Treaty and such other immediately neighbouring African States that become Member States of the Preferential Trade Area under the provisions of Article 46 of this Treaty.

ARTICLE 3 - AIMS AND SPECIFIC UNDERTAKINGS OF THE PREFERENTIAL TRADE AREA

1. It shall be the aim of the Preferential Trade Area to promote co-operation and development in all fields of economic activity particularly in the fields of trade, customs, industry, transport, communications, agriculture, natural resources and monetary affairs with the aim of raising the standard of living of its peoples, of fostering closer relations among its Member States, and to contribute to the progress and development of the African continent.

2. The functioning and development of the Preferential Trade Area shall be reviewed in accordance with the provisions of this Treaty with a view to the establishment of a Common Market and eventually of an Economic Community for Eastern and Southern African States.

3. For the purposes set out in paragraphs 1 and 2 of this Article the Member States agree to implement the undertakings set out in paragraph 4 of this Article and as provided for elsewhere in particular povisions of this Treaty.

4. (a) The Member States undertake by way of the Protocols annexed to this Treaty to—

(i) gradually reduce and eventually eliminate as between themselves customs duties in respect of imports of selected commodities produced within the Preferential Trade Area;

(ii) establish common rules of origin with respect to products that shall be eligible for preferential treatment;

(iii) establish appropriate payments and cleaning arrangements among themselves that would facilitate trade in goods and services;

(iv) foster such co-operation among themselves in the fields of transport and communications as would facilitate trade in goods and services;

(v) co-operate in the field of industrial development;

(vi) co-operate in the field of agricultural development;

(vii) establish conditions regulating the re-export of products within the Preferential Trade Area;

(viii) promulgate regulations for facilitating transit trade within the Preferential Trade Area;

(ix) simplify and harmonize their trade documents and procedures;

(x) co-operate in customs matters;

(xi) standardize the manufacture and quality of goods produced and traded within the Preferential Trade Area;

(xii) recoginize the unique situation of Botswana, Lesotho, and Swaziland and their membership of the Southern African Customs Union within the context of the Preferential Trade Area and to grant temporary exemptions to Botswana, Lesotho and Swaziland from the full application of certain provisions of this Treaty; and

(xiii) govern such other matters as may be necessary to further the aims of the Preferential Trade Area.

(b) The Member States further undertake to—

(i) relax or abolish quantitative and administrative restrictions on trade among themselves;

(ii) promote the establishment of appropriate machinery for the exchange of agricultural products, minerals, metals, manufactures and semi-manufactures within the Preferential Trade Area;

(iii) promote the establishment of direct contacts between, and regulate the exchange of information among their commercial organizations such as State trading corporations, export promotion and marketing organizations, chambers of commerce, associations of businessmen and trade information and publicity centres;

(iv) ensure the application of the most favoured nation clause to each other;

(v) adapt progressively their commercial policy in accordance with the provisions of this Treaty; and

(vi) take in common such other steps as are calculated to further the aims of the Preferential Trade Area.

ARTICLE 4 - GENERAL UNDERTAKING

The Member States shall make every effort to plan and direct their development policies with a view to creating conditions favourable for the achievement of the aims of the Preferential Trade Area and the implementation of the provisions of this Treaty and shall abstain from any measures likely to jeopardize the achievement of the aims of the Preferential Trade Area or the implementation of the provisions of this Treaty.

Chapter THREE
INSTITUTIONS OF THE PREFERENTIAL TRADE AREA

ARTICLE 5 - INSTITUTIONS

1. The institutions of the Preferential Trade Area shall be—

(a) the Authority;

(b) the Council of Ministers;

(c) the Secretariat;

(d) the Tribunal; and

(e) the Commission, the Committees and such other technical and specialized bodies as may be established or provided for by this Treaty.

2. The institutions of the Preferential Trade Area shall perform the functions and act within the limits of the powers conferred upon them by or under this Treaty.

ARTICLE 6 - THE AUTHORITY OF THE PREFERENTIAL TRADE AREA- ESTABLISHMENT, COMPOSITION AND FUNCTIONS

1. There is hereby established an Authority which shall be known as the Authority of the Preferential Trade Area and which shall consist of the Heads of State and Government of the Member States.

2. The Authority, which shall be the supreme organ of the Preferential Trade Area, shall be responsible for considering matters of general policy and for the general direction and control of the performance of the executive functions of the Preferential Trade Area and the achievement of its aims.

3. The decisions and directions of the Authority taken or given in pursuance of the provisions of this Treaty shall be binding on all other institutions of the Preferential Trade Area and on those to whom they are addressed other than the Tribunal without its jurisdiction.
4. The Authority shall normally meet once every year and may hold extraordinary meetings at the request of any member of the Authority provided that such a request is supported by one-third of the members of the Authority or upon the proposal of the Council of Ministers addressed to the Secretary-General. Subject to the provisions of the Treaty, the Authority shall determine its own rules of procedure.
5. The decisions of the Authority shall be taken by consensus.

ARTICLE 7 - COUNCIL OF MINISTERS-ESTABLISHMENT, COMPOSITION AND FUNCTIONS

1. There is hereby established a Council which shall be known as the Council of Ministers and which shall consist of such Ministers as may be designated by each Member States.
2. It shall be the responsibility of the Council—
   (a) to keep under constant review and ensure the proper functioning and development of the Preferential Trade Area in accordance with the provisions of this Treaty;
   (b) to make recommendations to the Authority on matters of policy aimed at the efficient and harmonious functioning and development of the Preferential Trade Area;
   (c) to give directions to all other subordinate institutions of the Preferential Trade Area; and
   (d) to exercise such other powers and perform such other duties as are conferred or imposed on it by this Treaty or as may be determined from time to time by the Authority.
3. The decisions and directions of the Council taken or given in pursuance of the provisions of the Treaty, shall be binding on all other subordinate institutions of the Preferential Trade Area and on those to whom they are addressed other than the Tribunal within its jurisdiction.
4. The Council shall meet at least twice a year and one of such meetings shall be held immediately preceding an ordinary meeting of the Authority. Extraordinary meetings of the Council may be held at the request of a Member State provided that such a request is supported by one-third of the Member States.
5. Subject to any directions that the Authority may give and to the provisions of this Treaty, the Council shall determine its own procedure including that for convening its meetings, for the conduct of business thereat and at other times and for the rotation of the office of Chairman among the members of the Council.
6. The decisions of the Council shall be taken by consensus.
7. Where an objection is recorded on behalf of a Member State to a proposal submitted for the decision of the Council, the proposal shall, unless such objection is withdrawn, be referred to the Authority for its decision.

ARTICLE 8 - DECISIONS OF THE AUTHORITY AND THE COUNCIL

The Authority shall determine the procedure for the dissemination of its decisions and directions and those of the Council and for matters relating to the coming into effect of such decisions and directions.

ARTICLE 9 - THE SECRETARIAT

1. There is hereby established a Secretariat of the Preferential Trade Area.
2. The Secretariat shall be headed by a Secretary-General who shall be appointed by the Authority to serve in such office for a term of four years and shall be eligible for re-appointment for a further period of four years.
3. The Secretary-General shall be the principal executive officer of the Preferential Trade Area. In addition to the Secretary-General, there shall be such other staff of the Secretariat as the Council may determine.

4. The terms and conditions of service of the Secretary-General and the other staff of the Secretariat shall be governed by regulations that may from time to time be made by the Council:

   Provided that the Secretary-General shall only be removed from office by the Authority upon the recommendation of the Council.

5. In appointing staff to offices in the Secretariat, regard shall be had, subject to the paramount importance of securing the highest standards of integrity, efficiency and technical competence, to the desirability of maintaining an equitable distribution of appointments to such offices among citizens of all the Member States.

6. (1) In the performance of their duties the Secretary-General and the staff of the Secretariat shall not seek or receive instructions from any Member State or from any other authority external to the Preferential Trade Area. They shall refrain from any actions which might reflect on their position as international officials responsible only to the Preferential Trade Area.

(2) Each Member State undertakes to respect the international character of the responsibilities of the Secretary-General and the staff of the Secretariat and shall not seek to influence them in the discharge of their responsibilities.

7. The Secretary-General shall—

   (a) as appropriate, service and assist the institutions of the Preferential Trade Area in the performance of their functions;

   (b) submit a report on the activities of the Preferential Trade Area to all meetings of the Authority and the Council;

   (c) be responsible for the administration and finances of the Preferential Trade Area and all its institutions and act as secretary to the Authority and the Council;

   (d) keep the functioning of the Preferential Trade Area under continuous examination and may act in relation to any particular matter which appears to merit examination either on his own initiative or upon the request of a Member State made through the Commission and the Secretary-General shall, where appropriate, report the results of his examination to the Commission;

   (e) on his own initiative or as may be assigned to him by the Authority or the Council undertake such work and studies and perform such services as relate to the aims of the Preferential Trade Area and to the implementation of the provision of this Treaty; and

   (f) for the performance of the functions imposed upon him by this Article, collect information and verify matters of fact relating to the functioning of the Preferential Trade Area and for that purpose may request a Member State to provide information relating thereto.

8. The Member States agree to co-operate with and assist the Secretary-General in the performance of the functions imposed upon him by paragraph 7 of this Article and agree in particular to provide any information which may be requested under subparagraph (f) of paragraph 7 of this Article.

ARTICLE 10 - TRIBUNAL OF THE PREFERENTIAL TRADE AREA

1. There is hereby established a judicial organ to be known as the Tribunal of the Preferential Trade Area which shall ensure the proper application or interpretation of the provisions of this Treaty and adjudicate upon such disputes as may be referred to it in accordance with Article 40 of this Treaty.

2. The Statute and other matters relating to the Tribunal shall be prescribed by the Authority.

ARTICLE 11

THE INTERGOVERNMENTAL COMMISSION AND TECHNICAL COMMITTEES—ESTABLISHMENT, COMPOSITION AND FUNCTIONS

1. There shall be established at such times as the Council may decide, as institutions of the Preferential Trade Area, the following Commission and Committees—
   (a) the Intergovernmental Commission of Experts; ,
   (b) the Customs and Trade Committee;
   (c) the Clearing and Payments Committee;
   (d) the Committee on Agricultural Co-operation;
   (e) the Committee on Industrial Co-operation;
   (f) the Transport and Communication Committee; and
   (g) the Committee on Botswana, Lesotho and Swaziland.
2. There may be such other Committees as the Authority on the recommendation of the Council, may from time to time establish or as may be established under this Treaty at such times as the Council may determine.
3. The Commission or a Committee other than the Clearing and Payments Committee, shall consist of representatives designated by the Member States to serve on the Commission or on a Committee. Such representatives may be assisted by advisers.
4. The Commission or a Committee may establish such sub-committees as it may deem necessary for the purpose of discharging its functions and specify the composition of such sub-committees.
5. The Commission shall—
   (a) oversee the implementation of the provisions of this Treaty and for this purpose a Member State may request the Commission to investigate any particular matter;
   (b) for the purposes of subparagraph (a) of this paragraph, request as necessary the Secretary-General to undertake specific investigations and to report his finding to the Commission;
   (c) submit from time to time reports and recommendations to the Council either on its own initiative or upon the request of the Council concerning the implementation of the provisions of this Treaty; and
   (d) have such other functions as are imposed on it under this Treaty.
6. Each Committee shall submit from time to time reports and recommendations to the Commission either on its own initiative or upon the request of the Commission or the Council concerning the implementation of related provisions of this Treaty, and have such other functions as are imposed on it under this Treaty.
7. Subject to any directive which may be given by the Council, the Commission or a Committee shall meet as often as necessary for the proper discharge of its functions and shall determine its own rules of procedure.

Chapter FOUR
CUSTOMS AND TRADE MATTERS

ARTICLE 12

LIBERALIZATION OF TRADE

The Member States agree in accordance with the provisions of this Treaty to—

(a) the gradual reduction and eventual elimination of customs duties and non-tariff barriers to trade conducted among themselves; and

(b) the gradual evolution of a common external tariff in respect of all goods imported from third countries with a view to the eventual establishment of a common market among themselves.

ARTICLE 13

CUSTOMS DUTIES

1. The Member States shall reduce and eventually eliminate in accordance with the provisions of the Protocols on the gradual reduction and elimination of customs duties and co-operation in customs matters annexed to this Treaty respectively, as Annexes I and II, customs duties imposed on or in connection with the importation or exportation of the commodities which are set out in the Common List.

2. During a period of eighteen years from the definitive entry into force of this Treaty, a Member State may not be required to reduce or eliminate customs duties except in accordance with the provisions of paragraph 1 of this Article. During this period of eighteen years the Member States shall not impose any new customs duties or increase existing ones on goods appearing on the Common List and shall transmit to the Secretary-General all information on customs duties for study by the Customs and Trade Committee.

3. The Commission shall, after considering proposals from the Customs and Trade Committee submitted to it by the Secretary-General, recommend to the Council for its approval, a programme for the progressive reduction of customs duties among the Member States with a view to eliminating such duties not later than eighteen years after the definitive entry into force of this Treaty. Such a programme shall take into account the effects of the reduction and elimination of customs duties on the revenues of the Member States:

   Provided that the Council may subsequently decide that any customs duties shall be reduced more rapidly or eliminated earlier than is approved under the provisions of this paragraph.

ARTICLE 14

COMMON EXTERNAL TARIFF

For the purposes of this Treaty, the Commission shall, on the recommendation of the Customs and Trade Committee, submit from time to time to the Council for its approval, a programme for the gradual establishment of a common external tariff.

ARTICLE 15

PREFERENTIAL TREATMENT

1. For the purposes of this Treaty, goods shall be accepted as eligible for preferential treatment if such goods —

   (a) originate in the Member States; and

   (b) are during the period of eighteen years specified in paragraph 2 of Article 13 of this Treaty contained in the Common List.

2. Goods shall be accepted as originating in the Member State where they satisfy the conditions prescribed in the Protocol on Rules of Origin annexed to this Treaty as Annex III.

ARTICLE 16

NON-TARIFF RESTRICTTONS ON GOODS

1. Except as is provided in this Article and in accordance with Annex I to this Treaty, each of the Member States undertakes that upon the definitive entry into force of this Treaty, it shall relax and remove the then existing quota, quantitative or the like restrictions or prohibitions on goods which apply to the transfer to that State, of goods originating in the other Member States and which are contained in the Common List. Except as may be provided or permitted by this Treaty, the Member States will thereafter refrain from imposing any further restrictions or prohibitions on such goods.

2. Except as is provided in this Article, the Commission shall, after considering proposals from the Customs and Trade Committee submitted to it by the Secretary-General, recommend to the Council for its approval a programme for the gradual relaxation and eventual elimination, not later than ten years from definitive entry into force of this Treaty, of all the existing quota, quantitative or the like restrictions or prohibitions which apply to Member State to the import of goods originating in the other Member States. Except as may be provided for or permitted by this Treaty, the Member States will thereafter refrain from imposing any further restrictions or prohibitions on such goods:

   Provided that the Council may subsequently decide that any quota, quantitative or the like restrictions or prohibitions shall be relaxed more rapidly or removed earlier than is approved under the provisions of this paragraph.

3. The provisions of paragraphs 1 and 2 of this Article shall not extend to the following —

   (a) export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting Member State;

   (b) import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in interational trade;

   (c) import restrictions on any agricultural or fisheries product, imported in any form, necessary to the enforcement of governmental measures which operate—

      (i) to restrict the quantities of the like domestic product permitted to be marketed or produced, or if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted; or

      (ii) to remove a temporary surplus of like domestic product or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted, by making the surplus available to certain groups of domestic consumers free of charge or at prices below the current market level; or

      (iii) to restrict the quantities permitted to be produced of any animal product the production of which is directly dependent, wholly or mainly, on the imported commodity if the domestic production of that commodity is relatively negligible.

4. Notwithstanding the provisions of this Article, a Member State may, after having given notice to the other Member State of its intention to do so, introduce or continue to impose restrictions or prohibitions affecting—

   (a) the application of security laws and regulations;

   (b) the control of arms, ammunition and other war equipment and military items;

   (c) the protection of human animal or plant health or life or the protection of public morality;

   (d) the transfer of gold, silver and precious stones;

   (e) the protection of national treasures; or

   (f) the control of nuclear materials, radio-active products or any other material used in the development or exploitation of nuclear energy.

5. If a Member State encounters balance-of-payment difficulties arising from the application of the provisions of this Chapter, that Member State may, provided that it has taken all reasonable steps to overcome the difficulties, impose for the purpose only of overcoming such difficulties for a specified period to be determined by the Council quantitative or the like restrictions or prohibitions, on goods originating from the other Member States.

6. For the purpose of protecting an infant or strategic industry the products of which are contained in the Common List, a Member State may, provided that it has taken all reasonable steps to protect such infant or strategic industry, impose for the purpose only of protecting such industry for a specified period

to be determined by the Council, quantitative or the like restrictions or prohibitions on similar goods originating from the other Member States.

7. A Member State imposing quantitative or the like restrictions or prohibitions under paragraphs 3, 5 and 6 of this Article shall inform the other Member States and the Secretary-General as soon as possible of such restrictions.

8. The Council shall keep under review the operation of any quantitative or the like restrictions or prohibitions imposed under the provisions of paragraphs 3, 5 and 6 of this Article and take appropriate decisions thereon.

ARTICLE 17

DUMPING

1. The Member States undertake to prohibit the practice of dumping goods within the Preferential Trade Area.

2. For the purposes of this Article, "dumping" means the transfer of foods originating in a Member State to another Member State for sale—

   (a) at a price lower than the comparable price charged for similar goods in the Member State where such goods originate (due allowance being made for the differences in the conditions of sale, in taxation, in transport costs or for any other factors affecting the comparability of price); and

   (b) under circumstances likely to prejudice the production of similar goods in that Member State.

ARTICLE 18

MOST FAVOURED NATION TREATMENT

1. The Member States shall accord to one another in relation to trade between them the most favoured nation treatment.

2. In no case shall trade concessions granted to a third country under an agreement with a Member State be more favourable than those applicable under this Treaty.

3. Any agreement between a Member State and a third country under which tariff concessions are granted shall not derogate from the obligations of that Member State under this Treaty.

4. The provisions of this Article shall apply only with respect to commodities contained in this Common List.

ARTICLE 19

RE-EXPORTATION OF GOODS AND TRANSIT FACILITIES

1. The Member States shall undertake to facilitate trade in reexports among themselves. However, in certain cases to be jointly agreed upon, a Member State from which the goods to be re-exported originate, may object to the re-export of such goods.

2. Each Member State shall grant freedom of transit through its territory of goods proceeding to or from another Member State indirectly through that territory in accordance with the provisions of the Protocol on transit trade and transit facilities annexed to this Treaty as Annex V.

3. The Member States agree that the goods imported into their territories from the Republic of South Africa shall not be re-exported into the territories of another Member State and that goods imported into the Member States from a Member State shall not be re-exported to the Republic of South Africa.

4. The Member States further agree that goods being imported or re-exported in contravention of the provisions of paragraphs 1 and 3 of this Article shall not benefit from the transit facilities and privileges provided for in this Treaty.

ARTICLE 20

CUSTOMS ADMINISTRATION

The Member States shall in accordance with the provisions of Annex 11 to this Treaty, take measures to harmonize and standardize their customs regulations and procedures to ensure the effective application of the provisions of this Chapter and to facilitate the movement of goods and services across their frontiers.

ARTICLE 21

DRAWBACK

1. The Member States may, after eighteen years from the definitive entry into force of this Treaty, refuse to accept as eligible for preferential treatment goods in relation to which drawback is claimed or made use of in connection with their exportation from the Member State in the territory of which the goods have undergone the last process of production.
2. At the end of the period of eighteen years referred to in paragraph 1 of this Article the Commission shall, after considering proposals from the Customs and Trade Committee sutbmitted to it by the Secretary-Genenal, make recommendations to the Council concerting the extension or otherwise, of the period of eighteen years referred to in paragraph 1 of this Article for the purposes of that paragraph.
3. For the purposes of this Article—
   (a) "drawback" means any arrangement, including temporary duty-free admission or the refund of all or part of customs duties applicable to imported materials, provided that the arrangement, expressly or in effect, allows such refund or remission if goods are exported but not if they are retained for home use;
   (b) "remission" includes exemption from duties on materials brought into free ports, free zones or other places which have similar customs privileges.

Chapter FIVE
CO-OPERATION IN PARTICULAR FIELDS

ARTICLE 22

CLEARING AND PAYMENT ARRANGEMENTS

The Member States undertake, in accordance with the provisions of the Protocol a clearing and payments arrangements annexed to this Treaty as Annex VI, to promote trade in goods and services within the Preferential Trade Area—

(a) encouraging the use of national currencies in the settlement of eligible transactions between themselves;

(b) establishing adequate machinery for the settlement of payments among themselves;

(c) reducing as much as possible the use of foreign exchange by the Member States in their inter-State transactions; and

(d) consulting regularly among themselves on monetary and financial matters.

ARTICLE 23

TRANSPORT AND COMMUNICATIONS

The Member States, recognizing the importance of efficient transport and communications links and the removal of obstacles to their transport and communications systems for the development of the Preferential Trade Area, undertake to evolve within the framework of the Transport and Communications Commission for Eastern and Southern African States and in accordance with the provisions of the Protocol on co-operation in the fields of transport and communications annexed to this Treaty as Annex VII, complementary transport and communications policies and systems. They also undertake to improve and expand their existing transport and

communications links and establish new ones as a means of furthering the physical cohesion of the Member States and the promotion of greater movement of persons, goods and services within the Preferential Trade Area.

ARTICLE 24

INDUSTRIAL DEVELOPMENT

The Member States shall in order to enhance industrial development within the Preferential Trade Area endeavour, in accordance with the provisions of the Protocol on co-operation in the field of industrial development annexed to this Treaty as Annex VIII, to promote collective self-reliance, complementary industrial development, the expansion of trade in industrial products and the provisions of related training facilities within the Preferential Trade Area.

ARTICLE 25

AGRICULTURAL DEVELOPMENT

The Member States, aware of the vital role of agricultural development, particularly the production of food in the development of their economies, undertake in accordance with the provisions of the Protocol on co-operation in the field of agricultural development annexed to this Treaty as Annex IX to co-operate in the formulation and implementation of their agricultural policies and programmes in the various fields of agriculture such as the supply of staple foodstuffs, the export of agricultural commodities, the development of agro-industries and the establishment of institutional machinery for agricultural development.

ARTICLE 26

TRADE DOCUMENTS AND PROCEDURES

The Member States agree to simplify and harmonize their trade documents and procedures in accordance with the provisions of the Protocol on the simplification and harmonization of trade documents and procedures annexed to this Treaty as Annex X so as to facilitate trade in goods and services within the Preferential Trade Area.

ARTICLE 27

STANDARDIZATION AND QUALITY CONTROL OF GOODS

The Member States agree to evolve, in accordance with the provisions of the Protocol on standardization and the quality control of goods annexed to this Treaty as annex XI, a common policy with regard to the standardization and quality control of goods originating in the Member States and to undertake such other activities in standardization as would promote trade within the Preferential Trade Area.

Chapter SIX
CO-OPERATION IN OTHER FIELDS

ARTICLE 28

GENERAL AND OTHER ASPECTS

Subject to the provisions of this Treaty, the Member States undertake to consult with one another through appropriate institutions of the Preferential Trade Area for the purpose of harmonizing their respective policies in such fields as they may, front time to time, consider necessary or desirable for the efficient and harmonious functioning and development of the Preferential Trade Area and the implementation of the provisions of this Treaty. In particular, but without prejudice to the generality of the foregoing, the Member States undertake to—

(a) promote the establishment of direct contacts between, and regulate the exchange of information among, their commercial organizations such as State trading corporations, export promotion and marketing organizations, chambers of commerce, associations of businessmen and trade information and publicity centres;

(b) promote the establishment of appropriate machinery for the exchange of agricultural products, minerals, metals, manufactures and semi-manufactures within the Preferential Trade Area;

(c) promote the establishment of common training programmes and institutions in various fields which would assist in the development of the manpower required within the Preferential Trade Area;

(d) regulate the activities of their State training and other commercial enterprises so as to ensure that they play an effective role in the development of the Preferential Trade Area; and

(e) take in common such other steps as are calculated to further the aims of the Preferential Trade Area and the implementation of the provisions of this Treaty.

Chapter SEVEN
ECONOMIC COMMUNITY FOR EASTERN AND SOUTHERN AFRICAN STATES

ARTICLE 29

GRADUAL ESTABLISHMENT OF A COMMON MARKET AND AN ECONOMIC COMMUNITY FOR EASTERN AND SOUTHERN AFRICAN STATES

Two years before the expiry of eighteen years from the definitives entry into force of this Treaty, the Commission shall propose to the Council for its consideration and recommendation to the Authority for its approval, measures which in addition to the provisions of this Treaty would be required to be implemented as from the end of the said period of eighteen years, in order to assist in the development of the Preferential Trade Area into a Common Market and eventually into an Economic Community for Eastern and Southern African States.

Chapter EIGHT
SPECIAL PROVISIONS IN RESPECT OF BOTSWANA, LESOTHO AND SWAZILAND, THE COMOROS AND DJIBOUTI

ARTICLE 30

PROTOCOL IN RESPECT OF BOTSWANA, LESOTHO AND SWAZILAND

The Member States agree that a Protocol on the unique situation of Botswana, Lesotho and Swaziland within the context of the Preferential Trade Area to be annexed to this Treaty as Annex XII shall, taking into account their membership of the Southern African Customs Union, regulate such unique situation and the granting to Botswana, Lesotho and Swaziland of temporary exemptions from the full application of certain provisions of this Treaty.

ARTICLE 31

SPECIAL PROVISIONS IN RESPECT OF THE COMOROS AND DJIBOUTI

The Member States, recognizing the special economic conditions of the Comoros and Djibuti, agree to grant than temporary exemptions from the full application of certain provisions of the Treaty as provided for in this Treaty.

Chapter NINE
THE EASTERN AND SOUTHERN AFRICAN TRADE AND DEVELOPMENT BANK

ARTICLE 32

ESTABLISHMENT

There shall be established at such time as the Authority may consider appropriate a Bank to be known as "The Eastern and Southern African Trade and Development Bank".

ARTICLE 33

OBJECTIVES OF THE BANK

The objectives of the Bank shall be, among other things to—

(a) provide financial and technical assistance to promote the economic and social development of the Member States, taking into account the prevailing varying economic and other relevant conditions within the Preferential Trade Area;

(b) promote the development of trade among the Member States conducted in accordance with the provisions of this Treaty by financing, where appropriate, trading activities related to such trade;

(c) further the aims of the Preferential Trade Area by financing, wherever possible, projects designed to make the economies of the Member States increasingly complementary to each other;

(d) supplement the activities of the national development agencies of the Member States by joint financing operations and by the use of such agencies as channels for financing specific projects;

(e) co-operate, within the terms of its Charter with other institutions and organizations, public or private, national or international, which are interested in the economic and social development of the Member States; and

(f) undertake such other activities and provide such other services as may advance the objectives of the Bank.

ARTICLE 34

CHARTER OF THE BANK

The authorized capital stock and resources of the Bank the determination of the contributions to be paid by the members of the Bank, the regulations governing the payments and the currencies in which they shall be effected, the operation, organization, management and status of the Bank and matters related and incidental thereto, shall be contained in a Charter of the Bank to be prescribed by the Authority.

ARTICLE 35

MEMBERSHIP OF THE BANK

Membership of the Bank shall be open to the Member States and such bodies corporate, enterprises or institutions which with the approval of the Authority may become members of the Bank.

Chapter TEN
FINANCIAL PROVISIONS

ARTICLE 36

BUDGET OF THE PREFERENTIAL TRADE AREA

1. There shall be a budget of the Preferential Trade Area.

2. All expenditures of the Preferential Trade Area, other than those in respect of the Bank and the Clearing House, shall be approved in respect of each financial year by the Council and shall be met from the budget.

3. The resources of the Budget shall be derived from annual contributions of the Member States and such other sources as may be determined by the Council. The contributions of the Member States shall be based on the budget as approved by the Council.

4. In determining the annual contribution of each Member State the Council shall assess the annual contribution for each Member State on the basis of the formula determined by the Authority from time to time:

Provided that subject to the provisions of paragraph 1 of Article 37, no Member State shall be required to contribute more than nineteen per centum nor less than 0.5 per centum of the total PTA annual budget.

5. Fifty per cent of the contributions due from a Member State shall be paid into the budget of the Preferential Trade Area within one month from the beginning of the financial year to which they relate and the remainder shall be paid within six months from the beginning of that financial year.

6. A draft budget for each financial year shall be prepared by the Secretary-General and approved by the Council.

7. There shall be special budget to meet extraordinary expenditures of the Preferential Trade Area.

ARTICLE 37

CONTRIBUTIONS BY MEMBER STATES

1. The Authority shall determine the mode and currency of payment of contributions by the Member States to the budget of the Preferential Trade Area and may exempt any Member State from the payment of its contributions upon such terms and conditions as the Authority may determine.

2. Where a Member State is in arrears for more than one year in the payment of its contribution for reasons other than those caused by public or natural calamity or exceptional circumstance that gravely affect its economy, such Member State may, by a resolution of the Preferential Trade Area and shall cease to enjoy the benefits provided for under this Treaty.

ARTICLE 38

BOARD OF AUDITORS AND ACCOUNTS OF THE PREFERENTIAL TRADE AREA

1. The accounts of the Preferential Trade Area relating to each financial year shall be audited in the following financial year of by a Board of Auditors constituted in accordance with paragraph 2 this Article and referred to in this Treaty as the "Board of Auditors".

2. The Board of Auditors shall consist of five persons from any five Member States designated from time to time by the Council on the proposal of the Commission and who shall be appointed by such Member States from among persons qualified as auditors in accordance with the respective laws of such Members States.

3. The Board of Auditors shall act in accordance with any general or specific directions of the Council and, subject thereto, shall—

   (a) determine its own procedure; and

   (b) submit its report of the audit to the Secretary-General not later than six months from the expiry of the financial year to which the accounts so audited relate.

4. Upon receipt of the report of the Board of Auditors, the Secretary-General shall circulate copies thereof to every Member State and convene a meeting of the Commission to examine the report and to make such recommendations in relation thereto before the report is submitted to the Council for adoption.

5. The Council may make regulations for the better carrying out of the provisions of this Article and, without prejudice to the generality of the foregoing, such regulation may provide for the terms and conditions of service of the members of the Board of Auditors and the powers of the Board of Auditors.

ARTICLE 39

FINANCIAL REGULATIONS

The Council shall make financial regulations for the application of the provisions of this Chapter.

Chapter ELEVEN
SETTLEMENT OF DISPUTES

ARTICLE 40

PROCEDURE FOR THE SETTLEMENT OF DISPUTES

Any dispute that may arise among the Member Sates regarding the interpretation and application of the provisions of this Treaty shall be amicably settled by direct agreement between the parties concerned. In the event of failure to settle such disputes, the matter may be referred to the Tribunal by a party to such dispute and the decision of the Tribunal shall be final.

Chapter TWELVE
GENERAL AND TRANSITIONAL PROVISIONS

ARTICLE 41

HEADQUARTERS OF THE PREFERENTIAL TRADE AREA

The headquarters of the Preferential Trade Area shall be determined by the Authority.

ARTICLE 42

OFFICIAL LANGUAGES

The official languages of the Preferential Trade Area shall be English, French and Portuguese.

ARTICLE 43

RELATIONS WITH OTHER REGIONAL ORGANIZATIONS

1. Subject to the provisions of Article 4 of this Treaty, the Member States may be members of other regional or subregional associations whether with other Member States or not, in technical, scientific and economic fields for the purpose of strengthening cooperation among themselves.
2. The Secretary-General shall endeavour to co-ordinate the activities of the Preferential Trade Area with those of the associations referred to in paragraph 1 of this Article.
3. The Preferential Trade Area shall maintain such continuous working relations with the Organization of African Unity, the United Nations Economic Commission for Africa and such intergovernmental organizations within the subregion as would assist the Preferential Trade Area in the implementation of the provisions of this Treaty.

ARTICLE 44

STATUS, PRIVILEGES AND IMMUNITIES

1. The Preferential Trade Area shall enjoy international legal personality.
2. It shall have in the territory of each Member State—
   (a) the legal capacity required for the performance of its functions under this Treaty; and
   (b) power to acquire or dispose of movable and immovable property in accordance with the laws and regulations in force in each Member State.
3. The Preferential Trade Area shall in the exercise of its legal personality be represented by the Secretary General.

4. The privileges and immunities to be recognized and granted by the Member States in connection with the Preferential Trade Area shall be determined by the Council.
5. The Secretary-General, acting on behalf of the Preferential Trade Area, shall conclude with the Government of the Member State in whose territory the headquarters or other institutions of the Preferential Trade Area shall be situated, agreements relating to the legal capacity and the privileges and immunities to be recognized and granted in connection with the Preferential Trade Area.

ARTICLE 45

PRELIMINARY ARRANGEMENTS

1. The Authority shall at its first meeting—
   (a) appoint the Secretary-General;
   (b) determine the place where the headquarters of the Preferential Trade Area shall be situated and, if necessary, arrangements for an interim secretariat; and
   (c) give such directions to the Council and other institutions of the Preferential Trade Area as are necessary for the expeditious and effective implementation of this Treaty.
2. Subject to the provisions of paragraph 1 of this Article, the Council shall within two months of the provisional entry into force of this Treaty, hold its first meeting and
   (a) appoint persons to offices in the secretariat in accordance with the provisions of this Treaty;
   (b) give directions to subordinate institutions of the Preferential Trade Area;
   (c) give all necessary directions to the Secretary-General as to the implementation of this Treaty; and
   (d) do all such other things as may be necessary for the expeditions and effective implementation of this Treaty.

ARTICLE 46

MEMBERSHIP OR ASSOCIATION OF OTHER COUNTRIES

The Member States may together negotiate with any African State not included among those referred to in paragraph 2 of Article 2 of this Treaty but which is an immediate neighbour of a Member State and which has transmitted to the Secretary-General its intention of becoming a Member State of or entering into other co-operative arrangements with the Preferential Trade Area.

ARTICLE 47

AMENDMENT

1. Any Member State or institution of the Preferential Trade Area may submit proposals for the amendment of this Treaty.
2. Any proposal for amendment of this Treaty shall be submitted to the Secretary-General in writing who shall, within thirty days of its receipt communicate it to the Member States.
3. Member States who wish to respond to the proposal shall do so within seventy days from the date of dispatch of the proposal from the Secretary-General.
4. After the expiration of the period prescribed under paragraph 3, the Secretary-General shall submit the proposal and any responses thereon to the Authority through the Committee of Legal Experts, the Commission and the Council.
5. Any amendment to this Treaty shall be adopted by the Authority by consensus and shall enter into force when ratified by a two-thirds majority of the Member States.

ARTICLE 48

WITHDRAWAL

1. Any Member State wishing to withdraw from the Preferential Trade Area shall give to the Secretary-General one year's written notice of its intention to withdraw and at the end of such year shall, if such notice is not withdrawn, cease to be a Member State of the Preferential Trade Area.
2. During the period of one year referred to in paragraph 1 of this Article, a Member State wishing to withdraw from the Preferential Trade Area shall nevertheless observe the provisions of this Treaty and shall remain liable for the discharge of its obligations under this Treaty.

ARTICLE 49

ANNEXES TO THE TREATY

The Annexes to this Treaty shall form an integral part of this Treaty.

ARTICLE 50

ENTRY INTO FORCE, RATIFICATION AND ACCESSION

1. This Treaty shall enter into force provisionally when signed on behalf of the High Contracting Parties and definitely upon ratification by at least seven signatory States.
2. Any State referred to in paragraph 2 of Article 2 of this Treaty may accede to this Treaty on such terms and conditions as the Authority may determine. This Treaty shall enter into foreign relation to an acceding State on such date as its Instrument of Accession is deposited.

ARTICLE 51

DEPOSITARY

1. This Treaty and all Instruments of Ratification or Accession shall be deposited with the Executive Secretary of the United Nations Economic Commission for Africa who shall transmit certified true copies of this Treaty to all Member States.
2. The Executive Secretary of the United Nations Economic Commission for Africa shall notify the Member States of the dates of Instruments of Ratification and Accession and shall register this Treaty with the United Nations, the Organization of African Unity and such other organizations as the Council may determine.