

Scheduling Road Transport Services in SADC

Advance Scheduling Workshop for SADC Member States
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F. Road Transport Services

a. Passenger transportation	CPC 7121+7122
b. Freight transportation	CPC 7123 This comprises the transportation of: frozen or refrigerated goods (71231), bulk liquids or gases (71232), containerized freight (71233), furniture (71234), mail (71235) and other freight (71239), as well as freight transportation by man- or animal-drawn vehicles (71236).
c. Rental of commercial vehicles with operator	CPC 7124
d. Maintenance and repair of road transport equipment	CPC 6112+8867
e. Supporting services for road transport services	CPC 744

Being on the same side of the road: Modes of Supply and Cross Border Road Transport

- Carrier from Zambia (“Z”) picks up freight in Zambia and delivers in Bulawayo
- Z picks up goods in Bulawayo and delivers them to Harare
- Z picks up goods in South Africa and delivers them to Harare, picks up goods there and returns with them to Zambia



GATS Modes of supply do not fully capture issues relevant for Road Transport

Consequences

- Mode 1: Covers cross border supply into the country of final destination, regardless of nationality of supplier; covers cabotage by foreign-based suppliers
- Mode 2: Largely irrelevant, covers supply of services to a foreign consumer in a foreign country
- Mode 3: Investment abroad: highly relevant
- Mode 4: Movement of personnel: highly relevant, scope for sector-specific agreements?

Third-country rule issues: inadequately covered as Mode 1 does not take account of the nationality of the supplier

Transit: Not covered by any mode of supply, but transit obligations exist under GATT Art V, and in SADC Trade Protocol Art 15 (Freedom of Transit)

Background:

The road transport landscape in SADC

TCM Protocol

I. Harmonisation and Standardization

(e.g. Drivers Licences;
Training and testing of drivers;
Vehicle Overload Control (loads on vehicles incl axle load limits)
Road User Charges; Third Party
Motor Vehicle Insurance Schemes

TCM Protocol

TCM Protocol envisages the conclusion of **“standardised bilateral or multilateral agreements** based on the principles of non-discrimination, reciprocity and extra-territorial jurisdiction” and which address various “regulatory matters”, inter alia,

- single SADC carrier permits or licences;
- carrier registration;
- quota and capacity (permit) management systems;
- harmonised administrative (including consultative) procedures, documentation and fees;

Protocol on Trade in Services

Envisages liberalization of Transport Services (including Road transport) according to the four modes of supply, in principle on an MFN basis within SADC

Current State of play

- The SACU Memorandum of Understanding on Road Transportation of 1990 prohibits cabotage and Third Country Rule under Article IV (3) and (4)
- SADC TCM has not resulted in binding agreements
- *De facto*: International Road transport in SADC based on
 - Bilateral agreements between MS, specifying volume of loads
 - Permit systems implementing these agreements
 - Prohibition of cabotage (except in some agreements)
 - Prohibition of implementing transport routes involving delivery or pick up in third countries

Consequences for Scheduling of commitments

- Mode 1: No commitments on a SADC-wide basis can be made due to bilateral agreements (not MFN) -> UB
- Mode 2: Should be possible to make full commitments
- Mode 3: Commitments subject to possible limitations on FDI (max foreign capital, prohibitions of certain subsectors (e.g. fuel; board of directors) etc
- Mode 4: Commitments on Drivers? Under what circumstances?

GATS Commitments and SADC Offers on Road Transport Services

MS	Passenger	Freight	Rental of vehicles with operator	Maintenance and Repair	Support services
Lesotho	M1: UB M2: UB M3: None	M1: UB M2: UB M3: None		M1: UB M2: None M3: None	
South Africa	M1: UB M2: UB (None) M3: None	M1: UB M2: UB (None) M3: None	M1: UB M2: None M3: None	M1: UB M2: None M3: None	M1: UB M2: None M3: UB
DRC	M1: UB M2: None M3: UB	M1: UB M2: None M3: UB	M1: UB M2: None M3: UB	M1: UB M2: None M3: UB	M1: UB M2: None M3: UB
Malawi	M1: UB M2: None M3: None	M1: UB M2: None M3: None	M1: UB M2: None M3: None	M1: UB M2: None M3: None	M1: UB M2: None M3: None
Swaziland	M1: UB M2: None M3: UB	M1: UB M2: None M3: UB	M1: UB M2: None M3: None	M1: UB M2: None M3: None	M1: UB M2: None M3: None
Zambia		Bulk and containerized freight M1: UB M2: None M3: -Incorporation, - Board of Directors, 75 local "membership"	<div style="border: 1px solid black; border-radius: 15px; padding: 10px; background-color: #f0f0f0;"> <p>Black: GATS commitments Green: SADC Offers</p> </div>		

Road transport and MFN exemptions

- To the extent that road transport is regulated bilaterally, no MFN treatment is granted
- ...but: only 2 SADC MS with MFN Exemptions

Sector or Subsector	Description of measure indicating its inconsistency with Article II	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
Swaziland: Road Transportation	Provisions of existing or future bilateral or plurilateral agreements on international road transport (including combined transport road/rail) reserving or limiting the provision of a transport service into, in, across and out of Swaziland to the contracting parties.	All countries with which bilateral or plurilateral agreements are in force	Indefinite	The need for exemption is linked to the regional characteristics of road transport services
South Africa: Road Transportation	Regional bilateral and plurilateral road transport agreements providing for the transport rights to carry goods and passengers to or from South Africa and between third countries concerned, to be reserved for the road transport operators of the contracting parties to existing and future agreements. Cabotage restricted to South African registered vehicles and operators.	Botswana Lesotho Swaziland Malawi Zimbabwe Other Sub-Saharan African countries	Indefinite	To enhance the development of an integrated road transport system to underpin the economic development of the region and to ensure the availability of an efficient distribution network for relief supplies in case of natural disasters such as frequently occurring droughts in the region.

Consequence

- Only Swaziland and South Africa have legally protected traffic coming in from other countries.
- Preferences granted by other countries for Swazi and South African suppliers are MFN inconsistent
- Preferences granted by all other SADC MS to each other are also MFN consistent

How to address this issue?

- The conclusion and notification of the SADC Trade in Services Protocol provides cover for the MFN inconsistency vis-à-vis WTO Members.
- Different treatment within SADC (based on different bilateral agreements) is probably tolerable given the flexibility provided in Art V:3 (a)
- Art 4:5 of the TIS Protocol (MFN) allows for internal MFN exemptions
- Differential bilateral agreements with non-SADC MS may still be MFN inconsistent.

Bringing together SADC TCM and TIS Protocols

- Efforts to regionally liberalization of cabotage and third country rules need to be based on cost benefit analysis taking into account costs to transport operators, and users of road transport.
- SADC Services Protocol can certify the state of liberalization at any stage of this process and prevent backsliding once liberalization has been agreed.
- Can the negotiating process provide influence the granting of concessions in M1 (for trade-offs in other sectors?)??