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ECONOMIC COMMISSION FOR AFRICA

Interim Secretariat of the Preferential
Trade Area for Eastern and Southern
African States

Second Meeting of the Intergovernmental
Commission of Experts of the PTA

Second Meeting of the Council of Ministers
of the PTA

Lusaka, Zambia
9 - 15 December 1982

AGREEMENT RELATING TO THE PRIVILEGES AND IMMUNITIES OF THE PREFERENTIAL
TRADE AREA FOR EASTERN AND SOUTHERN AFRICAN STATES

THE HIGH CONTRACTING PARTIES

RECALLING subparagraph (a) of paragraph 2 of Article 44 of the Treaty establishing the Preferential Trade Area for Eastern and Southern African States which provides that the Preferential Trade Area shall have in the territory of each Member State the legal capacity required for the performance of its functions;

RECALLING FURTHER paragraph 4 of Article 44 of the Treaty which provides that the privileges and immunities to be recognized and granted by the Member States of the Preferential Trade Area in connection with the Preferential Trade Area shall be determined by the Council of Ministers of the Preferential Trade Area;

AWARE that the Council of Ministers of the Preferential Trade Area has accordingly determined the privileges and immunities to be recognized and granted by the Member States in connection with the Preferential Trade Area to be as set out in this Agreement;

HEREBY AGREE AS FOLLOWS:

ARTICLE 1

Intrepretation

In this Agreement:

- (a) "Council" means the Council of Ministers established by Article 7 of the Treaty;
- (b) "Member State" means a Member State of the Preferential Trade Area;
- (c) "Officials of the Preferential Trade Area" means Officials entitled to the privileges and immunities set out in this Agreement
- (d) "Preferential Trade Area" means the Preferential Trade Area for Eastern and Southern African States established by Article 2 of the Treaty;
- (e) "Treaty" means the Treaty for the establishment of the Preferential Trade Area for Eastern and Southern African States.

ARTICLE 2

Juridical Personality

The Preferential Trade Area shall possess juridical personality. It shall have the capacity:

- (a) to contract;
- (b) to acquire and dispose of immovable and movable property;
- (c) to institute legal proceedings.

ARTICLE 3

Property, Funds and Assets

1. The Preferential Trade Area, its premises, buildings, assets and other property wherever located and by whomsoever held shall enjoy immunity from every form of legal process except in so far as in any particular case it has expressly waived its immunity. It is however, understood that no waiver of immunity shall extend to any measure of execution.
2. The premises and buildings of the Preferential Trade Area shall be inviolable. The property and assets of the Preferential Trade Area, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and from any other form of interference whether by executive, administrative, judicial or legislative action.
3. The archives of the Preferential Trade Area and in general all documents belonging to it or held by it shall be inviolable wherever located.
4. Without being restricted by financial controls, regulations or moratoria of any kind:
 - (a) the Preferential Trade Area may hold funds, gold or currency of any kind and operate accounts in any currency;
 - (b) the Preferential Trade Area shall be free to transfer its funds, gold or currency from one country to the other, or within any country and to convert any currency held by it into any other currency.
5. In exercising its rights under paragraph 4 above, the Preferential Trade Area shall pay due regard to any representations made by the Government of any Member State in so far as it is considered that effect can be given to such representations without detriment to the interests of the Preferential Trade Area.

ARTICLE 4

Tax Exemptions

1. The Preferential Trade Area, its income, assets and properties shall be exempt:
 - (a) from all direct taxes, except that the Preferential Trade Area shall not claim exemption from taxes or dues which are no more than charges for public utility services;
 - (b) from all import and export duties prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Preferential Trade Area for its official purposes: Provided, however, that articles imported under such exemptions shall not be sold or otherwise disposed of in the Member State into which they were imported except under conditions agreed upon by the appropriate authorities of the Government of that Member State;

- (c) from customs duties, prohibitions and restrictions of import and exports in respect of its publications.

2. The Preferential Trade Area shall be exempt from exercise duties and from taxes which are payable on the purchase of movable and immovable property which form part of the price to be paid. The Member States shall make appropriate administrative arrangements for the remission or refund of the amount of duty or tax if such duty or tax has been charged.

ARTICLE 5

Facilities in respect of communications

1. The Preferential Trade Area shall enjoy in the territory of each Member State for its official correspondence treatment not less favourable than that accorded by the Government of that Member State to any other international organisation as well as any Government, including its diplomatic missions in the matters of priorities, rates and taxes on mails cables, telegrams, radiograms, telephotos, telephone and other communications, as well as press rates for information to the press and radio. All official correspondence and other official communications of the Preferential Trade Area shall not be subject to censorship.

2. The Preferential Trade Area shall have the right to use codes and to despatch and receive its official correspondence either by courier or in sealed bags which shall have the same immunities and privileges as diplomatic couriers and bags.

ARTICLE 6

Representatives of Member States

1. Representatives of the Member States to the institutions of the Preferential Trade Area and conferences convened by the Preferential Trade Area, shall, while exercising their functions, and during their travel to and from the place of such meetings, enjoy the following privileges and immunities:

- (a) immunity from personal arrest or detention and from seizure of their personal baggage, and in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;
- (b) inviolability for all papers and documents;
- (c) the right to use codes and to receive papers or correspondence by courier or in sealed bags;
- (d) exemption in respect of themselves and their spouses from immigration restrictions as are accorded to representatives of foreign governments on temporary official missions;
- (f) the same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions.

2. In order to secure, for the representatives of the Member States to the institutions of the Preferential Trade Area and to conferences convened by the Preferential Trade Area, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Member States.

3. Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Member States of the Preferential Trade Area to conferences convened by the Preferential Trade Area, are present in a Member State for the discharge of their duties, shall not be considered as periods of residence.

4. Privileges and immunities are accorded to the representatives of Member States not for the personal benefit of the individuals themselves but in order to safeguard the independent exercise of their functions in connection with the Preferential Trade Area. Consequently, a Member State not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member State, the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

5. The provisions of paragraph 1, 2 and 3 of this Article are not applicable as between a representative and the authorities of the State of which he is a national or of which he is or has been the representative.

6. In this Article, the expression "representative" shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

ARTICLE 7

Officials of the Preferential Trade Area

1. The Secretary-General shall specify the categories of officials to which the provisions of this Article and Article 9 shall apply. He shall submit these categories to the Council for approval. Thereafter, these categories shall be communicated to the Governments of all the Member States. The names of the officials included in these categories shall from time to time be made known to the Governments of the Member States.

2. Officials of the Preferential Trade Area shall:

- (a) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
- (b) be exempt from taxation on the salaries and emoluments paid to them by the Preferential Trade Area;
- (c) be immune from national service obligations;
- (d) be immune together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;

- (e) be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;
- (f) be given together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;
- (g) have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

3. Privileges and immunities are granted to officials in the interests of the Preferential Trade Area and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Preferential Trade Area. In the case of the Secretary-General, the Council shall have the right to waive immunity.

4. The Preferential Trade Area shall co-operate at all times with the appropriate authorities of the Member States to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

ARTICLE 8

Experts on Mission for the Preferential Trade Area

1. Experts (other than officials of the Preferential Trade Area) performing missions for the Preferential Trade Area shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular, they shall be accorded:

- (a) immunity from personal arrest or detention as well as any official interrogation and from inspection or seizure of their personal baggage except where he is caught in the actual commission of an offence and the Member States concerned shall immediately inform the Secretary-General.
- (b) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the Preferential Trade Area.

- (c) inviolability for all official correspondence;
- (d) the same facilities in respect of exchange facilities as are accorded to representatives of foreign governments on temporary official missions.

2. Privileges and immunities are granted to experts in the interests of the Preferential Trade Area and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert other than an official of the United Nations, in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the Preferential Trade Area.

ARTICLE 9

Preferential Trade Area Laissez-Passer

The Preferential Trade Area may issue Preferential Trade Area Laissez-Passer to its officials. The Laissez-Passer shall be recognised and accepted as valid travel document by the authorities of the Member States.

ARTICLE 10

Settlement of Disputes

All disputes that may arise between the Preferential Trade Area on the one hand and a Member State on the other hand, regarding the interpretation or application of this Agreement shall be referred to the Tribunal of the Preferential Trade Area as established by Article 10 of the Treaty and the decision of the Tribunal shall be final.

ARTICLE 11

Entry into force

This Agreement shall enter into force provisionally when signed by or on behalf of the High Contracting Parties and definitively upon ratification by at least seven signatory States.

ARTICLE 12

Depositary

This Agreement and all Instruments of Ratification shall be deposited with the Executive Secretary of the United Nations Economic Commission for Africa who shall transmit certified true copies to all the Member States.

DONE at Lusaka, the Republic of Zambia on the seventeenth day of December in the year one thousand nine hundred and eighty two in the English and French languages, the two texts being equally authentic.

IN FAITH WHEREOF the undersigned have placed their signatures at the end of this Agreement.

The President of the Republic of Burundi and Chairman of the Uprona Party.

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 Life President of the Republic of Malawi

The Prime Minister of Mauritius

The President of the Somali Democratic Republic

His Majesty the King of the Kingdom of Swaziland

The President of the Republic of Uganda

The President of the Republic of Zambia

The President of the Republic of Zimbabwe