



THE 22ND TNF-SERVICES MEETING
NEGOTIATIONS ON TRANSPORT SERVICES
BACKGROUND NOTE

Introduction

Transport services is one of the first four sectors identified in the Roadmap for SADC trade in services negotiations. It was originally intended that requests for commitments would be tabled by SADC Member States by March 2013, with the circulation of initial offers by June 2013.

Transport services cover the following sub-sectors:

- a) Maritime (shipping);
- b) Inland waterways;
- c) Air (excluding services related to traffic rights – generally understood to cover sales and marketing, computer reservation services (CRS) and aircraft maintenance and repair services);
- d) Space;
- e) Rail;
- f) Road;
- g) Pipeline;
- h) Auxiliary services (e.g. freight forwarding, storage and warehousing, cargo handling).

The modes of supply apply both to the carriage of passengers and goods, and to the operation of facilities such as ports, airports, railheads, etc.

A study of transport services within the SADC region was commissioned by the Secretariat and presented at a sector forum in Durban in 2012.

Relationship with other SADC initiatives

In parallel with the trade in services negotiations, initiatives relating to regional integration of transport services is being undertaken under the SADC Protocol on Transport, Communication and Meteorology. A strategic goal of this Protocol is to eliminate or reduce hindrances or impediments to the movement of people, goods, equipment and services. It provides, *inter alia*, that:

Road transport

“Member States shall facilitate the unimpeded flow of goods and passengers between and across their respective territories by promoting the development of a strong and competitive commercial road transport industry which provides effective transport services to consumers.” (Article 5.1, TCM Protocol)

“Member States shall progressively introduce measures to liberalize their market access policies in respect of the cross-border carriage of goods [following three Phases of liberalization] [albeit guided by the need to ensure reciprocal benefits ...].” (Article 5.3, TCM Protocol)

Rail transport

“Member States shall facilitate the provision of a seamless, efficient, predictable, cost-effective, safe and environmentally-friendly railway service which is responsive to market needs and provides access to major centres of population and economic activity.” (Article 7.1, TCM Protocol)

Maritime and inland waterways

“Member States shall promote the economic and social development of the region by developing and implementing harmonized international and regional transport policies in respect of the high seas and inland waterways.” (Article 8.1, TCM Protocol)

Article 8 includes such provisions as “promoting the role of the private sector in providing cargo handling services” and “the progressive elimination of restrictions, if any, on cabotage by ships registered in a Member State”.

Air services

Article 9 includes the provision that Member States agree to “the gradual liberalization of intra-regional air transport markets for the SADC airlines”.

Assessment of requests

In the light of these provisions of the TCM Protocol, the current negotiations under the Trade in Services Protocol have a supporting role to play.

As at May 2014, requests for liberalisation commitments in transport services have been made as follows (excluding Mode 4, covered in a separate background paper):

	DRC	MUS	SWZ	SYC	ZAF
A. Maritime	NAM: All sub-sectors	MOZ, SYC, ZAF: All sub-sectors (Mode 3) SYC: Maritime auxiliary services		All MS: All sub-sectors, especially in Mode 3	AGO, BWA, DRC, MOZ, MUS, MWI, NAM, SYC, SWZ, TZA, ZMB, ZWE: All sub-sectors
B. Inland waterways	NAM: All sub-sectors				AGO, BWA, DRC, MOZ, MUS, MWI, NAM, SYC, SWZ, TZA, ZMB, ZWE: All sub-sectors
C. Air	NAM: All sub-sectors	SYC, ZAF: Sales and marketing, CRS, aircraft maintenance and repair, ground handling, airport management (Mode 3)			AGO, BWA, DRC, LSO, MOZ, MUS, MWI, NAM, SYC, SWZ, TZA, ZMB, ZWE: All sub-sectors
D. Space					AGO, BWA, DRC, LSO, MOZ, MUS, MWI, NAM, SYC, SWZ, TZA, ZMB, ZWE: All sub-sectors
E. Rail	NAM: All sub-sectors				AGO, BWA, DRC, LSO, MOZ, MUS, MWI, NAM, SYC, SWZ, TZA, ZMB, ZWE: All sub-sectors

	DRC	MUS	SWZ	SYC	ZAF
F. Road	NAM: All sub-sectors SWZ: Passenger and freight; rental of commercial vehicles with driver; support services		AGO, BWA, MOZ, MUS, MWI, NAM, SYC, TZA, ZMB, ZWE: All sub-sectors LSO: Rental of commercial vehicles with driver; support services		AGO, BWA, DRC, MOZ, MUS, MWI, NAM, SYC, SWZ, TZA, ZMB, ZWE: All sub-sectors LSO: Passenger and freight (Modes 1 and 2); maintenance and repair (Mode 1); Rental of commercial vehicles with driver; support services
G. Pipeline	NAM: All sub-sectors				AGO, BWA, DRC, LSO, MOZ, MUS, MWI, NAM, SYC, SWZ, TZA, ZMB, ZWE: All sub-sectors
H. Auxiliary	NAM, SWZ: Cargo handling; storage and warehousing; freight transport agency services		AGO, BWA, MOZ, MUS, MWI, NAM, SYC, TZA, ZMB, ZWE: All sub-sectors LSO, ZAF: Cargo handling; storage and warehousing; freight transport agency services		AGO, BWA, DRC, LSO, MOZ, MUS, MWI, NAM, SYC, SWZ, TZA, ZMB, ZWE: Cargo handling; storage and warehousing; freight transport agency services

Although Botswana, Lesotho and Zambia have also tabled liberalisation requests, these have excluded transport services.

Assessment of offers

From the above list of requests, it is clear that requests have been addressed to all Member States for commitments in one or more transport sectors. The following Member States have made offers in transport services:

	DRC	MWI	MUS	SYC	SWZ	ZMB
Maritime	Wide sectoral coverage – Mode 2 only	Full commitment	Passenger and freight transport (excluding cabotage), rental of vessels, maintenance and repair	Maintenance and repair, vessel salvaging and refloating (49% foreign equity limitation in Mode 3)	X	X
Inland waterways	Wide sectoral coverage – Mode 2 only	Full commitment	X	X	X	X
Air	Wide sectoral coverage – Mode 2 only	X	Broad commitments in three sub-sectors – unbound in Mode 3 for maintenance and repair	X	X	X
Space	X	X	X	X	X	X
Rail	Wide sectoral coverage – Mode 2 only	Broad commitment – passenger and freight unbound in Mode 3	X	X	X	X
Road	Wide sectoral coverage – Mode 2 only	Broad commitment – passenger and freight unbound in Mode 1	X	X	Passenger and freight (Mode 2 only); full commitment for other sub-sectors	Freight transport only, Mode 2 (full commitment); Mode 3 (incorporation in Zambia + nationality requirements)
Pipeline	X	Full commitment	X	X	X	X
Auxiliary services	Wide sectoral coverage – Mode 2 only	Cargo handling, storage and warehousing, freight transport agency services	Storage and warehousing, freight transport agency services and other services	X	Cargo handling, storage and warehousing, freight transport agency services	X

Mauritius' offer includes an MFN exemption aimed at respecting certain bilateral transport agreements. Botswana and South Africa have also tabled initial offers but excluded transport services.

Discussion point:

- a. With only five offers covering transport services, how far do Member States believe these negotiations need to go before it can reasonably be concluded that requests have been met?
- b. Even if these requests have been met, how far could it be assessed that these negotiations have made a difference to regional integration in transport services and improved market access and national treatment for business?

Other issues identified in the SADC study of transport services

The study of SADC transport services commissioned by the Secretariat also made the following recommendations for the negotiations (reflecting elements in the SADC Regional Indicative Strategic Development Plan – RISDP):

- i) **Road:** A commitment from all Member States to deregulate the supply of road transport services and focus on the achievement and promotion of the quality of transport services to meet the objectives of Chapter 6 of the TCM Protocol (this could include a commitment to review the relevance of restrictive measures such as the “third country rule”, which the study observes that the RISDP was intended to review in its “Facilitation of Road Transport Market Liberalisation Project”, which aimed to develop a multilateral road transport agreement to replace the myriad of bilateral agreements);
- ii) **Rail:** The need to develop a model for regional railways that will create separate entities for track supply and maintenance, safety regulator, economic regulator and train operators in order to create conditions to permit competition;
- iii) **Ports and maritime:** The need for institutional restructuring of most ports in the region to create a system of single port authorities with local landlord jurisdiction under a national ports authority and regulator;
- iv) **Air:** A commitment and action to implement the Yamoussoukro Decision on air transport.

Discussion points:

- a. To what extent do Member States believe these recommendations are appropriate to the objectives of regional integration in transport services?
- b. How could the current negotiations support progress in these issues?
- c. What scope is there for reflecting liberalization objectives in a reference paper of pro-competitive regulatory principles for the transport sector?

**SADC Secretariat
July 2014**