ANNEX I

PROTOCOL ON TRANSIT TRADE AND TRANSIT FACILITIES

ANNEX III

PROTOCOL RELATING TO THE UNIQUE SITUATION OF LESOTHO, NAMIBIA AND SWAZILAND

PREAMBLE

The President of the Republic of Angola;
The President of the Republic of Burundi;
The President of the Federal Islamic Republic of the Comoros;
The President of the Republic of Djibouti;
The President of the State of Eritrea;
The President of the Transitional Government of Ethiopia;
The President of the Republic of Kenya;
His Majesty the King of the Kingdom of Lesotho;
The President of the Republic of Madagascar;
The Life President of the Republic of Malawi;
The Prime Minister of the Republic of Mauritius;
The President of the Republic of Mozambique;
The President of the Republic of Namibia;
The President of the Republic of Rwanda;
The President of the Republic of Seychelles;
The President of the Somali Democratic Republic;
The President of the Republic of Sudan;
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 Zaire;
The President of the Republic of Zambia; and
The President of the Republic of Zimbabwe:

CONSCIOUS of the overriding need to establish a Common Market for Eastern and Southern Africa;

BEARING IN MIND the establishment among their respective States of the Preferential Trade Area for Eastern and Southern African States as a first step towards the creation of a Common Market and eventually of an Economic Community for Eastern and Southern Africa;

RECALLING the provisions of Article 29 of the Treaty for the Establishment of the Preferential Trade Area for Eastern and Southern African States to the effect that steps should be taken to develop the Preferential Trade Area established by that Treaty into a Common Market and eventually into an Economic Community;

RECALLING further the decision of the Authority of the Preferential Trade Area for Eastern and Southern African States taken at its Tenth Meeting held in Lusaka, Zambia from 30 - 31 January, 1992 to transform the Preferential Trade Area for Eastern and Southern African States into a Common Market for Eastern and Southern Africa;

INSPIRED by the objectives of the Treaty for the Establishment of the African Economic Community and in compliance with the provisions of Article 28(1) of the said Treaty;

DETERMINED to mark a new stage in the process of economic integration with the establishment of a Common Market for Eastern and Southern Africa and the consolidation of their economic co-operation through the implementation of common policies and programmes aimed at achieving sustainable growth and development;

RESOLVED to strengthen and achieve convergence of their economies through the attainment of a full market integration;

HAVING REGARD to the principles of international law governing relations between sovereign states, and the principles of liberty, fundamental freedoms and the rule of law; and

In view of further steps which have to be taken in order to advance the economic integration of Eastern and Southern Africa;

HEREBY AGREE AS FOLLOWS:

CHAPTER ONE

THE COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA

ARTICLE 1
Establishment and Membership

1. **THE HIGH CONTRACTING PARTIES HEREBY** establish among themselves a Common Market for Eastern and Southern Africa herein referred to as the Common Market.

2. Membership of the Common Market shall be open to the following Member States of the Preferential Trade Area for Eastern and Southern African States:

The Republic of Angola;
The Republic of Burundi;
The Federal Islamic Republic of the Comoros;
The Republic of Zaire;
The Republic of Djibouti;
The Republic of Egypt;
The State of Eritrea;
The Government of Ethiopia;
The Republic of Kenya;
The Republic of Madagascar;
The Republic of Malawi;

The Republic of Mauritius;
The Republic of Namibia;
The Republic of Rwanda;
The Republic of Seychelles;
The Republic of Sudan;
The Kingdom of Swaziland;
The United Republic of Tanzania;
The Republic of Uganda;
The Republic of Zambia; and
The Republic of Zimbabwe.

3. The following States of Eastern and Southern Africa may become Member States of the Common Market upon fulfilling such conditions as may be determined by the Authority:

   The Republic of Botswana; and

   The Republic of South Africa (Post-Apartheid).

4. The Authority may admit a State not referred to under paragraph 2 or 3 of this Article, which is an immediate neighbour of a member State as a member State of the Common Market for Eastern and Southern Africa, upon fulfilling such conditions as may be determined by the Authority.

CHAPTER TWO

INTERPRETATION

ARTICLE 2
Interpretation

In this Treaty unless the context otherwise requires:

"ARSO" means the African Regional Organisation for Standardisation;

"African regional standards" means technical standards issued by ARSO;

"Authority" means the Authority of the Common Market established by Article 7 of this Treaty;

"Bureau of the Council" means the Chairman, Vice-Chairman and Rapporteur elected in accordance with the Rules of Procedure of the meetings of the Council;

"Business community" means all commercial and industrial organisations or unions of national chambers of commerce and industry representing agriculture, tourism, commerce, finance, manufacturing, mining and transport, however styled and established under the laws of a Member State;

"CGIAR" means the Consultative Group on International Agricultural Research;

"C.I.F." means Cost Insurance and Freight;

"Clearing House" means the Clearing House established by Article 1 of the Charter on the Establishment of the Clearing House;

"CMA" means Common Monetary Area of Southern Africa;

"Common Market" means the Common Market for Eastern and Southern Africa established by Article 1 of this Treaty;

"common external tariff" means an identical rate of tariff imposed on goods imported from third countries;

"Common carrier" includes a person or an undertaking engaged in the business of providing services for the carriage of goods and passengers for hire or reward and operating as such under the laws of a Member State;

"Company or firm" means a company or a firm constituted or registered under the laws of a Member State regulating companies and firms;

"Consensus" means general agreement, characterised by the absence of objection to issues secured by a process that involves seeking to take into account the views of all parties concerned and to reconcile any conflicting arguments;

"Consultative Committee" means the Consultative Committee of the business community and other interest groups established by Article 7 of this Treaty;

"Co-operation" includes the undertaking by the Member States in common, jointly or in concert of activities undertaken in furtherance of the objectives of the Common Market as provided for under this Treaty or under any contract or agreement made thereunder or in relation to the objectives of the Common Market;

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

"Countervailing duty" means a specific duty levied for the purposes of offsetting any subsidy bestowed directly or indirectly upon the manufacture, production or export of any product;

"Court" means the Court of Justice of the Common Market established by Article 7 of this Treaty;

"Customs clearing agent" means a person, who provides services at a fee, in connection with documentation and customs clearance of import and export of goods consignments;

"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;

"Customs offence" means any breach or attempted breach of customs law;

"Customs law" means all the statutory provisions applied by the customs administration on the importation, exportation, transit or movement of goods whether or not they involve the collection of duties or taxes (or security thereof), on the enforcement of prohibitions, restrictions or control or exchange control regulations or on any other customs regime;

"Customs territory" means the territory in which the customs law of a Member State applies in full;

“Designated airline” means an airline which has been designated and authorized to operate the agreed services by a competent authority of a Member State;

“Economically depressed area” means any area so designated by the Council;

“Export duties” means customs duties and other charges of equivalent effect levied on goods by reason of their exportation;

“F.O.B.” means Free On Board;

“Free zone” means a part of the territory of a Member State where any goods introduced into that State are considered, in so far as import duties are concerned, as being outside its customs territory and are not subject to the usual customs control;

“Freight forwarder ” means a person engaged at a fee, either as an agent for other transport operators or on his own account in the management of transport services and related documentation;

“GNP” means Gross National Product;

“Goods declaration” means a statement made in the form prescribed by the customs administration by which the persons concerned furnish the particulars which the customs administration requires to be declared for purposes of the application of the relevant customs procedure;

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

"IAEA" means the International Atomic Energy Agency;

"Import duties" means customs duties and other charges of equivalent effect levied on goods by reason of their importation;

"Importing State" means a Member State from which goods imported into that State are subsequently re-exported to another Member State;

"Intergovernmental Committee" means the Intergovernmental Committee of Experts established by Article 7 of this Treaty;

"International standards" means standards that are adopted by international standardising or standards organisations and made available to the public;

"Judge" means a Judge of the Court serving on the First Instance Division or Appellate Division;

"Least developed country" means any Member State so designated by the Authority;

"Member State" means a Member State of the Common Market;

"Monetary authority" means a Central Bank or any other institution authorised by a Member State to issue currency within its territory;

"Most favoured nation treatment" means any advantage, favour, privilege or immunity granted by any Member State to any product originating in or destined for any third country and shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other Member States;

"Multimodal transport" means the transport of goods and services from one point to another by two or more modes of transport on the basis of a single contract issued by the person organising such services and while such person assumes responsibility for the execution of the whole operation;

“Multimodal transport facilities” include items such as heavy lift swinging devices, twin deck cranes, gantry crane, elevators, large carriers, mechanized storage, low loaders, access facilities, low-profile straddle carriers, mobile cranes, container gantry cranes, side loaders, heavy duty forklifts, heavy duty tractors, heavy duty trailers, portable ramps, flat wagons (flats) for containers, low tare special user wagons and trucks for containers, pallets and web-slings for pre-slung cargoes for different commodities;

“Multinational industrial enterprise” means an industrial enterprise registered in two or more Member States and which is owned by a person or persons resident in a Member State;

“National standards bodies” means all national institutions whose main concern is with standardisation or quality assurance at the national level in the Member States;

“National standards” means standards that are adopted by national standards bodies and made available to the public;

“Other charges of equivalent effect” means any tax, surtax, levy or charge imposed on imports and not on like locally produced products and does not include fees and similar charges commensurate with the cost of services rendered;

"Person" means a natural or legal person;

"Preferential Trade Area" means the Preferential Trade Area for Eastern and Southern African States (hereinafter referred to as PTA) established by Article 1 of the Treaty for the Establishment of the Preferential Trade Area for Eastern and Southern African States;

"Receiving State" means a Member State into which re-exports consigned from another Member State are imported for domestic use in that State;

"Re-exports" means goods which are imported and kept under bonded warehouse for re-exportation from the importing state to the receiving state;

"Region" means the geographical area covered by the Common Market;

"Rules of Court" means the Rules of Court in force as adopted pursuant to Article 38;

"SACU" means the Southern African Customs Union;

"Secretariat" means the Secretariat of the Common Market established by Article 7 of this Treaty;

“Secretary-General” means the Secretary-General of the Common Market provided for by Article 17 of this Treaty;

“Services” means services provided for remuneration and are governed by the provisions relating to freedom of movement of goods, capital and persons;

“Shipping agent” means a local representative of a shipping company;

“Technical Committee” means any of the technical committees established by Article 7 of this Treaty;

“Telecommunications” means any form of transmission, emission or reception signals, writing, images and sounds or intelligence of any nature by wire, radio, optical or other electro magnetic systems;

“Telecommunications administrations” means the government designated organisations and recognised private operating agencies accepted by the Member States and offering telecommunication services;

“Temporary admission” means customs procedures under which certain goods brought within a customs territory are exempted from payment of import duties and are free of import prohibition and restrictions on condition that they are, within a specified period re-exported from the Member State into which they were imported;

"Third country" means any country other than a Member State;

"Trade facilitation" means the co-ordination and rationalization of trade procedures and documents relating to the movement of goods from their place of origin to their destination;

"Trade procedures" means activities related to the collection, presentation, processing and dissemination of data and information concerning all activities constituting international trade;

"Transport operations" means the provision of services for the carrying of goods and passengers for hire or reward and all matters incidental to or connected therewith;

"Treaty" means the Treaty Establishing the Common Market for Eastern and Southern Africa;

"UNCED" means United Nations Conference on Environment and Development;

"UNEP" means United Nations Environmental Programme;

"UNESCO" means the United Nations Educational, Scientific and Cultural Organisation;

"UNIDO" means the United Nations Industrial Development Organisation;

"Unique situation of LNS countries" means the unique situation of Lesotho, Namibia and Swaziland arising from their membership of SACU, and CMA; and

"Valid travel document" means a passport or any other valid travel document establishing the identity of the holder, issued by or on behalf of the Member State of which he is a citizen and shall also include laissez passer issued by the Common Market to its officials.

CHAPTER THREE

AIMS AND OBJECTIVES

ARTICLE 3
Aims and Objectives of the Common Market

The aims and objectives of the Common Market shall be:

(a) to attain sustainable growth and development of the Member States by promoting a more balanced and harmonious development of its production and marketing structures;

(b) to promote joint development in all fields of economic activity and the joint adoption of macro-economic policies and programmes to raise the standard of living of its peoples and to foster closer relations among its Member States;

(c) to co-operate in the creation of an enabling environment for foreign, cross border and domestic investment including the joint promotion of research and adaptation of science and technology for development;

(d) to co-operate in the promotion of peace, security and stability among the Member States in order to enhance economic development in the region;

(e) to co-operate in strengthening the relations between the Common Market and the rest of the world and the adoption of common positions in international fora; and

(f) to contribute towards the establishment, progress and the realisation of the objectives of the African Economic Community.

ARTICLE 4
Specific Undertakings

In order to promote the achievement of the aims and objectives of the Common Market as set out in Article 3 of this Treaty and in accordance with the relevant provisions of this Treaty, the Member States shall:

1. In the field of trade liberalisation and customs co-operation:

   (a) establish a customs union, abolish all non-tariff barriers to trade among themselves; establish a common external tariff; co-operate in customs procedures and activities;

(b) adopt a common customs bond guarantee scheme;

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

(d) establish conditions regulating the re-export of goods from third countries within the Common Market;

(e) establish rules of origin with respect to products originating in the Member States; and

(f) recognise the unique situation of Lesotho, Namibia and Swaziland within the context of the Common Market and to grant temporary exemptions to Lesotho, Namibia and Swaziland from the full application of specified provisions of this Treaty.

2. In the field of transport and communications:

(a) foster such co-operation among themselves as would facilitate the production of goods and facilitate trade in goods and services and the movement of persons;

(b) make regulations for facilitating transit trade within the Common Market; and

(c) adopt a Third Party Motor Vehicle Insurance Scheme.

3. In the field of industry and energy:

(a) eliminate rigidities in the structures of production and manufacturing so as to provide goods and services that are of high quality and are competitive in the Common Market;

(b) provide an appropriate enabling environment for the participation of the private sector in economic development and co-operation within the Common Market;

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

(d) adopt common standards, measurements systems and quality assurance practices in respect of goods produced and traded within the Common Market; and

(e) provide an enabling stable and secure investment climate.

4. In the field of monetary affairs and finance:

(a) co-operate in monetary and financial matters and gradually establish convertibility of their currencies and a payments union as a basis for the eventual establishment of a monetary union;

(b) harmonise their macro-economic policies;

(c) remove obstacles to the free movement of services and capital within the Common Market; and

(d) recognise the unique situation of Lesotho, Namibia and Swaziland within the context of the Common Market and to grant temporary exemptions to Lesotho, Namibia and Swaziland from the full application of specified provisions of this Treaty.

5. In the field of agriculture:

(a) co-operate in the agricultural development;
(b) adopt a common agricultural policy;
(c) enhance regional food sufficiency;
(d) co-operate in the export of agricultural commodities;
(e) co-ordinate their policies regarding the establishment of agro-industries;
(f) co-operate in agricultural research and extension; and
(g) enhance rural development.

6. In the field of economic and social development:

   (a) harmonise the methodology of collection, processing and analysis of information required to meet the objectives of the Common Market;

   (b) harmonise or approximate their laws to the extent required for the proper functioning of the Common Market;

   (c) promote the accelerated development of the least developed countries and economically depressed areas through the implementation of special programmes and projects in various fields of economic development;

   (d) adopt a regional policy that will look into all possible economic problems that Member States may face during the implementation of this Treaty and propose ways and means of redressing such problems in a manner that will satisfy the conditions of equitable and balanced development within the Common Market;

   (e) remove obstacles to the free movement of persons, labour and services, right of establishment for investors and right of residence within the Common

Market;

(f) promote co-operation in social and cultural affairs between themselves;

(g) co-operate in tourism and wildlife development and management;

(h) co-operate in the development and management of natural resources, energy and environment; and

(i) take, jointly, such other steps as are necessary to further the aims of the Common Market.

ARTICLE 5
General Undertakings

1. 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 Common Market 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 Common Market or the implementation of the provisions of this Treaty.

2. Each Member State shall take steps to secure the

enactment of and the continuation of such legislation to give effect to this Treaty and in particular:

(a) to confer upon the Common Market legal capacity and personality required for the performance of its functions; and

(b) to confer upon the regulations of the Council the force of law and the necessary legal effect within its territory.

3. Each Member State shall:

(a) designate a Ministry with whom the Secretary-General may communicate in connection with any matter arising out of the implementation and application of this Treaty, and notify such designation to the Secretary-General;

(b) transmit to the Secretariat copies of all relevant existing and future legislation and its official gazettes; and

(c) where it is required under this Treaty, supply or exchange information to or with another Member State and send copies of such information to the Secretariat.

4. The Member States undertake to accord the Common Market and its staff the privileges and immunities accorded to similar international organisations in their territories and in accordance with the Agreement on Privileges and Immunities.

ARTICLE 6
Fundamental Principles

The Member States, in pursuit of the aims and objectives stated in Article 3 of this Treaty, and in conformity with the Treaty for the Establishment of the African Economic Community signed at Abuja, Nigeria on 3rd June, 1991, agree to adhere to the following principles:

(a) equality and inter-dependence of the Member States;

(b) solidarity and collective self-reliance among the Member States;

(c) inter-State co-operation, harmonisation of policies and integration of programmes among the Member States;

(d) non-aggression between the Member States;

(e) recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights;

(f) accountability, economic justice and popular participation in development;

(g) the recognition and observance of the rule of law;

(h) the promotion and sustenance of a democratic system of governance in each Member State;

(i) the maintenance of regional peace and stability through the promotion and strengthening of good neighbourliness; and

(j) the peaceful settlement of disputes among the Member States, the active co-operation between neighbouring countries and the promotion of a peaceful environment as a pre-requisite for their economic development.