



**Negotiating and Scheduling Guidelines
for the Second Round of
SADC Trade in Services Negotiations**

Adopted by TNF Services on [May 2021]

1. INTRODUCTION

- 1.1. The SADC Protocol on Trade in Services, hereinafter referred to as “the Protocol”, provides for successive rounds of negotiations on trade in services, under the principle of progressive liberalisation, with a view to achieving an integrated regional market for services.
- 1.2. Article 16(4) of the Protocol requires the Trade Negotiating Forum-Services (TNF-Services) to adopt negotiating guidelines for each round of negotiations. The *Negotiating and Scheduling Guidelines for the First Round* were adopted by TNF-Services on 11 November 2009 and approved by the Committee of Ministers of Trade (CMT) on 12 February 2011. Following the conclusion of the first round in June 2019, TNF-Services is required to adopt negotiating guidelines for the second round.
- 1.3. The *Negotiating and Scheduling Guidelines for the Second Round*, hereinafter referred to as “these Guidelines”, build on the guidelines for the first round and draw on experiences and lessons obtained in that round and in other services negotiating fora in which Member States are parties. These Guidelines shall apply solely to the second round of SADC trade in services negotiations in line with Article 16 of the Protocol.

2. INTERPRETATION

- 2.1. In order to create common understanding, the terms used in these Guidelines shall be defined and interpreted in line with the definitions in the Protocol. Where a term is not defined in the Protocol, reference shall be made to the meaning of similar such terms in the context of the Treaty of the Southern African Development Community and the World Trade Organisation (WTO)’s General Agreement on Trade in Services (GATS).

3. OBJECTIVE OF THE NEGOTIATIONS

- 3.1. The negotiations shall aim to achieve progressively higher levels of liberalisation of trade in services, to promote the interests of all State Parties on a mutually advantageous basis, and to secure an overall balance of rights and obligations.
- 3.2. During the negotiations State Parties shall work towards promoting an integrated regional market for services, complemented by cooperative mechanisms, in order to create new opportunities for a dynamic business sector, strengthen the SADC region's services capacity, efficiency and competitiveness, and expand services exports.

4. PRINCIPLES

- 4.1. Negotiations shall be undertaken on the basis of progressive liberalisation with a view to promoting the interdependence and integration of SADC national

economies for the harmonious, balanced and equitable development of the Region. The negotiations shall aim to achieve progressively higher levels of liberalization of trade in services with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.

- 4.2. The negotiations shall aim to promote an integrated regional market for services, complemented by cooperative mechanisms, with the objective of creating new opportunities for a dynamic business sector, and strengthening the Region's services capacity, its efficiency, and competitiveness and expanding the Region's services exports.
- 4.3. There shall be appropriate flexibility for individual State Parties in the conduct of the negotiations and commitments undertaken so as to reflect the existing asymmetry between State Parties due to disadvantages relating to their size, structure, vulnerability and levels of development of their economies. The process of liberalisation shall take place with due respect to the right of each State Party to regulate, and introduce new regulations, on services and services suppliers within its territory in order to meet national policy objectives, in so far as regulations do not impair any rights and obligations arising under this Protocol.
- 4.4. The negotiations shall take place within, and respect the structure and principles of, the Protocol and be consistent with the State Parties' rights and obligations under the GATS including their obligations stemming from commitments undertaken in specific sectors and the four modes of supply.

5. SCOPE OF NEGOTIATIONS

- 5.1. Consistent with the Article 16(2) and Article 3 of the Protocol, the second round of negotiations shall include all services sectors covered by the Protocol.
- 5.2. References in these Guidelines to specific service sectors and sub-sectors shall be deemed to be those included in the WTO Services Sectoral Classification List (W/120)¹.
- 5.3. The following sectors shall be prioritised during the negotiations:
- (a) Services that have relevance to the SADC Industrialisation Strategy and Roadmap (SISR) 2015-2063, particularly business services and distribution services;
 - (b) All other sectors not prioritised in the first round namely; educational; environmental; health; recreational, cultural and sporting services; and other services not included elsewhere;
 - (c) Unfinished sectors from the first round, notably any elements of the six priority sectors for the first round that are relevant to the fulfilment

¹WTO document MTN.GNS/W/120, dated 10 July 1991.

of the SISR 2015-2063 or where there are outstanding requests that could not be met in the first round.

- 5.4. Market access and national treatment commitments and limitations shall be set out in State Parties' lists of commitments. In line with the decision of the CMT at their 30th meeting held on 23rd July 2018 in Pretoria, South Africa, the SADC lists of commitments should include or improve on the commitments being offered by State Parties in the context of the African Continental Free Trade Area (AfCFTA) negotiations, and be based on negotiations.
- 5.5. The commitments shall be underpinned or supplemented, as necessary, by obligations or disciplines set out in Annexes, in line with Article 26 of the Protocol.
- 5.6. The second round will also consider the "built-in agenda" issues of the Protocol namely: domestic regulation (Article 6); mutual recognition (Article 7); subsidies (Article 11); and trade and investment promotion (Article 18). In line with the decisions of the CMT, the Secretariat shall assist Member States in relation to preparatory work on the built-in agenda issues, notably on mutual recognition of qualifications, domestic regulation and other relevant matters in priority sectors for discussion in the TNF-Services, in a manner consistent with the regional qualifications framework. The TNF-Services will decide on the work programme to be followed for these issues.
- 5.7. Commitments made in the second round will apply according to the Most Favoured Nation (MFN) Treatment principle in Article 4(1) of the Protocol.
- 5.8. As in the first round, a State Party wishing to maintain, in any sector covered under the second round, any measures inconsistent with Article 4(1) shall include such measures in an MFN exemption list. The agreed lists of MFN exemptions shall be annexed to the Protocol. The TNF-Services shall regularly review MFN exemptions with a view to determining which MFN exemptions can be eliminated.

6. CLASSIFICATION

- 6.1. When describing committed sectors and sub-sectors and in order to avoid any ambiguity as to the scope of the commitment, State Parties will refer to the aforementioned WTO Services Sectoral Classification List (W/120), which shall determine the order in which sectors and sub-sectors shall be listed. References in parenthesis to further sectoral definitions in the United Nations (UN) Central Product Classification List (CPC) shall be to CPC Version 2.1².
- 6.2. The TNF-Services shall decide whether the commitments made in the first round will be revised in line with CPC 2.1 and the negotiating guidelines

²Accessible at <https://unstats.un.org/unsd/classifications/unsdclassifications/cpcv21.pdf>

adopted for the AfCFTA trade in services negotiations. Any such revision shall be undertaken after the conclusion of the second round of negotiations.

7. STARTING POINT

- 7.1. The starting point for the negotiation of lists of commitments in sectors not covered in the first round shall be State Parties' existing GATS schedules. At the conclusion of the negotiations each State Party shall offer for each sector covered by the second round some improvement to its existing GATS commitments.
- 7.2. TNF-Services shall take stock of the outstanding requests from the first round. In this regard, State Parties shall reaffirm their outstanding requests, and concerned Member States shall reconsider or improve their offers.
- 7.3. Where State Parties agree to develop sectoral annexes to provide for regulatory principles underpinning market access and national treatment commitments, as well as the SADC Industrialisation Strategy, the negotiations shall take account of the provisions of other relevant SADC Protocols as appropriate. Such sectoral annexes shall include, inter alia, the finalisation of an Annex on Transport and Logistics Services, outstanding from the first round.
- 7.4. In negotiating the “built-in agenda” of the Protocol; priority shall be given to mutual recognition, as directed by the CMT, and any other disciplines required to support the SADC Industrialisation Strategy.

8. MODALITIES AND PROCEDURES FOR THE NEGOTIATIONS

- 8.1. The negotiations shall be conducted in TNF-Services, which will report on a regular basis to the Committee of Senior Trade Officials and the CMT and shall conduct the negotiations in accordance with the Protocol and decisions taken by the CMT. The TNF-Services may establish technical working groups as it deems necessary.
- 8.2. The SADC Secretariat will be the coordinating body for TNF-services negotiations and focal point for depository of all negotiating documents. It shall be responsible for circulation of State Parties' requests and offers, and negotiation outputs; and shall monitor the negotiation process.
- 8.3. Negotiations shall be transparent and open to all State Parties in all negotiating processes including the process where requests may be conducted bilaterally whilst offers will be extended to all State Parties.
- 8.4. Negotiations shall follow a request-offer approach. Requests shall be prescribed in writing (letter or email) or verbal submission at formal meetings, from a State Party to one or several State Parties. Requests may be general or shall set out the specific sectors or sub-sectors and modes of supply to which the requests relate. They may include proposals to remove all or some existing

limitations on market access or national treatment or to undertake new or full commitments. A State Party shall respond to requests with an offer in the form of a draft list of commitments setting out the proposed commitments, by sector, sub-sector and modes of supply.

- 8.5. The negotiations shall be in conformity with the principle of asymmetry, reflecting an individual State Party's disadvantages by reason of size, structure, vulnerability and level of development of their economy. Disadvantaged State Parties shall be granted the flexibility to open or liberalise fewer sectors and types of transactions.
- 8.6. The draft offers shall be regarded as working documents and can be changed and refined to reflect negotiated outcomes. The TNF-Services will agree on the finalisation of the draft offers to be recommended to trade officials and legal experts for consideration. Following the conclusion of technical negotiations in the TNF-Services on the lists of commitments and annexes, legal scrubbing of such documents shall be undertaken jointly between trade officials and legal experts.
- 8.7. The second round shall be concluded by CMT decision to adopt the lists of commitments recommended by trade officials and legal experts, on the basis of which the adopted lists of commitments and any agreed annexes shall be annexed to, and form an integral part of, the Protocol.

9. WORK PROGRAMME AND ROADMAP

The process for the second round of negotiations shall be in accordance with the work programme and roadmap agreed by the TNF-Services at its 37th meeting, as reviewed and revised at subsequent TNF-Services meetings. The TNF-Services may further revise the work programme and roadmap as it may deem necessary.

10. SCHEDULING OF COMMITMENTS

- 10.1. The horizontal commitments negotiated in the first round shall apply to all services sectors included in a State Party's list of commitments unless otherwise specified. A horizontal commitment is in effect a binding, either of a measure which constitutes a limitation on market access or national treatment or of a situation in which there are no such limitations.
- 10.2. Horizontal commitments condition all other entries in the list of commitments unless otherwise specified. To indicate in a given sector that no restrictions whatever are imposed, a State Party must make clear in the horizontal section or in the relevant sectoral section that the horizontal restrictions do not apply in the sector in question.
- 10.3. When a State Party decides to undertake a commitment in a specific sector it must indicate for each mode of supply that it binds in that sector: i) what

limitations, if any, it maintains on market access; and ii) what limitations, if any, it maintains on national treatment.

- 10.4. When a State Party opts to schedule numerical ceilings or economic needs tests, the entry should describe each measure concisely indicating the elements which make it inconsistent with Article 14. Numerical ceilings should be expressed in defined quantities in either absolute numbers or percentages. Entries relating to economic needs tests should indicate the main criteria on which the test is based, e.g. if the authority to establish a facility is based on a population criterion, the criterion should be described concisely.
- 10.5. In accordance with Article 15 (National Treatment) each State Party must indicate for those sectors in which it is undertaking commitments whether it is granting national treatment or not. When it accords full national treatment in a given sector and mode a State Party promises to provide foreign services and service suppliers with conditions of competition no less favourable than those accorded to its own like services and service suppliers. The national treatment standard does not require formally identical treatment of domestic and foreign suppliers.
- 10.6. The scheduling of specific liberalisation commitments shall follow a positive list approach and build on the commitments made in the first round. The format shall be the same as used in the first round, consisting of a tabular form (see Table 1) containing the following main types of information:
- (a) a clear description of the sector or sub-sector committed;
 - (b) limitations to market access as described in Article 14 of the Protocol;
 - (c) limitations to national treatment as described in Article 15 of the Protocol;
 - (d) additional commitments other than market access and national treatment³; where appropriate, include the time-frame for implementation of such commitments; and
 - (e) the date of entry into force of such commitments.

³Additional commitments as provided by GATS Article XVIII (i.e. measures affecting trade in services not subject to scheduling under GATS Articles XVI or XVII, including those regarding qualifications, standards or licensing matters) are not envisaged as commitments under the SADC Protocol on Trade in Services given as such measures will be covered by other services-related protocols, cooperative mechanisms and negotiations undertaken by SADC Member States.

Table 1: SADC List of Commitments

Mode of Supply: 1) Cross border 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments ⁴
I. HORIZONTAL SECTION			
ALL SECTORS INCLUDED IN THIS SCHEDULE	1) ... 2) ... 3) ... 4) ...	1) ... 2) ... 3) ... 4) ...	
II. SECTOR -SPECIFIC COMMITMENTS			
	1) ... 2) ... 3) ... 4) ...	1) ... 2) ... 3) ... 4) ...	

- 10.7. A State Party, which in its GATS schedule and for a given sector had made additional commitments with respect to measures affecting trade in services not subject to scheduling under GATS Articles XVI and XVII, shall leave these inscriptions in its schedule for information purposes. Such commitments can include, but are not limited to, undertakings with respect to qualifications, technical standards, licensing requirements or procedures, and other domestic regulations that are consistent with Article 6 of the Protocol.
- 10.8. It is understood that market access, national treatment and additional commitments apply only to the sectors or sub-sectors inscribed in the schedule. They do not imply a right for the supplier of a committed service to supply uncommitted services which are inputs to the committed service.
- 10.9. The scope of the four modes of supply listed in the schedules is defined in Article 3 of the Protocol. Where a service transaction requires in practical terms the use of more than one mode of supply, coverage of the transaction is only ensured when there are commitments in each relevant mode of supply.
- 10.10. For all issues relating to the scheduling of commitments not directly covered by these Guidelines, State Parties shall refer to the Guidelines for the Scheduling of Specific Commitments under the GATS adopted by the Council for Trade in Services on 23 March 2001 (WTO Document S/L/92).

⁴The additional commitments column is maintained to allow State Parties to indicate which additional commitments they have already undertaken under the GATS and which are applicable vis-à-vis all WTO Members.