



**Negotiating & Scheduling Guidelines for the 1st Round of
SADC Trade in Services Negotiations**

Adopted by TNF Services on 11 November 2009

Approved by CMT on 12 February 2011

OBJECTIVES AND PRINCIPLES

1. Negotiations shall be initiated on the basis of progressive liberalization upon signature of the SADC Protocol on Trade in Services 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.
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.
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 national policy objectives.
4. The negotiations shall take place within, and shall respect the structure and principles of, the SADC Protocol on Trade in Services and shall be consistent with the rights and obligations that State Parties have under the World Trade Organisation's General Agreement on Trade in Services (GATS) including their obligations stemming from commitments undertaken in specific sectors and the four modes of supply.

SCOPE OF NEGOTIATIONS

5. These negotiating guidelines shall apply to sectors identified in Article 16 of the SADC Protocol on Trade in Services. The first round of negotiations will focus principally on the six priority services sectors for liberalization in the SADC region (communication, construction, energy-related, financial, tourism and transport services). These sectors are deemed to cover the sub-sectors included in the WTO Services Sectoral Classification List¹.
6. Measures which are inconsistent with paragraph 1 of Article 4 (Most Favoured Nation Treatment) that a State Party wishes to maintain shall be included in an MFN exemption list. The agreed lists of MFN exemptions shall be annexed to this Protocol. The Trade Negotiating Forum-Services (TNF-Services) shall regularly review MFN exemptions, with a view to determining which MFN exemptions can be eliminated.

¹ Document MTN.GNS/W/120, dated 10 July 1991. Energy-related services shall be deemed to cover:
i) Services incidental to mining (CPC 883+5115), ii) Services incidental to energy distribution (CPC 887),
iii) Pipeline Transport, Transportation of fuels (CPC 7131).

7. State Parties who so wish may already in the first round of negotiations take commitments beyond the six priority sectors. Subsequent negotiations will include all services sectors covered by the SADC Protocol on Trade in Services.

8. The starting point for the negotiation of specific commitments shall be Members' existing GATS schedules, including the horizontal section and sectoral commitments. In the case of a State Party not being a Member of the WTO the starting point for the negotiations shall be a blank schedule of commitments.

MODALITIES AND PROCEDURES FOR THE NEGOTIATIONS

9. The negotiations shall be conducted in TNF-Services, which will report on a regular basis to the Committee of Senior Officials and the Committee of Ministers of Trade and Industry and shall conduct the negotiations in accordance with decisions taken by the CMT. The TNF-Services may establish sector specific technical working groups as it deems necessary.

10. The SADC Secretariat will be the coordinating body for TNF services negotiations and focal point for depository of all negotiations documents and responsible for circulation of schedules of offers and negotiation outputs, and shall monitor the negotiation process.

11. Negotiations shall be transparent and open to all State Parties in all negotiating processes including the process where requests will be conducted bilaterally whilst offers will be extended to all SADC Member States.

12. The method of negotiation shall be the request-offer approach. At the conclusion of the negotiations each Member State shall offer for each of the six priority sectors some improvement to its existing GATS commitments.

13. Negotiations shall commence with the exchange of specific requests which shall be in the form of a prescribed form and letter from one State Party to another (or to several other State Parties) setting out what it requests of the other and in which sectors or sub-sectors and modes of supply. Requests can include proposals to remove all or some existing limitations on market access or national treatment or to undertake new or full commitment. Initial requests shall be exchanged within three months after the announcement of the date of the commencement of negotiations.

14. Upon the expiry of three months of the exchange of initial requests, State Parties will exchange initial offers in the form of a draft schedule of commitments setting out the proposed commitments; the sectors, sub-sectors and modes of supply. Offers are working documents and can be changed and refined to reflect negotiated outcomes. The commencement of negotiations on initial offers shall not hinder further exchanges of further requests and offers among the State Parties.

15. Negotiations shall be in conformity with the principle of asymmetry, reflecting 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 fewer sectors and liberalise fewer types of transactions.

16. The TNF-Services shall, when appropriate, develop time schedules/a roadmap for the conduct of the negotiations in accordance with any relevant decisions taken by the Committee of Ministers of Trade and Industry.

17. The first round of negotiations shall be concluded no later than three (3) years after the adoption of the SADC Protocol on Trade in Services. The results shall enter into force immediately after the entry into force of the Protocol.

18. Schedules of specific commitments shall be annexed to the SADC Protocol on Trade in Services and shall form an integral part thereof.

SCHEDULING OF COMMITMENTS

19. A horizontal commitment applies to trade in services in all scheduled services sectors unless otherwise specified. It 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.

20. Horizontal commitments condition all other entries in the schedule 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.

21. 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.

22. In accordance with Article 14 (Market Access) limitations on full *market access* which need to be included in its schedule of commitments if the country wishes to continue to apply such limitations include:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test;
- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and

who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or a requirement of an economic needs test;

- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier of any other State Party may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

23. 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.

24. 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.

25. When a State Party opts to maintain measures which are inconsistent with both Articles 14 and 15 such measures shall be inscribed in the market access column with the inclusion of the indication "also limits national treatment" in the market access column.

26. Given that the SADC Protocol on Trade in Services adopts an approach to trade in services which is similar to the GATS, the SADC schedule will take a similar format as GATS schedules and will be based on countries existing GATS schedules of commitments (horizontal and sectoral). The format used will consist of a table which contains the following main types of information:

- (a) a clear description of the sector or sub-sector committed;
- (b) limitations to market access (SADC Protocol on Trade in Services Article 14);
- (c) limitations to national treatment (SADC Protocol on Trade in Services Article 15);

(d) additional commitments other than market access and national treatment²; where appropriate the time-frame for implementation of such commitments; and

(e) the date of entry into force of such commitments.

| | Limitations on Market Access | Limitations on National Treatment | Additional Commitments³ |
|-----------------------------|-------------------------------------|--|---|
| Horizontal section | (1) (2) (3) (4) | (1) (2) (3) (4) | |
| | Limitations on Market Access | Limitations on National Treatment | Additional Commitments |
| Sector or Sub-Sector | (1) (2) (3) (4) | (1) (2) (3) (4) | |

Key: (1) Cross-border supply (3) Commercial presence
(2) Consumption abroad (4) Presence of natural persons

27. A State Party may, 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.

28. 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 WTO Services Sectoral Classification List⁴. Where it is necessary to refine further a sectoral classification, this can be done on the basis of the UN Central Product Classification⁵.

29. When describing commitments with respect to Mode 4, State Parties will refer to the categories of natural persons typically included in GATS schedules of commitments, including:

² Additional 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.

³ The additional commitments column is maintained to allow member states to indicate which additional commitments they have already undertaken under the GATS and which are applicable vis-à-vis all WTO Members.

⁴ Services Sectoral Classification List, Note by the WTO Secretariat, MTN.GNS/W/120.

⁵ UN CPC Provisional available at <http://unstats.un.org/unsd/cr/registry/regcst.asp?Cl=9&Lg=1>.

- (a) Intra-corporate Transferees
- (b) Business Visitors
- (c) Contractual Services Suppliers
- (d) Independent Professionals.

Wherever possible, commitments for categories of personnel de-linked from commercial presence and at lower skill levels shall be included. State Parties will also consider what other internationally recognised classification, including the International Labour Organization's International Standard Industrial Classification of All Economic Activities (ISIC)⁶ would be relevant for the scheduling of their Mode 4 commitments.

30. 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.

31. The scope of the four modes of supply listed in the schedules is defined in Article 3 (Scope and Coverage). 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.

32. For all issues relating to the scheduling of commitments not directly covered by these Negotiating and Scheduling Guidelines State Parties shall refer to the Guidelines for the Scheduling of Specific Commitments under the General Agreement on Trade in Services (GATS) adopted by the Council for Trade in Services on 23 March 2001 (WTO Document S/L/92).

⁶ ISIC available online at United Nations Statistics Division webpage on Economic and Social Statistical Classifications (<http://unstats.un.org/unsd/class/default.asp>).