



EAST AFRICAN COMMUNITY

MEETING OF THE MULTI SECTORAL COUNCIL TO NEGOTIATE THE EAST AFRICAN COMMUNITY COMMON MARKET PROTOCOL

REPORT OF THE MEETING

1.0 OPENING

1.1 Introduction

The meeting was convened in accordance with the Program of Work of on the EAC Common Market Negotiations for the period July – December 2008. The meeting was attended by Ministers, Permanent Secretaries, Ambassadors and members of the HLTF from all the Partner States. The list of delegates is hereto attached as *Annex I*.

1.2 Bureau

Rwanda was elected Chairperson and Hon Monique Mukaruliza, Minister for East African Community Affairs chaired the meeting. Tanzania was elected Rapporteur and Ms. Grace Naburi, Principal Education

Officer, Ministry of Education and Vocational Training acted in that capacity.

1.3 Agenda

The draft agenda was adopted and is hereto attached as *Annex II*.

1.4 Statement by Deputy Secretary General (P&P)

On behalf of the Secretary General, and on his own behalf, Amb. Julius Onen, the Deputy Secretary General (Projects and Programmes) welcomed the delegates to Zanzibar, for the maiden meeting of the Multi Sectoral Council to negotiate the EAC Common Market Protocol and wished them fruitful deliberations.

Amb. Onen said the Common Market Protocol negotiations had made significant progress and reached an advanced stage. He said consensus had been reached on significant aspects and a large body of the proposed Common Market Protocol. He said there was great determination by all the Partner States to realize the Common Market by the set time frame of 2010. Amb. Onen hoped that with the inputs by the Multi-Sectoral Council, *“we would all come from Zanzibar with a clearer picture and road map to the finalization of a Common Market that truly meets the expectations of the East African people and has their broad support and acceptance”*.

On behalf of the EAC Secretariat, Amb. Onen thanked the Government of the Revolutionary Republic of Zanzibar for the warm reception and hospitality extended to all delegates during their stay in Zanzibar. The full statement of Amb. Onen is hereto attached as *Annex III*.

1.5 Statement by the Chairperson of the Council.

In her statement, Hon. Monique Mukaruliza, the Chairperson of the Council and Minister of East African Community of the Republic of Rwanda, noted that negotiations on the EAC Common Market had benefited from the positive orientation and the give and take attitude that had prevailed among the negotiating parties. She said the negotiations were also positively driven by a commonly shared sense of the Common Market at a time when the EAC integration process is deepening.

Hon. Mukaruliza observed a lot of headway had been made in the negotiations and consensus reached on many of the key provisions of the draft Protocol. She said, however, there was still some outstanding work to be completed that may necessitate some extension of the completion deadline. She urged the Ministerial session to provide further policy guidance and way forward on some of the outstanding issues which will feed into the remaining rounds of negotiations and give impetus towards the timely finalization of the Draft Protocol.

The full statement of Hon. Monique Mukaruliza is hereto attached as *Annex IV*.

1.6 Official Opening Statement by H.E. President of the Revolutionary Government Zanzibar.

The meeting of the Multi Sectoral Coordination Committee was officially opened by H.E. Dr. Amani Abeid Karume, President of the Zanzibar and Chairman of the Revolutionary Council. H. E. President Abeid Amani Karume noted that the Common Market negotiations had great significance to

the systematic progress and steady achievement of the East African Community. He commended the members of the High Level Task Force for demonstrating a sense of the strategic and historic mission to usher in the Common Market which the East African people yearned for.

The President further noted that*“the Common Market that we are negotiating today is not a new phenomenon. We have had an East African Common Market before, our aim now is to build a Common Market that avoids the mistakes of the previous Community which, unfortunately collapsed in 1977. It has to be a better Common Market, stronger and one that lasts. Only then will it be an effective Common Market that will be equal to the challenges of a new economic and social order”*.

The full statement of H.E. Dr. Amani Abeid Karume, President of the Revolutionary Government of Zanzibar is hereto attached as *Annex V*.

2.0 CONSIDERATION OF THE REPORT OF THE MULTI SECTORAL COORDINATION COMMITTEE

The Multi Sectoral Council considered the report of the Multi Sectoral Coordination Committee on the EAC Common Market Protocol and deliberated as follows:

2.1 The Preamble

The meeting noted the preamble to the EAC Common Market Protocol as indicated in the Draft Protocol attached hereto as *Annex VI*. The meeting also agreed that the citing of the Partner States in the Protocol will follow the EAC established procedure. The meeting further agreed on the need to define and interpret all

the key terms in the Protocol (Part I Article 1 – Interpretation).

Decisions

The Council:

- (a) Took note of the progress made in developing the Preamble to the EAC Common Market Protocol.**
- (b) Directed the HLTF to commence work on definitions and interpretation of the terms used in the Protocol.**

2.2 Establishment of the EAC Common Market

The noted the provisions that will establish the EAC Common Market as indicated under Part I Article 2 of the Draft Protocol.

Decision

The Council took note of the progress made in developing the provisions that will establish the EAC Common Market as indicated under Part I Article 2 of the Draft Protocol.

2.3 Objectives of the EAC Common Market

The noted the objectives of the EAC Common Market as indicated under Part I Article 3 of the Draft Protocol.

Decision

The Council took note of the progress made in developing the objectives of the EAC Common Market

Protocol as indicated under Part I Article 3 of the Draft Protocol.

2.4 Principles of the EAC Common Market

The meeting considered and agreed on the principles of the EAC Common Market as indicated under Part I Article 4 of the Draft Protocol.

Decision

The Council took note of the progress made in developing the principles of the EAC Common Market as indicated under Part I Article 4 of the Draft Protocol.

2.5 Free Movement of Goods

The meeting noted the provisions in the draft Protocol that will govern the free movement of goods within the EAC Common Market as indicated under Part II Article 5 of the Draft Protocol.

Decision

The Council took note of the progress made in developing the provisions that will govern the free movement of goods within the EAC Common Market as indicated under Part II Article 5 of the Draft Protocol.

2.6 Free Movement of Persons

The meeting noted the provisions that will govern the free movement of persons within the EAC Common Market as indicated under Part III Article 6 of the Draft Protocol.

However, the meeting did not reach consensus on Articles 6(5), 6 (6), 6(7), 6(8) and 6(13) of the Draft Protocol. Burundi, Kenya, Rwanda and Uganda proposed to retain Article 6 (5&6) as the basis for allowing East African citizens to use their national Identity Documents (IDs) for travel within the Community citing the following reasons:

- (i) The process of acquisition of national passports is cumbersome and not easily accessible to the majority of East African citizens.
- (ii) Since all Partner States are obliged to issue national identity cards in line with Council decisions (CM4a of 13th September 2002 and CM14/Directive 48 of 28th September 2007) the same will be accessible to all Community nationals and should be used to facilitate their free movement within the Common Market.
- (iii) IDs will ease the movement of cross-border communities who have hitherto used temporary movement permits for which they are charged for each crossing and in the alternative engage in illegal crossings. Elevating IDs to travel documents will alleviate this problem.
- (iv) The use of national IDs for travel within the Common Market will not stop the use of national or East African passports. It will only enrich the travel document regime for the benefit of the common man.

Tanzania on the other hand proposed to retain Article 6 (7&8) for the following reasons:

- (i) IDs are used for identification of nationals but are not internationally recognised as standard travel documents.
- (ii) The Treaty under Article 104 (3) (b) provides for Partner States to maintain common standard travel documents
- (iii) There is already an East African Passport which is accepted as a common standard travel document in East Africa
- (iv) For public security, given the size of the country and porous borders, Tanzania cannot accept Identity Card as a travel document.

During the Council meeting, Tanzania redrafted Article 6(7) to read as *‘The national identification documents issued by Partner States shall be the basis of identifying Citizens of the Partner States’*. Tanzania submitted that she will consult further on this issue and will report its position during the subsequent meeting.

Decisions

The Council:

- (a) Took note of the progress made in developing the provisions that will govern the free movement of persons within the EAC Common Market as indicated under Part III Article 6 of the Draft Protocol.
- (b) Urged Tanzania to consult on Article 6 (5, 6, 7,8 & 13) of the Draft Protocol and report at the next meeting.

2.7 Free Movement of Workers

The meeting noted the provisions that will govern the free movement of workers within the EAC Common Market as indicated under Part IV Articles 7, 8, 9, 10 and 11 of the Draft Protocol.

The meeting noted that Article 9 is an omnibus clause that affects all the four freedoms and agreed that this Article could be reformulated, at a later stage, by the legal draftspersons as a stand-alone article.

The meeting also noted that the model Protocol had not provided for transitional provisions in line with Article 76 (3) of the Treaty. The meeting agreed to draft the necessary transitional provisions, at a later stage, after deliberating on all articles of the Protocol.

Decisions

The Council took note of the:

- (a) Progress made in developing the provisions that will govern the free movement of workers within the EAC Common Market as indicated under Part IV Articles 7, 8, 9, 10 and 11 of the Draft Protocol.**
- (b) Outstanding work on Article 9 of the Draft Protocol.**

2.8 The Right of Establishment and Residence.

The meeting noted the provisions that will govern the Right of Establishment and Residence within the EAC Common Market as indicated under Part V Articles 12, 13, 14, 15, 16, 17 and 18 of the Draft Protocol. The

meeting reached consensus on most of the provisions under Part V of the Draft Protocol but the following issues remained outstanding:

Article 13- Abolition and Non-Introduction of Restrictions

Burundi, Kenya, Rwanda and Uganda proposed to retain the sub-paragraph 4(d) as improved to remove the word ‘*acquire*’ and add “*in accordance with the national laws of the Partner States*” in the text considering that:

- (i) A person cannot exercise the Right of Establishment without access to land and buildings;
- (ii) Land is an important factor of production, and therefore a Common Market issue.

Rwanda proposed further to add the words ‘*acquire/access*’ in the text so as to allow East Africans to own land and properties in other Partner States. Rwanda further proposed to delete the words “*in accordance with the national laws of the Partner States*” from the text.

Tanzania proposed to delete the sub-paragraph 4(d) dealing with access to and use of land and buildings for establishment for the following reasons-:

- (i) Land is not a Common Market issue and investors establishing in Tanzania are adequately covered under Tanzania investment rules.
- (ii) Land is sensitive and most civil conflicts in the region are connected to the unequal distribution of land.

Tanzania submitted that she will consult further on this issue and will report its position during the subsequent meeting.

Article 14-Equal Treatment of Companies and Firms

This was agreed in principle, by the HLTF. The Secretariat was requested to refine this provision so as to define “*continuous link*” and explore “*substantial economic activities*” as a measure to guard against shell companies accessing Common Market privileges and also to prevent protocol abuse.

Article 17-Residence Permit

The meeting agreed in principle to retain Article 17 (2) in the Protocol but directed the HLTF to redraft it to include a provision protecting a Partner State from legal claim in case a residence permit is subsequently denied to an applicant.

Article 18-Permanent Residence

This section remained bracketed. Rwanda, Kenya, Burundi and Uganda submitted that permanent residence is a Common Market matter as it is linked to the other freedoms and should, therefore, be retained in the Protocol. The EAC Secretariat explained that this provision is necessary in order to accord people who have worked and resided in other Partner States, for a given period of time, a right to reside permanently in that Partner State.

Tanzania, on the other hand, was of the view that this issue should be referred to the Chiefs of Immigration for consideration and should, therefore, be deleted from the Common Market Protocol.

Tanzania submitted that the issue of permanent residence is not provided for in her constitution but agreed, in principle, with the provisions. Tanzania submitted that she will consult further on this issue and will report its position during the subsequent meeting.

Decisions:

The Council:

- (a) Took note of the progress made in developing the provisions that will govern the Right of Establishment and Residence within the EAC Common Market as indicated under Part V of the Draft Protocol.
- (b) Took note of the outstanding work on Article 17 (2) of the Draft Protocol.
- (c) Urged Tanzania to consult on Articles 13(4)(d) and 18 of the Draft Protocol and report at the next meeting.

2.9 Free Movement of Services

The meeting considered the provisions that will govern the free movement of services within the EAC Common Market as indicated under Part VI Articles 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 of the Draft Protocol. The meeting reached consensus on most of the provisions under Part V of the Draft Protocol but the following issues remained outstanding:

Article 24-Domestic Regulation

The meeting agreed to delete the paragraph under Article 24 reading as follows: *‘Each Partner State shall maintain practicable judicial, arbitral or administrative institutions and procedures for settling disputes on measures affecting the free movement of services’*. The meeting further agreed to consider the same while handling provisions under dispute settlement mechanism.

Article 25- Progressive Implementation

The meeting agreed, in principle, on a modified Article 25, as reflected in the Draft Protocol and directed the HLTF to consider the provisions during their forthcoming meeting in Rwanda.

Unfair Business Practices

The meeting agreed to shift the provisions of the “*Unfair Business Practices*” from the part on free movement of services (Article 28, Version 4: Kampala) to Part IX dealing with competition and consumer welfare and the proposed formulation now appears under Article 42 of the Draft Protocol.

Decisions

The Council took note of the:

- (a) Progress made in developing the provisions that will govern the free movement of services within the EAC Common Market, where consensus was reached, as indicated under Part VI of the Draft Protocol.**

- (b) **Outstanding work on Article 25 of the Draft Protocol.**

2.10 Free Movement of Capital.

The meeting noted the provisions that will govern the free movement of capital within the EAC Common Market as indicated under Part VII Articles 29, 30, 31, 32, 33, 34, 35 and 36 of the Draft Protocol.

Decision

The Council took note of the progress made in developing the provisions that will govern the free movement of capital within the EAC Common Market as indicated under Part VII Articles 29, 30, 31, 32, 33, 34, 35 and 36 of the Draft Protocol.

2.11 Economic and Financial Sector Policy Coordination

The meeting noted the provisions that will govern economic and financial sector policy coordination within the EAC Common Market as indicated under Part VIII Articles 37, 38, 39 and 40 of the Draft Protocol.

Decision

The Council took note of the progress made in developing the provisions that will govern economic and financial sector policy coordination within the EAC Common Market as indicated under Part VIII Articles 37, 38, 39 and 40 of the Draft Protocol.

2.12 Competition and Consumer Welfare

Having taken note of the East African Community Competition Act, 2006, the meeting considered the provisions that will govern competition and consumer welfare in the Community as indicated under Part IX Articles 41 and 42 of the Draft Protocol. The meeting reached consensus on most of the provisions under Part IX of the Draft Protocol but the following issues remained outstanding:

Article 41- Competition and Consumer Welfare.

The meeting agreed to retain Article 41(5) in the Draft Protocol but reformulate it to delete the phrase “*or affiliated with*” from the text.

Article 42-Unfair Business Practices

The meeting agreed to consult further on the provisions under Article 42 and consider the same during the next meeting of the HLTF.

Decisions

The Council took note of the

- (a) Progress made in developing the provisions that will govern competition and consumer welfare within the EAC Common Market as indicated under Part IX of the Draft Protocol.**
- (b) Outstanding work under Article 42 of the Draft Protocol.**
- (c) Directed the HLTF to re draft this part to reflect the fact that the EAC Common Market Protocol is superior to the EAC Competition Law.**

2.13 Common Commercial Policy

The meeting noted the provisions on common commercial policy in the Community as indicated under Part X Articles 43, 44, 45 and 46 of the Draft Protocol.

Decision

The Council took note of the progress made in developing the provisions on common commercial policy as indicated under Part X Articles 43, 44, 45 and 46 of the Draft Protocol.

2.14 Transport Policy

The meeting noted the provisions that will govern transport policy in the Community as indicated under Part XI Articles 47, 48, 49, 50, 51 and 52 of the Draft Protocol.

The Council took note that the HLTF will consider the outstanding issues on Transport Policy at its next meeting in Rwanda.

Decisions

The Council took note of the:

- (a) Progress made in developing the provisions that will govern transport policy within the EAC Common Market as indicated under Part XI of the Draft Protocol.

- (b) **Outstanding work under Transport Policy in the Community.**

2.15 Approximation of Laws

The meeting noted the provisions on approximation of laws in the Community as indicated under Part XII Article 53 of the Draft Protocol. The meeting agreed to delete the following formulation from the Draft Protocol but proposed that this be handled, at a later stage, by the Secretariat:

“ The Secretariat shall draw up an inventory of national laws, regulations and administrative provisions of each Partner State which fall under Article 96 and which have not been harmonized pursuant to that Article.”

Decision

The Council took note of the progress made in developing the provisions on Approximation of Laws as reflected under Part XII Article 53 of the Draft Protocol.

2.16 Terms of Reference for Consultancy Studies on Services

The meeting noted the decision of the HLTF requesting the Secretariat to draw up ToR for consultancy studies on the liberalisation of the services sector in the Community. The meeting further noted that the draft ToR were presented, considered and agreed upon by the Coordination Committee and are hereby attached as Annex **VII**.

The meeting agreed that the Secretariat should engage the services of competent and reputable Consultants to

undertake the study, working closely with the Partner States. In this regard, the EAC Secretariat was requested to source for the necessary funding and expeditiously commission the study.

Decisions

The Council:

- (a) Considered and adopted the terms of reference for consultancy studies on services liberalisation attached hereto as *Annex VII*.
- (b) Directed the EAC Secretariat to source for funding and commission consultancy studies on services liberalisation as per the ToR indicated under (a) above.

2.17 Timeframe for Negotiating the East African Community Common Market Protocol

Introduction

The meeting noted that the Summit of EAC Heads of State held in Arusha, Tanzania, on 5th April 2006 set *'timeframes of July 2006 to commence negotiations; December 2008 as the target date for concluding and signing the Common Market Protocol; June 2009 as the target date for ratification of the Protocol; and January 2010 as the target date for commencement of the Common Market.'* These timeframes were reaffirmed by subsequent Summit meetings and are also restated in the EAC Development Strategy 2006 – 2010.

Status of Negotiations

The meeting observed that negotiations on the EAC Common Market Protocol actually commenced in April

2008 and not in July 2006 as directed by the Summit. The intervening period was used to undertake a study on the EAC Common Market Protocol which was adopted by the Council in September 2007 as a basis for negotiations. By mid November 2008, the HLTF had deliberated and, by and large reached consensus, on the following aspects of the Protocol:

- (i) The Preamble
- (ii) Establishment of the Common Market
- (iii) Objectives and Principles
- (iv) Free Movement of Goods
- (v) Free Movement of Persons
- (vi) Free Movement of Workers
- (vii) Free Movement of Capital
- (viii) Right of Establishment and Residence
- (ix) Free Movement of Services
- (x) Transport Policy
- (xi) Competition and Consumer Welfare
- (xii) Economic and Financial Sector Policy
Coordination
- (xiii) Common Commercial Policy
- (xiv) Approximation of Laws

Outstanding Work

The meeting noted that substantial work remains to be done to finalise the above provisions. Besides that, relevant directives, regulations and laws that will form an integral part of the Protocol need to be developed. Some sections, like services, may indeed require some short term studies to guide the negotiators. Additionally, the following provisions are yet to be negotiated:

- (i) Social Policy
- (ii) Environment Policy
- (iii) Statistics
- (iv) Research and Technological Development
- (v) Institutional Reforms of the Community
- (vi) Financial Provisions
- (vii) Interpretations
- (viii) Protection of Intellectual Property Rights
- (ix) General provisions

The meeting observed that it is unlikely that the Protocol will be concluded by December 2008 due to a number of reasons including:

- i. Late commencement of the negotiations;
- ii. Schedule of meetings not followed as planned due to unavoidable circumstances;
- iii. Need to inform and consult stakeholders at national level;
- iv. Need for various studies to inform the negotiations;
- v. Capacity building workshops for the negotiators and undertaking of study tours to other integration blocs for best practices; and
- vi. Some issues take too long to get consensus and thus remain outstanding

Finalising the remaining parts of the Protocol plus developing the relevant directives, regulations and laws and undertaking the necessary legal drafting could be finalised by March 2009. It is proposed,

therefore, that the timeframe for concluding and signing the EAC Common Market Protocol be extended to the end of April 2009.

Plan of Action

The meeting proposed to handle the outstanding work as follows:

- (i) Meeting of the HLTF – 1st – 10th December 2008.
 - Outstanding Issues
 - Social Policy
 - Environment
 - Statistics
 - Research and Technological Development
- (ii) Meeting of the HLTF – 26th January – 4th February 2009.
 - Workshop on Institutional Reforms
 - Institutional Reforms of the Community
- (iii) Meeting of the HLTF – 23rd February – 4th March 2009.
 - Institutional Reforms of the Community
 - Outstanding Provisions
- (iv) Meeting of the HLTF – 23rd – 31st March 2009.
 - HLTF to consider outstanding issues
 - Meetings of the Multi Sectoral Coordination Committee and Council
 - Draftsmen to undertake the legal drafting

- (v) Meeting from 6th – 15th April 2009
- Draftsmen to undertake the legal drafting
 - Meeting of the Legal and Judicial Affairs Sectoral Council
- (vi) Meetings from 20th – 29th April 2009
- Meeting of the Council to adopt the Protocol
 - Summit meeting of EAC Heads of State to conclude and sign the EAC Common Market Protocol.

Decisions:

The Council

- (a) **Extended the timeframe for concluding and signing the EAC Common Market Protocol to April 2009.**
- (b) **Directed the HLTF to draw up a road map for developing the annexes, schedules, directives and regulations to the Common Market Protocol.**

3.0 ANY OTHER BUSINESS

The meeting appreciated the warm hospitality and facilitation extended to all the delegations by the people and the Revolutionary Government of Zanzibar.

SIGNED this 12th day of November 2008, by the respective
Heads of delegation of Partner States as hereunder.

.....
**Hon. Monique
Nsanabaganwa**
Minister for Trade
and Industry
**The Republic of
RWANDA**

.....
**Hon. Dr. Diodorus B.
Kamala (MP)**
Minister for East
African Cooperation
**The United Republic of
TANZANIA**

.....
**Mr. Venerand
Bakevyumusaya**
Minister for Regional
Integration and East
African Community
Affairs
**Republic of
BURUNDI**

.....
**Hon. Eriya
Kategaya**
First Deputy Prime
Minister and minister
for East African
Community Affairs
**Republic of
UGANDA**

.....
**Hon Amason Jeffa
Kingi**
Minister for East
African Community
**Republic of
KENYA**



**EAST AFRICAN COMMUNITY
FIRST DRAFT PROTOCOL ON THE ESTABLISHMENT OF THE EAST
AFRICAN COMMUNITY COMMON MARKET**

PURSUANT TO THE PROVISIONS OF ARTICLES 76 AND 104 OF THE TREATY FOR THE ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY, THE PROVISIONS FOR THE PROTOCOL FOR ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY COMMON MARKET ARE HEREBY SET FORTH:

PREAMBLE:

WHEREAS the Republic of Kenya, the United Republic of Tanzania, the Republic of Uganda, the Republic of Burundi, the Republic of Rwanda (hereinafter referred to as “the Partner States”), are Parties to the Treaty for the Establishment of the East African Community (hereinafter referred to as “the Treaty”);

AND WHEREAS under the provisions of Article 2 (2) and 5(2) of the Treaty, the Partner States undertake to, *inter alia*, establish among themselves a Common Market, as a transitional stage and an integral part of the Community;

- a) Under the provisions of Article 76(1) and (2) of the Treaty, the Partner States have determined that the establishment of a Common Market shall be progressive;
- b) Under provisions of Article 76(4) of the Treaty, the Partner States shall conclude a protocol on a Common Market;
- c) Recalling the decision of the 12th Council to conclude one protocol covering the provisions of Articles 76 and 104 of the Treaty;

NOTING that the Partner States concluded the Protocol Establishing the East African Community Customs Union;

CONSIDERING that the objective of establishing a Common Market is the realization of accelerated economic growth and development through the attainment of free movement of persons, labour, goods, capital and services, and the right of establishment and residence;

NOTING the importance of the development of the social dimensions including equal treatment of men and women in East Africa and the desire to ensure economic and social development in promoting employment, improved standards of living and working conditions within the Community;

CONSCIOUS of the individual obligations and commitments under the Treaty and under other regional and international economic partnerships;
RECALLING the vision of the Community is to widen, deepen and strengthen cooperation in economic, social and cultural fields;
AGREE AS FOLLOWS:

**PART I
ARTICLE 1
INTERPRETATION**

1. For the purposes of this Protocol:

[“Common Market” means the Common Market as defined in the Treaty, including free movement of persons, the right of establishment and residence.

“Worker” means a person who performs services for and under the directions of another person in return for remuneration. For the purposes of this Protocol, worker includes persons offering voluntary services for charitable or religious organizations.

“Person” for the purposes of this Protocol, means a citizen of a Partner State.

“Self employed person” means a person engaged in an economic activity not under any contract of employment or supervision and earns a living through this activity either working alone or with members of his or her family.

“Labour” for the purposes of this Protocol, means workers and self employed persons.

“Economic activity” means any legitimate income generating activity.

“Young worker” for purposes of this Protocol, means a worker, not exceeding 35 years of age who possesses skills/profession in any field.

“Spouse” means a husband or a wife in a legally recognized marriage in accordance with the national laws of a Partner State where the marriage was celebrated.

“Dependant” means a person who, by reason of age, disability or other incapacity is unable to maintain him/herself and depends wholly upon a worker or a self employed person for his/her maintenance].

**ARTICLE 2
ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY COMMON
MARKET**

- 1. In order to promote the objectives of the Community provided for under Article 5 of the Treaty and in accordance with the provisions of this Protocol, the Partner States hereby establish a Common Market as an integral part of the Community.**
- 2. The Common Market established under paragraph 1 of this Article, shall be called the East African Community Common Market (hereinafter referred to as “the Common Market”).**
- 3. The Common Market shall be managed in accordance with the law of the Community enacted for that purpose.**
- 4. In accordance with the provisions of Articles 76 and 104 of the Treaty, this Protocol provides for the following: -**
 - a) Free movement of goods;**
 - b) Free movement of persons;**
 - c) Free movement of labour;**
 - d) Right of establishment;**
 - e) Right of residence;**
 - f) Free movement of services; and**
 - g) Free movement of capital;**
- 5. The establishment of the Common Market shall be progressive and in accordance with the schedules approved by Council.**

ARTICLE 3

OBJECTIVES OF THE COMMON MARKET

- 1. The overall objective of the EAC Common Market is to widen and deepen cooperation among the Partner States in economic, social and cultural fields, research and technology for their mutual benefit.**
- 2. The specific objectives are to: -**
 - (a) Accelerate economic growth and development through the attainment of free movement of goods, labour, services, capital, persons, and right of establishment and residence;**
 - (b) Strengthen, coordinate and regulate the economic and trade relations among Partner States in order to promote their accelerated harmonious and balanced development;**

- (c) Sustain expansion and integration of economic activities, the benefit of which shall be equitably distributed.
- (d) Promote common understanding and cooperation among its people for their economic, social, cultural and technological advancement.

ARTICLE 4
PRINCIPLES OF THE COMMON MARKET

1. The Common Market shall be guided by the fundamental and operational principles of the Community as enshrined in Articles 6 and 7 of the Treaty.
2. Within the scope of application of this Protocol and without prejudice to any special provisions contained herein, any discrimination on grounds of nationality shall be prohibited.

PART II
ARTICLE 5
FREE MOVEMENT OF GOODS

1. Free movement of goods between the Partner States shall be governed by:-
 - a) the provisions of the Protocol on Establishment of the East African Community Customs Union (hereinafter referred to as the ‘Customs Union Protocol’) and the Customs Law;
 - b) the provisions of the EAC Protocol on Standardization, Quality Assurance, Metrology and Testing and EAC Standardization, Quality Assurance, Metrology and Testing Act, 2006; and
 - c) the provisions of this Protocol.
2. The Partner States undertake to conclude protocols on SPS, TBT and any other relevant instruments for the application of this Protocol.

PART III
ARTICLE 6
FREE MOVEMENT OF PERSONS

1. The Partner States hereby guarantee the right to free movement of persons, who are citizens of the Partner States, within the Community.
2. The right to free movement of persons shall entail the abolition of any discrimination based on nationality.
3. The right to free movement of persons shall include the following:
 - a. The right to enter the territory of a Partner State without a visa;
 - b. The right to move freely within the territory of a Partner State;

- c. The right to stay in the territory of a Partner State on such terms as shall be directed by the Council;
 - d. The right to exit without restrictions; and
 - e. The right to full protection by the laws of a Partner State.
4. The enjoyment of the rights specified under Sub-Article 3 shall be subject to limitations justified on grounds of public policy, public security or public health. The Partner State imposing such limitation shall be obliged to notify the other Partner States accordingly.

The Council shall, within a period of from entry into force of this protocol issue directives and regulations to govern the application of sub-article 4 of this Article.

5. *[Partner States shall establish a common system of issuing national identification documents.]*
6. *[The national identification documents issued by Partner States shall be the basis for identifying Citizens of the Community and shall, among other common standard travel documents, facilitate the free movement of the holders thereof]*

OR

7. *[The national identification documents issued by Partner States shall be the basis of identifying Citizens of the Partner States.]*
8. *[The Partner States shall maintain common standard travel documents for their citizens to facilitate the free movement of the holders thereof.]*
9. The Partner States shall effect reciprocal opening of border posts and keep the posts opened and manned for 24 hours.
10. The right to free movement of persons does not include exemption from prosecution or extradition where a national of one Partner State commits a crime in another Partner State.
11. The movement of refugees within the Community shall be governed by the relevant international conventions.
12. For the purposes of this Article, ‘person’ means a citizen of a Partner State.
13. *[For the purposes of this Article, ‘travel document’ may include such other documents as the Council may direct.]*

PART IV

ARTICLE 7

FREE MOVEMENT OF WORKERS

1. The Partner States hereby guarantee the right to free movement of workers within the Community.
2. The right to free movement of workers shall entail abolition of any discrimination based on nationality between workers of Partner States as regards employment, remuneration and other conditions of work and employment.
3. Subject to limitations justified on grounds of public policy, public security or public health, the right to free movement of a worker shall entail the right to:
 - a. Apply and accept offers of employment actually made;
 - b. Move freely within the territory of the Partner States for this purpose;
 - c. Stay in the territory of a Partner State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
 - d. Enjoy the freedom of association and to collectively bargain for better working conditions in accordance with national laws of a Partner State;
 - e. Conclude and perform contracts of employment in accordance with the provisions in force laid down by national law, regulation or administrative action, without any discrimination resulting there from; and
 - f. Social security in accordance with Article 12 of this Protocol.
4. A national of a Partner State who seeks employment in the territory of another Partner State shall receive the same assistance as that afforded by the employment offices in that State to their own nationals seeking employment.
5. Partner States shall, within the framework of a joint programme, encourage the exchange of young workers.
6. Provisions laid down by law, regulation or administrative action or administrative practices of a Partner State shall not apply where the principal aim or effect is to keep nationals of other Partner States away from the employment offered.
7. The provisions of this Article shall not apply to employment in the public service unless the relevant national laws and regulations of a host Partner State so permit.

ARTICLE 8

HARMONIZATION OF LABOUR LAWS, POLICIES AND PROGRAMMES

1. The Partner States undertake to harmonize their labour laws, policies, programmes and legislation to secure free movement of labour within the Community.
2. The Council shall issue directives or make regulations setting out the measures required to remove all restrictions to free movement of workers and in particular:
 -
 - a) by ensuring close co-operation between national employment services;
 - b) by abolishing those administrative procedures and practices in respect of eligibility for available employment;
 - c) by abolishing all such qualifying periods and other restrictions provided for either under national legislation or under any agreement previously concluded;
 - d) by setting up appropriate mechanisms to bring offers of employment in touch with applications for employment and to facilitate the achievement of a balance between supply and demand in the employment market; and
 - e) by maintaining common employment policies, programmes and laws.

ARTICLE 9

HARMONISATION AND MUTUAL RECOGNITION OF ACADEMIC AND PROFESSIONAL QUALIFICATIONS¹

1. Partner States undertake to harmonise their curricula, examinations, standards, certification and accreditation of educational and training institutions.
2. Partner States undertake to mutually recognise academic and professional certificates of citizens of the Partner States.
3. Partner States shall mutually recognize the relevant experience obtained, requirements met, licences or certifications granted in another Partner State for the purposes of undertaking any economic activity in accordance with the provisions of this Protocol.
4. For purposes of this Article, the Council shall issue directives and make regulations on its implementation.

ARTICLE 10

RIGHTS OF SPOUSES AND DEPENDANTS OF A WORKER

¹ Partner States agreed that the draftpersons should also consider a proper placement of Article 9 as it is relevant to free movements of persons, workers, services and the right of establishment.

1. Where a national of a Partner State is pursuing an activity as a worker in the territory of another Partner State, his/her spouse and dependant children who are under the age of 21 years shall have the right to accompany the worker.
2. The spouse under Sub-Article 1 of this Article, shall have a right to take up any activity as an employed person in the territory of that Partner State
3. The dependent children under sub-article 1 shall have a right to take up any activity as an employed person in the territory of that Partner State subject to the age limits under national law.
4. Partner States shall facilitate the admission of any member of the family of a worker not referred to in Sub–Article 1, if such dependent is living under the roof of the worker in the country where s/he comes from.

ARTICLE 11
SOCIAL SECURITY OF WORKERS

1. The Partner States undertake to harmonize their social security policies, laws and systems to secure social security benefits for workers and their dependants.
2. The Council shall issue directives and make regulations on:-
 - a) aggregation and portability of social security benefits; and
 - b) enjoyment of the same social and tax advantages as national workers.
3. A worker who is a national of a Partner State and who is employed in the territory of another Partner State shall enjoy all the rights and benefits accorded to national workers.

PART V
RIGHT OF ESTABLISHMENT AND RESIDENCE
ARTICLE 12

RIGHT OF ESTABLISHMENT

1. Partner States hereby guarantee the right of establishment of nationals of other Partner states in their territory.
2. The right of establishment shall entail the right to:
 - a) take up and pursue activities as self employed persons,
 - b) set up and manage economic undertakings,
 - c) set up agencies, branches and subsidiaries,;
3. The enjoyment of the rights specified under sub-Article 2 of this Article, shall be subject to limitations justified on grounds of public policy, public security or public health

The Partner State imposing such limitation shall be obliged to notify the other Partner States accordingly.

4. The Council shall, within a period of from entry into force of this protocol issue directives and regulations to govern the application of sub-article 2 of this Article.

ARTICLE 13

Abolition and non-introduction of Restrictions

1. Partner States shall abolish all restrictions on the right of establishment based on nationality of companies, firms and citizens of Partner States, and shall not introduce any restrictions on the right of establishment in their territories, save as otherwise provided in this protocol.
2. For the purpose of this article, the Council shall within a period of one year from entry into force of this Protocol, adopt a schedule for the abolition of existing restrictions on the freedom of the establishment within the Community;
3. The Schedule shall set out the general conditions under which freedom of establishment is to be attained.
4. The Partner States shall carry out the duties devolving upon them under the preceding paragraphs, in particular:
 - a) by abolishing those administrative procedures and practices, whether resulting from national legislation, or from agreements previously concluded between Partner States, the maintenance of which would form an obstacle to freedom of establishment;
 - b) by effecting the progressive abolition of administrative procedures and practices resulting from national legislation in respect of the conditions for:
 - (i) setting up agencies, branches or subsidiaries; and
 - (ii) the entry of personnel of the main establishment into managerial or supervisory positions in such agencies, branches or subsidiaries.
 - c) by ensuring that workers of one Partner State employed in the territory of another Partner State may remain in that territory for the purpose of taking up activities therein as self-employed persons, where they satisfy the conditions which they would be required to satisfy if they were entering that State at the time when they intended to take up such activities;
 - d) *[by enabling a national of one Partner State to access and use land and buildings situated in the territory of another Partner State for purposes of establishment in accordance with the national laws of the Partner States].*

- e) by coordinating safeguard measures, which in the interest of the Community, are required for the protection of the companies and firms to ensure that the measures are equivalent throughout the Community; and
 - f) by satisfying themselves that the conditions of establishment are not distorted by aids granted by Partner States.
5. The provisions of this chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by the law, regulation or administrative action providing for special treatment for foreign nationals accorded by individual Partner States on grounds of public policy, public security or public health.
 6. The Council shall within two years from the entry into force of this Protocol, issue directives for the harmonization of the aforementioned provisions laid down by the law, regulation or administrative action.

ARTICLE 14

EQUAL TREATMENT OF COMPANIES AND FIRMS

1. Companies or firms constituted in accordance with the law of a Partner State and having their registered office, central administration or principal place of business and with a continuous link in the Partner State shall, for purposes of establishment, be accorded non discriminatory treatment in other Partner States.
2. *‘Companies’ or ‘firms’ means companies or firms constituted under civil or commercial law, including co-operative societies and other legal persons governed by public or private law, save for those which are non-profit making.*

ARTICLE 15

Social Security for Self Employed Persons

1. The Partner States shall endeavor to review and harmonize their social security policies, laws and systems to secure social security benefits for self-employed persons, spouse and their dependants².
2. A self-employed person who is in the territory of another Partner State may join a Social Security system of that Partner State where the laws, policies and systems of that Partner State provide for social security for self-employed persons.
3. The Council shall issue directives and make regulations on:-
 - a) aggregation and portability of social security benefits; and

² **All PSs agree that for the purposes of this article a “dependant” for social security purposes will be as provided for in national laws.**

- b) enjoyment of the same social and tax advantages as national self-employed persons.
- 4. A self-employed person who is a national of a Partner State and who is undertaking an economic activity in the territory of another Partner State shall enjoy all the rights and benefits accorded to national self-employed persons relating to social security.

ARTICLE 16
RIGHT OF RESIDENCE

- 1. Partner States hereby guarantee the right of residence to nationals of other Partner States who have been admitted in their territories in accordance with Articles 7 and 12 of this Protocol.
- 2. The right of residence guaranteed under Sub-Article (1) of this Article, shall apply to the Spouse(s) and Dependents of a worker or self-employed person entitled to freedoms provided in Articles 7 and 12 of this Protocol
- 3. The enjoyment of the rights specified in this Article, shall be subject to limitations justified on grounds of public policy, public security, or public health. The Partner State imposing such limitations shall be obliged to notify other Partner States accordingly.
- 4. The Council shall, within a period of (1) years from the date of entry into force of this Protocol, issue directives and regulations to govern the application of this Article.
- 5. This Chapter shall not affect any provisions laid down by law, regulation or administrative action of one Partner State which would be more favourable to nationals of other Partner State.

ARTICLE 17
RESIDENCE PERMIT

- 1. Partner States shall grant Residence Permits to nationals of other Partner States who qualify in accordance with the provisions of Article 17.

2. **[The processing of an application for a Residence Permit may not delay the immediate execution of employment contracts concluded by applicants or hinder the reason they are in the Partner State.]**
3. The Council shall within a period of 1 year from entry into force of this Protocol issue directives on harmonization of rules and regulations relating to conditions for the issuance of Residence Permits in Partner States with a view to establishing an East African Community Residence Card.

ARTICLE 18

[PERMANENT RESIDENCE

1. ***Any citizen of the Partner State who will have resided in the territory of another Partner State for a period exceeding 5 years as resident shall be entitled for permanent residence status upon undergoing necessary administration procedure in a competent authority***
2. ***The dependant and spouse of the person entitled to such status provided in sub-Article 1 shall also be entitled to the same status accorded to the principal.***
3. ***Notwithstanding the conditions provided in sub article 1 and 2 of this article the Council may from time to time provide for any other circumstances in which the citizen of a Partner State can be entitled with this status without necessarily meeting the said conditions].***

PART VI

FREE MOVEMENT OF SERVICES

ARTICLE 19

ESTABLISHMENT OF THE RIGHT TO FREE MOVEMENT OF SERVICES

1. Partner States hereby guarantee the right to free movement of services and service suppliers within the Community.
2. In accordance with paragraph 1, there shall be free movement of services provided by nationals of Partner States within the Community.
3. For purposes of paragraph 1 of this Article, Partner States shall progressively remove existing restrictions and shall not introduce any new restrictions that will impede the right to supply or consume services among Partner States subject to the provisions of this Part of the Protocol.
4. Without prejudice to the provisions of any other Article in this Protocol, in order to supply a service, suppliers may temporarily pursue activities in a Partner State where the service is to be supplied, under the same conditions as apply to nationals of the Partner State.

ARTICLE 20
SCOPE AND DEFINITIONS

1. This Part of the Protocol applies to measures by Partner States affecting free movement of services.
2. For purposes of this Part of the Protocol:
 - (a) 'measures by Partner States' refers to any law, regulation or administrative determination of general application taken by:
 - (i) National or local governments and authorities, and
 - (ii) Non-governmental bodies in the exercise of powers delegated by national or local governments and authorities;
 - (b) "Services" includes any service in any sector except services supplied in the exercise of governmental authority; the United Nations Central Product Classification List for services shall be used for purposes of services sectoral classification
 - (c) "Services supplied in the exercise of governmental authority" means services supplied neither on a commercial basis nor in competition with one or more service suppliers.
3. Free movement of services shall cover the supply of services:
 - (a) From the territory of one Partner State into the territory of any other Partner State;
 - (b) In the territory of one Partner State to service consumers from any other Partner State;
 - (c) By a service supplier of one Partner State, through commercial presence in the territory of any other Partner State;
 - (d) By a service supplier of one Partner State, who is a natural person, through presence in any other Partner State.
4. Each Partner State shall take reasonable measures to ensure observance by local governments and authorities and non-governmental bodies in its territory of the provisions of this Part of the Protocol.

ARTICLE 21
PRINCIPLES
NATIONAL TREATMENT

1. In respect of all measures affecting the supply of services, each Partner State shall accord to services and service suppliers of any other Partner State, treatment no less favourable than that it accords to its own like services and service suppliers.
2. A Partner State may meet the requirement of paragraph 1 by according to services and service suppliers of any other Partner State, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Partner State compared to like services or service suppliers of any other Partner State.

ARTICLE 22

Most Favoured Nation Treatment

With respect to any measure covered by this Protocol, each Partner State shall accord immediately and unconditionally to services and service suppliers of any other Partner State treatment no less favourable than that it accords to like services and service suppliers of any other Partner State or any other state or customs territory.

ARTICLE 23

Transparency

1. Each Partner State shall promptly notify the Council of all measures of general application affecting the free movement of services at the entry into force of this Protocol.
2. Partner States shall notify the Council of international treaties pertaining to or affecting trade in services with third parties that they are signatory to prior to and after entry into force of this Protocol.
3. Once a notification has been made to the Council, the Secretariat shall transmit a copy to the Partner States. The Council may adopt appropriate decisions on the measures or treaties.
4. Each Partner State shall promptly and at least annually inform the Council of the introduction of any new, or any changes to existing laws, regulations or administrative guidelines which affect trade in services covered by this Protocol.
5. Each Partner State shall respond promptly to all requests by any other Partner State for specific information on any of its measures of general application or international treaties.

ARTICLE 24

DOMESTIC REGULATION

1. Partner States shall have the right to regulate their services sectors in accordance with their national policy objectives provided that the measures do not constitute barriers to trade in services and are consistent with the provisions of this Protocol.
2. Partner States shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

ARTICLE 25

PROGRESSIVE IMPLEMENTATION

- 1. [Partner States shall implement the provisions of Article 20 (i.e. free movement of services) in accordance with schedules adopted by Council at the entry into force of this Protocol.**
- 2. Partner States shall submit to Council at the signature of this Protocol their schedules on free movement of services.**
- 3. The schedules shall indicate any sectors that may not be subject to the right to supply or consume services at the entry into force of this Protocol.**
- 4. Any such schedule shall contain a program in the prescribed format for elimination of any restrictions or discriminatory measures that may affect services and service suppliers of other Partner States.]**

ARTICLE 26

Emergency Measures

1. A Partner State may on a provisional basis adopt emergency measures where implementation of the provisions of this Part of the Protocol results in unforeseen adverse consequences affecting the economy.
2. A Partner State that adopts such emergency measures shall at such adoption notify the Council.
3. The Council shall take a decision on the validity of any such emergency measures within 60 days.

ARTICLE 27

General Exceptions on Trade in Services

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Partner States where like conditions prevail, or a disguised restriction on trade in services, nothing in this Part shall be construed to prevent the adoption or enforcement by any Partner State of measures:
 - (a) necessary to protect public morals or to maintain public order;
 - (b) necessary to protect human, animal or plant life or health;
 - (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Part including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;

- (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
- (iii) safety;
- (d) inconsistent with Article 21 of this Part, provided that the difference in treatment is aimed at ensuring the equitable or effective³ imposition or collection of direct taxes in respect of services or service suppliers of other Partner States;
- (e) inconsistent with Article 22, provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Partner State is bound.

ARTICLE 28

Security Exceptions on Trade in Services

1. Nothing in this Part shall be construed:
 - (a) to require any Partner State to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
 - (b) to prevent any Partner State from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;

³Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Member under its taxation system which:

- (i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Member's territory; or
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Member's territory; or
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (iv) apply to consumers of services supplied in or from the territory of another Member in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Member's territory; or
- (v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Member's tax base.

Tax terms or concepts in paragraph (d) of Article XIV and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Member taking the measure.

- (ii) relating to fissionable and fusionable materials or the materials from which they are derived;
 - (iii) taken in time of war or other emergency in international relations; or
 - (c) to prevent any Partner State from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.
2. The Council shall be informed by the Partner States to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination⁴.

PART VII
FREE MOVEMENT OF CAPITAL
ARTICLE 29
ELIMINATION OF RESTRICTIONS

1. Upon entry into force of this Protocol:
- a) There shall be no restrictions between the Partner States on the movement of capital belonging to persons, resident in the Community and no discrimination based on the nationality or on the place of residence of the parties or on the place where such capital is invested.
 - b) Partner States shall remove existing restrictions and shall not introduce any new restrictions on the movement of capital and payments connected with such movement and on current payments and transfer, nor render more restrictive existing regulations.
 - c) Current payments connected with the movement of goods, persons, services or capital between Partner States within the framework of the provisions of this Protocol shall be free of all restrictions.
2. The Council shall draw up a schedule for the removal of existing restrictions on free movement of capital, other payments and transfers within the Community.
3. The schedule under article 1(2) shall set out the general conditions under which restrictions on movement of capital, other payments and transfers shall be removed.

ARTICLE 30
NON DISCRIMINATION

Where Partner States' laws governing the financial markets and payments systems are applied to the movement of capital, it shall be done in a non-discriminatory manner.

ARTICLE 31
Foreign Exchange Policy Coordination

Partner States shall take such measures as are necessary to co-ordinate their foreign exchange policies.

ARTICLE 32
Information Sharing

⁴ Some Partner States proposed that the Security and the General Exceptions be reviewed for the purposes of the application to the whole Protocol in the General and final provisions Chapter.

Partner States shall keep the competent authorities of other Partner States informed of significant unusual movements of capital within their knowledge to and from third countries.

ARTICLE 33

Safeguard Measures

1. If movement of capital leads to disturbances in the functioning of the financial markets in any Partner State, the Partner State concerned may take safeguard measures subject to the conditions provided under article 6.
2. If the competent authority of a Partner State makes an intervention in the foreign exchange market which seriously distorts conditions of competition, the other Partner States may take, for a strictly limited period, the necessary measures in order to counter the consequences of such interventions.
3. Where a Partner State is in difficulties, or is seriously threatened with difficulties, as regards its balance of payments, the Partner State concerned can take safeguard measures.
4. The Council shall make Regulations governing matters provided for under this Article.

ARTICLE 34

Conditions for Application of the Safeguard Measures

1. The safeguard measures which may be adopted or maintained pursuant to the provisions of Article 5 shall:
 - a) subject to the provisions of this Protocol, not discriminate among Partner States in favour of third countries;
 - b) at all times seek to minimize damage to the commercial, economic or financial interests of other Partner States;
 - c) not exceed those necessary to deal with the circumstances described in Article 5; and
 - d) be temporary and be phased out progressively as the situation described in Article 5 improves.
2. In determining the imposition of the said safeguard measures, the Partner State concerned may accord priority to activities which are essential to its economic stability. Such safeguard measures shall not be adopted or maintained for the purpose of protecting a particular sector in contravention of the provisions of this Protocol.
3. Safeguard measures adopted or maintained pursuant to Article 5 or any changes therein shall be notified to the EAC Secretariat and other Partner States.
4. The Council shall establish procedures for periodic consultations including, where possible and desirable, prior consultations with the objective of making recommendations to the concerned Partner State for the removal of the safeguard measures.

5. The consultations shall address the compliance of any safeguard measures within paragraph 1 of this Article and, in particular, the progressive phase-out of safeguard measures in accordance with paragraph 1(d) of this Article

ARTICLE 35

General Exceptions

1. The free movement of capital may be restricted upon justified reasons related to:
 - i. Prudential supervision;
 - ii. Public policy considerations;
 - iii. Money laundering; and
 - iv. Financial sanctions agreed at Community level.
2. The Partner State adopting a restriction based on the conditions mentioned in paragraph 1, shall inform the EAC Secretariat and other Partner States and shall furnish proof that the action taken was appropriate, reasonable and justified.

ARTICLE 36

Capital and related payments and transfers

1. For the purposes of this Protocol, capital and related payments and transfers include:
 - a) Direct Investment;
 - b) equity and portfolio investments;
 - c) bank and credit transactions;
 - d) payment of interest on loans and amortization;
 - e) dividends and other income on investments;
 - f) repatriation of proceeds from the sale of assets; and
 - g) other transfers and payments relating to investment flows.

PART VIII

ECONOMIC AND FINANCIAL SECTOR POLICY CO-ORDINATION

ARTICLE 37

Economic and Monetary Policy Co-ordination

1. The Partner States shall co-ordinate and harmonize their economic policies to ensure macroeconomic stability, sustained economic growth and balanced development for the proper functioning of the EAC Common Market.
2. The Council shall monitor the implementation of economic policies by Partner States to ensure macro-economic stability and sustained economic development.
3. The Partner States undertake to adhere to the macroeconomic convergence criteria as determined and approved from time to time by the Council.

4. The Partner States shall submit to Council periodic progress reports on the performance of their national economies to facilitate close co-ordination of economic policies and adherence to macroeconomic convergence criteria.

ARTICLE 38

Financial Sector Policy Co-ordination

1. The Partner States shall co-ordinate and harmonize their financial sector policies and regulatory frameworks to ensure efficiency and stability of their financial systems as well as smooth operations of the payment systems.
2. The Partner States shall ensure and maintain convertibility of their national currencies and promote the use of national currencies in the settlement of payments for all transactions within the Community.

ARTICLE 39

Harmonization of Tax Policies and Laws

The Partner States undertake to progressively harmonize their tax policies and laws on domestic taxes with a view to removing tax distortions in order to facilitate free movement of goods, services and capital, and the promotion of investments within the Community.

ARTICLE 40

Transitional Provisions

The Council shall establish an appropriate framework for the transition from Common Market to the Monetary Union in line with article 5 (2) of the Treaty.

PART IX

ARTICLE 41

COMPETITION AND CONSUMER WELFARE

1. Save as otherwise provided in the Competition Law, all agreements between undertakings, decisions by associations of undertakings, and concerted practices which may affect trade between Partner States and which have as their objects to effect the prevention, restriction, or distortion of competition within the Common Market, shall be prohibited.
2. Save as otherwise provided in the Competition Law, any subsidy granted by a Partner State through state resources in any form whatsoever which distorts or threatens to distort effective competition by favoring certain undertakings shall, in so far as it affects trade between partner states be incompatible with the function of a common market.
3. Save as otherwise provided in the Competition Law, concentrations which create or strengthen a dominant position as a result of which effective competition would be significantly impeded within the Community or a substantial part of it, shall be declared incompatible with the Common Market.

4. The Community shall ensure that consumers are given a high degree of protection and freedom of choice.
5. In order to achieve the benefits of free competition in the field of public procurement, Partner States shall extend non-discriminatory treatment to all suppliers and to all products or services originating from other Partner States.
6. The implementation of the provisions of this protocol shall be in accordance with the East African Community's Competition Law.

ARTICLE 42
UNFAIR BUSINESS PRACTICES

1. *[Partner States recognize that service suppliers may adopt unfair business practices that may adversely affect the free movement of services. A Partner State may notify other Partner States and the Council of any such unfair business practices.*
2. *[[Without prejudice to the provisions on dispute settlement]], the Partner State where such unfair business practices occur shall investigate the matter and notify the other Partner States and Council within 30 days of its findings and measures taken.*
3. *Any Partner State dissatisfied with the findings or measures may request the Council to take a decision on the matter. Where such request is made, Council shall take the decision within 10 days or, for just reason, the soonest thereafter.*

PART X
COMMON COMMERCIAL POLICY

Article 43
DEFINITION

For the purposes of this part of the protocol, Common Commercial Policy means the Community trade rules applied by Partner States in relations with third parties to influence or direct international trade.

Article 44
OBJECTIVES AND PRINCIPLES

1. The objective of a Common Commercial Policy shall be to promote international trade and trade relations between the Community and third parties.
2. For the purposes of paragraph 1, Partner States shall adopt common principles particularly in relation to:
 - a) tariff rates;

- b) conclusion of tariff and trade agreements;
- c) the achievements of uniformity of measures of liberalisation;
- d) export policies; and
- e) Trade remedies.

Article 45

CO-ORDINATION OF TRADE RELATIONS

1. The Council shall establish a mechanism for the co-ordination of trade relations with third parties and in particular to:
 - a. Adopt common negotiating strategies in the development of mutually beneficial trade agreements with third parties; and
 - b. Promote participation and joint representation in international trade negotiations
2. Partner States shall provide information to Council on trade relations with third parties to facilitate effective implementation of paragraph 1 above.

Article 46

INDIVIDUAL TRADE ARRANGEMENTS WITH THIRD PARTIES

For purposes of trade arrangements between individual Partner States and third parties, the provisions of Article 37 of the Protocol on the Establishment of the East African Community Customs Union shall apply.

PART XI

TRANSPORT POLICY

ARTICLE 47

OBJECTIVES

1. The objective of this Transport Policy shall be the provision of adequate, reliable, safe and internationally competitive transport infrastructure modes/services for the development and consolidation of the EAC Common Market, in accordance with the Treaty.
2. Pursuant to paragraph 1, Partner States shall among others:
 - a. Expedite the harmonization of their transport policies, regulations and standards;
 - b. Expand, interconnect and maintain the regional transport infrastructure within their boundaries and establish additional transport corridors for development;
 - c. Jointly develop human resources and other local/regional capacities in construction, management, financing, maintenance, upgrading and development of regional transport infrastructure and facilities;

- d. Facilitate the development and maintenance of dedicated multimodal transport infrastructure for the landlocked countries;
- e. Eliminate non physical barriers and reduce physical barriers that increase cost and reduce efficiency of transport within the Community;
- f. *[Liberalize transport services in line with the provisions within this Protocol.]*
- g. Encourage the application of Information and Communications Technology (ICT) and other modern technologies with a view to improving transport efficiency and facilitate exchange of information.

**ARTICLE 48
SCOPE**

The provisions of this Part shall apply to logistics and transport by road, rail, inland waterways, maritime, pipeline and air as well as facilities such as ports, airports and inland dry ports.

**ARTICLE 49
APPLICABLE INSTRUMENTS**

For the purposes of implementing Article 48, Partner States shall:

- a) Maintain the already ratified existing agreements entered between the Partner States;
- b) Agree to enter into any other future agreements;
- c) Honour their existing commitments and obligations emanating from international conventions and agreements; and
- d) Subject to the provisions of paragraph c, align all other agreements on transport to the provisions of this protocol.

**ARTICLE 50
COMMON RULES AND GUIDELINES**

The Council shall within ... years upon entry into force of this Protocol, lay down:

- a) common rules or regulations applicable to:
 - i) Railways transport;
 - ii) Maritime transport and port operations;
 - iii) Pipeline transport;
 - iv) Air transport; and;

- v) Multimodal transport and Logistics.
- b) Rules to give effect to Article 87 of the Treaty in matters of joint financing mechanisms on regional transport infrastructure development.
- c) **[Rules for third country carriers offering transport services within the Community or transiting through the Community;]**
- d) Guidelines for the Private – Public Partnerships (PPPs) in the development of transport infrastructure and services in the region;
- e) Guidelines towards equitable distribution of regional transport infrastructure development; and
- f) Any other appropriate provisions consistent with this Protocol.

**ARTICLE 51
PROHIBITION OF DISCRIMINATORY TREATMENT**

Until the provisions referred to in Article 50 have been laid down:

- a) Partner States shall maintain the national regulations or rules governing the subject; and
- b) Partner States shall in applying the national regulations avoid discriminatory or less favorable treatment to carriers or operators from other Partner States.

ARTICLE 52
[INSTITUTIONAL ARRANGEMENTS/ IMPLEMENTATION MECHANISMS]
[The Council shall establish an institutional framework to co-ordinate policies, manage transport corridors and ensure the effective implementation of the common transport policy].

**PART XII
APPROXIMATION OF LAWS**

ARTICLE 53

- 1. Partner States undertake to approximate their national laws in order to implement this Protocol.
 - 2. For purposes of paragraph 1, Council shall issue directives for the approximation of laws in Partner States.
-