

# **Strengthening of economic and trade related capacities and competences in SADC**

**Study Report**

**SADC Trade in Transport  
Services**

**P r e s e n t e d   t o**

GIZ – Deutsche Gesellschaft für  
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The views, comments and any errors are however, the sole responsibility of the authors, and observations and corrections will be most welcome via email: npa@gom.co.za. or Tel: +27 31 5628707

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## Table of Contents

<b>ACKNOWLEDGEMENTS</b>	<b>1</b>
<b>ABBREVIATIONS</b>	<b>VI</b>
<b>WEIGHTS AND MEASURES</b>	<b>X</b>
<b>GLOSSARY OF TERMS</b>	<b>XI</b>
<b>EXECUTIVE SUMMARY</b>	<b>XII</b>
<b>1 BACKGROUND</b>	<b>1</b>
<b>2 SCOPE AND OBJECTIVES OF THE STUDY</b>	<b>2</b>
2.1 Scope .....	2
2.2 Objective of the study .....	2
<b>3 METHODOLOGY</b>	<b>2</b>
<b>4 RELATIONSHIP BETWEEN PTCM AND PTIS IN RELATION TO TRANSPORT SERVICES</b>	<b>3</b>
4.1 Introduction .....	3
4.2 Road transport .....	4
4.3 Railways.....	6
4.4 Maritime and Inland Waterway Transport.....	7
4.5 Civil Aviation .....	8
<b>5 APPLICATION OF THE PTCM</b>	<b>10</b>
5.1 Obstacles to Liberalisation.....	10
5.2 Liberalisation of the Regional Road Transport Market: .....	14
<b>6 CURRENT STATE OF TRANSPORT LIBERALISATION IN THE REGION</b>	<b>17</b>
<b>7 DESCRIPTION OF ROAD TRANSPORT BY COUNTRY</b>	<b>20</b>
7.1 Angola.....	20
7.2 Botswana .....	21
7.3 Democratic Republic of Congo (DRC).....	23
7.4 Lesotho .....	25
7.5 Malawi.....	26
7.6 Mozambique .....	28
7.7 Namibia.....	31
7.8 South Africa .....	33
7.9 Swaziland.....	37
7.10 Tanzania .....	38
7.11 Zambia .....	40
7.12 Zimbabwe .....	42
<b>8 DESCRIPTION OF RAIL TRANSPORT BY COUNTRY</b>	<b>45</b>
8.1 Introduction .....	45
8.2 Angola .....	46

8.3 Botswana .....	46
8.4 Democratic Republic of the Congo .....	47
8.5 Lesotho .....	47
8.6 Malawi .....	47
8.7 Mozambique .....	48
8.8 Namibia .....	49
8.9 South Africa .....	49
8.10 Swaziland .....	51
8.11 Tanzania .....	51
8.12 Zambia .....	52
8.13 Zimbabwe .....	52
<b>9 DESCRIPTION OF MARITIME TRANSPORT AND PORTS</b>	<b>53</b>
9.1 Overview .....	53
9.2 Angola .....	55
9.3 Democratic Republic of Congo (DRC) .....	57
9.4 Mauritius .....	58
9.5 Mozambique .....	59
9.6 Namibia .....	60
9.7 Seychelles .....	61
9.8 South Africa .....	62
9.9 Tanzania .....	64
<b>10 DESCRIPTION OF AIR TRANSPORT SERVICES</b>	<b>65</b>
10.1 Overview .....	65
10.2 Angola .....	68
10.3 Botswana .....	69
10.4 DR Congo .....	69
10.5 Lesotho .....	70
10.6 Malawi .....	71
10.7 Mauritius .....	71
10.8 Mozambique .....	72
10.9 Namibia .....	72
10.10 Seychelles .....	73
10.11 South Africa .....	73
10.12 Swaziland .....	74
10.13 Tanzania .....	74
10.14 Zambia .....	75
10.15 Zimbabwe .....	75
<b>11 DESCRIPTION OF INLAND WATERWAYS</b>	<b>77</b>
11.1 Overview .....	77
11.2 DR Congo .....	77

11.3	Malawi .....	78
11.4	Mozambique .....	79
11.5	Tanzania .....	79
11.6	Zambia .....	79
<b>12</b>	<b>DESCRIPTION OF PIPELINE TRANSPORT</b>	<b>81</b>
12.1	Overview .....	81
12.2	Angola .....	81
12.3	Mozambique .....	81
12.4	South Africa .....	82
12.5	Tanzania .....	83
<b>13</b>	<b>CHALLENGES AND POSSIBLE MITIGATION OF RISKS FROM LIBERALISATION</b>	<b>84</b>
13.1	Road Freight and Passenger .....	84
13.2	Rail Transport .....	85
13.3	Ports and Maritime .....	86
13.4	Air Transport .....	87
13.5	Waterways .....	87
<b>14</b>	<b>OBSERVATIONS AND RECOMMENDATIONS</b>	<b>88</b>
14.1	Potential for Requests and Offers .....	88
16.2	MFN Obligation and Bilateral Agreements .....	90
16.3	Other Services Agreements .....	90
16.4	Observations by Transport Modes .....	90
16.5	Recommendations .....	94
16.6	Future Development of Efficient Transport Services in ESA .....	95
	<b>ANNEXURE A – TERMS OF BILATERALS AND MOUS</b>	<b>97</b>
	<b>ANNEXURE B – SADC ROAD TAXES AND OTHER CHARGES – 2012</b>	<b>101</b>
	<b>ANNEXURE C – QUESTIONNAIRE TEMPLATE FOR COUNTRY MODAL PROFILES</b>	<b>104</b>
	<b>ANNEXURE D – TERMS OF REFERENCE</b>	<b>108</b>
	<b>ANNEXURE E – CORRESPONDENTS AND CONTACTS</b>	<b>115</b>
	<b>ANNEXURE F – LITERATURE CONSULTED</b>	<b>116</b>

## List of Tables

Table 1: Maritime Liberalisation Implementation by Country .....	xvii
Table 2: Progression in the Liberalisation of Market Access .....	14
Table 3 SADC Road Taxes – 2012.....	101

## List of Figures

Figure 1: Framework for Road Transport Regulation in SADC-ESA .....	xv
Figure 2: Levels of Negotiations and Application of Agreements .....	11
Figure 3: Current Status of Port Liberalisation in SADC Member States.....	54

## **ABBREVIATIONS**

ACSA	Airports Company of South Africa
ADM	Aeroportos de Mocambique
AFCAC	African Civil Aviation Commission
ANIP	Angolan Private Investment Agency
ASLC	Air Service Licensing Council
BASAs	Bilateral Air Service Agreements
BEE	Black Economic Empowerment
bn	Billion
BURS	Botswana Unified Revenue Services
CAAB	Civil Aviation Authority of Botswana
CBRTA	Cross Border Road Transport Agency
CEAR	Central East African Railway
CFB	Caminhos de Ferro de Benguela
CFM	Caminhos de Ferro de Mozambique
CHCL	Cargo Handling Corporation Limited
CMT	Committee of Ministers of Trade
CoM	Council of Ministers
COMESA	Common Market for Eastern and Southern Africa
COR	Certificate of Roadworthiness
DAC	Department of Civil Aviation
DCA	Directorate of Civil Aviation
DoT	Department of Transport
DRC	Democratic Republic of Congo
EAC	East African Community
EAC	East African Council
EC	European Commission
ENANA	Empresa Nacional de Exploracao e Navegacao Aereade Angola
ESA	Eastern and Southern Africa

FESARTA	Federation of Eastern and Southern African Transport Associations
FDI	Foreign Direct Investment
GATS	General Agreement on Trade in Services
HIV	Human Immune Virus
HGV	Heavy Goods Vehicle
IACM	Instituto de Aviacao Civil de Mocambique
IMO	International Maritime Organisation
INAV	National Vehicle Licensing institute
IRRN	Interconnected Regional Railway Network
ISCL	Interstate Carrier Licence
IT	Information Technology
KADCO	Kilimanjaro Airports Development Company
LAM	Linhas Aéreas de Moçambique
M	Million
m	Metre
MIGA	Multilateral Investment Guarantee Agency
MIPS	Mozambique International Port Services
MLS	Malawi Lake Services
MOU	Memorandum of Understanding
MRTA	Multilateral Road Transport Agreement
NAFTA	North American Free Trade Area
NERSA	National Energy Regulator of South Africa
NFRA	National Food Reserve Agency
NLPI	New Limpopo Investments
NTB	Non-tariff Barrier
NRA	National Roads Agency
NRZ	National Railways of Zimbabwe
OHADA	Organisation For The Harmonisation Of Business Laws In Africa
ONATRA	Office Nationale des Transportes



OSBP	One-stop Border Post
OTRACO	Office D'exploitation des Transportes du Congo
p.a.	Per annum
PACRA	Patent and Companies Registration Agency
PRASA	Passenger Rail Authority of South Africa
PTCM	Protocol on Transport, Communication and Meteorology
PTIS	Protocol on Trade in Services
RECs	Regional Economic Communities
RSA	Republic of South Africa
RISDP	Regional Indicative Strategic Development Plan
RTSA	Road Transport and Safety Agency
RVA	The Air Navigation Board
SAA	South African Airways
SACAA	Civil Aviation Authority Act
SACU	Southern African Customs Union
SADC	Southern African Development Community
SAR&H	South African Railways and Harbours
SATCC	Southern African Transport and Communications Commission
SATS	South African Transport Services
SCTP	Société Commerciale des Transportes et des Ports
SNCC	Société Nationale des Chemins de Fer du Congo
SR	Swaziland Railways
SUMATRA	Surface and Marine Transport Authority
TAA	Tanzania Airports Authority
TAZARA	Tanzania and Zambia Railway Authority
TCC	Trans Caprivi Corridor
TEUs	Twenty Foot Equivalent Units
TFR	Transnet Freight Rail
TICS	Tanzania International Container Services

TIS	Trade in Services
TNR	Tanzanian National Railways
TPA	Tanzanian Port Authority
TRA	Tanzanian Revenue Authority
TRC	Tanzania Railway Corporation
USA	United States of America
VAL	Voluntary Arbitration Law
VALE	Companhia Vale do Rio Doce
VAT	Value Added Tax
WHT	Withholding Tax
WTO	World Trade Organization
ZUPCO	Zimbabwe United Passenger Company
ZR	Zambia Railways

## **WEIGHTS AND MEASURES**

ton	Metric ton (0.984 British tons / 1.102 US tons)
m	Metre (= 3.28 feet)
km	Kilometre (= 0.621 British or Statute Miles)
mm	Millimetre
mpta	Million tons per annum
tpa	Tons per annum
tph	Tons per hour
ha	Hectare
dwt	Deadweight Tons

## GLOSSARY OF TERMS

<b>Abnormal Load Abnormal Vehicles</b>	Terms used to describe loads and vehicles that exceed the maximum permissible dimensions and weights prescribed for different vehicle categories.
<b>Axle Load Axle Massload Axle Group Load</b>	Terms denoting permissible legal weight (or mass) that is imposed by a road vehicle and load on the road pavement. Axles are defined as “steering, drive axles”, and “trailed axles”. Axle groups are two or three axles interconnected by suspension so as to distribute load weight evenly over the group. Weight is defined for number of wheels per axle and for single, dual and super single tyres of different ratings. Calculation is complicated by the need for measurement and manuals.(Note: terms “weight” and “mass” are often used interchangeably)
<b>Bridge Formula</b>	The formula used to calculate Permissible Gross Vehicle or Gross Combination weight for vehicles/combinations of different lengths and axle spacings. The formula is designed to control point loading on bridges and structures by permitting greater weight for wider axle spacings. (SA Formula is $(2.1 \times L + 18000\text{kgs})$ maximum for any axle groups).
<b>Vehicle Height</b>	The maximum permissible weight of vehicle and load, not standard in SADC – Current SADC “standard” 4.3 metres; Zimbabwe 4.65 metres. NB: In all countries High Cube Containers on trailers are 4.6 metres high.
<b>High Cube</b>	Term for the new generation of ISO containers constructed with height of 2.9 metres compared to “standard” height of 2.6 metres.
<b>Deadweight</b>	Nautical term for the carrying capacity of ships
<b>Tons (DWT)</b>	expressed in metric tons. (Note: Not the displacement or Gross Tons of the vessel)
<b>Gross Combination</b>	Term denoting the total mass (weight) of a combination of road vehicles including the weight of the load carried.
<b>Mass</b>	Legal permissible standards are prescribed.

## **EXECUTIVE SUMMARY**

The first round of the negotiations in Trade in Services in Southern Africa Development Community (SADC) was launched in April 2012 and it covers six priority sectors such as communication, construction, energy related, financial, transport, and tourism services. The negotiations are to be concluded within three years and will result in reduction or removal of barriers to the flow of trade in services between SADC Member States. A road map for the negotiation was developed, and among other things, Member States agreed on the need for sector studies to provide more up-to-date information on existing trade restrictions in the territories of SADC States.

SADC Secretariat commissioned this study to assess the state of liberalisation and take stock of existing trade restrictions in transport sectors in all Member States. The study provides an overview of current levels of liberalisation of transport services in all modes of transport as per the WTO classification, takes stock of trade restrictions, and assesses the levels of implementation of liberalisation commitments under the Protocol on Transport, Communication and Meteorology as well as liberalisation commitment undertaken by Member States in other international agreements. The information presented aims to assist Member States in the formulation of requests and offers in the trade in services negotiating process.

Transport by road has become the dominant mode of land transport for freight throughout the region due to the extensive road network, private sector involvement, and the inherent flexibility and convenience of road transport compared to most other modes.

The regulation of road transport in all countries is vested in transport authorities that control the usage of the roads, the rights and duties of operators and drivers, the specifications of vehicles and the operating standards. Only Tanzania and South Africa have independent regulatory authorities, while in the other Member States the regulatory role lies with the Ministries/Departments responsible for transport. The regulatory authorities in all countries are responsible for the regulation of both freight and passenger transport.

The provision of transport services in the region is largely in the hands of private sector entrepreneurs who provide a wide range of services in support of agriculture, mining, manufacturing, wholesale and retail industries and integrate their services with other aspects of transport and logistics.

In many respects, road transport liberalisation has moved ahead of the regulatory framework with private sector firms establishing connections between countries and negotiating access to markets throughout the region. Access to foreign markets is achieved through establishment of subsidiaries, creation of depots and use of brokers. For freight transport the provision of long distance cross-border haulage covers almost all commodities on the main regional corridors. The emphasis is typically on import of manufactured goods and export of bulk commodities such as copper, cobalt, steel, maize and sugar in much of the region the main routes are

between ports and inland destinations. South Africa being a major supplier of manufactured and processed goods, import-export cargos from ports are a relatively small portion of the total long distance freight market.

In SADC the movement of freight transport and bus passengers across borders is controlled by issue of permits in country of origin but as these are seldom refused, they have become a formality to be observed. In all countries cabotage is prohibited for goods and passengers to protect local suppliers from foreign competition. This is strictly applied to minibus operators, and between South Africa and Mozambique passengers are discharged to walk across the borders and find transport on the other side. In South Africa, because of the volumes of freight on road there is very little effective control of cabotage. The “third country rule” is applied in all countries but in Zambia, Zimbabwe, South Africa and Malawi it is alleged that there is reduced enforcement of the rule.

With regard to liberalisation, the high level regulatory framework is governed by the SADC Protocol on Transport, Communication and Meteorology (PTCM). Intervention areas relating to Road Transport Market Liberalisation are contained in Chapter 5. Article 5.1 (Objectives) stipulating that “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” but the current inter-state regulation is contained in bilateral agreements and Memoranda of Understanding (MOUs) between the Member States. These contain restrictive clauses as shown in Annexure A.

The bilateral agreements refer to the PTCM and all have stated intentions of harmonisation and liberalisation of market access across the region. Both the bilateral agreements and the Southern African Customs Union (SACU) MOU include the issue of cross-border permits under specified conditions and in fact provide a defensive mechanism for control of the supply of transport services between the markets of adjacent countries. The MOU provides for quotas to be established. The Bilaterals between Member States define the types of permits, vehicle categories, forbid cabotage and 3<sup>rd</sup> country haulage, establish Transport Liaison Committees, mention equal market share, determine the number of permits that may be issued (Joint Route committees are to make the decisions based on demand, but this has so far proved impossible)<sup>1</sup>.

In all the SADC Member States, permits are issued by the carrier’s home country. The systems for coordination are largely inoperative, which mean that the destination countries do not know how many vehicles will enter their country, thereby negating the element of control. For passenger transport there is a theoretical referral system to obtain permission from the destination country, but in most cases, this is used as a barrier mechanism rather than to support liberalisation. The real situation is that the permit system does not achieve quantity regulation or control of

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<sup>1</sup> SADC, *Phase 2-Facilitation of Road Transport Market Liberalisation in the SADC Region*, March 2012 p.12

market access and the current situation is therefore positive for liberalisation and efficiency.

Market access for local operations in each country (defined as commercial presence in the PTIS), is controlled by registration of vehicles, licencing of drivers and registration of companies. There is no operator licencing except in Mozambique, Angola, DRC, Zimbabwe and Botswana. In those countries it is reportedly more difficult for foreigners to register and there are immigration and local employment restrictions and processing delays. In most SADC countries foreigners may register companies, always subject to Company Law and immigration regulations.

No country in SADC applies quota systems except Swaziland, which requires foreign operators to give 25% of freight contract work to local hauliers. All countries accept driver licences from other SADC states but in Mozambique this is for cross-border trips only; foreign drivers employed in Mozambique must register and then convert to Mozambique licences. In South Africa there are large numbers of foreign drivers from Zimbabwe, Zambia, Mozambique and other countries (up to 15% in long haul operations).

Throughout the region road freight and passenger transport operates freely across borders (always with the proviso that a permit must be carried). In practice, in all countries, permits are very seldom refused on grounds of market supply, and from the operator's perspective represent just another tax or levy to be paid and passed on to customers.

Some progress has been made with harmonisation of standards for vehicles, driver's licences, and road signage. There are still many aspects where harmonisation is fraught with problems, such as driver training and licencing standards, vehicle maintenance standards, specifications of imported used vehicles, inaccurate weighing equipment, lack of skills in enforcement agencies and variations in official documentation.

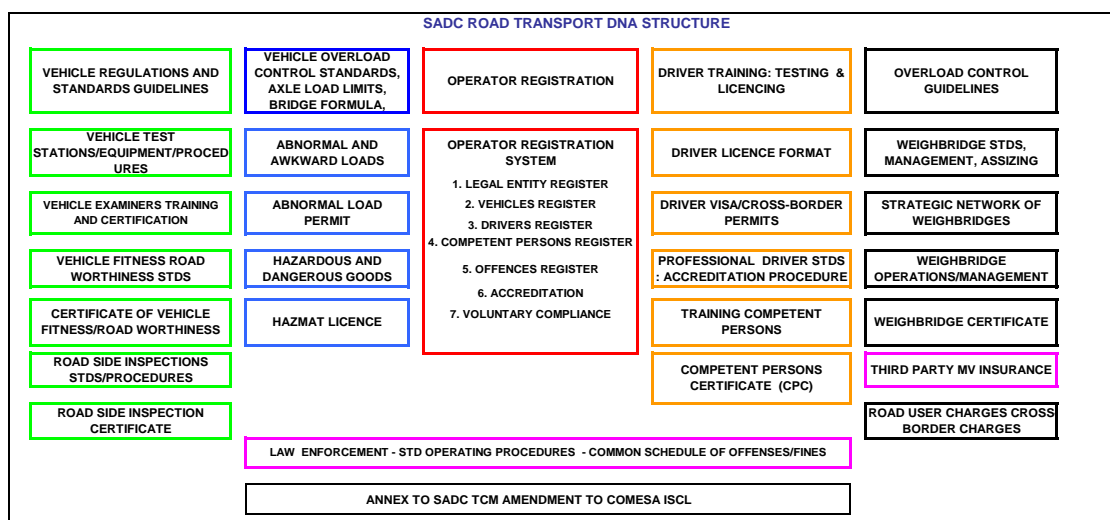
The issue of harmonisation of road charges has gone through a process of protracted discussions and development of a uniform SADC calculation system based on distance and categories of roads in each Member State. The systems in the region range from arbitrary to hi-tech toll systems (South Africa) and standard distance charges (Namibia). There are indications that total agreement is unlikely to be reached, as there are very different needs for road maintenance and various funding systems in place in the region; the issue should probably be deleted from the harmonisation agenda.

A more difficult issue is that 3rd Party insurance, for which several different systems exist and on which there has been no final agreement on harmonisation between the Member States.

Reform of the current systems has received sporadic attention as evidenced by the duration of the process to review harmonisation of standards, development of systems, and evaluation of the present system of market regulation within the framework of bilaterals, spanning for many years.

A recent study for SADC-COMESA and presentation to a Tripartite Workshop in 2012<sup>2</sup>, has recommended the repeal of permit systems and replacement with a uniform system of Operator Registration and Accreditation along the lines of an enhanced COMESA interstate carriers licence. If implemented, this process would provide the basis for a regionally harmonised system of quality control and would support voluntary operator compliance and enhance effective competition. Figure 1 elaborates the role of the operator registration system in an environment of liberalised road transport with quality regulated competition.

**Figure 1: Framework for Road Transport Regulation in SADC-ESA**



*Source: Bingandadi. L.: SADC*

Generally, the liberalisation of road freight services in all countries appear to have run ahead of the regulatory system with private sector operators contriving to supply market demand despite a regulatory framework which contributes little to the promotion of liberalisation or control of the market. The protection of local carriers is more illusory than the conditions described in the bilateral agreements due to lack of systems and data regarding actual market operations. This conclusion is supported by WTO<sup>3</sup> as reported in USAid<sup>4</sup>

Liberalisation of road passenger transport services is somewhat less open with permit restrictions being applied for cross-border operations, with varying levels of success. Industry reports show that there is a measure of support for regulation of passenger transport between neighbouring countries to attempt to protect local operators. In all countries, local freight and passenger transport is controlled by authorities, to avoid cut throat competition and in attempts at maintaining quality standards. In all countries it is difficult for foreign operators to work in the local market due to resistance from local operators, supported by the licencing authorities.

The railway systems in SADC consist of the Interconnected Regional Railway Network (IRRN) with approximately 35,500km of 1,067mm “Cape” gauge lines. Major part of the region is covered by IRRN except for 2600km of 1000 mm gauge

<sup>2</sup> Ibid p.27

<sup>3</sup> WTO Document S/C/W/324, October 29 , 2010

<sup>4</sup> Tech Report – Transport Services Consultations , Tanzania –April



track of the TNR in Tanzania. Most of the IRRN were built in the 19th and 20th centuries and are government owned. The IRRNs in many cases are in poor condition due to deferred maintenance and characterised with inter-states cooperation for cross border transfer of wagons. They require extensive recapitalisation in order to restore operational efficiency. There is urgent need for replacement of locomotives and rolling stock with more modern and efficient machinery to improve regularity, reliability, frequency and capacity of the services and to improve the productivity of the railways which suffer from intensive competition from road haulage in all countries of the region.

Liberalisation of railway transport in the region is relatively limited and largely remains under parastatal monopoly for most countries. However, more recently some countries such as Malawi, Mozambique, South Africa, Tanzania, Zambia and Zimbabwe have liberalised the operations through international concessions. Throughout the region there is scope for trade in ancillary services to most of the railways and there is extensive interstate provision of specialist services that support railways in adjacent countries.

Railway passenger services are limited in most Member States due to low volumes, except South Africa where PRASA provides urban commuter rail services. Passenger services are universally provided by parastatal operators and as in countries worldwide, require State subsidies for survival. An obstacle to the concept of liberalisation in many of the countries in SADC is the low volume of traffic for both freight and passengers, which therefore does not justify competition on the railway system. In several countries, there is potential for revitalisation of rail services, but this is unlikely to take place until economic development creates market demand and a change in the regulatory regime to permit private sector involvement and encourage competition.

Liberalisation of railways is taking place slowly with the new developments in Mozambique and Malawi for haulage of coal and the track access by Swazi Railways for iron-ore haulage to Matola and for cross haulage by South African TFR. Zambia and Zimbabwe have permitted private sector operations and management of services and Tanzania has concessioned railway operations to an investment group. Moves to increase private sector involvement in rail transport are generally being resisted by parastatal operators in most countries. In South Africa recommendations to break up the existing parastatal to form rail track companies and allow competing train operating companies has met with resistance at government level.

Regarding **maritime transport**, the SADC ports capacity has lagged demand growth, leading to congestion, delays and increased costs. With the exception of Mozambique, port authorities are fully controlled by governmental and parastatal organisations which have landlord and regulator roles. While all SADC maritime nations are committed to private sector involvement in the maritime sector and especially in ports, progress varies between countries. The table below summarises the extent to which liberalisation has been implemented in the sector in terms of PTCM.

**Table 1: Maritime Liberalisation Implementation by Country**

	DRC	Angola	South Africa	Namibia	Mozambique	Tanzania	Mauritius	Seychelles
National/flag restrictions on passenger service providers	U	U	U	U	U	U	U	U
National/flag restrictions on deep-sea vessel calls	U	U	U	U	U	U	U	U
National/flag restrictions on coastal vessel calls	U	R	U	U	U	R	U	U
Private terminal operators in place	S	S	S	S	U	S	P	S
Private ship repair in place	S	S	U	R	S	S	R	R
Private sector involved in ships agencies and other support services	S	U	U	U	U	U	U	U
Private sector engaged in marine and towing services	U	R	R	S	R	R	R	R
Movement of natural persons (mode 4)	R	R	R	R	R	R	R	R

**Key:** R=Restricted, P=Planned, S=Allowed/some presence, U=Unrestricted/pervasive

While the table shows good progress in liberalisation of maritime services, current practice shows partial implementation. The status of liberalisation and significant restrictive practices for each maritime country include the following:

In Democratic Republic of the Congo, Onatra, a state entity, has both landlord and port operations roles. Private investment in the industry is allowed but remains limited. Ratios of foreign to national employees are controlled.

The government of Angola is active in port and shipyard investment, supported by countries like China as well as private investors. The private sector is engaged in terminal operations, bunkering, ships agency and support functions. Priority is given to the local economy and initiatives such as the intention to establish a state owned shipping company indicates that the state continues to play a dominant role in the industry.

Namport, a state owned enterprise is engaged in both port authority and port operations roles in Namibia. Private investment may be sought for the planned container terminal expansion. Restrictions include limiting towing services to local companies. The movement of natural people (mode 4) remains highly restrictive

The South African policy and regulations implemented since 2006 have sought to limit Transnet's dominance in the industry as well as attract private investment. There is no competition in containers. However some competition exists in general cargo

Mozambique is unique within SADC in that it allows the private sector into landlord functions. Restrictive practices include the need for transit bonds and restrictions on hiring foreign staff. Transparency is also an area for concern

For Tanzania, the state is still heavily involved in the port management and supply of services but private sector terminals and service suppliers exist. Restrictions include

foreign ownership thresholds and only Tanzanian ships may be engaged in local trade in Tanzanian waters

Mauritius Port Authority conducts both landlord and port operations activities. Port services and some minor port operations activities include the private sector. Restrictions include foreign operators cannot offer their yacht chartering or cruising services as cross-border supply

The Seychelles Port Authority owns and operates Port Victoria, the only commercial port. Restrictions on land ownership, restricted investment areas and restrictions on foreign workers limit liberalized trade.

The region faces serious challenges due to investment backlogs, low operational efficiency and lack of skills. The growth of industry and particularly import and export cargoes has resulted in under capacity in most of the ports of the region. Improving port efficiency will free up cargo flows to both the host country and the landlocked interior countries dependent on these ports. It is evident that in several countries new mining developments are being supported by government and in those countries private sector initiatives for development of ports and transport corridors is being liberalised due to the urgent need for Foreign Direct Investment (FDI) in the provision of capacity to handle bulk exports.

The development of regional maritime legislation needs to be aligned with global best practices, regional needs and sound economics. Efforts to make the region competitive should focus on removing constraints that restrict the unhindered flow of cargoes and supporting services. There has been a trend towards development of regional maritime legislation which may or may not conflict with the highly organised international maritime regulations which drive international commerce and trade worldwide. For example calls for mandatory registration in national ship registries may fail to yield trade advantages, with the bulk of the world's shipping registered under well-established flags of convenience such as Panama, Monrovia and Liberia.

Only four Member States have inland waterways of any significance, and all of them have cross-border routes. In Tanzania there are 11 major lake ports and 43 minor ports with 16 vessels reportedly operating under licence from Surface and Marine Transport Regulatory Authority (SUMATRA). The main ports are government owned and operated. Malawi's attempt at concessioning lake services did not succeed, and operations have reverted to the state. In Mozambique lake transport on Lake Niassa is underdeveloped, and consequently cabotage rights have been granted to the Malawi state operator. In all the countries the lake ports are owned and run by the state. Minimal information is available for Malawi and Tanzania, passenger and freight operations.

In DRC, at the port of Kinshasa private firms are involved (possibly by default) in the provision of their own equipment and cargo handling. In addition to state-owned and state-operated ferries, a wide variety of craft is found on the lakes and, in DRC and Zambia, on the rivers. In DRC push tugs are owned and operated both by state entities and the private sector. A number of Chinese firms in DRC also operate their own vessels and cargo handling. In DRC liberalisation exists de facto if not de jure.

Zambia has no lake service and relies on vessels from Tanzania, DRC and Burundi. Bilateral agreements for cross-lake transport are common; these allow for reciprocal ferry services and recognise partner countries' licences, certificates and training. Concessioning of lake ports in Zambia did not succeed in establishing sustainable operations. A Zambia parastatal company operates 2 ferries at Kazangula on the Zambezi, providing commercial services to freight and passenger vehicles on one of the busiest trucking routes in the region with 220 trucks per day carrying about 2.0 million tons per annum for both directions. In Zambia the mode appears to be substantially liberalised.

Liberalisation of port services in the region consist of the licencing of port terminal operations to private sector. Terminal operators such as Hutchison, Cornelder, SARL, MIPS, Grindrod, Bidvest, and RBCT are major players in the handling of cargo throughout the region. Freight forwarding and clearance is in the hands of the private sector in all ports. The limited scope and extent of the inland waterways system of the region has inhibited liberalisation due to low volumes and lack of effective private sector involvement. Attempts by Malawi government to privatise Malawi Lake Services illustrate the problem.

The state of liberalisation of **air transport services** in different countries can be classified categories into four groups of the World Bank Report of 2010<sup>5</sup> as follows;

- Countries with a dominating state-owned carrier – South Africa.
- Countries with a small state-owned carrier – Angola, Malawi, Mauritius, Mozambique, Namibia, Seychelles, Tanzania and Zimbabwe.
- Countries with private operators only – Botswana, DRC and Zambia.
- Countries with no local operators – Lesotho and Swaziland.

According to the report, the countries in categories (i), (iii) and (iv) should be willing to apply the Yamoussoukro Decision. However, those in category (ii) are effectively maintaining a heavily subsidised air carrier with public funds or providing other government-directed advantages, e.g., airport privileges, to such a carrier, or are procrastinating in the opening of air transport markets.

The World Bank Report stated that none of the SADC Member States had liberalised in the air transport sector in the spirit of the Yamoussoukro Decision, and attributed South African domination of the market as the prime factor for fifth freedoms being extremely limited.

In broad general terms, two countries (Lesotho and Swaziland) do not have a national airline, and rely entirely on a foreign operator (SA Airlink). Their markets may therefore be considered liberalised. Another three (Botswana, DR Congo and Zambia) have no wholly owned national carrier, instead relying on PPP, private or foreign carriers, while in one the national carrier is suspended although it may be resuscitated; these markets are also substantially liberalised. Almost half of SADC countries have relatively weak or small state-owned carriers. Only South Africa has

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<sup>5</sup> The World Bank Report – Open Skies for Africa, Implementing the Yamoussoukro

a dominating state-owned carrier, SAA that relies heavily on government subsidies for survival (R6 billion in 2012). The situation where 9 out of the past 11 private airline start-ups have failed due to competition from SAA is being challenged as it represents an extreme case of unfair competition with private sector airlines.

The level of competition varies across countries but in general the air passenger sector is relatively competitive. In some countries the stated policy is one of liberalisation but this is cautiously applied with protection of the national carrier uppermost in the government's mind. The model in the region is for the state or a state agency to own and operate airports. Ancillary services are usually concessioned, or are offered by a mix of state and private operators.

Regulatory authorities are not independent from policymakers although they are not accountable to operators. Nonetheless, there is relatively little evidence of anti-competitive behaviour except in SA where cases have been referred to the Competition Board. Very few countries have competition commissions; instead, the sector is regulated either by the government or a state agency. Prices on airlines are mainly market-determined.

There are generally few restrictions on foreign investment or the formation of joint ventures or partnerships with locals, except for stipulations on minimum ownership by locals in a few countries (Angola, South Africa, and Tanzania). However, work permits are usually required for the employment of foreign nationals. Ground handling and cargo services are privatised in several countries but in Botswana, ground services are specifically reserved for locals. Air transport throughout the region is becoming more liberalised with only South Africa left with a dominant state-owned airline. In the countries with smaller state-owned carriers, there is liberalisation by provision of permits for services by foreign airlines. Ground handling and freight services are provided by private sector firms in several countries.

**Pipelines** play a significant role in the eastern maritime states, i.e., Mozambique, Tanzania and South Africa, but also serve the landlocked countries of Zambia and Zimbabwe. Because their construction entails high capital outlays and requires complex land expropriation procedures, pipeline construction and operation is typically in the hands of the state and there is little or no competition.

The Mozambique - Zimbabwe pipeline is managed by government parastatal for the fuel industry while the Temane-Sasol gas pipeline is a joint venture between the governments of Mozambique and South Africa. The Tanzania-Zambia pipeline "Tazama" is jointly owned by the two governments i.e. Tanzania and Zambia. The gas pipeline "Songas" in Tanzania is jointly owned and operated by the power utility and the private sector including a Canadian company. The South African petroleum and gas pipeline network is controlled by the National Energy Regulator of SA (NERSA) which issues licences and deals with annual applications for tariff increases. The Competition Commission has full jurisdiction over the sector in South Africa.

More recently, however, a private foreign firm has been contracted by the Malawi government to build and operate a gas pipeline from Beira in Mozambique to

Malawi, while joint South Africa-Mozambique companies have been granted licences to build and operate a cross-border gas pipeline and a fuel pipeline. These represent the entry of the private sector into the industry in those countries.

From the research performed in this study, it is apparent that some liberalisation i.e. opening of markets is taking place in all transport modes throughout the region. The implementation of PTCM differs across countries and in the case of road transport is controlled by a complex set of bilateral agreements between neighbouring Member States. The biggest challenge in road transport in the region is the effects of Trade Regulation as applied by customs and revenue authorities at border crossing points in all countries. Although not technically a transport issue, the net effect of border delays, on road and rail transport is very significant and adds significantly to the cost of moving goods, aggravating the difficult conditions caused by poor roads and lack of support services.

From the perspective of the PTIS there does not appear to be reasons why most countries cannot make commitments in transport in Modes 1 and 2. There also appears to be no obstacles to making commitments in Mode 3 as there are many examples in the region. In Mode 4, most of the SADC Member States have, at WTO level, so far only guaranteed limited employment of foreign natural persons linked to foreign direct investment. Consideration could be given to expand the scope of commitments to movements that are particularly relevant for transport, such as the assurance that foreign transport personnel can enter destination countries on a short term basis – a practice that is almost universally applied.

# **1 BACKGROUND**

SADC Member States commenced its programme on trade in services in 2002 by developing a Protocol based on the General Agreement on Trade in Services (GATS). After lengthy negotiations the Protocol was adopted by the Committee of Ministers (CMT) of Trade in 2009 and subsequently signed by the Heads of State/Government in August, 2012. CMT at its meeting held in November, 2011 agreed that the negotiations on liberalisation commitments in the six priority sectors (communication, construction, finance, energy related, tourism and transport) should commence in 2012.

Therefore, Member States launched the first round of negotiations on liberalisation commitments in April, 2012, with the expectation that these negotiations will be completed within three years, i.e. by March 2015. Member States agreed on a road map for negotiations which will be through a request-offer process. The agreed milestone for the process include submission of requests in at least two of four sectors i.e. communication, finance, tourism and transport services by August 2012; and submission of initial offers in at least two of the four sectors by November, 2012.

In support of the negotiations, Member States also agreed on the need for more up-to-date information on the trade restrictions and state of liberalisation in the relevant sub-sectors across Member States. There is a recognition that for most of the sectors including transport services; a large amount of research has been carried out and that the resulting studies may offer a certain level of accumulated information. A thorough assessment indicated some gaps both in terms of inclusiveness of all member states and level of details. Some of the information is out dated and may not offer a good basis for formulating negotiating positions.

The Secretariat therefore commissioned this study with the objective of taking stock, updating and filling gaps in the existing body of information on trade in transport services so as to support member states participation in the negotiations.

## **2 SCOPE AND OBJECTIVES OF THE STUDY**

### **2.1 Scope**

The study covered transport services in air, internal water ways, maritime, pipeline, railway and road transport as per the WTO classification. The assessment covered passenger and freight transportation; and where data was available other subsectors were covered as appropriate such as rental of transportation equipment with crew, push and towing services, maintenance and repair of transportation equipment/vessels, supporting services (e.g. Catering for air and maritime transport) and ancillary services to all modes (such as cargo handling, storage and warehousing, freight agency) and other transport services.

The report describes the current market structures, state of liberalisation of transport services in the region; the level of implementation of the commitments and achievements under the Protocol on Transport Communication and Meteorology (PTCM) as well as the relationship between PTCM and the Protocol on Trade in Services (PTIS) in relation to the Trade in Transport. Also, the study took a stock of market access and national treatment restrictions applicable in the various subsectors for all SADC countries except Madagascar which is currently suspended.

### **2.2 Objective of the study**

The purpose of the study is to take stock and update the existing body of information on trade in transport services in SADC in order to facilitate Member States' preparations for and participation in the regional SADC trade in services negotiations.

## **3 METHODOLOGY**

The methodology of the study involved assessment of primary and secondary data covering all issues specified in the scope of the study.

Primary data was collected through a template (see annex .... of the report) that was prepared and circulated to various stakeholders in across SADC countries. Secondary data was collected through literature review including studies, relevant SADC Protocols, GATS, SADC Member States' GATS commitments; and discussions with relevant officials from SADC Member States and the Secretariat.

Since most of the information of interest is more qualitative than quantitative, the consultant opted for qualitative analysis and limited quantitative analysis of the data. The draft report was shared for comment by stakeholders in a sector forum held On 11-13<sup>th</sup> September, 2012 in Durban, South Africa.



## 4 RELATIONSHIP BETWEEN PTCM AND PTIS IN RELATION TO TRANSPORT SERVICES

### 4.1 Introduction

The Protocol on Transport, Communications and Meteorology, in force since 6 July 1998, provides a legal and broad policy framework for co-operation, and defines the strategic goals for the transport, communications and meteorology sectors. The Protocol was concluded with the recognition that collective benefits would flow from greater co-operation and effective definition of the roles of both private and public sector service providers. There is recognition that well developed transport and communications sectors support the development of other sectors (e.g. tourism and energy sectors) and that they can promote complementarities between SADC Member States and enhance trade.

The PTCM provides that its scope of application is the whole of the national and regional sectors (public and private) and does not provide for any carve-outs.<sup>6</sup> For the transport sector, its overarching objective has been described as the establishment of “transport systems which provide efficient, cost effective and fully integrated infrastructure and operations, which best meet the needs of the customers and promote economic and social development while being environmentally and economically sustainable”.<sup>7</sup>

Chapter 3 sets out the PTCM's specific objectives—as the encouragement of, *inter alia*, multimodal transport<sup>8</sup> and travel between SADC territories—as well as an “integrated transport policy”. The PTCM expressly requires State Parties to treat equally “the national freight and passenger service providers of [State Parties] with regard to the provision, access and use of infrastructure and immigration and clearance procedures”<sup>9</sup>—thus recalling the (albeit much more inclusive) non-discriminatory MFN standard of treatment required by Article 4 of the Protocol on Trade in Services.

The framework for co-operation in the PTCM covers various transport modes; road transport (Chapters 4-6); railways (Chapter 7); maritime and inland waterways (Chapter 8); and civil aviation (Chapter 9).<sup>10</sup> The following sub-sections examine the principal provisions of these Chapters as well as their linkages to the Protocol on Trade in Services.

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<sup>6</sup>Article 2.1 of the PTCM provides the following illustrative list of subject-areas that it covers: “all policy, legal, regulatory, institutional, operational, logistical, technical, commercial, administrative, financial, human resource and other issues” from an “international, continental, regional and national” perspective. This is also true in respect of its scope of application for the communications sector.

<sup>7</sup>UNCTAD, above n 3, p. 17.

<sup>8</sup>Which may in practice involve cross-border supply of services given that certain SADC Member States are landlocked. With respect to the promotion of intermodal transport operations, see also Article 3.4 of the PTCM.

<sup>9</sup>Article 3.2(2) of the PTCM. Article 1.1 provides that a “Service provider” is a “public or private sector provider of a transport, communications or meteorology facility and/or operational service”. The overlap with “service supplier”, defined in Article 1(1) of the Protocol on Trade in Services as a “natural or juridical person of a State Party that supplies a service” is apparent.

<sup>10</sup> Chapter 13 of the PTCM deals with institutional aspects pertaining to all sectors.

## 4.2 Road transport

Chapter 5 of the PTCM addresses road transport, and two other chapters are dedicated to road infrastructure and traffic.<sup>11</sup> The objectives in these chapters are: to facilitate the flow of goods and passengers in the region, as well as access to centres of population and economic activity, by promoting the development of a competitive commercial road transport industry which provides safe, cost-effective transport services to consumers while minimising negative environmental impacts.<sup>12</sup> In order to achieve this objective, State Parties undertake various obligations, some of which give rise to linkages with the trade in services liberalisation agenda.

Under Article 5.1, State Parties undertake to “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”.

State Parties undertake to progressively liberalise their “market access policies in respect of the cross-border carriage of goods”.<sup>13</sup> Three “liberalisation phases” are foreseen in order to achieve this end<sup>14</sup> and the aim of this provision seems to be that State Parties should achieve the “same levels of liberalisation”.<sup>15</sup> There is, however, provision for Parties which have the capacity to move ahead with liberalisation to do so on a bilateral basis.<sup>16</sup> In addition, there is an emphasis on the centrality of reciprocity of benefits for State Parties’ carriers<sup>17</sup> and a State Party is explicitly permitted to not introduce liberalisation measures to benefit other State Parties which do not “accord equal market access [to its] carriers”.<sup>18</sup>

PTCM provide for binding commitments by State Parties to liberalise their markets for the international carriage of goods and passengers. The connection between the move away from regulation—or at least towards harmonisation of regulatory mechanisms—and the move towards free and open transport market access is important. For road transport, the PTCM 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*, (a) single SADC carrier permits or licences (discussed below); (b) carrier registration; (c) quota and capacity management systems; (d) harmonised administrative (including consultative) procedures, documentation and fees; and (e) information management, including a harmonised format of supporting information systems and exchange of information procedures.<sup>19</sup>

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<sup>11</sup> Chapters 4 and 6, respectively.

<sup>12</sup> See Articles 4.1, 5.1 and 6.1 of the PTCM.

<sup>13</sup> Article 5.3(1) of the PTCM (titled “Market Access in Respect of International Transport”). There is also a rather “soft” commitment for State Parties to “consider the possibilities of future liberalisation of road passenger services” as “guided by regional and national policy reforms”. (Article 5.3(12) of the PTCM (emphasis added))

<sup>14</sup> Article 5.3(7) of the PTCM.

<sup>15</sup> Article 5.3(6) of the PTCM. It is curious that Article 5.3(6) of the PTCM provides that State Parties may “formalise[]” their intention to reach the same levels of liberalisation by concluding “a multilateral agreement”, despite the fact that they undertake to do exactly that in this article. An agreement is currently being developed pursuant to this provision.

<sup>16</sup> Article 5.3(4) of the PTCM.

<sup>17</sup> Article 5.3(3) of the PTCM.

<sup>18</sup> Article 5.3(9) of the PTCM.

<sup>19</sup> Article 5.4 of the PTCM. (emphasis added)

The terms of the road transport bilateral agreements and Memorandum of Understanding (MOUs) in existence tend to include a significant element of defensive and restrictive terms, some of which conflict with the long term objectives of the PTCM and the PTIS. It is also relevant to question the need for “lateral” agreements in addition to the PTCM and the PTIS, as the liberalisation processes in COMESA and EAC do not contain these duplications.

The analysis of the bilaterals performed in Phase 1 of the project “Facilitation of Road Transport Liberalisation in SADC”, showed that the ineffective application of the bilaterals and MOUs supports a need for radical change in the regulatory environment as shown in the following section.

In order to fully appreciate how the above-mentioned agreements provided for under Article 5.4 of the PTCM may conflict or complement the Protocol on Trade in Services (PTIS), or constrain Member States’ options for negotiations under the PTIS, there is a need to study such agreements. It has been highlighted that “bilateral agreements and MOUs provide the current framework for coordination of road transport among Member States”.<sup>20</sup> Indeed, the purpose of these bilateral road transport agreements is ostensibly to achieve the progressive liberalisation of Member States’ market access policies (pursuant to Article 5.3). It is possible that harmonisation and effective application of a multilateral administrative framework could be achieved, but as discussed in the following paragraphs, it seems that overall, these agreements are in fact at odds with the objectives of the PTCM.<sup>21</sup>

The undertakings discussed above indicates that there has been a commitment to liberalise this sector for almost 15 years and some Member States have, to this effect, liberalised some road transport services in their territories. It is still relevant to evaluate whether there is any potential conflicts between these commitments and those in PTIS. For example, Article 5.3 of the PTCM emphasise on proscribed reciprocity on a bilateral level between negotiating States, which, is in principle inconsistent with the PTIS central general obligation of MFN treatment which requires unconditional extension of the most favourable treatment accorded to services or suppliers of any country to the services or suppliers of State Parties of the PTIS. However, the MFN clause permits exemptions to this general obligation. While such exemptions cannot be used to diminish specific liberalisation commitments made and entered in the schedule, they can be listed either where no specific commitments exist for the relevant sector and mode of supply, or to allow more favourable treatment beyond above the level of liberalisation granted to all State Parties. Accordingly, Member States should consider whether there is a need for them to make use of MFN exemptions in order to circumvent this conflict.<sup>22</sup> The

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<sup>20</sup> SADC, *Phase 1-Facilitation of Road Transport Market Liberalisation in the SADC Region*, March 2010, p. 5. This report provides, *inter alia*, an overview of the evolution of agreements in this area—challenges they have posed as well as perceived obstacles to their implementation (*ibid.*, pp. 5-7).

<sup>21</sup> *Ibid.*, pp. 15-24 reviews the subject matter of these bilateral agreements.

<sup>22</sup> The PTCM would not constitute an MFN-exempt preferential agreement under Article 4 of the Protocol on Trade in Services because it would likely be viewed as a pre-existing preferential agreement between State Parties which does not appear to be covered by Article 4.

issue is further complicated by the fact that only Swaziland and South Africa had undertaken MFN exemptions for road transport under the GATS in 1995.

New MFN exemptions can no longer be listed, except by the Seychelles upon their accession to the WTO. This means that only preferences that these two Member States grant to their trading partners are protected by the WTO MFN exemptions. Any new preferences introduced by other SADC Member States to the benefit of only some but not all State Parties would not be covered by Article V of the GATS, and would hence trigger an obligation to grant the most favourable treatment to all other WTO Member States. It would also cause the problem of GATS-minus treatment for any PTIS State Parties not listed as beneficiaries of the preferential treatment.

One solution to this conundrum that would be legally consistent with both the GATS and the PTIS, and fulfil the main objective of the market liberalisation programme of the PTCM, would be for State Parties to make better commitments than MFN-treatment for all State Parties, possibly to be phased, in line with Article 4 of the PTIS. In these deliberations it is relevant for Member States to evaluate the costs and efficacy of current permit procedures that attempt to regulate the supply of transport services as the current processes have been shown to be ineffective and at variance with the principles of transport liberalisation<sup>23</sup>.

Other possible tensions with the PTIS may exist, such as Article 5.4 which indicates that State Parties to the PTCM may establish “quota and capacity management systems” (these concepts are also included in the SACU MOU to which some SADC Member States are signatories, as described in the following section) Member States, when negotiating their commitments under the PTIS should be mindful of this and, should they agree to liberalise road transport (which would have to be done on an MFN basis), might consider either doing away with quota/capacity conditions or listing specific limitations in order to be consistent with Article 14 of the PTIS (“market access”).

### 4.3 Railways

The objective of the PTCM as to rail transport is also that State Parties “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”.<sup>24</sup> To this end the PTCM provides for, *inter alia*, the development of a harmonised regional railway policy; monitoring the adequacy of railway infrastructure; co-operation on routes and operational matters; promoting the development and implementation of compatible technical standards in respect of infrastructure and equipment; and the development of a common syllabus for the training of personnel. Much of this would facilitate trade in services, but as shown in later sections of this report the extensive involvement of

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<sup>23</sup> SADC, *Phase 2-Facilitation of Road Transport Market Liberalisation in the SADC Region*, March 2012

This report proposes that regulation of quantity (supply) of transport by authorities is ineffective and recommends operator quality regulation and accreditation as a better alternative.

<sup>24</sup>Article 7.1 of the PTCM.

monopoly parastatal organisations in the provision of rail services is a limiting factor to liberalisation.

#### 4.4 Maritime and Inland Waterway Transport

Maritime and inland waterway transport is regarded as an area of strategic importance to regional economic growth.<sup>25</sup> State Parties' objective is to promote regional development by implementing "harmonised international and regional transport policies" which, amongst other things, "*maximise regional and international trade and exchange*" (Article 8.1 of the PTCM). In addition, State Parties undertake to develop "common understanding[s]" on specific matters, such as, "the role of coastal shipping and the encouragement of joint ventures and alliances between ship-owners to promote economies of scale"; and "the role of maritime transport in regional trade within the region while maintaining its role in international transport by concluding bilateral agreements with SADC's main trading partners".<sup>26</sup> Considering that Article 18 of the PITS calls for development of mechanisms for the identification of services business opportunities and joint investment projects, Member States might consider what has been completed under the PTCM in this regard.

When negotiating their specific commitments under the PTIS, SADC Member States which are parties to the PTCM should note that they have in principle already committed not to restrict cabotage (i.e. shipping between ports in the same country) by ships registered in another party to the PTCM, article 8.3(2 & 3). Article 8.3 of PTIS also complements PTCM (article 8.3(1)) whereby State Parties agreed to adopt measures to promote competition in the provision of port services and related services. Also this reinforces one of PITS' objectives (i.e. enhancement of services sectors' competitiveness), supports the obligation under Article 19 of the PTIS, and provides an example of a specific collective undertaking to take measures to proscribe anticompetitive business practices. While the PTCM does not provide for the liberalisation of port and landside services, State Parties' specific undertaking to adopt measures for harmonised tariff structures and regulation of charges so as to "avoid monopolistic exploitation"<sup>27</sup> is in line with the PTIS prohibition of abuse of dominant positions by monopoly service suppliers.<sup>28</sup> The relationship between State-owned parastatal port management organisations and private sector terminal operators and shipping lines has relevance.

Finally, it is of particular interest that, with regard to "the provision of or access to any port services including the freedom to establish facilities", Member States which are party to the PTCM have already essentially agreed to extend MFN treatment to other parties to the PTCM.<sup>29</sup> The implications of this agreement in an environment

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<sup>25</sup>UNCTAD, above n 3, p. 19.

<sup>26</sup>Article 8.2(1) of the PTCM.

<sup>27</sup> Article 8.3(2)(e) of the PTCM.

<sup>28</sup> See Article 12(2) of the Protocol on Trade in Services.

<sup>29</sup>Article 8.3(4) of the PTCM. An examination might be made to gauge whether there is a tension between this obligation and State Parties' bilateral agreements on inland waterway transport, and also whether Member States' agreement will necessitate them to list MFN exemptions under the Protocol on Trade in Services. For some information on bilateral and other agreements in place regarding inland waterway transport, see UNCTAD, above n 3, p. 20.

where there is parastatal monopoly control of ports will need to be explored in relation to the more binding terms of the PTIS. The current situation in the port and maritime sector is described in later sections of this report.

## 4.5 Civil Aviation

The main objective of the PTCM in air transport is to ensure the provision of safe, reliable and cost-efficient services in support of socio-economic development in the SADC region. Member States have recognised the need for co-operation in the Region in order to overcome “the constraints of small national markets, market restrictions and the small size of some SADC airlines and further to ensure the competitiveness of regional air services in a global context”,<sup>30</sup> something which immediately indicates a need to open up markets.

In order to achieve these objectives, Member States agreed to develop a harmonised regional civil aviation policy for the gradual liberalisation of intra-regional air transport markets for the SADC airlines.<sup>31</sup> As of 2002, it was reported that market liberalisation efforts had been “slow and government-owned airlines dominate[d] the airline sub-sector”.<sup>32</sup> There has been some progress towards liberalisation of the airline industry however.

State Parties also undertook under the PTCM to develop a common policy for the staggered and co-ordinated restructuring of the sector that would necessarily cover, *inter alia*, “the development of ownership options”—possibly entailing the attraction of investors from within and outside the Region—and the promotion of competition among service providers.<sup>33</sup> With regards to the latter, State Parties’ commitment was further defined as one to foster an environment which would encourage the formation of viable joint venture operations.<sup>34</sup>

State Parties also agreed to encourage the mutual recognition of licences and certificates of airworthiness which are in compliance with international standards<sup>35</sup> and progress has been made in this regard.<sup>36</sup> These initiatives complement the objectives with regard to mutual recognition and competition contained in the Protocol on Trade in Services. It is also most notable that, in the context of air transport, the PTCM appears to recognise the potentially important role of

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<sup>30</sup>Article 9.1(2) of the PTCM.

<sup>31</sup>Article 9.2(a) of the PTCM.

<sup>32</sup>Lolette Kritzinger-van Niekerk and Emmanuel Pinto Moreira, The World Bank, *Regional Integration in Southern Africa: Overview of Recent Developments* (Washington, DC: World Bank, 2002), pp. 19-20.

<sup>33</sup> See Article 9.2(c)(ii) and (iii) of the PTCM which specifically provides for the restructuring of “SADC airlines, airports and the provision of air traffic and navigation services” and expressly anticipated that competitiveness might be enhanced by the “participation” of foreign investors in the ownership of airlines. (See Article 9.3(3) of the PTCM)

<sup>34</sup> The PTCM specifically foresaw that this might involve the “integration” of some SADC airlines. (Article 9.3(2) of the PTCM)

<sup>35</sup>Article 9.4(3) of the PTCM.

<sup>36</sup> SADC is implementing a SADC-**Cooperative Development of Operational Safety and Continuing Airworthiness Program** project aimed at enhancing the safety of air transport operations, and at exploring the viability of establishing a SADC Aviation Safety Organization to be manned by Regional Flight Safety Inspectors which would have the mandate to maintain the certification, surveillance, airline audit and training functions. This project intends to address the deficiencies in Member States’ aviation legislation and regulations in respect of personnel licensing, flight operations and airworthiness certification/surveillance. The harmonisation of regulations will also be sought.

investment from outside the Region but only imposes “soft” obligations in this regard. The role of Yamoussoukro is discussed in a later section.

## **5 APPLICATION OF THE PTCM**

### **5.1 Obstacles to Liberalisation**

In many countries of the region there is evidence of growing liberalisation in transport, but whether this can be attributed to the influence of the PTCM or is happening as the result of commercial pressures to develop economic enterprises and exploit potential markets, is not very clear.

#### **a) Government Intervention**

Throughout the SADC region there are very high levels of government participation in economic decision making and planning of the economies, often with little apparent appreciation that the creation of sustainable and profitable commercial undertakings requires the attraction of private sector entrepreneurs and investors. This high level of government intervention is evidenced by the low rankings of Member States in the Global Business Index.<sup>37</sup>

Several countries have policies entailing mandatory participation by government in major investment and development initiatives. In other countries there is (official or unofficial) mandatory inclusion of nationals in the ownership structures. For some countries the promotion of Affirmative Action and Economic Empowerment by selective procurement policies is also seen to be inimical to investment. In several countries there are unwritten requirements to include influential persons in applications to develop resource based and government contractual projects in order to secure licences and win tenders. In addition, presence of transport operations under monopoly parastatal seems to be at variance with the stated intentions of creating an open competitive environment for all transport modes. Nevertheless, there is a growing trend in the region for governmental negotiations with foreign investors in infrastructure for railway construction, port development, and provision of transport equipment and supply of support services. These developments are described by country in the transport later sections of this report.

#### **b) Communication of Objectives**

Throughout the region there is evidence that the high level deliberations and decision making on liberalisation in global and inter-governmental structures, such as WTO and the regional protocols such as PTCM are not the main determinants of national economic policy design. In addition, it is very evident that in many countries the objectives and commitments in terms of interstate protocols and bilateral agreements are either not being effectively communicated and/or not always applied within the descending levels and various department within the State hierarchy.

It is also apparent that the lack of communication of the objectives and application of the negotiated positions on liberalisation is not dependent on the level of sophistication and capacity of the governments concerned, as some of the most advanced economies have created complex institutional structures that have

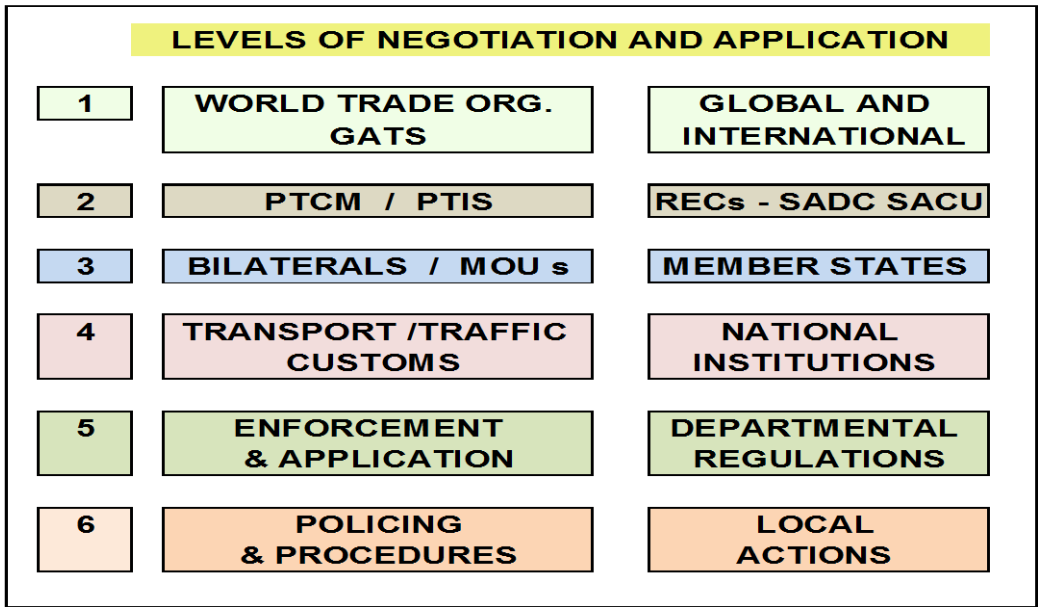
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<sup>37</sup>World Economic Forum – Global Business Index.



tenuous connections to other national Ministries and programmes, and almost operate in isolation with their own mandates and budgets. In the road transport sector this is apparent in the application of vehicle standards, weighing procedures, operator registration and administration of fines. In other transport sectors market access conditions and operational regulations are applied differently in Member States e.g. maritime cabotage. The “disconnect” between layers of implementation is illustrated in figure 2.

**Figure 2: Levels of Negotiations and Application of Agreements**



In many countries there are additional challenges influenced by the ineffectively controlled enforcement personnel, leaving scope for collusion, corruption and bribery. This is particularly evident in road transport as it is primarily a private sector activity, where operators, and drivers in particular, bear the brunt of these dealings as they are the visible part of commerce and industry, face-to-face with traffic and border officials, out in the public domain (on their own), with pressures to perform their function (which is movement of goods and passengers) and are therefore very vulnerable to demands for “signature fees”, “sweeteners” and other inducements necessary to unblock impasses and get on with the job.

**c) Regulatory Priorities**

The concepts of regulation and liberalisation as described in the PTCM have been interpreted to relate primarily to cross-border transport operations rather than the PTIS concept of commercial establishment. In this regard the stated goal of progressive liberalisation implies reducing quantity regulation and increasing freedom to move and trade across borders. It does not suggest any reduction in quality regulation and may in fact require higher levels of quality regulation for some states in order to reassure their neighbours that they should permit their vehicles to operate on the neighbour’s roads.

The historical situation between USA and Mexico is a case in point, where despite the creation of the North American Free Trade Area (NAFTA)<sup>38</sup>, US authorities are sceptical about vehicles and driver standards and the security of Mexican trucking companies in respect of drugs, contraband, and human trafficking. They have therefore historically resisted allowing Mexican trucks to operate on US soil, even when they meet all necessary standards, a situation that may well be aggravated by some protection of local carriers. This has led to retaliation by Mexico and created an unnaturally complex border regime that will take some time to resolve. In total contrast to the US-Mexican relationship, border crossings with Canada are completed in minutes.

There are parallels in SADC where permit and regulatory procedures within some countries are complicated and others are notorious for the extent of harassment and arbitrary fines and enforcement e.g. (Angola: Article in Transport World Africa Sept 2012 and DRC: cross-border embargo by foreign drivers at Kasumbalesa in protest over police victimisation 1-4 Oct 2012.)

With regard to quantity regulation, a number of the freight transport agreements between countries have retained the “third country rule” (which only permits a carrier from Member State A delivering to State B and then to take a return load to it’s home country, but not to any other country). The bilateral and MOU agreements universally prohibit “cabotage”, which is defined as the transport of goods or passengers by a carrier from a Member State, “from a point in another Member State to another point in the same Member State” (i.e. domestic or local haulage). The enforcement of the “No Cabotage” rule is particularly strong in relation to passenger transport and the passenger industry in all countries reacts very rapidly to infringements. As a general rule, it can be said that attempts at protecting local companies from competition by foreign cross-border freight transport operators has the effect of driving up the costs to industrial users, promoting inflation and reducing the quality of the transport supplied by inhibiting FDI in the transport industry. All of these are negative in relation to the promotion of Trade in Services<sup>39</sup>.

Where regulations are designed to “protect” national carriers there is need for further introspection by authorities with regard to national priorities. The path to full liberalisation of cross-border road transport is beset by tough choices regarding the relevance of protection and possible promotion of mediocrity and inefficiency. It must also be recognised that there is no obvious reason why “local” carriers will be able to operate any cheaper than “foreign” carriers, so that a lot of the protectionist legislation in existence is counterproductive for users and often has minimal effect on the actual operation of the transport market. The cost of “protection” or “promotion of local operators” must be compared to the benefits of market freedom and resulting pressures for performance by competing transport service providers.

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<sup>38</sup>Arvis J.F., Global Review of Transit Systems: The North American Free Trade Agreement – World Bank – Dec 2008

<sup>39</sup> Pegrum DF –Transportation Economics and Public Policy – 3<sup>rd</sup> Ed.Irwin 1972 pp 17, 151

There are trade-offs in the decision process regarding levels of protectionism between the transport industries of neighbouring states. Decisions regarding transport liberalisation by governments can have serious cost and service impacts on the industrial users of the transport in their countries that are more significant than the effects on the businesses of local transporters. In the current systems there are very large costs incurred by the transporters (and therefore the users of the transport)<sup>40</sup>, partly as the direct result of government intervention. There are at the same time, also significant costs incurred by the various state authorities that expend resources on managing the transport control regime, without creating any perceivable benefit to the country's economies. As a general principle, the reduction of quantity regulations increases competition and efficiency and reduces costs to end users. The process may lead to some casualties among local carriers; but as they have theoretically got the advantage of closeness to customers, local connections and language, local costs of operation, company and labour legislation and local management on their side, they are to an extent insulated from foreign competition for all but very large local operations. If protection of transport businesses is actually necessary, there are many other legal means of limiting foreigners from doing business within a country.

In the SADC region the objective of "local" protection is illusory as the present system provides that permits are issued by the operators' home country without reference to destination country authorities, so that there is actually no protection of the second country "local carriers" at all, except from the "no cabotage" rule. Even in countries where the incoming carrier must buy a local permit before entry, it is not practical to refuse entry to a vehicle with a load consigned to a local industry, such permits are also not used to control the quantity of foreign trucks entering, but merely contribute to costs/revenues.

In the gradual liberalisation of transport markets the last barrier to be removed is usually cabotage, as it is generally regarded as the preserve of the local carriers. In some countries the protection of local markets has led to formation of inefficient cartels and industry domination that is less efficient than would be the case if there were foreign competition. It can be noted that in the SADC region there is a considerable amount of cross-ownership of transport companies between the various nationalities and investment in shares of foreign transporters is common. In particular, the ownership of transport companies in Botswana, Zambia, Zimbabwe, South Africa, and Tanzania, by foreign nationals (both national and overseas) is a normal feature of the market. There is no conceptual reason why Foreign Direct Investment (FDI) in road transport should be any more threatening than in any other economic activity.

The process of liberalisation has variable impacts of the different role-players that can be shown as a progressive transition from a condition we designate as Phase 0 (restricted market) to Phase 4 (Free market), is shown in Table 2 below.

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<sup>40</sup> Harnessing Regional Integration for Trade and Growth – Word Bank 2011 pp12-13

**Table 2: Progression in the Liberalisation of Market Access**

Phase	Conditions	Description	Impact on carriers	Impact on Industrial Users	Impact on Country	Impact on Authority	Example
Phase 0	No reciprocal Access	All transport in each state is performed by own carriers. Cross-border transport is all one way	Protection of local carriers increases rates. One way haulage means empty backhauls and increases rates	Higher transport costs. Lower export competitiveness	Reduced investment in potential export industries. Higher local production and distribution costs may encourage imports of made up goods.	Minimal regulation - policing only. Reduced Taxation income. Reduced industrial development	Mexico-USA
Phase 1	Transport between states A and B only	Transport of goods between states A and B only by carriers registered in those states	Restricted markets limited to local industries and import export demand. Exclusion of some external competition. May promote formation of cartels.	Need to contract with specific carriers for specific routes or countries. May increase rates	Limits scope of transport market and may increase transport costs	Need for regulatory action such as permits	Canada-USA
Phase 2	Transport of goods between States A and B or on a defined route from A in transit through B to C or D - only if journey includes travel in A.	Transport by carriers from A to B, C, D in both directions starting or ending in home state	More flexible to achieve backhauls. Restricts market to two way trade between home state and other states. Increases competition among carriers	Permits contracts with carriers from more countries. May improve competition and reduce rates. May encourage buy-ins or buy-outs of carrier companies	Higher level of trade integration. Reducing logistics costs. Increased flexibility of transport market	Increased activity may need further regulation to effectively control the carrier O&D actions	SACU
Phase 3	No restriction on carriers of State A to transport goods on defined routes between B and C or D even if the journey does not include state travel.	Transport by carriers from A to B, C, D in both directions and extended operations between B, C and D	Allows circular routing and optimising backhauls by pickup and drop along a multi-country routing. Increases vehicle utilisation	Increases options for contracting carriers seeking backhaul cargo along routes. Reduces rates	Increased competition in the transport market. Improved logistical flexibility and trade integration with neighbour States	Lessens need for monitoring carrier O&D	Mozambique-SA Zambia-SA Malawi-SA Zambia-Tanzania
Phase 4	Transport on any routes, of goods from A between B to C or D without restriction	Transport by regional carriers between all States without restriction	Increased market opportunities. Increased competition. Better vehicle utilisation. Increased need for logistics coordination from all origins and destinations. Increased vehicle control and scheduling	More flexible market. More options for contracting carriers. More competition, lower rates	Promotes optimal levels of competition and freedom to develop transport systems.	Reduced monitoring and concentration on quality regulation.	Zimbabwe-SA
Phase 5	Free market in region including cabotage	Any carrier registered and properly equipped, able to perform transport throughout the region	Increased competition for local carriers in all countries. Likely to reduce numbers of operators but increase professionalism	Provides options for contracting best possible operators or setting up inter-country carrier operations. Reduced costs	May attract FDI in transport distribution companies. Reduced logistics costs	Eliminates permits, licences, operators and concentrates on quality regulation.	European Union

Source: Phase 1 - Facilitation of Road Transport Liberalisation in SADC - NP&A March "2010

## 5.2 Liberalisation of the Regional Road Transport Market:

The SADC Regional Indicative Strategic Development Plan ("RISDP") sets out "ambitious target objectives" for liberalisation of the market and for harmonisation of transport rules, standards and policies.<sup>41</sup> The first target, which was to be achieved by 2008, was the liberalisation of regional transport markets.<sup>42</sup>

As mentioned above, the relationships between Member States are regulated by bilateral road transport agreements<sup>43</sup> which are "defensive" and protectionist rather than promoting market access and are "contributing to the inefficiency of road transport".<sup>44</sup> Deliberations by SADC committees in 2009 recommended that the bilateral agreements should be replaced with a multilateral agreement. As at September 2011, this liberalisation was not achieved and the secretariat initiated the "Facilitation of Road Transport Market Liberalisation Project", with the mandate to review the situation and to develop a multilateral road transport agreement ("MRTA")<sup>45</sup>

In Phase 1 of the project "Facilitation of Road Transport Liberalisation" the SADC Secretariat collected a sample of 16 bilateral and multilateral agreements<sup>46</sup>, Examination of the bilateral agreements and MOUs amongst the Member States

<sup>41</sup>*Ibid.*, p. 7.

<sup>42</sup>See SADC Secretariat Infrastructure and Services Directorate Transport Division, above - 163, p. 5.

<sup>43</sup>See SADC, above n 160, p. 8. See also SADC Secretariat Infrastructure and Services Directorate Transport Division, *Progress and Status of Implementation Road Infrastructure, Transport and Traffic Sector Regional Policies, Legal Instruments, Regulations, Technical Standards and Systems in the SADC Region* (23 September 2011, Discussion Paper), Table 2.

<sup>44</sup>SADC above-160, p. 27.

<sup>45</sup>*Ibid.* "The MRTA was intended to remove regulatory restrictions such as the 'third country rule' and cabotage and introduce competition." The intention was that the MRTA will address all matters mentioned in Article 5.4 of the PTCM (see, e.g., para. 83 *supra*).

<sup>46</sup> SADC : Phase 1 Report - Facilitation of Road Transport Market Liberalisation in the SADC Region

shows that they all cover very similar basic regulatory aspects of market access, conditions for issue of cross-border permits, information required for permit applications, road usage charges, and commitments to seek closer harmonisation of operating standards, conditions, regulations, and charges in the interest of promoting efficiency and reducing the costs of inter-state transport.

Based on the analysis of the current SADC/SACU bilaterals and permit systems in relation to the liberalisation objectives of the PTCM a recommendation was made by the facilitator, that steps should be taken to replace them with quality regulation based on a harmonised operator accreditation and licencing system, similar to the COMESA Inter-State Carrier Licence<sup>47</sup>. The Member State Representatives from across the ESA, attending the Workshop, registered general agreement with the principles recommended;

- a) That all RECs in ESA repeal measures to control supply of road transport and refocus the direction of transport regulation onto the improvement of the quality of all aspects of the road transport systems.
- b) That the RECs should support and fund the development of a multilateral framework for quality regulation based on the principles of effective transport regulation
- c) Quality regulation within a “regional” framework should be adopted by all countries as the basis for the national transport quality regulation.
- d) The national system in each country should include operator registers and IT database control and monitoring systems based on the agreed and defined standards of the regional framework (enhancement of the principles of COMESA ISCL).
- e) Liaison with customs authorities should establish acceptance of the concept that fully accredited and registered operators need no further identification in order to perform the movement of goods across borders. This will include review of the need for Customs Licences for transporters and streamlining of control procedures to reduce current delays.
- f) The development should include harmonisation between instruments of the SADC, East African Community (“EAC”) and Common Market for Eastern and Southern Africa (“COMESA”) in order to create a homogenous base for a future integrated FTA.

It was also noted that the terms of PTCM and the various agreements include intentions to “harmonise” vehicle standards, traffic regulations, road user charges and methods of providing for 3<sup>RD</sup> party insurance. The secretariat was requested to integrate and expedite the development of the overall system and to compress the timescale and number of phases to accelerate the pace of change, as was recognised that the standards will form the basis for operator registration, accreditation and control.

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<sup>47</sup> Model Guidelines for Issuance of the Comesa Inter-State Road Carrier License

State Parties are committed to recognise driver licences issued by other State Parties “according to the agreed SADC codes and format”<sup>48</sup> and this recognition extends to professional driving permits (where applicable).<sup>49</sup> In order to facilitate this mutual recognition, State Parties have also agreed to adopt a harmonised format of driving licence,<sup>50</sup> Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, and Zambia have begun issuing the “SADC Drivers License”, but not all are in unified formats.

There is also agreement by SADC Member States to harmonise driver training, learner drivers’ testing and licence codes<sup>51</sup> but the actual situation is that in almost all ESA countries the training of commercial freight and passenger drivers to professional standard is non-existent or at best ineffective. In addition there is widespread forgery and irregular issue of licences. The result is very high accident rates, sub-standard operations and ineffective control of offending drivers and operators.

Although not directly connected to the liberalisation agenda, it is of note that State Parties also undertook to establish national roads authorities—as representatives of the public and private sector—with responsibilities for, *inter alia*, promoting public awareness on the importance of roads for mobility and trade purposes. It is assumed that this would provide effective management of the provision, operation and management of road transport infrastructure (which can have many positive knock on effects for trade in other sectors).<sup>52</sup> This has been done in Lesotho, Namibia, South Africa, Tanzania, Zambia, and Zimbabwe.

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<sup>48</sup>Article 6.10(3) of the PTCM.

<sup>49</sup>Article 6.10(5) of the PTCM.

<sup>50</sup>Article 6.10(2) of the PTCM.

<sup>51</sup>Article 6.10(4) of the PTCM.

<sup>52</sup>Article 4.4 of the PTCM.

## **6 CURRENT STATE OF TRANSPORT LIBERALISATION IN THE REGION**

Before description of the transport activities in different modes in and between the countries of the region in later sections of this report, it is relevant to give a broad overview of the nature of transportation in the region and the current state of liberalisation as it has been developed in terms of the PTCM.

### **Need for Liberalisation**

Due to extensive geographic area and dispersed economic and population centres, transportation is critically necessary to the economic development of the Southern African region. Especially in the case of the landlocked countries the distances between import/export centres and the industrial and social centres of the countries impose very high costs and reduce the competitiveness of the region. The relative importance of import/export trade is very different in the various countries with only South Africa and Mauritius having significant national manufacturing industrial output that generates trade within the region and internationally. For most countries in the region the major activities are production of basic commodities or primary mineral and agricultural products for export. Nearly all industrial and high technology products as well as many processed and manufactured articles are imported rather than produced. Liberalisation can reduce the costs of transport in the region.

### **Transport Markets**

The demand for transport services is generated mainly in the private sector, with users being from industry, agriculture, and the general public. Road transport, throughout the region is provided by the private sector whereas rail, pipelines, ports and most air transport is controlled by government agencies, parastatals or departments, often in competition with private sector operators. This undesirable situation leads to extensive inefficiencies due to the fact that government is both player and regulator in the transport market.

It is also very evident throughout the region that regulations applied by government agencies do not always consider that transport demand is created in the private sector transport markets as responses to the demands of customers for services in respect of both passengers and goods. The fact is that regulatory authorities can by definition, only regulate (restrict) the supply of transport (and cannot increase it directly) but they are definitely mandated to set and monitor the quality standards of transport operations in the public domain.

In the transport industries that are dominated by government ownership and operation by parastatal companies or agencies, there are no apparent intentions to create a competitive environment in which users can benefit from multiple suppliers. In most countries, the retention of control of ports, railways, pipelines and airlines are regarded as national strategic priorities and are usually more closely linked to the centres of political control than to economic motivations.

Notwithstanding all of the above-mentioned considerations that currently apply in the transportation systems of the region, there is in most countries a measure of de facto liberalisation, that is most apparent in road transport but also evident in technical supporting services in all transport modes. This trend is likely to continue as skills deficiencies force the options for immigrant technical staffing.

### **Modal Shares**

Throughout the region, road transport is the dominant mode of land transport due to the relative inefficiency of railways in most countries. Even in South Africa with a well-developed railway system, the total annual tonnage on rail is approximately 200 million tons of mainly bulk mining products compared to the overall road transport sector volumes of 1.4 billion tons p.a. In South Africa, cross-border road transport amounts to less than 10 million tons per annum, of which only 10% comes from the ports and 90% is produced locally.

A significant feature of road transport is that it is possible to operate transport for own account in the course of own business or industry as an alternative to hiring the services of professional-hauliers. This effectively means that if regulation of carriers imposes constraints on industry, investment is made in own road transport in order to obviate problems and ensure services to their production operations. In South Africa and other countries, the proportion of vehicles owned by own-account operators is higher (SA: 69%) than for hire-and-reward carriers (SA:29%)<sup>53</sup>. Examination of cross-border account holders in South Africa shows many such own-account operators engaged in cross-border transport.

### **Ports Authorities**

With regard to ports and railways there has been a historical monopoly by government parastatals controlling both modes, but there is evidence of liberalisation of railways (Zimbabwe, Malawi, Mozambique, Swaziland, Tanzania and Zambia, as described in later sections of this report). In the ports sector there has been a continual increase in the concessioning of port terminals cargo handling and in the case of Maputo concessioning of the entire port management system.

### **Road Transport Regulation**

The concept of quantity controls (supply-side regulation) is applied irregularly in the ESA region with the SADC bloc and SACU MOU bloc using road vehicle permit regulation whereas the COMESA and EAC bloc rely on control by operator and vehicle regulation. These initiatives are often fraught with unresolved problems and inefficiencies in the region. For example, the SADC driver licence adopted in 1999 is yet to be widely adopted while truck driver training, licencing and control is very ineffective in most countries. South Africa is a case in point, where operators report that one in ten HGV licenced applicants can actually drive a modern commercial vehicle<sup>54</sup> and road transport accident levels are amongst the worst in the world.

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<sup>53</sup> National Freight Logistics Strategy – Pretoria: South Africa 2009 p 16

<sup>54</sup> Durban Harbour Carriers – Report to KZN Freight Task Group : 28<sup>th</sup> October 2010



Regional traffic facilitation has received a lot of attention with many attempts at harmonising road user charges, control of overloading, vehicle standards and dimensions, etc. The application of these measures has been very erratic, in some cases contradictory and is usually not supported by harmonised systems that can be applied by the various countries. The result is that each country develops its own approach to these SADC recommended measures, and there is further need for a centralised development agency with professional capacity to shape and develop proposed measures.

The recent study for SADC, COMESA and EAC covering the ESA region<sup>55</sup>, pointed out that the current practice to regulate supply of transport through permits is ineffective and counterproductive. The recommendation was made for abolition of permit systems and concentration by all the countries on effective quality regulation by applying harmonised standards throughout the region. This will effectively lead to the creation of quality regulated road transport industries based on voluntary compliance. All countries in the region have already committed to the regulation of transport operating standards in all modes in terms of the PTCM. Quality regulation is controlled by a plethora of government departments and agencies which are very often internally inconsistent in the application of the standards which should have been harmonised in the region.

### **Customs Regulation in Road Transport**

In all the countries, there is an overlapping duplication of regulatory influence caused by the fact that the control of transport of goods by revenue authorities (customs and excise) is applied in addition to transport regulation, so that road freight operators need to apply for several different licences and clearances for cross-border transport. For example, the SADC transit management system in the Protocol on Trade (and as shown in the traders manual published by SADC), has a comprehensive set of regulations and conditions to be complied with by cross-border road transport operators in region. However, many of the regulatory procedures described in this process are not applied in some countries (e.g. Transit plates) and in others they are applied partially or subject to arbitrary application.

### **Establishment and Investment**

In road transport there is evidence of foreign establishment i.e. subsidiaries, through purchase of foreign transport entities, registration of local companies. In this way, foreign-owned companies are regarded as “local”, and have the same access to the protected local market as locally owned companies. In many cases the foreign investors do not change the name of the company in which they invest and they prefer keep local shareholders and employment of local management and drivers. These processes have been so successfully applied in the region making the permit regulatory system largely irrelevant. The entrance of foreign investors in port terminals, airlines, and more recently railway operations are encouraging signs of change in the pace of liberalisation of transport in the region.

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<sup>55</sup> COMESA-Phase 2 - Development of Harmonisation Proposals for Road Transport Market Access – Johannesburg 24-03-2012

## **7 DESCRIPTION OF ROAD TRANSPORT BY COUNTRY**

This section provides a description of road freight and passenger transport for all SADC inland countries; based on information collected from a variety of sources, including a structured template questionnaire on the issues relevant to Trade in Services in the transport markets of the region (attached as Annexure C).

### **7.1 Angola**

Angola is the 2<sup>nd</sup> largest petroleum producer in Africa with population of 19 million and total import trade in 2010 amounted to \$ US 37.8 billion and trade in services amounted to \$US 16.4 billion, compared to exports of petroleum \$US 99 billion and merchandise \$US 53 billion.<sup>56</sup> Commercial road traffic is largely confined to the major routes between the ports and the cities and towns along the west of the country. Angola has approximately 52,000kms of roads of which about 5,500kms are paved. Several of the major roads have been resurfaced in recent years and these are in excellent condition. There are still sections of the main corridor from Namibia to Luanda that are not tarred and most minor roads and suburban streets are unpaved or potholed with broken asphalt making travel both difficult and expensive.

#### **Cross-border Transport**

Domestic freight transport and passenger buses are operated under licence by local operators. Most passenger transport is performed by minibus taxis and small buses. Vehicles are registered and drivers licenced by authorities in the main centres. The main freight transport activities relate to imports and local distribution of foods and consumer goods. The number of operators is not known.

The border post between Namibia and Angola at Oshikango is very busy with 110 vehicles per day carrying about 500,000 tons of mainly import cargo. The amount of cargo via Namibia and South Africa has reduced due to deliberate reduction of permits by Angola to promote use of local ports. Large warehouses and bonded stores are the major feature of Oshikango town. Most cross-border traffic and passenger transport is performed by Angolan carriers, with low numbers of Namibian and South African vehicles. Taxis, LDVs, trucks and small buses carry goods purchased in Oshikango and re-enter Angola via the Oshikango-Santa Clara border post. Cross-border permits can be obtained at the border post.

#### **Commercial Presence**

With regard to the possibility of foreign transport companies establishing commercial presence in Angola, the National Private Investment Agency (ANIP) must approve all investments over \$100,000 and less than \$ 5 million; for larger investments approval is required from the Council of Ministers (CoM). The major company legislation is the Company Law and the Voluntary Arbitration Law (VAL). After approval from ANIP or CoM the investor must register the company, publish

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<sup>56</sup>Global Enabling Report 2012 –World Economic Forum

company details in the gazette (Diario da Republica), obtain a business licence and register with the fiscal authorities. Obtaining all permits and approvals is reported to be very time consuming with typical time to complete documentation of 68 working days<sup>57</sup>. The One-stop registration office Guichet-Unico has reportedly helped a little but there are still delays. Some large South African companies have withdrawn their establish Angola<sup>58</sup> and few foreign companies are prepared to operate there due to the arbitrary regulatory environment.

Investment Law 11/03 guarantees repatriation of profits for officially approved investments, but Central Bank approval is needed for sums in excess of \$100,000. Angola is a signatory to Multilateral Investment Guarantee Agency (MIGA). The government actively encourages “Angolanisation” and Decrees 5/95 and 6/01 limit expatriate staffing to 30% and require salaries and benefits to be the same for Angolans and expatriates in the same positions. All land is owned by the State but may be leased on long (99 year) leases with lease fees of about 11.6% of property value. Registering property take up to 11 months and property for which acquisitions are approved, may not be sold for 5 years. The transparency of regulations is a problem with much of the legislation in flux or subject to arbitrary interpretation, at all levels of application. This situation lends itself to corruption by officials which is reportedly a widespread problem.<sup>59</sup>

Angola did not make any GATS commitment in transport services and has no any bilateral agreement in road transport with any SADC country.

From the study there is potential for commitment by Angola to Mode 1 permission for commercial freight transport, but current difficulties for foreigners to operate in the country effectively deter potential suppliers. Mode 2 and Mode 3 commitments should be possible as there are foreign companies in other markets such as mining, banking and import-export trade. It is however unlikely that major regional transport groups will enter the limited and difficult markets for freight and passengers.

## 7.2 Botswana

The transport market is severely skewed due to the geographic proximity to South Africa and the large proportion of imports from the South African industrial area which lies approximately 450 km from the capital, Gaborone. The population is low with only 2.1 million people and 80% of the population located on the eastern side of Botswana with a high proportion of urban dwellers, approximately 231,600 live in Gaborone and about 160,000 in Francistown. Due to limited manufacturing activity in Botswana as well as the unfavourable climate for intensive agriculture, the transport market is largely dependent on import cargoes and some limited export traffic.

Most fuel, retail consumer products and building materials are imported. Fuel and petroleum products are a major import item to all the towns by road from the fuel

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<sup>57</sup>US Embassy – Angola Business and Investment Climate Overview – June 10 2010

<http://www.howwemadeitinafrica.com/angola-business-and-investment-climate-overview/1513/>

<sup>58</sup> Financial mail : Feb 2009 – Super Group was the victim of a clever ruse aimed at effectively stealing 448 trucks; causing a write down of R 187 million for possible losses.

<sup>59</sup> US Embassy – Angola Business Climate Overview . ibid.

terminal at Tlokweng in North West province of South Africa. Exports include salt, soda ash, copper, nickel and beef. Larger volumes of the bulk commodities are transported by rail for export to South Africa. Many of the largest transport companies are South African owned but there are significant numbers of Botswana registered vehicles operating from South Africa used for long distance haulage to Zambia, DR Congo and Namibia. The use of Botswana registered companies is preferred due to the more liberal forex controls and lower tax rate. A large proportion of imports and exports are handled by South African based trucking companies as well as the large fleets owned by industrial, retail and wholesale businesses with branches in Botswana. There is no formal operator registration system but the vehicles are licensed annually and are subject to annual certificate of roadworthiness tests before licenses are renewed.

It is estimated that the number of freight vehicles operating in Botswana is approximately 1,000 whereby 1-2 companies have more than a 100 vehicles; 4-5 companies have 50 vehicles; 20-30 companies have 10 to 15 vehicles and about 500 odd companies have 1 to 10 vehicles. The total share of cross-border traffic by foreign registered vehicles is estimated to be 70%, of annual tons. The internal road freight haulage is approximately 550,000tons p.a. and cross-border haulage account for 600,000tons p.a., mainly via Tlokweng and Lobatse border posts. Approximately 450,000tons p.a. is conveyed along the Trans Kalahari Corridor between South Africa and Namibia<sup>60</sup>. This transit traffic amounts to approximately 16,000vehicles p.a. The border crossing at Martins Drift is extensively used by traffic between South Africa and Zambia and DRC via Kazangula (83,000 vehicles in 2008)<sup>61</sup>.

Local bus companies perform all the short haul rural and urban bus transport functions in competition with mini-bus taxi operators that abound in all areas. Long distance services into Zimbabwe, Zambia, South Africa and Namibia are performed by both local and foreign companies under permits. Passenger permit describe the services including days of the week and the route of the operators. There is no formal discrimination between local and foreign operators who do however, have to observe the processes to apply for valid work and residence permits. This does not apply to cross-border drivers of vehicles moving in and out of Botswana.

Road transport legislation includes: Road Traffic Act of 1975;The Road Traffic Regulations 1975 and various amendments; and Road Transport (Permits) Act 1973 and its amendment of 2004. Cross-border transport is regulated by the Department of Transport as per the "Road Transport (Permit): Subsidiary legislation". Road transport permit regulations describe the terms and conditions under which cross-border permits maybe issued, (related to SACU MOU). Permit issues are subject to the consideration of a controller who is required to consult an advisory board .There are 16,932 active Botswana Registered (BA) domestic Permits.

Botswana is part of the SACU and has bilateral agreements with Zambia and Namibia to permit reciprocal cross-border transport with those countries. Cross-border permits relate primarily to SACU regulations and the main origins and

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<sup>60</sup> Report of the TKS PPP Levy Project - TKMC Windhoek 2010

<sup>61</sup> JICA O&D Studies – Kazangula November 2009

destinations are South Africa and Namibia. Botswana recognises all SADC licences. The licence categories reflect local and foreign registration of vehicles but charges are the same. Vehicle standards are largely harmonised within SADC and the bridge formula is applied in vehicle weighing. Cross-border revenue management is handled by Botswana Unified Revenue Services (BURS) who are also the agency responsible for collecting road taxes, vehicle license fees, weighbridge levies and any other charges that accrue to the state from transport operations.

Botswana is signatory to the PTCM, the SACU MOU on Road Transportation, WTO and GATS as well as various preferential trade agreements and treaties. Botswana did not make any specific commitment under the GATS for transport services. Its applied regulations would allow for a liberal Mode 3 commitment for freight and passenger transportation, as well as Mode 1 for road passenger transportation.

### **7.3 Democratic Republic of Congo (DRC)**

Road transport in DRC is very limited due to limited road infrastructure, scarce number of vehicles, and extensive damage to fuel storage facilities. Outside of the major cities, Kinshasa, Matadi, Lubumbashi, private freight transport is almost non-existent and vehicles that do operate are used in local transport only. On the eastern border, Kisangani is linked by a major route of about 3000km via Rwanda, Burundi to Dar es Salaam port in Tanzania) over very difficult terrain and bad roads. On the southern side, the Kasumbalesa border post (DRC – Zambia) which is managed by a private-public partnership is very busy following the recent rehabilitation. It is reported that this border is operating reasonably effectively but a levy of USD 150 per crossing is charged for the management of the border post. Other borders are relatively un-congested due to the lack of traffic and road freight operations.

#### **Road Freight**

There is a high level of concentration, but limited numbers of local service providers which dominate 30% share of the cross-border market due to major contracts e.g. transport of fuel: 1 provider for 70%; transport of mining products: 2 providers for 60%; transportation of imports: 4 providers for 70%. There are numbers of foreign operators and cross-border competition mainly from South African, Zimbabwean and Zambian operators. The market share of foreign operators in cross-border transport is estimated at 70%.

Estimated volumes of cargo through the Kasumbalesa border post in 2010<sup>62</sup> amounted to:

- Exports estimated at 660 000 tons p.a.
- Import volume: +- 1 550 000 tons p.a.
- Average monthly freight traffic (imports and exports) about 7 000 trucks
- Average monthly passengers: 8 000.

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<sup>62</sup> JICA O&D Surveys Project – Kasumbalesa February 2010

There are bilateral agreements between DRC and Zambia and agreements are being negotiated between DRC and Tanzania and Angola, for the movements of goods on corridors.

### **Passenger Transport**

Passenger transport in DR Congo is limited to minibuses and numbers of private sector buses operating in the major towns. Cross-border permits are required, for both passengers and goods, obtainable at border posts. Domestic and cross-border goods and passenger transport in DRC are controlled by the Ministries of Finance and Transportation. The operation of road transport services of goods or passengers is open to all national and foreign operators fulfilling the conditions set by inter-ministerial Orders 065<sup>63</sup> and 310 which are related to the National Agency for Promotion of Investment (ANAPI) and taxation.

Permits are required by individuals and firms for all categories of transport activities in all modes. In road transport permits are required both as operators and as drivers and these are issued at the discretion of the relevant authorities (and are reportedly difficult for foreigners to obtain)<sup>64</sup>. DRC government guarantees sector investors the repatriation of dividends and the income generated by their businesses.

The formalities of applying for visa of establishment (work cards and other papers) is reportedly time consuming. In addition, foreign personnel must renew their entry visas within DRC on expiry, or leave the country, and as the formalities are slow, failure to meet deadlines can have drastic effects on the operations of a firm. This does not apply to drivers of cross-border vehicles.

There are bilateral agreements with Zambia for transit; negotiations are underway with Tanzania and Angola.

The DRC recognises transport licenses, driving licenses and documents issued by the SADC member states For 3<sup>rd</sup> Party insurance it applies the COMESA Yellow Card scheme for all cross-border carriers and DRC is currently studying the COMESA Interstate Carriers licence for possible application. Road User Costs are recovered by various charges; e.g.

- authorisation fees for transportation of persons depending on the number of people to be carried
- Registration as Operator \$1000 p.a.;
- Fees of authorisation for transportation of goods depending on tonnage;
- Fees of authorisation of international transportation (\$50)
- Toll road fees according to the size of the vehicle;
- Fees for roadworthiness certificates

DRC has no specific GATS commitment in transport services. The current state of liberalisation is more apparent than real, due to the heavy administrative burden

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<sup>63</sup> The official statutes, functions and organisational settings of ANAPI are defined in *Decree no. 065/2002 from June, 5, 2002*.

<sup>64</sup> l'Arrete Interministeriel Nos 018/et 039 /cab/min/tvc /2010 portant fixation des taux des droits , taxes et redevances : Kinshasa 8 Fev. 2012

imposed by the slow process of licencing regulations for foreigners. There does not appear to be any reason why DRC should not make commitment in need of investment and skills and the currently limited industrial base is unlikely to attract extensive immigration.

## **7.4 Lesotho**

Road transport in Lesotho is limited by the extent of the available road network within the country. The capital, Maseru is on the border with access to South Africa via the Maseru Bridge border post.

### **Road Freight**

Most import and export cargo travels a very short distance between the capital and the border. Abnormal load transport within Lesotho is dominated by carriers based in South Africa, hired in for specific contracts, operating under permits as there is little scope for development of abnormal load transport companies within the country. Lesotho is part of the Southern African Customs Union (SACU) with a very close relationship with South Africa and a dependence on the east coast port of Durban (about 500km) for imports and exports. Manufactured imports come from South Africa via the port and exports of textiles and some foodstuffs follow the same route.

### **Passenger Transport**

Cross-border passenger transport is dominated by South African based larger companies operating under permits, which pick up and drop passengers in Lesotho. These firms offer coach services between Lesotho and the major industrial areas of South Africa. The high level of employment of Lesotho nationals in South African industry makes transport between these centres and Maseru a major undertaking. Maseru and Ficksburg border posts are the main commercial border crossing points but there are nine other border posts used mainly by light passenger vehicles.

Most of the passenger transport within Lesotho is handled by local, small minibus and bus operators who cover the routes between the major centres. No foreign operators run services domestically. There is no formal operator registration and licensing but vehicles are licensed annually and require annual certificate of roadworthiness. There is a high level of liberalisation and competition for cross-border transport of both passenger and freight but it has been reported that authorities tend to favour local passenger and freight operators<sup>65</sup>.

Ministry of Transport is the regulatory authority and also issue cross-border permits. Road traffic and permit enforcement is done by the Lesotho Police. All SADC licences are recognised. A Road Accident Fund exists and in order to limit exploitation the maximum claim allowed is R50, 000 per event which all claimants must share; there is also an expiration period for claims.

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<sup>65</sup> Personal communication with licencing authority

## **Cross-border Regulation**

Cross-border traffic requires period permits for specific vehicles for defined countries. Freight vehicles are for periods but passenger permits require the description of the route, origin and destination and the operating schedule to be followed by the specific vehicle for which the permit is issued. The intention is to regulate the competition on specific routes with due regard for the relatively small markets. The total number of local and cross-border operators is unknown but there are approximately 500 cross-border permit holders, mainly South African and just a few local firms involved in cross-border operations. All abnormal loads require permits detailing routes and dimensions of loads, and are escorted by traffic police.

## **Commercial Presence**

Company registration laws permit foreigners to establish transport business in Lesotho. Foreigners who have registered a company are subject to work permit regulations, maximum executive salary rules, and the need to apply for Lesotho nationality after a year of residence. There are no capital limitations and the repatriation of earnings is subject to Treasury rules. Development and reform policies are geared to promotion of economic growth employment and aim to enhance participation by locals.

Lesotho made GATS commitment in road transport covering passenger and freight transportation (CPC 7121 and CPC 123), and maintenance and repair of road transport equipment (CPC 6112 + CPC 8867). No binding commitment was made for Mode 1 and 2 for passenger and freight transport services. Cross-border maintenance and repair services; Mode 1 is unbound due to lack of technical feasibility, no limitation on mode 2 and M3 limitations include minimum equity requirement (USD 200, 000 for whole foreign owned and USD 50, 000 for a joint venture) and that the foreign agency must have a mandate to conclude a contract on behalf of its parent company. In case of Mode 4, Lesotho is bound only for a maximum of four expatriates, senior executive and specialised skills. It should be possible to make improve these commitments within the existing regulations.

## **7.5 Malawi**

Road freight haulage in Malawi is dominated by import-export operations as there is limited manufacturing and processing except for export commodities such as tobacco and sugar. The road haulage route which offers the shortest and most effective import-export potential is from Beira in Mozambique overland for a distance of approximately 675 kms via Mwanza border post. Current developments include a direct road route from Nampula to Mulanje to promote access to Nacala, Mozambique. The port of Beira has a 9.1-metre draft limitation whereas Nacala has deep water at the quay. The development of the coal and gas mining areas in Tete (Mozambique) and the resultant port, road and rail development will be of great assistance to Malawi. The border post further north at Mchinji gives access to Zambia and on the major northern corridor access to Tanzania.



## **Freight transport**

Haulage is performed by local and regional carriers with a predominance of carriers from South Africa and Zimbabwe operating from their locally established operating centres and depots in Harare, Beira or Lilongwe. Container traffic is limited both by rail and by road, but there is a seasonal requirement for empty 12 metre containers for the tobacco exports from Malawi to South Africa and to overseas destinations. The containers are imported via Nacala and railed to Lilongwe, or transported overland from South Africa. Loaded containers are transported by rail to Nacala or road to Beira or Johannesburg.

The number of local freight operators is not known, but it is estimated that there are about 1000 operators in the road freight haulage industry, the majority of whom are one-truck operators. There are no dominant carriers or organisations that may impede liberalisation but fuel haulage is controlled by the National Fuel Regulatory Authority (NFRA) with rates set by NFRA and contracts being shared between two brokers. Prices in dry-cargo are competitive and relate to international charges for cross-border work

## **Passenger Transport**

There is limited road freight and passenger traffic via the northern borders with Zambia and Tanzania. Bus services are available from all the main centres in Malawi. A luxury bus service runs three times daily between Blantyre and Lilongwe and the main local bus operator in Malawi has a comprehensive network of routes within the country. Long distance inter-regional services are provided both by local and regional operators. There are no quotas in the road freight and passenger sub-sectors, but the Bus Operators Association still exerts control of liberalisation of passenger services. Passenger service tariffs are approved by the government. There are a few foreign owned long distance passenger operations, and a small local share of cross-border operations estimated to be below 5% of the market. External foreign operators dominate.

Ministry of Transport and Public Infrastructure regulates transport services in Malawi through issuance of permits and road traffic laws are enforced by Malawi Police. Both freight and passenger services are fully privatised with no public enterprises, services operate on totally competitive basis at both domestic and regional levels as per Chapter 69.1 of the laws of Malawi. The Road Traffic Act of 1988 and related regulations are the major legal instruments. Regulation of traffic across borders, in Malawi, is performed by The Department of Transport from its offices in Lilongwe and Blantyre. Malawi has agreements with Mozambique, Zimbabwe, Zambia and South Africa as well as a corridor development agreement with Tanzania. Permits are issued in terms of the bilateral agreements with neighbouring states.

Malawi has shown significant commitment to comply with the SADC resolutions including changes in driver licences format, vehicle registration number plates, road signs etc. Malawi gives recognition to licences, Insurance and training obtained in other member states. The country has taken significant steps to implement

liberalisation commitments as foreseen in the PTCM, except for the 3rd country and cabotage rules. The bilateral road transport agreements originally provided for designated routes and drop off or pick-up points. This requirement is not strictly enforced, allowing cargo to be dropped off and picked up at non-designated points. All SADC licences are recognised.

### **Commercial Presence**

Malawi has no restrictions on the establishment of foreign owned businesses. Foreign staff may be hired after proof that the position cannot be ably covered by a local. This is done by advertising of vacancies in the local media. There are no special measures except for visa requirements for drivers that come from countries that require visas to enter Malawi. The national policy encourages private sector participation in the development and maintenance of roads. The Roads Authority and Road Fund Administration are meant to foster the policy at national/regional level. The roads are managed by The National Roads Agency, with delegated authority from the Ministry of Transport.

Malawi has no GATS commitment on road transport services, but there does not seem reason to be any reason why it could not make commitments in Modes 1 and 2 for road freight transport as there is already a significant cross-border market supplied by foreign and local operators, For the passenger transport market there is likely to be reservations about commitment to Mode 3 due to heavy involvement of local associations and the perceived need to protect local passenger markets.

## **7.6 Mozambique**

Most of the domestic freight and passenger transport is performed by local operators, often owner-driven or relatively small transport companies. Local transporters operate within the major towns and cities such Maputo, Beira, Nampula, Nacala and to provide services to and from ports and smaller towns and for the agricultural areas surrounding the main centres. Road haulage to and from the port of Pemba, is operated by local carriers which provide services to the growing agricultural activities and to the deforestation operations that are exporting sawn logs through the port of Pemba.

### **Maputo Area**

Cross-border traffic in the Maputo area is largely confined to the transport of goods between Mozambique and South Africa and Swaziland. Most of the traffic uses the Maputo Corridor toll road between Ressano Garcia and Maputo. The development of industries around Maputo has increased industrial traffic but this fluctuates depending on the levels of building and construction work at Mozal industries. Exports notably sugar, citrus, manganese, coal and some timber from South Africa via Maputo Port continue to increase. Freight from Maputo into South Africa tends to be limited to small quantities of imports which are delivered primarily to the Mpumalanga Province. Continued efforts to expand the role of Maputo Port in the

import/export trade with South Africa is resulting in gradually increasing tonnage on road as port capabilities and system development overcome the bottlenecks and delays that have been problems in the past.

### **Nacala**

The port of Nacala and the inland centre of Nampula are linked by road and significant road transport takes place between the port and inland areas but as there is no effective route into Malawi, the cross-border traffic from Nacala is mainly carried by Malawi Railways (formerly Central East African Railway (CEAR)). Road haulage in this area is currently confined within Mozambique, but the building of a new road from Nampula to the Malawi border will change this traffic flow pattern. New developments in Tete province are taking place, with the large scale building of transport facilities to handle the new coal mining enterprises and the production of gas at the Pande, Temane and Buzi-Divinhe gas fields.

### **Beira**

From Beira a significant proportion of the transport in the international haulage market is provided by carriers from South Africa and Zimbabwe which operate large fleets based at depots in Beira and Harare. The Malawian operations tend to be run from Beira with freight being coordinated by freight forwarders within the port and handled by the port management company. Many of the companies have established Mozambican subsidiaries. The development of the Tete/Moatize coal and gas fields will result in large road and rail developments in Beira and Nacala.

### **Passenger transport**

Domestic passenger transport is primarily performed by local, small bus companies that operate under permits from the authorities, mainly in the urban areas but with some limited services to new rural developments such as sugar mills and the various agricultural developments. Long distance international, cross-border luxury and tourist coach transport is operated by South African based regional operators with depots in Mozambique and Beira. There are limited numbers of Mozambican cross-border bus operators.

### **Transport Regulation**

Cross-border regulation is based on the various bilateral agreements between Mozambique and neighbouring states. Cross-border permits are currently issued by the transport department. Mozambique enforces the 3<sup>rd</sup> country and cabotage rules and no foreign operators can engage in domestic haulage, unless they establish a local firm.

The transport sector is technically fully liberalised but a large degree of informal barriers are reported to exist<sup>66</sup>. The Ministry of Transport and Communications

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<sup>66</sup> Mozambique – Trade And Transport Facilitation Audit

controls all transport regulation. Operating licenses known as an “alvará” are issued by the Ministry depending on the type of transport to be undertaken – passengers or freight. Vehicle specifications have not been amended to comply with SADC harmonised standards, except for permission to operate on the N4 toll route from Ressano Garcia to Matola and port of Maputo. Local transport is done mainly with rigids and trucktractor-semitrailer combinations of maximum length 18 metres (in terms of local road traffic legislation).

Legislation governing the weights and dimensions of vehicles which can travel on Mozambican roads differ from other standards in the region. In addition the requirements are sporadically applied, and foreign-registered trucks are particularly likely to be stopped and fined for supposed infractions under this legislation. Arbitrary decisions are also common in the application of other road-related legislation. For example there is legislation in force requiring vehicles to be equipped with emergency warning triangles and reflective vests. However the number, and type of these items, despite being legislated, is policed in a discretionary manner. There are reportedly inconsistencies between the content of the Highway Code and the Road Code. Vehicles belonging to larger operators, including foreign owned companies, are required to submit to periodic vehicle inspection with the related fees while other road users are not. There is only one inspection centre per province and vehicles must be inspected in the province in which they are registered, meaning as a practical matter operators may be required to move vehicles and trailers over considerable distances to undertake inspections.

Mozambique is implementing the SADC standard licence document and all SADC drivers’ licenses are accepted, but must be registered with the National Vehicle Licensing Institute (INAV) if it is to be used for any longer than one in-out trip. The legislation is unclear on whether the reporting requirement means converting the licence to a Mozambican one. At the moment it seems that simply reporting is sufficient. Mozambican registered trucks can only be driven by holders of Mozambican driving licenses. Procedure for obtaining a Mozambican driving license, or converting another nationality’s license into a Mozambican one is lengthy and complex requiring a series of medical checks (including for HIV, tuberculosis etc.) and require presentation of various documents in Portuguese.

### **Commercial Presence**

While local individuals may operate informal transport services, foreigners are required to open a commercial company to operate. There are no formal barriers to registration of companies. Any foreign exchange must have entered the country through the reserve bank and formal banking sector and foreign dividends and payments may be subjected to Withholding Tax (WHT). There is a requirement for large scale investors to include the government as shareholder and develop national employees for managerial positions in specified periods. Foreigners may not own land in Mozambique. There is a quota system in place for employment of foreign nationals as a proportion of local employees.

Mozambique has made no current commitments in terms of GATS but has a commitment to harmonisation of vehicle dimensions, licencing and application of traffic regulations in terms of PTCM. Mozambique has signed Bilateral agreements with Swaziland, Malawi, South Africa and Tanzania; all contain harmonisation objectives. There is no reason why Mozambique should not make commitments in relation to Mode 1 in freight and passenger transport, but there is likely to be resistance to commitments in Mode 3 due to the high priority accorded to preservation of opportunities for local operators.

## **7.7 Namibia**

Cross-border haulage in Namibia is handled mainly by the main Namibian and South African companies (many of which are interrelated). The cross-border market is dominated by the relatively few large companies with depots in Windhoek, Cape Town and Johannesburg. Most of the import – export traffic is coordinated by the freight forwarders that are based in the main centres and at all the regional ports. Vehicle dimensions and the mix of configurations are very similar to South Africa, with most of the South African based manufacturers of trucks and trailers supplying equipment to operators in both countries. It is estimated that 150 local companies operate in freight transport.

The main export commodities handled by road transport are fish, hides, charcoal, minerals, and cement. In addition there was significant amount of transit traffic from Walvis Bay to Oshikango and a lesser amount into Angola by Namibian carriers, including furniture, consumer goods, vehicles on own wheels, foods and industrial supplies. Export and transit volumes across the Angolan border were 40,000 tons per month in 2010. Angolan traffic via the Walvis Bay port in the period September 2010-2011 was 130,758 tons as against 230,579 tons in the comparable period in 2009/10. A decline of 43% has since taken place due to unilateral embargo by Angola, on imports via Namibia, to promote use of Angolan ports.

Most of the traffic from the port of Walvis Bay using the Trans Caprivi Corridor (TCC) is on road. The Trans Caprivi is the fastest growing corridor, and volumes continue to expand because of significant development in Zambia (copper) and DR Congo with some increased development in Zimbabwe. There is some traffic for Malawi, mainly exports of uranium as Walvis Bay is the only port certified to handle uranium exports in Southern Africa. These exports require specialised handling, safety and security. At present 80% of TCC cargo tonnage is on road and 20% on rail as far as Grootfontein where transshipment from rail to road takes place. The volumes on the corridor increased from 69,053 tons between September 2009-April 2010 to 113,168 tons in the comparable period in 2010-11; i.e., a growth of 60% mainly via the border with Zambia at Katima Mulilo-Sesheke (Zambezi Bridge). Traffic on the Trans-Kalahari Corridor is about 400,000 tons p.a. with an estimated 21,000 vehicle movements in 2010.

### **Passenger Transport**

The long haul passenger transport in Namibia are provided by local operators and a number of inter-regional cross-border carriers operating mainly from South Africa with depots and termini in all the main centres. Long distance coach services serve the extensive tourist industry by providing connections to the neighbouring countries that are ill-served with air transport services. Tour operators offer scheduled packages and defined route services to support tourist requirements. Short haul, urban and inter-city services are provided by local bus companies many of which are small 1-5 vehicle operations. The intercity distances are long hence require coach specification rather than city bus configurations and therefore represent a separate market segment. No statistics are available for local and foreign coach operations.

### **Cross-border Transport**

Cross-border regulation in Namibia relates to the need for cross-border permits which are issued by an agency (Africon), for periods of one trip, or three months, or 12 months. Three monthly cross-border permits are for a maximum of 20 trips over the 3-month period. Permits are issued in the name of the Cross-border Road Transport Agency (CBRTA) of Namibia. Application forms for cross-border transport cost N\$50 and must be submitted with a motor vehicle license and an operator's card. Application forms may be emailed or faxed, but only in Windhoek. Processing is immediate. Consignment notes are supposed to be completed every time a vehicle crosses the border, and then returned to the Namibia Revenue Authority (NRA) but this does not appear to take place.

Road usage taxes are collected from all vehicles, domestic and foreign according to a formula based on kms travelled. SADC licences are accepted and the 3<sup>rd</sup> country rule and cabotage restrictions are applied, and supported by local operators. Transport Policy is framed to comply with SACU MOU but in general, supports the PTCM terms for liberalisation. Regulations are contained in Road Traffic and Transport Act No 22/1999. Specific sections of the Road Transportation Act 74 of 1977 with regard to passenger transport still apply, although the Act was repealed. The quotas and restrictions of the SACU MOU are not applied, but SACU operators and SADC operators are issued with the same cross-border permits. Goods vehicles are controlled by registration of vehicle nationally, cross-border permits are issued at discretion of authority, but in practice are only refused for procedural deficiencies, not quantity of service considerations. Competition is based on market prices and customer demand.

### **Passenger Transport**

Passenger services both cross-border and local require an operating licence (permit) and these are issued at the discretion of the licensing authority, subject to application for specific routes, times and schedules, with a process permitting gazetting of applications and objections by interested parties.

### **Commercial Presence**

There are no restrictions of or distinctions between domestic or international company registration other than registration domicile of vehicles, but immigration

restrictions apply regarding residence and work permits and some Affirmative Action requirements are under consideration (similar to BEE requirements in RSA). Employment of foreigners is restricted to specialists and management subject to proof of unavailability of locals.

Namibia does not have specific GATS commitments for transport services, but there does not seem to any reason why commitment could not be made for Mode 1 in freight and passenger road transport as there is a large amount of current foreign cross-border movement. For Mode 3 there is already a large body of established transport operators in both freight and passenger transport by road therefore, it is possible to make liberal commitments.

## **7.8 South Africa**

South Africa has a well-developed and highly competitive private sector road transport market for freight and passengers. The market is highly liberalised and there are no governmental operations on road apart from some bus services. Road freight transport is very extensive with large numbers of commercial vehicles. The industry is very fragmented and in fact constitutes several different sectoral groupings which include professional hauliers and own account operators, with large numbers of industrial enterprises operating their own transport for production and distribution of products. The total number of freight and passenger operators is unknown but it is estimated to be 50,000 operators<sup>67</sup>. Registered account holders with permits at the Cross-border Road Transport Agency are 36,000 issued over some years. About 2,000 of these accounts are active at the border posts.

### **Road Freight**

Local urban distribution tends to be confined to the major cities but it is noteworthy that the distribution centres for most foods, fuels, industrial supplies and animal feeds are located in the main cities but serve large regions of the country. This concentration of warehousing and production has led to the use of large vehicles distributing products over long distances within the country and has reduced the amount of industrial activity in rural areas.

A separate segment within the industry is engaged in the long distance cross-border import/export trade from South Africa into the region. Many companies (both hire and reward carriers and own account operators) have both local and cross-border operations using the same vehicles from the same depots. It is estimated that the total tonnage moved by road is approximately 1.4 billion tons per annum with approximately 50% taking place within urban areas, 40% between production areas and mining, agricultural and processing centres in the country. The remaining 10% is made up of long distance corridor and cross-border haulage.

Cross-border export traffic from South Africa amounts to approximately 280,000 vehicle movements p.a. carrying about 7 million tons of cargo with an export value of

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<sup>67</sup> Unpublished analysis : NP&A 2010

approximately R88 billion per annum. Inbound cargo amounts to approximately 5 million tons, carried by 280,000 vehicles, with an import value of R47 billion. Long distance inter-city cargo on the national freeways amounts to approximately 180 million tons per annum with the main corridor being the N3 between Durban and Johannesburg. The total number of commercial freight transport vehicles in South Africa is approximately 390,000. The vehicle fleet ownership is skewed with smaller numbers of larger companies owning the larger long distance configurations and large numbers of small operators owning the rigid and smaller vehicles with carrying capacities up to 14 tons. The proportion of vehicles owned by own-account operators is 69% with hire-and-reward carriers accounting for 29%<sup>68</sup>.

### **Passenger Transport**

Domestic long distance passenger transport operations are performed by about six major intercity and interregional bus and coach companies. The major cities all have urban bus transport companies under the control of the municipal authorities, operating on various contract arrangements. Bus services in rural areas are operated by smaller private sector companies and there are large number of one man and small operators providing services between the smaller towns.

Some of these are public companies with foreign shareholders. There are no stakeholder groups or business organisations that can impede liberalisation and in fact the major road freight and passenger associations are heavily committed to improving liberalisation as far as possible.

### **Cross-border Transport Regulation**

The National Department of Transport has created a semi independent agency (Cross-Border Road Transport Agency) (CBRTA) with the function of managing cross-border regulations and permit authorisations. Cross-border Road transport permits are issued for 14 days, 3 months, 12 months and 60 months for both passengers and goods. In the case of passenger permits, the applications are referred to municipalities through or into which the service may operate as well as the transport authorities of neighbouring countries into which the services may operate. For passenger permits, all applications are advertised in the Government Gazette to enable comment or opposition which results in the process taking approximately three to four months. The application for goods permits are considered by a regulatory committee and approval normally takes two to three weeks. Temporary permits are issued within two days. 75,000 goods permits are issues p.a. and 3400 passenger permits.

### **Transport Regulation**

The institutional structure of transport management in South Africa is complicated. The National Department of Transport holds responsibility for policy and implementation of National Road Transport and Traffic Legislation. The department

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<sup>68</sup> National Freight Logistics Strategy – Pretoria: South Africa 2009 p 16



has created the Cross- Border Road Transport Agency and the Road Traffic Management Corporation to take control of cross-border transport and transport and traffic management respectively. A further parastatal agency, the National Roads Agency is charged with responsibility for management of the country's major freeways and highways. 3<sup>rd</sup> Party insurance is handled by a fuel levy payable to the Road Accident Fund, which operates as another agency of the Department of Transport (DOT). Road user charges are recovered via a fuel levy and the imposition of road tolls on major routes.

At the operational level the regulation of operator standards, vehicle inspections, licensing and control of operators and drivers is managed by the nine provincial traffic departments which have traffic officers and vehicle examiners deployed in most major towns in the country and in some major cities the functions are performed by municipal officers.

All SADC driver licences are accepted. There is no operator licencing system but commercial drivers require licences and Professional Driving Permits. The roadside vehicle inspection standards in South Africa are relatively better than in much of the region but leave much to be desired in terms of ability to control the quality of vehicle operations. Overloading is reported to be a problem in many areas but the ineffectiveness of the overloading control system is a large contributing factor. In practice foreign vehicles are permitted to operate anywhere in South Africa and due to the lack of connections between cross-border procedures and the regulation of the mass of domestic freight haulage it is almost impossible to monitor where cargo is loaded and unloaded.

### **Commercial Presence**

There are no restrictions in terms of establishment of enterprises subject to compliance with immigration regulations and the terms of the Companies Act. There are no requirements to establish joint ventures with local partners but there is BEE legislation requiring commitment to advancement of local black personnel. Large investments require approval by Department of Trade and the Competition Board.

There are very large road freight transport companies that have grown into major corporations in South Africa and they do in fact dominate specific fields of transport, without being able to create total monopolies. In particular contract haulage of fuel, chemicals, steel, coal to power stations, and some agricultural products markets are dominated by the large freight transporters.

South Africa made specific GATS commitment in road transport covering passenger and freight transportation (CPC 7121 and CPC123 respectively), and maintenance and repair of road transport equipment (CPC 6112). No commitment was made for cross-border and consumption abroad for passenger and freight transport services. For Modes 1 and 2 for maintenance and repair services, a full commitment has been made. There is no limitation on foreign supply of committed services through commercial presence, In case of temporary presence of natural persons; South Africa is bound only for defined categories of services salesperson, inter-corporate transferees and personnel engaged in establishment.

In addition, South Africa listed GATS MFN exemption for an indefinite period covering 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 is restricted to South African registered vehicles and operators. The exemption is in favour of Botswana, Lesotho, Malawi, Swaziland, Zimbabwe and other Sub-Sahara African countries.

## 7.9 Swaziland

The domestic and regional transport markets in Swaziland are highly liberalised and operate efficiently with a permit system and free market operation. The transport market for local operators is small, and the dominance of South African carriers poses problems due to undercutting of rates for return load freight to South Africa. The South African road haulage companies handle most of the imports to the country from industrial areas of Gauteng and some imports via the port of Durban. The registration of vehicles in Swaziland to avoid the high permit costs in South Africa also attracts some small operators which then try to undercut established carriers in order to survive.

Industry within Swaziland is largely confined to consumer goods, food processing, sugar production, timber (largely depressed due to extensive fires), some coal mining near Mpaka, and some fruit production.

The main border routes are via Oshoek-Ngwenya and Golela-Lavumisa. On the northern boundary, a border post at Mananga and another at Matsamo lead into Mpumalanga province and on the eastern border, the border post at Lomahasha-Namaacha gives access to Mozambique with a distance of approximately 150km to Maputo port. Road freight transport imports include fuel, foodstuffs, industrial supplies, machinery, vehicles, and a wide range of consumer goods. The most of the import/export traffic is consigned to Matsapha, the industrial area to the east of the capital, Mbabane. It is estimated that 1, 800,000 tons p.a. of exports and imports are hauled by road, mainly by regional long-haul carriers.

Passenger transport within Swaziland is largely provided by minibus taxi operators and some local bus operations. Longer distance inter-state coach and bus operations are performed by South African and Swaziland operators under permit, providing services between Mbabane and the main South African industrial areas which employ numbers of Swaziland citizens.

Ministry of Transport and Public Works is the main regulator of transport operations. Cross-border road transport is subject to the issue of permits for specific countries issued for various periods of time including trip, three month, and annual permits to operate between specific points over specific routes. Individual permits are issued for the various countries for which permits are requested. Passenger transport permits are more specific than freight permits with regard to origin-destination and operating schedules. Passenger operators must apply for routes to panel of 9 members – application is gazetted. There is a 14-day period to lodge an objection. Passenger permit applications are referred to the Bus Operators Association, which effectively acts as a cartel to regulate the market.

Section 34 of the Road Transport Act provides that “foreign trucking companies or their Swaziland subsidiaries shall be obliged to award a quota of not less than 20% of their transport requirements to the local small truckers so as to empower or contribute to the development of the small truckers”. 3rd country haulage and cabotage are not permitted.

There is no formal operator licensing or registration, but all vehicles are registered and subject to annual COR and license requirements. All traffic enforcement (and the enforcement of permit regulations) is performed by Royal Swaziland Police. Border operations are managed by the Swaziland Revenue Authority.

There are no formal restrictions on the establishment of enterprises by foreigners except immigration regulations and the Companies Act, and no discrimination on grounds of nationality. Immigration measures only affect transport operations with regard to period of recognition of foreign licences before the need to convert to Swaziland licence within 6 months of residence. Unofficial evaluation of proposed investments does take place. Competition regulations exist but there have not yet been transport cases.

Swaziland has bilateral agreements with, Mozambique as its immediate neighbour, and with South Africa as part of the SACU. Swaziland has no GATS commitment in transport services or horizontal commitment. However, Swaziland indicated MFN exemption to cover 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. This implies that Swaziland is not obliged to extend on MFN basis the preferences contained in its bilateral road agreements with Mozambique and SACU.

## **7.10 Tanzania**

### **Road Freight**

The Tanzanian economy is very dependent on road transport due to poor condition of other inland transport systems, especially the railways. The largest market sector is inter-regional freight which accounts for about 75% of the total demand for road transport. Road freight comprises agricultural produce to Dar es Salaam and from regional production areas to processing centres and export warehouses as well as transport of imported industrial commodities and consumer products.

There is marked domination of the market by a few major trucking companies, especially for transit cargo, and due to the lack of return loads there are high costs which are further aggravated by the maintenance costs caused by inadequate infrastructure.

Over 95% of operators are private companies, with public operators accounting for less than 5%. Operators from neighbouring countries compete in the market for backhauls. The international operators tend to have larger fleet sizes and to operate the largest vehicle configurations. It is estimated that there are about 50 companies in the international market with fleets of 300 to 500 trucks. The international transport market depends on contracts from international clearing and forwarding agents and competition is very strong. Tariffs are highly dependent on the availability of return loads.

Road transport tariffs are deregulated and negotiable depending on road conditions, length of haul, and weight of load. Tariffs have reduced, due to use of larger and more economical vehicles as well as increased competition between operators. Local and domestic operators tend to use smaller vehicles from 7 to 15 tons and numbers of operators also have businesses outside the transport sector. There are a significant number of owner-drivers with one vehicle.

### **Passenger Transport**

Long distance passenger transport is dominated by private sector passenger road transport companies. It is estimated that there are 12,000 commercial passenger vehicles of which 40% are 26 to 65 seater buses. About 300 to 400 of these operate on long distance inter-city routes while the rest operate in the urban and suburban areas. There are large numbers of single bus owner operators in the short-haul market which is frequently oversupplied and many of the buses operate with low occupancy levels. Fares are regulated by Surface and Marine Transport Authority (SUMATRA). Passenger permits for all types of operations are very specific and require passenger lists, defined routes, origins and destinations and timetables.

### **Transport Regulation**

Road transport regulation in Tanzania is managed by SUMATRA. The authority is responsible for ports, inland waterways, railways, road freight and passenger transport within Tanzania, as well as the control of cross-border traffic. There is no formal operator registration system but road transport operators wishing to perform cross-border transport are required to apply for operator permits. Cross-border permits are issued for specific vehicles per specific countries on defined routes under specified conditions.

### **Customs Regulations for Road Transport**

All customs and border management is performed by Tanzanian Revenue Authority (TRA). The TRA also requires vehicles to be registered with them before permission is given to conduct goods across borders. Transit (cross-border) vehicles are licences according to the EAC Transit system (not the SADC system), and enforced by TRA. The EAC Licence issued, defines specific routes, unload points and reload and return points. A weighbridge record requires vehicles to stop at each weighbridge and be re-weighed, with weight recorded and certified for each stop.

The vehicles with EAC Customs Licences must have a large sign fitted to front and rear reading TRANSIT VEHICLE. These registered vehicles are not permitted to operate within the country and can only be used for cross-border work. The permits issued are for specific countries and conditions define whether they include permission to transport backloads from the destination country back to a Tanzanian destination, e.g., Port of Dar es Salaam to Kampala with a backload to the Port of Dar es Salaam. Third country rules apply and no cabotage is permitted within Tanzania or under permit in neighbouring countries.

Tanzania recognises SADC licences and uses the COMESA yellow card system for 3rd Party insurance and recognises the COMESA Inter-state Carrier Licence. Vehicle standards have been harmonised with EAC initiatives. Tanzania has a corridor agreement with Malawi. Relations with other neighbour states fall with the ambit of the EAC and Tripartite deliberations and agreements. This poses some enforcement problems when SADC and EAC regulations diverge, e.g. SADC permits and licences, and COMESA Interstate Carrier Licence and yellow card

### **Commercial Presence**

There are no limitations on establishment of enterprises by foreigners apart from immigration regulations and the need for work permits.

Tanzania has made no GATS commitments in transport services, but has made a full liberalisation commitment in international road transport for passenger and freight CPC 7121 - 7123\*\*, under EAC. However, Mode 4 in all sectors are governed by agreement on movement of workers.

## **7.11 Zambia**

The Zambian economy is growing rapidly with copper mining production increasing and large scale agricultural development contributing exports of maize and sugar. In 2011 Zambia recorded a trade surplus of around ZMK 9 Trillion or \$US 191 million.

### **Road Freight**

The freight haulage industry is fully liberalised with no restrictions except for the provisions of the Road Traffic Act and the cross-border permit system for foreign operators. Local transport consists primarily of the haulage of coal, lime, cement, fertilizer and maize, distribution of consumer goods, foods, beverages, industrial supplies and fuel distribution within Zambia from the Ndola Fuel Terminal or Ndeni Refinery. It is estimated that there are about 1300-1500 heavy trucks on the road. The cross-border export market comprises haulage of copper (all year round), agriculture (seasonal), and scrap metal (all year round) and to a lesser extent cement, asbestos products and steel to Malawi. Imports include all industrial goods, fertiliser, machinery and vehicles, fuels, mining chemicals and explosives, and a wide range of foods and consumer goods. Cross-border transport is performed by companies from all over the region with 39% South African, 17% Zambian and 41% Zimbabwean registrations being the main operators.

Annual cross-border traffic at Chirundu is estimated to amount to approximately 4.0 million tons p.a. and via Kazangula about 3.0 million tons p.a. Long distance haulage to and from Dar es Salaam and other ports is a lot less, but recent developments including the opening of the bridge at Katima Mulilo-Sesheke have caused an increase of haulage to and from Walvis Bay to about 100,000 tons p.a. Zambia also provides the main conduit between the east coast ports and DRC so that a significant proportion of transit traffic exits into DRC via Kasumbalesa. Cross-border haulage shows 39% South African, 41% Zimbabwean and 17% Zambian carriers.

There are a number of large companies such as bakeries, breweries, mines and agricultural firms with own fleets used for movement of their own production inputs and distribution to retail and wholesale outlets. The industry is strongly linked to South Africa and Zimbabwe and much of the traffic is generated by association with freight forwarders in those countries.

### **Road Passenger Transport**

The Road passenger sector is regulated in terms of the permit system. There is no evidence of excessive restrictions on foreign operators and a number of foreign operators and in particular South African operators enjoy a competitive market share in Zambia.

The bus and or luxury coach industry provides services on both the local routes within Zambia and cross-border to South Africa and other neighbouring states. Permits for local routes within Zambia and cross-border are issued by RTSA (Road Transport and Safety Agency) on a national or regional (provincial) basis and the conditions for issue of local permits are not as restrictive as for the cross-border industry where specific routes must be nominated. Permits issued for transport of passengers on long distance routes e.g., Lusaka to Johannesburg are based on an origin/destination basis i.e. passengers can only be loaded at point of commencement of the journey for disembarkation at final destination. No passengers may be dropped or picked up in any country en-route. Ticket offices are therefore located in Lusaka and Johannesburg and tickets can only be issued from these points. Strict timetables are applied for these routes and only valid reasons like a vehicle breakdown or border-post delays will be accepted for non-compliance.

### **Transport Regulation**

Freight transport regulation in Zambia is under the control of the Road Transport and Safety Agency (RTSA). The RTSA is responsible for transport policy and the application for cross-border permits. Permits are available for one month, three months and twelve months. Permits require the name of the operator and a physical address, vehicle registration number and details of the type of transport (passenger or goods) the number of trips and destination or transit countries and destination countries. In theory the third country rule applies and cabotage is prohibited, but in practice it appears that there is some relaxation of the 3<sup>rd</sup> country rule for South African and Zimbabwean carriers.

The Road Traffic Act 11 of 2002 is the transportation regulatory instrument. The National Transport Policy of May 2002 – is the national framework for transportation in Zambia. High charges are levied for abnormal load permits for foreign operators and deposits lodged for transits through Zambia cost anywhere from USD 4500-6500 depending on the tonnage of the abnormal load and local escorts must be used which cost about USD 1000 per municipal region transgressed by the load. Bridge crossing at Katima Mulilo-Sesheke is USD 431 for normal loads.

Zambia recognises all SADC licences and the COMESA Inter-state Carrier Licence. The COMESA Yellow card 3<sup>rd</sup> party system is used and operators that do not have the necessary cards are charged at the border.

### **Commercial Presence**

There are no barriers to establishing enterprises in Zambia apart from the need for work permits and the requirement to register in terms of the Companies Act. Several South African and Zimbabwean operators have joint ventures and shareholdings with Zambian operators. There are special measures for joint ventures in Zambia<sup>69</sup>, but certain concessions are given to foreign operators/investors in the mining and agricultural sectors of the market. There are no limits in terms of capital investments, but is guided by Foreign Investment Act of Zambia.

Foreign staff may be hired as long as it is demonstrated that the position cannot be ably covered by a local. This necessitates the advertising of such vacancy in the local media. There are no regulated or legislated measures that govern the composition of boards or the numbers of expatriate staff other than the rules and regulations for foreign investment and trade.

Zambia has bilateral agreements with Botswana, Namibia, South Africa Zimbabwe and Tanzania and DRC, all of which have similar provisions based on the overarching conditions of the PTCM. Application of the regulations is highly variable and arbitrary, as evidenced by continual complaints by truckers.

Zambia has no GATS commitment on road transport services, but with current levels of cross-border and transit traffic by foreign companies it should be possible to make commitments in Mode 1. Examination of the Zambia investment guide appears to indicate that all conditions are in place to make commitments in Mode 3, subject only to the current immigration controls to protect local employment.

## **7.12 Zimbabwe**

The Zimbabwean trucking industry has changed over the past ten years and now has three identifiable segments, cross-border trucking, national trucking, and domestic distribution companies. Within the Southern Africa region, the north-south corridor serves as an intraregional trade route between Zambia, the Democratic Republic of Congo, Botswana, Zimbabwe, and South Africa and as a link to the port of Durban for overseas imports and exports. Beit Bridge, which is one of the two main crossings from south to north, is the busiest border post in the region, handling 800 – 1000 trucks per day in each direction.

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<sup>69</sup> Companies that hold an Investment Licence and invest a minimum of US\$ 250,000 or employ a minimum of 200 employees shall be entitled to self-employment permit for up to five expatriate

employees



## **Road Freight**

Cross-border transport services are largely provided by the big inter-regional companies based in South Africa, with depots and operating centres in most countries in the region. The number of trucks registered in Zimbabwe was estimated to be 75,000 in 2009, with about 107 operators in the Transport Operators Association of Zimbabwe and large numbers of 1-10 truck operators. The growth and structural change in the trucking industry has been greatly influenced by the increased importance of South Africa as a source of imports and the primary destination for exports. The cross-border trucking industry has been willing and able to accept lower return-freight rates, thereby undercutting the rail services. Prior to the 1990s, incoming freight was predominantly from overseas exporters using containers for their shipment of goods, thereby favouring the use of rail services. More recently transport is break bulk using a variety of maxi-cube longer vehicles

## **Passenger Transport**

The urban passenger transport industry in Zimbabwe was liberalised in 1993. This led to a significant increase in the number of privately operated public transport vehicles (mostly mini-buses). The government controlled Zimbabwe United Passenger Company (ZUPCO) provides public transportation services in Harare. Road passenger transport is regulated by permit system that favours local operators. Incoming scheduled and tourist services move on the main corridors under permits from their home countries, in terms of bilateral agreements. For much of the past decade, public transport services in urban areas of Zimbabwe have been on a declining trend. The decline in these services has resulted in high transport costs as well as an inadequate and unreliable public transport system.

## **Road Transport Regulation**

Transport regulation in Zimbabwe is the responsibility of the Ministry of Transport, Communications and Infrastructure Development. The Road Traffic Act 13:11 of 2001 is the transportation regulatory instrument. The National Transport Policy of 2003 – revised in 2005 is the national framework for transportation in Zimbabwe. Traffic enforcement is done by the Zimbabwe police. Cross-border transport is regulated by issue of permits, both passenger and goods from the Ministry of Transport. Operations to and from other countries are governed by bilateral agreements that provide for sharing information on traffic development and define the types of permits that can be issued. This system restricts the carriage of bilateral trade to operators from the two countries concerned and prohibits the provision of transport within a country by a foreign operator (cabotage).

Zimbabwe recognises all SADC licences and the COMESA Inter-state Carrier Licence. The COMESA Yellow card 3<sup>rd</sup> party system is used and operators that do not have the necessary cards are charged at the border. Zimbabwe has high level of integration with SADC harmonised vehicle standards and is party to the on-going liberalisation processes in SADC and COMESA.

The Freight haulage industry is fully liberalised with no restrictions, apart from cross-border permits and Zimbabwe has various bilaterals with Namibia, Malawi, Botswana, South Africa, MOUs with neighbours on One-Stop Border Posts (OSBPs).

### **Commercial Presence**

Cross-border transport services are largely provided by the big inter-regional companies based in South Africa, with depots and operating centres in most countries in the region. There are no special legal requirements to start enterprises other than the requirements to register the company but the Indigenization and Economic Empowerment Act is restrictive in terms of both existing foreign owned business and new investments, which is turning foreign investors away from the country. There are special measures for joint ventures in Zimbabwe and the market is divided into three sectors, namely the Priority Sector which includes manufacturing, mining and development of infrastructure for tourism (100% foreign ownership permitted), Service Sector i.e. Consultancy, management and construction (70% ownership) and the Reserved Sector (35% ownership)<sup>70</sup>. The latter is intended to protect locals, among other areas in road haulage, passenger bus, taxis and car hire services of any kind of tourist transport, excluding airways.

Ownership policies are governed by the rules and regulations on foreign investment in Zimbabwe<sup>71</sup>. Foreign staff may be hired as long as it is demonstrated that the position cannot be ably covered by a local. This necessitates the advertising of such vacancy in the local media. Zimbabwe does not have GATS commitment in transport services

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<sup>70</sup> Rules and Regulations of Investing in Zimbabwe -

<sup>71</sup> 3. Reserved Sector

Areas where foreign investors can only take a shareholding, the government through statutory 108 of 1994 has reserved a few sectors of the economy for local investors. Any foreign investors wishing to participate in a reserved sector can only do so by entering into a joint venture arrangement with a Zimbabwean with the foreign partner taking a maximum of 35% shareholding of the venture.

## **8 DESCRIPTION OF RAIL TRANSPORT BY COUNTRY**

### **8.1 Introduction**

The railway systems of the Southern African region are interconnected with a network of 35428 kms of 1067 mm ("Cape" gauge) tracks covering almost the whole region. The only exceptions are 2600kms of 1000 mm lines operated by the Tanzanian National Railway (TNR) which runs from the port of Dar es Salaam into the interior, with a line that connects to the port of Tanga near the Kenyan border.

Almost all railways in the region are government owned parastatals but there is widespread cooperation between the entities and transfers of wagons at borders between the countries. The cooperation is fostered as far as possible by the Southern African Railways Association (SARA) based in Harare but due to the fact that the systems are all national governmental companies the influence of the association is muted. The Interconnected Regional Railway Network (IRRN) was mainly built between 1850 and 1920 and is in many areas in poor condition (or derelict), and almost universally suffering from deferred maintenance and in need for extensive recapitalisation in order to restore operational efficiency. In addition, the locomotives and rolling stock in the system are almost all overdue for replacement and there is need for extensive upgrading and replacement with more modern locomotives and improved modern wagon designs and capabilities.

There are some sections of the lines that are heavily used for transport of bulk minerals with South Africa having the largest tonnage of about 200 million tons per annum, mainly coal and iron ore to the bulk ports of Richards Bay and Saldanha. In general all the railway companies of the region are willing to allow their businesses to be accessible to trade in ancillary services, such as track maintenance, locomotive repairs, wheel rehabilitation, signalling, but reserve the core activity of operating trains. Foreign companies wishing to offer services to large railway operating or track owning companies can apply for contracts, but face empowerment clauses or requirements for local partnerships in most tenders.

Most of the countries have specific rules that promote local content, employment of nationals and other terms that reflect their national priorities, but none of them effectively prevent or hinder trade in ancillary and support services. A major exception is Transnet Freight Rail in South Africa, where the national railway operator has set up its own facilities to provide selected services, often in competition with private sector service companies. The various national monopoly rail operators do co-operate with each other and do permit locomotives or wagons to transit each other's lines with varying degrees of freedom, but always subject to definition of the scope and range of such activities.

The major issue regarding compliance with the PTCM is the objective of providing efficient and cost effective services (amongst others). With the exception of Swaziland and one track in Southern Mozambique, all railway operating companies are monopolies, which are either government owned or government appointed.

A problem for the concept of liberalisation is that in many of the countries in SADC the volume of traffic is too low to justify establishment of a second operator. There are however some areas where there is sufficient traffic, but no competing railway operating companies are permitted. This situation has resulted in inefficiency, lack of responsiveness to demand, excessive tariffs and the general switch of cargo from rail to road throughout the region. The railway systems in each country of the SADC region are described in the following sections of this report.

## **8.2 Angola**

The Angolan railway system is owned by the government and consists of three separate sections of railway, each operated by different government-owned railway operating companies. All lines are built to 1067 mm gauge.

The Caminho de Ferro Mocamedes railway connects Mocamedes with the interior and is 249 km long. The Caminhos de Ferro Benguela connects the port of Lobito with the interior of the country and extends onwards to the DRC and the Zambian copper belt. This railway is 1344 km long. This section of railway has for a very long time been closed as a result of war and is only now being restored to operation. The Caminhos de Ferro Luanda section is 424 kms and carries very little freight, but has started limited passenger train services

All the above railways are owned by the government and train operations are conducted by government owned companies. All three businesses are open private sector operations in respect of all subsidiary railway services, such as repairs, locomotive rebuilds, etc. (South Africa companies involved). Substantial plans exist for the inter-connection of these railways and to develop services to the Cabinda area of Angola north of the DRC. There is little current traffic on rail and several major developments are still in the planning stage. There are no stated intentions of privatising rail transport.

## **8.3 Botswana**

The Botswana government owns the national railway network and Botswana Rail (BR) which was created by Act of Parliament in 1986 is the government owned parastatal company which operates trains and maintains the railway network. Rail operations were handed to the Botswana Railways by the Zimbabwe Railways in 1987 and the network today consists of 888 km of track at 1067 mm gauge.

Passenger traffic has been discontinued and freight volume, estimated at 650 000 tons per annum, is in decline. The railway also lost market share when the Beit Bridge/Bulawayo railway was opened and the financial viability of the railway is now questionable. In the future however if the coalfields of Botswana are developed, BR will have relevance for export traffic. The Botswana Railway Company undertakes limited cross border business with its neighbouring railways, Zimbabwe and South Africa and uses engineering and other ancillary services such as signalling installations by outside companies. No other Train operators are permitted on the network.

## **8.4 Democratic Republic of the Congo**

The railway network and operating company called Office D'exploitation des Transportes du Congo (OTRACO), was created by Royal Decree on April 20, 1935, charged with operating all railways in the then Belgian Congo. The OTRACO railway operations were subsequently renamed Societé Nationale des Chemins de Fer du Congo (SNCC), but still had the same responsibilities, and was also wholly owned and operated by government.

In a later development the Matadi to Kinshasa railway and the ports at each end of the railway, were reorganised into an entity called Office Nationale des Transportes (ONATRA) which still operated as a wholly government owned parastatal. The ONATRA company name was changed by a further decree on 24 April, 2009, to Societé Commerciale des Transportes et des Ports (SCTP).

The SCTP Railway is 366 km long with 1067 mm gauge and has been losing market share for the last twenty years. It now carries about 95 000 tons per annum, which is a market share loss of 97% over twenty years. This railway is seeking outside help to restore market share and operation of freight and passenger services. All the other sections of railway in the DRC remained the responsibility of SNCC, but most of the SNCC lines are now derelict, with the exception of the section between Lubumbashi and the Zambia border at Sakania (with connection to Zambia Railways at Ndola), and the connection to the Caminhos de Ferro de Benguela (CFB) in Angola, which is being rehabilitated.

All railways including maintenance and supplies servoces are open for investment from local and foreign companies, but no competition is permitted between railway operators on the same track and all rail operations are controlled by the government owned parastatal monopolies. The companies are also seeking investors to rehabilitate lines and replace rolling stock.

## **8.5 Lesotho**

There is a 4 km stretch of 1067 mm gauge railway from the South African border to Maseru and is operated by the South African railways, hence operations are describe under South Africa. Most transport to Lesotho is by road but rail transport carries approximately 270,000 tons p.a.

## **8.6 Malawi**

The entire railway track in Malawi is owned by the government, but following the termination of the contract with Central East African Railways (CEAR), recent developments include the outsourcing of all operations to Companhia Vale do Rio Doce (VALE) the Brazilian private sector international mining company with operations in Tete province of Mozambique. The main current operations on the Malawi section amounts to 280,000 tons p.a. of import and export cargo to and from Nacala.

VALE is developing a rail line from Tete eastwards into Malawi to join the Malawi main line. The former CEAR and CFM-Norte sections of the line will then be redeveloped and upgraded from Malawi via Nampula to the deep water port of Nacala. The Malawi section should therefore be read in conjunction with the northern Mozambique CFM-Norte section of this report. VALE will also manage the Malawi general cargo sections as far north as Lilongwe as well as the new mining oriented section between Tete and the port of Nacala. This will effectively create a new railway operating company supplying services to all industries.

CFM –Norte has a minority interest in the VALE train operating company which has a twenty year operating contract. It is noteworthy that Vale will operate as a total monopoly on this section and does not permit any other rail operators.

## **8.7 Mozambique**

The railway in Mozambique (Caminhos de Ferro de Mozambique (CFM)) is a fully government owned parastatal that has had control of operations and railway policy for many years. The sections of the railways do not provide a network but consist of three different sectors that have recently developed into independent operations run under different conditions of private-public sector control and management. All the CFM lines are 1067 mm gauge and therefore connect into the Interconnected Regional Rail Network (IRRN) with current transfer points between CFM and NRZ, SR, TFR, and MR railways.

The Caminhos de Ferro de Mozambique-Sud (CFM-Sud) operates a network of lines between the port of Maputo; Swaziland; South Africa and Zimbabwe. These sections of railway are all owned by the government of Mozambique and operated by CFM. In a recent development CFM-Sud now permits a private operator who owns an iron ore mine in Swaziland, to run its own locomotives, wagons and train crews from Swaziland to Maputo.

CFM-Sud does not currently permit other operators to work the lines from South Africa and Zimbabwe, although it allows South African trains to run through from the border to Maputo under the operating control of the CFM. The CFM-Sud permits trade in services with ancillary businesses and uses contractors for maintenance operations. In effect, this section of the Mozambique railways permits not only trade in services but begins to meet the PTCM condition of allowing freer train operating competition.

CFM-Centro operates the lines feeding from Tete province and the Moatize coal fields in the hinterland of Mozambique and also from Zimbabwe to the port of Beira. This section of railway is wholly-owned by the government of Mozambique, and since 2011 has been operated solely by the CFM, as the government-owned operating company. CFM-Centro section of the railway is being renovated because coal from the inland coalfields is starting to flow in appreciable quantities. Interaction with private business on this section is encouraged for building and maintenance activities, but no other train operator is permitted.

The CFM-Norte is owned by the Mozambique government but operations are contracted to the Brazilian company VALE who are coal mining in the Tete – Moatize areas inland from Beira. CFM-Norte has a minority interest in the VALE train operating company which has a twenty year operating contract. The line services the port of Nacala and runs inland via Nampula to the Malawi border. The line crosses into Malawi and runs 365 kms to Lilongwe. The new VALE coal line intersects to the south of Blantyre from the west. (This is described further in the section on Malawi).

## **8.8 Namibia**

In Namibia the ownership of track, provision of train operations and maintenance services is done by Trans Namib, which is a government-owned parastatal company with monopoly rights. The rail network consists of 2,382 kms of 1067 mm gauge track that connects between Walvis Bay and Windhoek and to the TFR on the South African border at Ariamsvlei. The line from Windhoek extends north via Tsumeb to Grootfontein where some cargo is transferred to road for onward haulage to Zimbabwe and Zambia. Current freight transport on rail is estimated at 1 million tons p.a. and approximately 63,000 passenger's journeys are provided p.a.

Trans Namib makes use of foreign contractors for construction and maintenance but does not permit competition for train operations. Current planning includes the construction of a line from Tsumeb north to the Angolan border at Oshikango that will hopefully provide a point at which the future Angolan railway development will connect with the Namibian system. There are also plans to develop a cross Kalahari railway in collaboration with Botswana from the BR line near Palapye to a new port to be constructed on the Atlantic seaboard near Cape Fria. The purpose of the line is to provide for export of coal from the Morupule coal fields, which are currently under development.

## **8.9 South Africa**

In South Africa freight railway activities are under the control of the Department of Public Enterprises which is one of the Cabinet ministries of the National government. The Department is effectively the sole shareholder and has responsibility for control of Transnet (rail, ports and pipelines operator), SAA (airways), Eskom (electricity supply) and several other parastatal service and utility entities.

Transnet Limited is the state parastatal monopoly provider of transport services. The company has evolved from the gradual transition that resulted from nationalization of all railways on the formation of the Union of South Africa in 1910. Originally South African Railways and Harbours (SAR&H), the enterprise became SA Transport Services (SATS) and (after the Rail Act of 1989) then became Transnet Limited, which also controls ports (and other marine infrastructure, such as lighthouses) and pipelines. All management of assets and railway operations for transport of freight are performed by Transnet Freight Rail (TFR), a division of the parastatal Transnet.

All railway track in the country is government owned (apart from some significant mine railways on privately owned mining properties), but different sections of railway activities are controlled by various government agencies and departments as described below.

TFR is responsible for the largest proportion of the 20,000 kms of 1067 mm (Cape) gauge track on which it manages track and equipment as well as all operations of freight trains as a total parastatal monopoly operator of rail transport services. TFR transports approximately 201 Million tons of freight p.a. over about 15 000 kms of track. Transnet does not permit other freight train operators access to its lines. TFR conducts some of its ancillary services needed for railway operation in-house and therefore some activities are in competition with outside companies. For many functions such as track maintenance, supply of materials, engineering services, design and construction and procurement of locomotives and rolling stock the company makes use of private sector contractors. All procurement procedures are designed to favour SA BEE firms, usually paired with foreign or local partners that supply the technical and management inputs.

In a recent move the Department of Transport has been given responsibility for the provision of passenger rail services. A new entity has been created called the Passenger Rail Authority of South Africa (PRASA), which is a wholly government owned parastatal monopoly business and is responsible for train operating and maintenance on passenger lines. This includes both inter-city (under the brand name Shosholozza Meyl) and metro commuter services (branded as Metrorail). There is one operation in the Gauteng province that is a noteworthy exception, as described in the following section of this report). PRASA handles about 6.1 Million passenger journeys per annum on a route network of about 4 500 km. No private passenger train operators are permitted on PRASA tracks with the exception of the occasional tourist train. PRASA uses private sector service providers for a range of functions, but also performs in-house functions that compete with private sector companies in the provision of selected services. All procurement procedures are designed to favour SA BEE firms. As a monopoly PRASA does not comply with the PTCM in that it does not permit any competing railway operator.

The Gautrain commuter service between Johannesburg and Pretoria was built about 4 years ago and is owned by the provincial government of Gauteng. The railway track is approximately 100 kms in length, built to 1435 mm gauge as a medium speed commuter service. The operation and maintenance of the system is a BOT venture which is contracted to a private sector consortium of local and international companies on a thirty year contract. The entire system will revert to the provincial government on termination of the contract period, after which alternative arrangements may be made. Gautrain enjoys monopoly rights to the operations and assets and does not permit any competition.

In summary, the South African railway systems is similar to other SADC countries, but, the South African railway train operators themselves provide many of the service components in-house that are provided by external or foreign companies in other SADC countries.



### **8.10 Swaziland**

The railways in Swaziland were run by the CFM in Mozambique until 1978 and thereafter have been run by Swaziland Railways (SR). The entire track is owned by Swaziland government but policy is to allow private sector train operations on Swaziland Railway lines. The Swaziland railway consists of 310 kms, all 1067 mm gauge. Swaziland Railways handles containers and petroleum trains from South Africa that are received at Golela and travel to Manzini, using TFR rolling stock and Swazi drivers.

Swaziland Railways, is the largest operator but, permits competition from two other operators; a) the South African railways (TFR) is allowed to run through freight trains from Komatipoort via Mananga right across Swaziland to the southern border at Lavumisa-Golela (using South African rolling stock, and Swaziland Railway drivers), and b) an iron ore mining company has been permitted to acquire rolling stock and drivers and to operate trains sourced inside Swaziland, running trains via Goba over the CFM lines to Maputo.

This provides a unique and encouraging situation for the objectives of both PTCM and PTIS as a first ever development within SADC, where three separate train operating companies are running on 310 kms of tracks owned by the Swazi government.

### **8.11 Tanzania**

In Tanzania there are two separate state-owned railway operations that do not interconnect. Tanzania Railway Corporation (TRC) is wholly-owned by the government of Tanzania and consists of 2600 kilometres of 1000 mm gauge track. TRC engages contractors to provide services, however the management has been taken over by the government after a concession was terminated in 2011. TRC has two lines; the central line that runs from Dar es Salaam to Tabora with two branches; one branch to Kigoma in the west along lake Tanganyika, hence providing freight cargo transportation to the west of the country as well as the land-locked countries of Burundi, Rwanda and eastern part of Democratic Republic of Congo. The second branch runs from Tabora to Mwanza port on Lake Victoria, also providing transportation services to north and north-western part of the country including landlocked Uganda. The other line runs from Ruvu northward to Korogwe and then branches to Tanga port on the Indian Ocean, another branch north-west to Arusha and connecting to Kenya railway system. There is minimal interchange of services between TRC and the rest of the IRRN in SADC because of the gauge difference.

The Tanzania and Zambia Railway Authority (TAZARA) is jointly owned by the Tanzanian and Zambian governments. The 1067 mm gauge line runs 1860 kms from an intersection with Zambia Railways (ZR) line at Kapiri Mposhi all the way to Dar es Salaam. The use of the 1067 mm Cape gauge permits through trains from all over the IRRN to access the port of Dar es Salaam. Tazara railway faces constant competition from road haulage and currently transports about 50,000 tons p.a. with the result that the railway faces mounting economic problems.

### **8.12 Zambia**

The Zambian Railway (ZR) is owned by the Zambian government, but after several attempts at establishing different operational models the government has outsourced the operating and maintenance of the railway to NLPI (New Limpopo Investments<sup>72</sup>). In a recent announcement the government has intentions of investing US\$120 million in rehabilitating the infrastructure to permit usage of rail for heavy cargoes<sup>73</sup>.

NLPI also have marketing rights on the Zimbabwe railway from Victoria Falls to Bulawayo and are the operators of the Bulawayo to Beit Bridge railway. The firm can therefore offer through service right from the DRC border to the South African border even though the portion in Zimbabwe is operated by National Railways of Zimbabwe (NRZ). As a private sector operator the NLPI operation can be regarded as monopoly control of train operations.

### **8.13 Zimbabwe**

The government of Zimbabwe owns all railway tracks in the country with the exception of the Beit Bridge to Bulawayo section. The government has delegated the operation of all the railways to the National Railway of Zimbabwe (NRZ) which transports approximately 2 million tons per annum on 2583 km of 1067 mm gauge lines that connect to the South African, Botswana and Zambian borders to form a network within the country, connected into the IRRN.

In an apparent liberalisation about 10 years ago, Zimbabwe government permitted a private sector company, Beit Bridge Railway Company (New Limpopo Investments; NLPI) to build and operate the section of track from Beit Bridge to Bulawayo, on a twenty year BOT contract, so this section will be returned to the Zimbabwe government at the end of the contract period. NLPI has also been given the marketing rights for the section of line from Bulawayo to Victoria Falls thereby facilitating the connection with Zambia Railways, which is also operated by NLPI.

The NRZ is primarily a railway operator and uses numbers of contractors that supply all sorts of support services, but like other railways in the region does not permit access to the lines by other train operators.

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<sup>72</sup> **NLPI Limited** (NLPI) is an investment-holding company, registered in Mauritius, whose main investment focus is infrastructure-related projects on the continent of Africa. The Nedbank, Old Mutual and Sanlam Groups, all major South African financial institutions, are partnered by the shareholders of NLPI, together with New Limpopo Bridge Projects Limited (NLP), an investment company controlled by Mr. Mordechai Tager and Mr. Zion Elani – Wikipedia

<sup>73</sup> Mbendi Newsletter : 12-10-2012

## **9 DESCRIPTION OF MARITIME TRANSPORT AND PORTS**

### **9.1 Overview**

The maritime sector is a critical interface between countries and their trade partners, trade flows in both volume and value are dominated by the tonnage handled in SADC ports. The increase in international “south-south” trade volumes and current import and export performances highlights the growing importance of the maritime sector within SADC and southern Africa as a region.

Major challenges are faced due to the fact that ports in the region have suffered from investment backlogs, poor operational performance and lack of skills. The supply of waterside and landside infrastructure has not kept pace with the deployment of larger container vessels on north-south trades and the need for larger dry bulk carriers to handle larger call sizes and reduce export cost per ton.

The development of transport corridors has become a priority in many regions within Africa and SADC and new or refurbished mineral export channels are coming on stream in Angola and Mozambique. For efficiency, these channels require increased cooperation and harmonisation between countries to ensure seamless and uninterrupted flow of cargoes. Increased transport trade in services liberalisation is required to reduce tariffs and eliminate non-tariff barriers

In addition to WTO led initiatives to increase regional harmonisation and eliminate barriers to trade, there are maritime specific initiatives being implemented, such as the recent African Maritime Transport Charter<sup>74</sup> initiative that sets out to establish Africa in as an international force in the maritime sector. Objectives include establishing African shipping fleets, improving shipping cooperation between African nations and shared skills development initiatives. Development of a viable ship repair and building industry is seen as important for job creation and to create a position for Africa in the maritime industry.

The maritime industry is truly international and is populated by large and influential multi-national companies with mature frameworks for operations and investment. In SADC Member States and the AU however, maritime policy and supporting legislation is still evolving within the framework of the international environment.

Although all SADC countries recognise the potential value of an integrated, open and transparent maritime sector’s contribution to trade, countries are at different stages of policy development and implementation to achieve these objectives. There is minimal evidence of efforts to achieve greater harmonisation and more coordinated planning of capacity and operations. The process is complicated by the fact that there is a high level of government involvement in management and ownership of ports and competition between individual ports and between countries. National objectives receive priority over cooperation.

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<sup>74</sup> Objectives of the African Maritime Transport Charter include the implementation of harmonised shipping policies and the development of an African shipping fleet. It sets out to promote cooperation in maritime transport and port operations

While maritime policies vary between SADC member states, national priorities are similar and include creating capacity to meet demand, improving port performance and reducing transport costs. Most SADC countries have liberalised their maritime policies, and the operation of port facilities within a framework of State ownership and control of ports assets. There is also need for introspection about the value and likely benefits of some aspects of maritime activity in competition with the major maritime nations. For example, South Africa has done much to get vessels onto a South African flag registry without success. Maritime trade in services in the region include shipping, port operations, ship building and repair, agency services, marine services and other services supporting the maritime industry (e.g. ships chandelling, fire prevention, diving). All SADC countries support concession arrangements with private sector, vary from country to country, but always under the control of the national ports authority.

- Angola has private sector concessions in ports (Multiterminales which includes Delmas/CMA-CGM and Sogester which includes APM Terminals)
- South Africa permits private sector port terminals in all major ports. A transaction advisor has been appointed for the Ngqura Container Terminal
- Mozambique has concessioned the management of port of Maputo (MPDC) [Maputo Port Development Company] with shareholding by Grindrod, Dubai Port World and Portos e Caminhos de Ferro de Moçambique. Beira terminals (Cornelder) and Nacala. (present concession under review)
- Concessioning of Container terminal at Dar es Salaam

The table below indicates the following:

- According to Lloyds no SADC country has national flagged commercial vessels over 1,000 tons GRT
- Port authority and marine operations remain the domain of public entities
- While port operations are the target of liberalisation initiatives in most SADC port countries, these operations remain dominated by public entities
- Ship repair, ships agency, warehousing and depots and other port support services are mostly liberalised across SADC port countries

**Figure 3: Current Status of Port Liberalisation in SADC Member States**

	Angola	DRC	Mauritius	Mozambique	Namibia	Seychelles	South Africa	Tanzania
Flagged Vessels	I	I	I	I	I	I	I	I
Ship repair	I/L	L	I/L	L	P/I	L	L	L
Ships agency and support	I/L	P/I	I/L	I/L	I/L	I/L	I/L	I/L
Port authority	P	P	P	P/I	P	P	P	P
Marine operations	P	P	P	P/I	P	P	P	P
Port operations	P/I	P/I	P	I/P	P/I	P	P/L	P/I
Warehouse and depots	I	P/L	P/L	I/L	L/I	L/I	L/I	P/L

*N=None, I=International, L=Local, P=Public Sector*

## 9.2 Angola

The maritime sector in Angola has experienced periods of severe port congestion. While capacity initiatives including port investment and inland container facilities have contributed to reducing berthing delays and extended container storage in Luanda, congestion remains an issue. The major ports in Angola are;

### **Lobito**

With a maximum of 10.5m, handles containers, liquid bulk and multi-purpose cargoes. The port has 8 general purpose berths, 17 warehouses and facilities for refrigerated containers; a slipway and floating dry dock (capacity 2,000 tons) owned by Sorefame bunkers are provided by Bomin. Passenger vessels have preferred berthing and there are several shipping agents including Maersk, Orey (local), and SMI (local). \$12bn will be spent to modernise and expand the port and increase capacity from 2.7mtpa to 11mtpa.

**Luanda** is the main port in Angola and handles general purpose cargoes, containers and (461,000 TEU in 2011) liquid. The port has 2 general cargo terminals, 2 container terminals, a bulk terminal, passenger terminal and petroleum facilities; bunkers provided by Sonagol and Shell; floating dock (capacity 6,000 tons) and 2 small slips; ships agents include Maersk, Panalpina, Orey (local); Survey services include local entities plus Det Norske Veritas. The port has been plagued by congestion but investment in the port includes \$155m by Sogester which holds a container terminal concession.

**Namibe** is the deep water port in the south of Angola and handles mainly iron ore exports through Porto Saco which is an iron ore loading terminal which can handle 200,000 ton vessels (handling rate 3,500tph). Other facilities include 1 commercial quay and a tanker berth operated by Texaco; there are ships agents (Maersk and Orey). There are facilities for limited repairs and maintenance. The Angolan government intends to spend \$1bn rehabilitating and expanding the Lubango-Namibe corridor. There are also plans to develop a deep water port at Barra do Dande north of Luanda which is to include a container terminal

Each of the ports is served by one of the three main transport corridors to the interior, all of which are being rehabilitated and expanded. Benguela corridor is intended to create a rail and road link from the DRC mining areas. Mineral exports have stimulated investment in Angolan ports and corridors to these ports. Angola's economy aims to move away from a dependence on oil and gas. The ports are administered by separate parastatal port authorities. Private investment in the maritime sector is increasing and the private sector is represented in port operations, ship repair and shipping but competition in port operations and port support services remains limited. Dominant shipping lines including Nle Dutch have a significant share of the container market. The competitiveness of Angolan ports has been hampered by inadequate infrastructure, slow documentation and lengthy customs delays, resulting in demurrage and shipping surcharges.

Government is actively investing in the maritime sector. This includes port rehabilitation as well as considering the establishment of a national shipping entity. Private participation in the maritime sector includes the development of a shipyard to support oil companies. The facility is owned by Sonagol (Angolan state owned), SBW (Singapore) and Daewoo (South Korea). There is also further investment by Sogester (which includes APM Terminals and Maersk) in container terminals, both at port and inland. A limiting factor for liberalisation is the significant State presence in the maritime sector with dominant state owned entities (e.g. Sonagol) as well as shareholding in port operations and ship repair activities.

The overall regulatory environment remains constrained and policies that might support open markets show limited progress. Tariff and non-tariff barriers, coupled with burdensome investment regulations, hamper development of a dynamic private sector and diversification of the country's economic base. China, Portugal and Italy are large investors in Angola. According to ANIP investment in non-oil sectors for 2010 was \$2.37bn, mostly in manufacturing, construction and agriculture. Priority is still given to the Angolan domestic economy and the country has postponed enforcing SADC's Free Trade Zone.

While both international and coastal shipping are liberalised, the intention to establish a state owned shipping company may result in restrictions on foreign vessels. Foreign investment has been hindered by requirements for government approval in many industries. Key features related to maritime trade in services for Angola include concessions and private sector involvement in port operations, ship repair, ships agency and maritime support activities. They also include private sector bunker supply agreements (Texaco in Namibe, Bomin in Luanda). There is also a drive by the Angolan Private Investment Agency (ANIP) to attract private investment into the sector.

Angola has not undertaken any WTO commitments and the administration of ports and airports remains a prohibited area of economic activity. Controlled entry is allowed for long-distance maritime transportation and access for coastal shipping is limited. The Council of Ministers must approve projects valued over USD 5 million and also approve projects that require public company participation. Freight charges applicable in Angola are negotiated by the National Council of Carriers. Angola maintains MFN exemptions in both coastal and long-distance (deep-sea) shipping. These measures are deemed necessary by government to stimulate international trade. It has also adopted the United Nations Code of Conduct for Liner Conferences which allocates 40% regular traffic to national ship-owners.

Angola has no ships registered on international ship registry databases (DNV, etc.). In June 2012 the Law on the Merchant Navy, Ports and Related Activities was passed in which allows for concession rights to Angolan companies for ports services including loading and unloading of ships, cargo storage, port navigation infrastructure. This law prioritises Angolan companies. Concessions can also be obtained for contracts in the operation of airport services and for coastal shipping

The regulatory framework is designed to retain government control of development in the maritime and ports environment and to promote local involvement. FDI is encouraged within the framework of state regulation and licencing. Limited regulatory transparency and inconsistent enforcement have limited progress on liberalisation and regional harmonisation initiatives still need to gain momentum.

### **9.3 Democratic Republic of Congo (DRC)**

The state controlled Office Nationale des Transports (Onatra) has responsibility for transport, including the maritime sector. 72% of port revenue is used to cross-subsidise other Onatra divisions and activities. Political instability, regulatory quality and poor governance limit the effectiveness of the maritime sector. The DRC's main ports are;

Petroleum products are handled at the **Banana** anchorage for the nearby SOCIR oil refinery. It has limited (5.5m). Port facilities include cargo load / discharge at anchor. Bunkers provided by SOCIR barges;

**Boma** port handles containers general bulk (mainly building materials, wood, fish, and vehicles). Maximum at berth is 6.8m. Port facilities include 4 berths (total length 485m, depth 6.1m – 6.8m); 1 tug available. Agency services by Agence Maritime Internationale du Congo.

**Matadi** which is approximately 120 kms up the Congo River is the only deep water port in DRC. Quay repair and renovation work is being done but, investment in the port is limited. Port facilities include 10 berths, maximum berth depth 10m, 10 warehouses ranging from 5,000m<sup>2</sup> to 16,000m<sup>2</sup>. Bunkers available from SEP-Congo, a “semi-state” company which is the exclusive customs agent for oil products; Shipping agents include Maersk, Afritramp. The undeveloped state of both the ports and the land transport sectors in DRC is a major hindrance to economic development. The unstable political climate has also deterred potential investors.

The country has poor transport infrastructure with major connectivity gaps and investment is urgently needed. Matadi, as the country's only deep water port is one of the most expensive in Africa. Cargo is often transhipped from Pointe Noire (in the neighbouring Republic of Congo) into shallow draught boats capable of sailing up the river. This adds cost and time to cargo movements. Commodities such as export minerals (copper and cobalt) in the eastern areas of the country are mainly exported through Durban, Dar es Salaam and more recently, Walvis Bay.

Key features related to maritime trade in services in DRC include support of liberalisation, with private operators allowed in all areas except for customs clearance. Stevedoring is mostly done by ONATRA with limited private stevedoring performed by flour mills. Fuel is handled by SEP, a semi-public company which includes shareholding by Total and Shell. Private investment is allowed. Kinshasa Container Terminal has private investors (Onatra holds 35%) Presidential approval is required for market entry and the required ratio of foreign to national employees was reduced in July 2012 in all except Marine and Process sectors

DRC's trade policy goals aim to create an unhindered regulatory, fiscal and institutional environment for domestic and foreign trade by streamlining and reducing port taxes. In June 2012 the DRC became the 17th Member State of the "Organisation Pour l'Harmonisation du Droit des Affaires en Afrique" (Organisation for the harmonisation of business laws in Africa) (OHADA). OHADA sets out to establish a unified set of business laws to be used across its Member States. This will improve legal stability and facilitate regional economic integration. The DRC has also adopted a legal framework to support Special Economic Zones

The parastatal transport company ONATRA is a bureaucratic and inefficient institution which will hamper effective implementation of reform programmes. There is high level cross subsidisation from ports to other transport sectors. There is progress on harmonisation through the OHADA process but the DRC lacks the capacity to implement all but the most modest initiatives. There is an evident need for investment but volumes and parastatal involvement tend to deter investors and inhibit development.

#### **9.4 Mauritius**

Mauritius is a small but actively developing economy far from major markets. Mauritius Freeport was created in 1992 as a hub promoting warehousing, distribution and value added transformation services. The country has one major harbour at Port St Louis which is the only commercial port. Mauritius Port Authority is the landlord authority with regulatory powers over port activities and services. The Freeport has successfully created export industries and tourism services.

The port handles general cargoes and has a dedicated container terminal. The port handled 0.35m TEU and 6.4m tons of cargo in 2011. Dry bulk and liquid bulk made up most of non-containerised cargoes. The port is positioned as a regional transshipment hub. Terminal 1 handles general cargo, agricultural products and passengers. Terminal 3 is the Mauritius Container Terminal (state operated). Bunkering is provided by Indian Oil Mauritius. Repairs and maintenance is provided by Taylor Smith & Co. There are private shipping agents, ships chandlers, surveyors, etc. The Cargo Handling Corporation Limited (CHCL), a "government parastatal company" handles approximately 55% of total cargoes and the private sector handles the other 45%. Private sector operators provide oil tank farms, and handle fertiliser, flour and cement and other bulk products. The Port Sector Reform Act gives CHCL sole rights to handle general cargo, certain bulk cargoes and container cargoes on terminals 1-3. A committee was established to investigate restructuring and privatising the operation after a failed privatisation bid in 2012.

Limitations to maritime trade include the fact that private sector is currently excluded from container operations and other designated general cargoes. Foreign operators cannot offer yacht chartering or cruising services, as cross-border supply, and commercial presence are limited to Mauritian nationals. Foreign equity ownership is subject to approval (some areas restricted to nationals). Maritime and Port regulation is designed to promote development and attract FDI into the country.



## 9.5 Mozambique

Ports in Mozambique have made good progress over the last few years. Far reaching investment plans for Maputo, Nacala and Beira are setting the country up as a major maritime force in the region. Portos a Caminhos de Ferro de Mocambique (CFM) is a state-owned ports and rail company, controls ports system and retains a share in each concession company. Both CFM and the private sector have shares in both port authority and port operations activities in the major ports. Regional port authorities administer ports in Mozambique. The major ports in Mozambique are

**Beira** is located at the mouth of the Punungoe River is a general purpose port. Port facilities include a dedicated coal terminal; general cargo berths (operated by Cornelder), and a fuel/oil terminal operated by CFM; 2 ship to shore gantry cranes and mobile cranes; bunkering provided by Chevron, Exxon and other private companies; ships agents include King & Son, Manica Freight and Mediterranean Shipping. The port is shallow with s of about 9 metres at most berths. Expansion plans include a 6 mtpa coal export facility and infrastructure upgrades including berth deepening. The port handles significant tonnage of import–export cargoes for neighbouring landlocked countries including Malawi, Zimbabwe and Zambia

**Maputo** is the major national and largest port is located in the south of the country in a large river estuary. Mozambique has concessioned the management of port of Maputo to Maputo Port Development Company (MPDC), with shareholding by Grindrod, Dubai Port World and Portos e Caminhos de Ferro de Moçambique.) There is a dedicated container terminal operated by Mozambique International Port Services (MIPS) a consortium which includes Dubai Ports World; citrus, sugar, dry bulk and automotive facilities. The coal export facility at Matola is expected to handle in excess of 20 mtpa once fully developed. Bunkering is supplied by Shell, there is a small dry dock (80m x 12m); private ships agents, surveyors, etc.

**Nacala** is in the northern province of Mozambique is a deep water port with general cargo and container terminals, operated by Corredor de Desenvolvimento do Norte, (S.A.R.L.). The port is managed by a consortium led by Manica but with the recent development of coalfields and redevelopment of the port the concession is under review. It is expected to expand very rapidly as coal mining concessions and iron ore, titanium and phosphate deposits are attracting investment and industrial development. Offshore natural gas deposits also appear promising. Vale mining company invested \$4.4bn to build an 18mtpa coal facility supported by a 912 km railway line and government has asked \$1.5bn loan from China for port construction.

Improved investments and productivity has resulted in ever increasing volumes. The increased rail capacity and efforts to develop corridor integration have led to greater volumes between South Africa and Maputo, and the development of mining in Tete province is driving expansion in Beira and Nacala as Mozambique expands its coal export capability. Key features related to maritime trade in services for Mozambique include the significant private investment in ports (e.g. Dubai Ports and Grindrod in Maputo, Vale in Nacala).

In contravention of the PTCM, cabotage by coastal shipping between Mozambican ports is only permitted for national vessels or vessels contracted by Mozambican persons or institutions. The regulations that prevent ownership of land are considered restrictive to investment and new labour law continues to restrict the hiring of foreign staff, providing for maximum quotas as a ratio of total number of employees. For investors the regional facilitation including Regional Transit Bond Guarantees and companies need to be registered in Mozambique to get government tender.

Progress on liberalisation has been good with no limits on private sector participation in the sector. Recent concessions highlight the attractiveness of investing in this sector. However, progress still needs to be made on transparency and governance. Port concessions have been awarded in Maputo, Beira and Nacala, but in all cases CFM manages the overall ports system and retains a share in each concession company. Mozambique appears to be committed to trade in service implementation but a lack of resources and a perceived lack of transparency in government commitments may extend timelines.

## **9.6 Namibia**

Namport is the state-owned national port authority responsible for managing the ports of Walvis Bay and Luderitz. In addition to the role of port authority, Namport is also engaged in dry dock and port operations. An export processing zone has been established to stimulate manufacturing and exporters. The port of Walvis Bay has a very important strategic value for Namibia as it is planned for the port to promote and participate in regional growth initiatives. It is also well positioned to take advantage of developing south-south trade flows. Active promotion of regional harmonisation and integration is being driven by Walvis Bay Corridor Group. The major ports in Namibia are;

**Luderitz** is a shallow port that handles low volumes of general cargo (0.3m tons in 2011), and containers. The port has a single container and general purpose berth (8.15m) that accommodates vessels up to 12,500 dwt. Bunkers are provided by Shell and shipping agents include Maersk.

**Walvis Bay**, the main national port is a full service port which handled 5.2m tons in 2011. The port has a container terminal (3.2ha) and general cargo berths (8 berths); and general purpose operations by Namport; cold storage facility operated by Commercial Cold Storage; a dry bulk facility (Grindrod); repairs and maintenance. Synchrolift, (2,000 tons) operated by Namport and some private companies that provide repair services. Shipping agents include Maersk. Namport plans to invest N\$ 2.7bn in Walvis Bay over the next 4 years, plans include dredging the port to accommodate 5,000 TEU container vessels and expanding container capacity to 500,000 TEU by 2013. The port is currently operating below its capacity threshold. Namibia has one fisheries research ship on its vessel registry.

Namibia is well located for trade between Africa and Europe and the Americas. It has also handled containers destined for Angola when Luanda experienced chronic

congestion. A number of studies have shown that cargo to landlocked countries in the region and to South Africa can be competitive through Walvis Bay. However, to date volumes are relatively low. Key features related to maritime trade in services for Namibia include the active efforts to foster regional transport integration through corridors, by working with public and private sector corridor partners. The presence of Namport as the port authority and provider of majority of port operations hampers private investment. No foreign company may provide towing services.

Regarding, the movement of natural persons (mode 4), market access is limited to highly skilled people or employees of companies operating in the country. There is no commitment on limits to national treatment. There is a lengthy process for gaining visas. The stated target is to achieve of 50% of previously deprived individuals (PDI) on Boards or in top management.

The Namibian regulatory environment is influenced by South African legislation (e.g. Competition Law) and include a white paper on transport policy (of June 1995) which led to the commercialisation of a number of Government activities as well as the creation of state owned enterprises for airports, ports, road and rail. Private investment is required to meet capacity upgrades for the port and for the corridor. Progress on liberalisation of trade in services appears to be more developed for road transport than in the maritime sector. As with the other SADC countries, market access under mode 4 remains a challenge, with barriers and lengthy approval processes for natural persons.

## **9.7 Seychelles**

Maritime activities in Seychelles are confined to import/export cargoes, fishing industry products and tourism cruise liners and private vessels. Port Victoria is the only commercial port in the Seychelles. The port has shallow berth except for the Mahe Quay (9.5m – 11.5m). Port facilities include General cargo and container facilities; repairs and maintenance (by Naval Services Ltd); private ships agency and other services. Seychelles Port Authority is the landlord whose responsibilities include port regulation, safety and security, promotion of infrastructure development and encouraging efficient port operations. The port authority owns and operates Port Victoria. Seychelles competes with Mauritius, Madagascar, and Reunion for passenger volumes

Key issues related to trade in maritime services for the Seychelles include the tax, work permit and social security exemptions for non-Seychellois personnel for vessels registered under the Seychelles flag. Foreigners require permission to own land; Investment in port infrastructure a reserved strategic area – permission subject to conditions; restricted and strategic areas limits competition and limit attractiveness to foreign investors; Gainful Occupation certificates are only issued after proof that there are no suitable Seychellois applicants.

Seychelles is currently negotiating accession to WTO. GATS schedule not yet finalised Institutional reforms designed to modernise the port include setting up concession agreements. Trade policy is orientating towards regional integration with

the Common Market for Eastern and Southern Africa (COMESA). There is little progress on regional policies to grow regional tonnage capacity. A trade zone is operating in Mahe. The maritime regulation is primarily designed to set the rules for efficient use of facilities and promotion of the involvement of Seychellois so liberalisation is not an issue.

## **9.8 South Africa**

South Africa has 7 commercial ports and the ports system is the most developed in the region. All commercial ports are controlled by Transnet National Ports Authority (TNPA) as the landlord on behalf of the Department of Public Enterprises, the Cabinet Ministry charged with control of State utilities and operating companies.

TNPA licences private sector terminal operators and also operates competing terminals in all ports. Complaints by industry, shipping lines and forwarders relate to constrained capacity, poor performance and high tariffs. A Ports Regulator has been established as an initiative to promote a process of port reform and to mitigate Transnet's monopoly position. Maritime policy includes long term investment plans for ports and supporting corridors mainly driven by Transnet as port and rail operator. The major commercial ports in South Africa are;

**Richards Bay** is a deep water bulk port that exports 72mtpa of coal as well as iron ore and other minerals. Port facilities include Richards Bay Coal Terminal and dry bulk and general cargo terminals operated by Transnet; bunkers are provided by FFS Bunkers, AMoil and other private companies; Ship repairs and maintenance (Dormac) and many private ships agents, surveyors, chandlers, etc. Transnet has recently initiated a R3bn equipment replacement programme for its bulk terminals.

**Durban** is the largest port in Sub Saharan Africa and ranks as the 49<sup>th</sup> largest container facility in the world. Facilities include Durban Container Terminal (2.9m TEU p.a.), dry bulk, automotive and general purpose facilities, all operated by Transnet. Dry bulk facilities are operated by private operators (Bidfreight, Grindrod and others). There is a Graving dock (length 352m, depth 12.6m) and floating dock (capacity 4,500 tons) operated by Transnet. Private companies provide ship repair (Dormac, L.H. Marthinusen). Planned new developments include developing a new port precinct at a cost of more than R100bn.

**East London** is only river port has container terminal, handles automobiles and grain imports/exports. The port has all maritime services.

**Port Elizabeth** is the container terminal 400 000 TEUs p.a to be expanded to 2m TEU p.a. (subject to coordination with Nqgura), manganese export terminal, automotive and general bulk all operated by Transnet. The port has 14.5m at berth which allows large (8,5000 TEU+) vessels to be handled. Support facilities including bunkering, repairs and maintenance, ships agency are provided by private operators

**Nqgura:** is the new Port of Nqgura has current container terminal (capacity 0.8m TEU p.a before expansion)

**Cape Town** facilities include Container, general cargo, fruit export facilities, cold storage, 2 dry docks, repair quay and a synchrolift all operated by Transnet. Private shipping agents, surveyors, chandlers, etc

**Saldanha Bay** is a deep water port and mainly an iron ore export facility 50 million tons p.a expanding to 90 mtpa. Port facilities include the iron ore export terminal (depth 23.7m), crude oil discharge lines, general cargo terminals all operated by Transnet. Bunkers supplied by Bomin, BP, Amoil and other private companies

Evolving maritime policy sets out to promote the maritime industry in South Africa, including stimulating South African vessel ownership and ship repair industry. There are currently no vessels on South Africa's ship registry. All dedicated container terminals in South Africa are operated by Transnet. Private and state owned dry bulk and break bulk facilities exist at several ports and compete with each other for cargoes. Initiatives are finally under way to introduce private sector participation into container operations. There is no legal impediment to private funding for infrastructure or private participation in port operations and port services, but as landlord Transnet has effective control of developments within ports.

High volumes and developed port and logistics infrastructure make South African ports regionally competitive. SA maintains its leadership role as a regional transshipment hub. South Africa has unrestricted access for international maritime market and traffic is based on fair competition on a commercial basis. Trade-in services include a regulatory environment that supports private sector involvement, transparency and good governance. Private participation in port operations is currently under control of Transnet. There are current calls for private sector participation for passenger cruise terminals in Durban and Cape Town.

The National Ports Act purports to promote private sector involvement in port operations and support services but the dominant position of Transnet which fulfils both landlord and port operator roles, has discouraged private investment in ports. Maritime policy is under review and a revised policy is expected to be issued in late 2012. The Ports Regulator which a division of Department of Transport approves port authority tariffs and regulates the ports industry. The complementary system of national ports supports regional integration but also permits selective supply of services and cross subsidisation within the overall Transnet structures covering ports, rail and pipelines. The government is proposing to create several initiatives in the ports sector hoping for private sector engagement, but the overarching priority to support Transnet is likely to deter investors.

GATS commitments include lengthy list of exceptions on the presence of natural persons (mode 4) for temporary persons, approval only to qualified foreign individuals. A needs test is required for certain categories of natural persons providing services. Temporary presence allowed for up to 3 years.

## 9.9 Tanzania

In Tanzania the national port authority, Tanzanian Port Authority (TPA) administers the ports system. TPA reports to the Surface and Marine Transport Regulatory Authority (SUMATRA) which is responsible for promoting competition and economic efficiency in transport. Competition is virtually non-existent in the major areas of port activity, namely bulk exports and containers. The authority plans to spend \$ 485 bn, sourced by authority revenue, grants and private investment. Tanzania has 3 ships on its vessel registry, namely a fisheries training vessel, a tug and a bulk/lumber carrier.

**Dar es salaam** is the major port and it handled 0.5m TEU in 2011. Port facilities include 8 general cargo berths; 10m – 12.2m), 3 container berths (12,2m), an oil jetty and SPM for oil. The concessioning of the Dar es Salaam Container Terminal was successfully completed and the operating lease awarded to International Container Terminal Services Inc. (ICTSI). The period of the concession was recently extended up to 2025. General cargo space of 20,000m<sup>2</sup> shed space on quay and 17,000m<sup>2</sup> back of port sheds. Bunkering is provided by BP, Caltex, Engen and other private companies; private shipping agents and other support services. Due to lack of space at the port there is need for more Inland container terminals (e.g. Ubungu) supported by rail to ease port congestion. A cargo freight centre is also planned at Kisarawe about 20 kms inland from the port to ease congestion at Dar es Salaam.

Other Ports along the Tanzania eastern coast include Mtwara, Tanga and Bagamoyo. Mtwara port is in the south of the country is a sheltered natural deep water harbour. Capacity is currently small (5 mobile cranes) but the TPA plans to build 4 berths at the port. Facilities include Single quay (length 385m, depth 9.8m). The port of Tanga near the Kenyan border is the terminus for the TNR railway line to the interior. The port is in a shallow river estuary providing services by lighter barges from ships at moorings. Also, a feasibility study has been done for a potential port at Bagamoyo that will support 7,000 – 8,000 TEU vessels.

Tanzania's main port Dar es Salaam is being gradually expanded modernised and is opening to private sector investment and operations within the regulatory framework managed by SUMATRA. Extensive investments are in progress in Dar es salaam and other ports such as Tanga to improve import–export efficiencies.

There has been some liberalisation related to trade in maritime services for Tanzania including the private sector concession for the container terminal in Dar es Salaam. But only Tanzanian ships may be engaged in local trade in Tanzanian waters. Foreign equity ownership is subject to approval (some areas restricted to nationals) Foreign ownership threshold in listed companies is limited to 60%. The cost of work permits for foreigners was recently increased by up to 300%. The Fair Competition Act aims to promote and protect effective competition in trade and commerce and transport was identified as a “first cycle” priority for the National Development Vision 2025. There is also an emphasis on public/private partnerships.

## 10 DESCRIPTION OF AIR TRANSPORT SERVICES

### 10.1 Overview

The SADC Draft Protocol on Trade in Services (PTIS) specifically mentions air transport in clause 3 of Article 3 as follows:

- (a) The Protocol shall not apply to the following measures affecting air transport:
  - (i) traffic rights, however granted; or
  - (ii) services directly related to the exercise of traffic rights.
- (b) This Protocol shall apply to measures affecting:
  - (i) aircraft repair and maintenance services;
  - (ii) the selling and marketing of air transport services;
  - (iii) computer reservation system (CRS) services.

The WTO air transport services categories are as follows:

#### Air Transport Services

- (a) Passenger transportation
- (b) Freight transportation
- (c) Rental of aircraft with crew
- (d) Maintenance and repair of aircraft
- (e) Supporting services for air transport

#### Services auxiliary to all modes of transport

- (a) Cargo-handling services
- (b) Storage and warehouse services
- (c) Freight transport agency services
- (d) Other

Apart from measures relating to traffic rights, therefore, is not clear whether PTIS cover services auxiliary to air transport services such as cargo handling, storage and warehousing as well as Freight transport agency services.

The state of air services in different countries can be classified using the categories defined in the World Bank Report of 2010<sup>75</sup> which identified four groups, into which it is possible to fit all SADC Member States, as follows;

- (i) Countries with a dominating state-owned carrier – South Africa.
- (ii) Countries with a small state-owned carrier – Angola, Malawi, Mauritius, Mozambique, Namibia, Seychelles, Tanzania and Zimbabwe.
- (iii) Countries with private operators only – Botswana, DRC and Zambia.
- (iv) Countries with no local operators – Lesotho and Swaziland.

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<sup>75</sup>Charles E. Schlumberger – Open Skies for Africa, Implementing the Yamoussoukro (Washington, DC: World Bank, 2010)

According to the report, the countries in categories (i), (iii) and (iv) should be willing to apply the Yamoussoukro Decision. However, those in category (ii) were maintaining a heavily subsidised air carrier with public funds or providing other government-directed advantages, e.g., airport privileges, to such a carrier, or were procrastinating in the opening of air transport markets. The most significant progress towards liberalisation is the adoption of the *Yamoussoukro Decision Concerning the Liberalisation of Access to Air Transport Markets in Africa* (“Yamoussoukro Decision”) which came into effect on 12 August 2000<sup>76</sup>, but the World Bank Report states that none of the SADC Member States have liberalised their air transport sector in the spirit of the Yamoussoukro Decision, and attributed South African domination of the market as the prime factor for fifth freedoms being extremely limited. The provisions of Article 9.2 of the SADC Protocol on Transport, Communications and Meteorology (PTCM) relating to liberalisation have similarly not been implemented by Member States.

The aim of the Yamoussoukro Decision is to establish arrangements for the gradual liberalisation of scheduled and non-scheduled intra-Africa air transport services and, importantly, it purports to have “precedence over any [incompatible] multilateral or bilateral agreements on air services between State Parties”.<sup>77</sup> Elements of the Yamoussoukro Decision—specifically those relating to the granting “traffic rights”—would *not* appear to be relevant for forthcoming negotiations given that traffic rights and services directly related to the exercise of traffic rights are expressly outside the scope of the Protocol on Trade in Services.<sup>78</sup> However, the Yamoussoukro Decision framework does also provide for other matters such as: capacity and frequency; tariffs; the development of competition rules; the settlement of disputes; the right of airlines to establish offices; and the creation of a monitoring body to follow up on implementation as well as an executing agency to supervise liberalisation. Implementation of the framework has apparently been poor to date.

Regional groupings were charged with implementing competition regulations in air transport services. Joint regulations for competition within COMESA, the EAC, and

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<sup>76</sup>ECA/RCID/CM.CIVAC/99/RPT Annex 1. This Decision elaborated upon the Yamoussoukro Declaration of 1988. The Decision was adopted by a conference of African Ministers responsible for Civil Aviation, convened under the auspices of the United Nations Economic Commission for Africa in Yamoussoukro, Côte d'Ivoire in November 1999. The Decision was endorsed by the Assembly of Heads of State and Government of the African Economic Community in July 2000 pursuant to Article 10 of the Abuja Treaty. The Decision is therefore binding on all Abuja Treaty states. Madagascar signed but never ratified the Abuja Treaty. It is also questionable whether, of the other SADC Member States, Swaziland and South Africa are part of the Decision's framework—on the basis that they only ratified and/or deposited the instruments of ratification after the Abuja Treaty was replaced by the constitutive act of the African Union on 26 May 2001. (For an explanation of why these Member States may not be parties to the Decision, see: Charles E. Schlumberger, *The World Bank, Open Skies for Africa: Implementing the Yamoussoukro Decision* (Washington, DC: World Bank, 2010), pp. 23-27)

<sup>77</sup>Article 2 of the Yamoussoukro Decision. Agreements which are compatible with the Decision, and implement its framework on a bilateral or other basis, could be said to supplement it even though the Decision itself sets out particular modalities for its implementation.

<sup>78</sup>Article 3(3)(a) of the Protocol on Trade in Services.



SADC were prepared and discussed (by 2005) but have never been adopted.<sup>79</sup> The executing agency was created in 2007 in Addis Ababa during the Third Session of African Union Ministers Responsible for Air Transport but has met infrequently since then. Its duties were assigned to the African Civil Aviation Commission (“AFCAC”).

It has been suggested that the AFCAC—to which all SADC Member States are parties—will play a “leading role” in establishing the Decision’s dispute settlement mechanism.<sup>80</sup> Finally, implementation of safety requirements has been particularly poor.<sup>81</sup> Correspondence with the relevant SADC unit has confirmed that most Member States have not in fact implemented their commitments under the Yamoussoukro Decision but that nearly all Member States maintain policies *endorsing* its implementation and efforts are underway to reform policies, laws and institutions, in order to facilitate the liberalisation process.

Autonomous civil aviation authorities have been established in almost all Member States but most suffer from a shortage of skilled workers, principally because of the modest conditions of service which are not sufficiently competitive to attract and retain such skills.

In broad general terms, two countries (Lesotho and Swaziland) do not have a national airline, and therefore rely entirely on foreign operators. Their markets may be considered liberalised. Another three (Botswana, DR Congo and Zambia) have no state-owned national carrier, instead relying on private or foreign carriers, while in one the national carrier is suspended although it may be resuscitated; these markets are also substantially liberalised. Seven countries have relatively weak or small state-owned carriers. Only South Africa has a dominating state-owned carrier. Thus, the levels of competition vary but in general the sector in SADC is relatively competitive. In some countries the stated policy is one of liberalisation but this is cautiously applied with protection of the national carrier uppermost in the policy directions.

The model in the region is for the state or a state agency to own and operate airports. Ancillary services are usually concessioned, or are offered by a mix of state and private operators.

Regulatory authorities are not independent from policymakers and are not accountable to operators. Nonetheless, there is relatively little evidence of anti-competitive behaviour except in South Africa where the Competition Commission has penalised SAA for anti-competitive behaviour. Very few countries have competition commissions; instead, the sector is regulated either by the government or a state agency. Prices on airlines are mainly market-determined. Cabotage rights are not granted.

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<sup>79</sup> Moreover, the African Union ed competition rules with special provisions on air transportation. These were due to be adopted at the Ninth Ordinary Session of the Assembly of the African Union, held in Ghana on 1–3 July 2007, but they were not adopted.

<sup>80</sup> See Schlumberger, above n 192, p. 34.

<sup>81</sup> *Ibid.*, pp. 42–52.

There are generally few restrictions on foreign investment or the formation of joint ventures or partnerships with locals, except for stipulations on minimum ownership by locals in a few countries (Angola, South Africa, and Tanzania). However, work permits are usually required for the employment of foreign nationals. In Botswana, ground services are specifically reserved for locals.

In the country descriptions below, reference is made wherever possible to the air transport services covered by the PTIS, depending on the extent to which information was obtained during the course of the study. Apart from South Africa, there is little or no local capability in SADC Member States to undertake aircraft servicing and maintenance, and these services, together with ground handling, are areas in which there is a potential for countries to make a commitment to liberalisation.

## **10.2 Angola**

Angola's airports and aviation network are run by the National Company for the Exploitation of Airports and Air Navigation (ENANA). Civil aviation is governed by the Law on Civil Aviation and domestic air transport by a 2005 decree

Access to trade in air services is limited by the government. There is one national carrier LinhasAereas de Angola (TAAG). There are 14 operators and in 2010, 985,000 passengers were handled at Angolan airports. There are private operators, and one foreign operator (Sonair). Special interests in the sector are held by TAAG, Sonongal and Sonair. Prices are determined by the market.

There is relatively limited competition in the air transport sector. Services have been liberalised within the context of government ownership and the perceived need to protect TAAG, the national carrier. The government agenda predominates in terms of stakeholder interests as it controls entry to domestic and international services.

Requirements for partnerships stipulate a 51% holding by Angolan nationals, and investment is tightly controlled by ANIP and government ministries. There are no foreign capital requirements for investors. Immigration measures relate to work permits and proof of a lack of local skills. Foreign operators are not limited in the hiring of foreign staff except for the need for work permits.

There are no measures discriminating between operators based on nationality, and no residence requirements for boards of directors or employees; however, work permits are necessary. Regulatory authorities are not independent from policymakers and are not accountable to operators. Licences are allocated at the discretion of authorities. There is no jurisdiction by a competition authority but no evidence of anti-competitive behaviour.

PTCM commitments and the Yamoussoukro Decision have not been implemented; according to the World Bank study referred to in Section 9.1 above, Angola is one of the category (ii) countries that are procrastinating in the opening of air transport markets. There is no foreign presence in ancillary services, and very limited commercial supply of these services.

### **10.3 Botswana**

The Civil Aviation Authority Act established the parastatal Civil Aviation Authority of Botswana (CAAB) as an independent regulatory authority responsible for the management of airport and air navigation services infrastructure and facilities as well as licensing. The CAAB relies on competition to discipline fares and rates in the domestic market for scheduled services, but it monitors market behaviour and may intervene in the case of anti-competitive practices. All operators are licensed by CAAB.

Air Botswana is the national airline, but lost its domestic monopoly on the transport of passengers, cargo and mail on all scheduled routes in 2009, and entry was opened for all eligible carriers. There are private as well as foreign operators, the major one being SA Airlink whose share in the market is unknown. Air Botswana has a special interest in the sector and is the dominant service provider in the domestic market. Prices are determined by the market. However, cabotage is prohibited. Attempts since 2000 to privatise Air Botswana have not succeeded. Operators number about ten, while air cargo volumes are small because of limited demand. There are 2-3 foreign airlines owned by SADC nationals operating in Botswana. Ground services are reserved for locals, ground-handling services being provided by Air Botswana on all scheduled routes and on a contract basis for charter flights.

The agreement with Zambia provides for the removal of restrictions on capacity and frequency, and for fifth freedom rights. The agreement with South Africa has a restricted number of routes but provides for an unlimited number of carriers to be designated by both sides.

The Yamoussoukro Decision has not been implemented and commitments under the PTCM have not been implemented. Botswana recognises all SADC licences, certificates and training.

There are no restrictions in terms of the legal form of enterprises or requirements for establishing joint ventures with local partners. There is limited investor interest, and no foreign capital requirements. Work permits are required but there is no limit on the hiring of foreign staff. There is no discrimination between operators based on nationality, no requirements for boards of directors or employees, no empowerment or national ownership policies, and no jurisdiction by a competition authority or any evidence of anti-competitive behaviour.

### **10.4 DR Congo**

The Air Navigation Board (RVA), the Department of Civil Aviation (DAC) and the private sector manage airports and aerodromes. Regulation is controlled by the RVA. A Civil Aviation Law is pending enactment and is expected to lead to the establishment of a Civil Aviation Authority. The aim is to encourage competition and private-sector participation. RVA manages navigation and aviation security services including cargo handling and airport buildings

There is no state-run air transport operator but there are about 50 private airlines sharing domestic traffic, while international links are provided by foreign operators. There are private operators and approximately 16 foreign operators on international routes. All WTO services are offered. About 1 million passengers p.a. and 300,000 tons of cargo are handled per annum at DRC airports. Prices are determined by the market and competition. There is a foreign presence in ancillary air transport services but trade restrictions in the industry. The commercial supply of ancillary services is minimal.

DRC has signed and ratified many bilateral agreements, mainly with other African countries, but has concluded no open skies agreements. Cabotage in air transport is prohibited. No TCM Protocol commitments have been implemented and the Yamoussoukro Decision has not been implemented. DRC recognises all SADC and Comesa licences, certificates and training.

The market is driven by foreign needs. Licence requirements pose obstructions to the establishment of joint ventures with local partners but there are no restrictions on the legal form of enterprises, no foreign capital requirements, no discrimination between operators based on nationality, and no requirements for boards of directors or employees.

Work permits for foreign staff are slow to obtain. The stated policy is open and progressive development of the market. There are no independent regulatory authorities, and the authorities are not accountable to operators. Licences to operate air transport services are granted by the Minister only to companies registered in the DRC, for a period of one year renewable. There are no special stakeholder interests and no dominant service providers. There is no jurisdiction by a competition authority and no evidence of anti-competitive behaviour.

### **10.5 Lesotho**

The air transport sector in Lesotho is small. There are no domestic air services and no national airline. There is an international airport near Maseru, and a number of airstrips, most of which are closed due to the lack of domestic traffic.

The market for air travel is extremely small. The only bilateral agreement is with South Africa. The Aviation Act established the Department of Civil Aviation which regulates the industry and establishes and maintains aerodromes and air navigation facilities. There is only one operator in the market, namely SA Airlink.

Volumes are low and the airport is underutilised. Licensing falls under the Department of Civil Aviation which also maintains the international airport. Ground handling of passengers is undertaken by SAA. There are no restrictions, requirements or discriminatory measures, but work permits are required for foreign staff.

## 10.6 Malawi

The national airline, Air Malawi, is wholly owned by the government. The Department of Civil Aviation is both a regulator of the industry and the operator of airports. The international airport at Lilongwe is owned by the parastatal, Airports Developments Ltd. The legal framework is based on the Aviation Act. There are several operators on international and regional routes.

Air freight services and ground handling services are provided by subsidiaries of Air Malawi whose operations help to cross-subsidise the national airline. A subsidiary of Airport Developments Ltd provides catering services at Lilongwe while a private firm provides similar services at Blantyre.

Bilateral air service agreements are mostly dormant. They cover the first four freedoms<sup>82</sup>; fifth freedom rights are not yet applied, and cabotage is not permitted for foreign airlines.

## 10.7 Mauritius

International routes are operated by foreign carriers and Air Mauritius. The domestic market is essentially limited to only one route, namely, Mauritius to Rodrigues. A private carrier, Catovair, competed with Air Mauritius on this route but did not survive.

Air Mauritius Cargo dominates the cargo market with a share of 46%. This market was liberalised in 1997, but only for specialist cargo flights. However, the bulk of cargo capacity is provided by belly-cargo on passenger flights which remain subject to bilateral agreements. Air Mauritius and Equity Aviation Indian Ocean Ltd (EA) provide ground-handling services at the international airport. Air Mauritius is the major service provider, handling ten foreign airlines, while the EA serves eight airlines.

Air transport services remain within the ambit of scheduled services governed by bilateral agreements, contingent upon reciprocity. There are 18 agreements that are functional. Cabotage is not allowed. ; but anyway is not applicable in a small island country. Total air cargo traffic in 2006 was about 45,000 tons.

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<sup>82</sup> The first five freedoms of the air are defined as follows:

- *First.* The right or privilege, with respect to scheduled international air services, granted by one state to another state or states to fly across its territory without landing (also known as a first freedom right).
- *Second.* The right or privilege, with respect to scheduled international air services, granted by one state to another state or states to land in its territory for non-traffic purposes (also known as a second freedom right).
- *Third.* The right or privilege, with respect to scheduled international air services, granted by one state to another state to put down, in the territory of the first state, traffic coming from the home state of the carrier (also known as a third freedom right).
- *Fourth.* The right or privilege, with respect to scheduled international air services, granted by one state to another state to take on, in the territory of the first state, traffic destined for the home state of the carrier (also known as a fourth freedom right).
- *Fifth.* The right or privilege, with respect to scheduled international air services, granted by one state to another state to put down and to take on, in the territory of the first state, traffic coming from or destined to a third state (also known as a fifth freedom right).

Mauritius has not implemented the PTCM or concluded any open skies agreements, and it withdrew from the Yamoussoukro Declaration in 2003.

### **10.8 Mozambique**

Policy direction and technical regulation fall under the Instituto de Aviacao Civil de Mocambique (IACM) which grants operating licences for air carriers and service suppliers at airports.

International routes are serviced by the national carrier, LAM, which dominates the domestic market. A bilateral agreement with South Africa allows South African carriers to fly to various destinations in Mozambique. There are 13 airline operators. Airport services are supplied by the state-owned Aeroportos de Mocambique (ADM) under an exclusivity regime. ADM sets the rates for services subject to approval by government.

The PTCM has been partially implemented. A new policy governing civil aviation was adopted in 2007. Recent bilateral agreements provide for the first four freedoms, while the IACM intends to include the fifth freedom. Mozambique has signed the Yamoussoukro Declaration and the SADC Protocol. None of the bilateral agreements authorises domestic cabotage.

The regulatory framework appears to limit competition in the industry – the policy of single designation affects the supply of seats, reduces flexibility in scheduling, increases price, and reduces service quality. Policy is largely focused on protecting LAM rather than supporting the industry's overall development.

### **10.9 Namibia**

The domestic market in Namibia is served by Air Namibia and private operators. Liberalisation is controlled by the parastatal airport company. International routes are served by the national carrier, Air Namibia, and foreign airlines. There are approximately seven operators while passenger volumes in 2009 at airports totalled approximately 455,000. There are private operators, with foreign operators having an estimated 60% market share of passenger traffic. There are very close ties with the South African air transport market.

Air Namibia is the dominant domestic carrier. A number of international airlines provide regular services under various agreements, and most have third and fourth freedom rights. Prices are determined by carriers and tend to be high due to low seat occupancy. Airports are state-operated with a parastatal supplying cargo-handling, storage and warehousing. The commercial supply of ancillary services is minimal due to state monopoly.

The policy is one of planned gradual liberalisation but with protection of the national carrier. The regulatory framework is governed by the Aviation Act. The Airport Companies Act provides for the commercialisation of the eight major airports. The Directorate of Civil Aviation (DCA) is a regulatory public service provider. Entry into

the market is controlled by the Directorate of Civil Aviation (DCA). Routes and landing rights are controlled. Namibia has signed the Yamoussoukro Decision, and has reciprocal agreements with South Africa, other regional countries and the UK. All SADC licences, certificates and training are recognised.

Work permits are required for foreign staff but there are no specific requirements, other restrictions or discriminatory measures. An empowerment strategy is being developed for national ownership. Licences are allocated on the basis of negotiations. The Competition Commission has jurisdiction over the sector.

#### **10.10 Seychelles**

Air Seychelles is the dominant local carrier, and international routes are operated by Air Seychelles and foreign airlines. The domestic market is negligible. There are six international airlines serving Seychelles. Air transport is under the jurisdiction of the Seychelles Civil Aviation Authority. The directorate of Civil Aviation issues licences and permits for visitors to land private aircraft.

#### **10.11 South Africa**

There are three main carriers (the parastatal South African Airways, British Airways/Comair and 1Time) in the domestic market; 1Time, a low-cost airline, is in financial trouble. SAA and BA both operate low-cost carriers (Kulula and Mango), while SAA has partnerships with SA Express and SA Airlink which serve domestic and regional routes. There are 26 airline operators on international routes to South Africa. There are no foreign operators in the domestic market - BA is operated by Comair under a franchise agreement. The low-cost airline market is very competitive.

The air transport market was deregulated in 1991 but the government has full powers of decision over domestic policies. These have been extensively reviewed and revised. The Civil Aviation Authority Act led to the establishment Civil Aviation Authority (SACAA) in 1998. This body is an agency of the Department of Transport (DoT), and its activities are governed by a performance agreement.

The Airports Company Act of 1993 established the Airports Company of South Africa (ACSA) which is overseen by an independent statutory body, the Regulating Committee. ACSA operates the ten main airports which together handled 35.1 million passengers in 2011, but there are 91 other airports (municipal as well as private). ACSA is responsible for the planning, construction and operation of state airports, but services such as cargo handling, baggage handling and catering are concessioned to private operators.

Investment in the sector is subject to empowerment clauses – in general, 75% of the domestic services of eligible applicants must be owned by South Africans, and they must use South African aircraft to provide air services. Licences are issued by the Air Service Licensing Council (ASLC).

There is a regulator for the airline industry, SACAA. The Competition Commission has jurisdiction and has heard cases, ruling against SAA in favour of competitor airlines. South Africa is a signatory to the Yamoussoukro Decision, and the Ministry of Transport states that the country has made some progress, notably in signing various services Agreements with other African countries. However, the Ministry notes that “the governments of Africa have not yet implemented the Yamoussoukro Decision; although on a small scale some like-minded States apply the principles of Yamoussoukro, but not on a continental-wide basis” (statement by the Minister of Transport on 14 June 2011).

### **10.12 Swaziland**

The air transport sector in Swaziland is small, with a very small local and international market. There is no national carrier and no domestic operator. Services are supplied by the South African carrier, SA Airlink, and LAM.

There are two international operators and one international airport at Matsapha; however, the new and larger Sikhupe International airport has been constructed but is not yet open. There are a number of private (company) landing strips.

The Swaziland Civil Aviation Authority is a statutory body established under the Civil Aviation Act of 2009. It is responsible for the regulation of the industry and the establishment and maintenance of aerodromes and air navigation facilities. It also negotiates bilateral agreements. The civil aviation regulations came into force in 2011. There has been some evidence of anti-competitive behaviour: Swazi Express Airways cited unfair competition on the Johannesburg-Matsapha route as the reason for its demise after losing an application against SA Airlink in a ruling that was widely criticised.

The Yamoussoukro Decision and the PTCM have not been implemented.

### **10.13 Tanzania**

International routes are served by the national carrier, Air Tanzania, and foreign carriers. Domestic services consist mainly of routes between Dar es Salaam and regional centres, and serve the business and tourist market.

The Tanzania Airports Authority (TAA) manage airports services but does not have any liberalisation objectives. Foreign airlines are allowed to serve the domestic market but may not own the majority of shares in an airline company. There are 368 aerodromes owned, managed and operated by different entities. TAA itself owns, manages, and operates 62 airports. Kilimanjaro International Airport is leased to Kilimanjaro Airports Development Company (KADCO). Ground handling services at most airports are provided by a state-owned company although legislation facilitates privatisation. Swissport Handling Services is responsible for ground handling at Dar es Salaam.

The PCTM and Yamoussoukro Decision have not been ratified.



#### **10.14 Zambia**

Zambian Airways was the national carrier, although it only operated within the region. Zambia has fully privatised its air services, following the liquidation of Zambia Airways in 1994 and the liberalisation of entry into its market.

There are approximately six operators in the market, and 144 airports/air strips. The major airports are managed by the state-owned National Airports Corporation. Passenger movements at those airports amounted to 1.2 million in 2008. The air cargo market plays a significant role for exports of perishable products. British Airways and Emirates operate inter-continental flights, and various African airlines fly to Lusaka.

There is little practical competition and airfares in and out of Zambia are expensive. Foreign-owned airlines operate in the domestic market, and two of them are owned by SADC nationals. There is also a foreign presence in airport services.

After 1994, bilateral air service agreements (BASAs) were renegotiated and no longer specified a single carrier. Policy is defined by the National Air Transport Policy paper of 2002. The implementation has made modest progress in terms of policies to create a competitive and liberalised environment and to ensure effective regulation.

The PTCM and the COMESA Treaty have paved the way for liberalisation of air traffic rights. Zambia has concluded bilateral agreements and memoranda of understanding with 46 countries so far in this respect, but the PTCM has not been fully implemented and the Yamoussoukro Decision has not been applied. The most important bilateral relationship is with South Africa, with whom traffic between five city pairs was agreed. The capacity of these traffic rights was only partially used until recently, when traffic rights were assigned to a low-cost carrier which operates under a Zambian operator's certificate. The country recently adapted an "open skies policy" and is encouraging the establishment of an air cargo hub for the Southern African.

For establishment in Zambia, work permits are required for foreign employees but otherwise there do not appear to be any major restrictions. Licences are issued by negotiation and are subject to government control. Prices are determined by market forces. All SADC and Comesa licences, certificates and training are recognised.

#### **10.15 Zimbabwe**

The air transport market in Zimbabwe is partly liberalised. There are approximately seven airlines, and a new domestic low-cost airline, Fresh Air, is expected to commence operations later in 2012. The sector is controlled by the Civil Aviation Authority. Air Zimbabwe was the primary domestic carrier until its suspension. Plans to privatise Air Zimbabwe following substantial financial losses fell through after opposition from organised labour, and the airline continued to operate as a loss-making national entity. The government is working on a plan to resuscitate the airline and has indicated that it could choose to be a partner, suggesting partial privatisation.

In 2010 just over 300,000 passengers were handled at Zimbabwean airports compared to a peak of 2.6 million in 1997. There are stringent investment regulations that limit the expansion of services. The authorised ground handlers are the government-owned National Handling Services for cargo and passenger operations, and the privately owned Aviation Ground Services for cargo operations only.

There are private operators, and foreign operators are active on international routes. With Air Zimbabwe's operations suspended, foreign operators have 100% of the market on international and regional routes. The main carriers are from South Africa and Dubai. The SA private operator, 1Time, is in partnership with Nu-Aero in the new low-cost domestic carrier, Fresh Air. Previously Air Zimbabwe was a stakeholder group with a special interest in the sector, and was the dominant group on domestic routes until its suspension. Currently the government is the major stakeholder and controls the supply of services. Prices are determined by airlines and the regulator.

There are bilateral air service agreements with various African countries, and 12 African carriers (in addition to Air Zimbabwe) service the international routes to and from Zimbabwe. Implementation of the PTCM has been minimal. The Aviation Act governs the industry. Access to the local aviation market is regulated by the Air Services Act and the Carriage by Air Act.

The Indigenisation Act applies to empowerment policy. Licences are issued at the discretion of authorities. There is parastatal influence on competition, e.g., it took five years for Fresh Air to obtain the permits required to start a new domestic airline that would compete with Air Zimbabwe.

Zimbabwe has ratified the Chicago Convention with regard to policy on airline ownership and control. However, compliance with the 25% threshold is not guaranteed, the authorities believing that 25% represents substantial ownership in a capital-intensive industry. Work permits are required for foreign employees in order to protect local jobs. There are no official restrictions discriminating against operators on grounds of nationality, and no requirements for directorships except for a severe restriction on the repatriation of profits.

All SADC and COMESA licences, certificates and training are recognised. The PTCM and Yamoussoukro Decision have not been implemented, and no fifth freedom traffic rights have been granted. Government policy is that this is only allowed on a case-by-case basis and with reciprocal rights.

## 11 DESCRIPTION OF INLAND WATERWAYS

### 11.1 Overview

Only four Member States (DRC, Malawi, Tanzania and Zambia) have inland waterways of any significance, and all of them have cross-border routes. Little information has been obtained for Malawi and Tanzania.

In general, the mode appears to have been substantially liberalised in Zambia (which considers that it has met its regional commitments), and, *de facto* if not *de jure*, in DRC.

Malawi's attempt at concessioning lake services was unsuccessful, and operations have reverted to the state. Although officially committed to deregulation and privatisation, Tanzania and Mozambique do not appear to have implemented the PTCM and PTIS. In Mozambique lake transport is underdeveloped, and cabotage rights have therefore been granted to the Malawi state operator.

In all the countries the lake ports are owned and run by the state; concessioning by Zambia in the ports sector also did not endure. However, at the port of Kinshasa private firms are involved (possibly by default) in the provision of their own equipment and cargo handling. In addition to state-owned and state-operated ferries, a wide variety of craft is found on the lakes and, in DRC and Zambia, on the rivers. In DRC push tugs are owned and operated both by state entities and the private sector. A number of Chinese firms in DRC also operate their own vessels and cargo handling.

Zambia has no lake service and relies on vessels from Tanzania, DRC and Burundi. Bilateral agreements for cross-lake transport are common; these allow for reciprocal ferry services and recognise partner countries' licences, certificates and training. Zambia operates 2 ferries at Kazangula on one of the busiest trucking routes in the region, handling about 220 trucks per day carrying nearly 2.0 million tons per year, for both directions. .

### 11.2 DR Congo

The DRC has the largest inland water transport system in Africa and moves more passengers and goods than any other country in Africa. The total length of waterways is estimated at 15,000 km. River transport is a highly competitive mode and is provided by state entities and the private sector.

The main route is between Kinshasa and Kisangani on the Congo River, where tugs push barges lashed together; tugs and barges are owned either by state entities (e.g., the state fuel organisation) or the private sector. Kinshasa is linked to **Brazzaville** by regular boat and ferry services, but most waterway routes do not operate to regular schedules. Kinshasa is the largest inland waterways port on the continent. However, much of the infrastructure, vessels, and port handling facilities, has suffered from poor maintenance and internal conflict.

Lake transport is also important with connections across: Lake Kivu to Rwanda; Lake Tanganyika to Tanzania, Burundi and Zambia; Lake Mweru to Zambia and Lake Albert to Uganda. There are also small craft on Lakes Edward, Mai-Ndombe and Tumba.

River transport in DRC is a highly competitive mode. It is provided by private cargo operators (on barges), private canoes and small boats, and state entities, e.g., SCTP (formerly ONATRA) and the Matadi-Kinshasa Railway (CFMK). On Lakes Albert and Edward small operators run vessels mainly or entirely on a non-commercial basis. The law makes no distinction between regulatory agencies and service providers. The River Navigation Board (RVF) and the Maritime Navigation Board (RVM) are the two national agencies responsible for the supervision of dredging and maintenance of navigable rivers

Port facilities in Kinshasa are operated by SCTP. Tugs are owned by state organisations and private operators including Chinese firms. Wharf operations are a state monopoly but the private sector provides its own equipment and drivers, while Chinese firms fill containers at Kinshasa port.

There are apparently no restrictions or discriminatory measures in the sector. Private operators are numerous. Foreigners are present in the form of Chinese firms which own and operate tugs and barges. There are no dominant service providers except for specialist state entities e.g., in fuel transport. Prices appear to be determined by the market.

### **11.3 Malawi**

The main inland maritime services in Malawi are currently operated by the government. Malawi Lake Services (MLS) is the largest operator on Lake Malawi. Some private dhows and small vessels operate in areas of the lake where Malawi Lake Services either does not operate or offers only a weekly schedule. Prices are determined competitively, but the limited market size favours cartels. There are also some private tourism excursions operated by hotels on the lakeshore. Small private operators have a stake in the sector, but services are very limited. Volumes are minimal.

All ports are owned by the state and run by MLS. There does not appear to be a current policy document. There are some investment regulations for enterprises. Cross-lake services are operated by both Malawi and Tanzania, and are on a limited scale.

The government attempted to implement a policy of liberalisation by concessioning the service to the private sector, but this failed after a few years of operation. Malawi and Tanzania signed a bilateral trans-border service agreement in 1995, and Malawi and Mozambique in 2000.

Licences, certificates and training in Tanzania and Mozambique are recognised in terms of the bilaterals. It is possible that a viable market may be developed over time.

#### **11.4 Mozambique**

There is no government ferry service on Lake Niassa (Lake Malawi), and hence Mozambique has allowed Malawi Lake Services cabotage rights between Mozambican ports. The government officially is committed to deregulation and privatisation.

#### **11.5 Tanzania**

Services on Lakes Nyasa and Tanganyika are operated by a government parastatal. Officially, the government is committed to deregulation and privatisation. Cross-lake services are operated by vessels from Tanzania, Burundi, DRC and Zambia. There are bilateral agreements with Burundi, DRC and Zambia, and licences, certificates and training are fully recognised in terms of the agreement.

#### **11.6 Zambia**

Although Zambia has an extensive system of lake and river transport, water transport is **insignificant** in the total transport picture. It is mostly dominated by the private sector. Lake Tanganyika provides links to Burundi, DR Congo, Tanzania and Zambia, and carries a substantial volume of trade with those countries. Zambia has no vessels on the lake, and trade is in the hands of foreign vessels. There are also privately operated fishing boats, both local and foreign (from Tanzania).

There is domestic transport on Lakes Bangweulu and Mweruwanitpa as well as on the Bangweulu Swamp canals and waterways, the Lake Mweru/Luapula River system, Kafue River and Chambeshi River where services are provided by the government and private boats and canoes. The government owns and maintains harbours and canals but maintenance is also provided by non-governmental organisations. On Lake Kariba and the Zambezi River, services are provided by private vessels while harbours are owned by government and privately.

Mpulungu port on Lake Tanganyika was concessioned to a private consortium in 2000. The concession agreement has since been terminated by government. The sector is regulated through the Inland Waters Shipping Act and Merchant Shipping Act. Entry into the water transport services sub-sector is not restrictive. Important policies and legislation are the Transport Policy of 2000 and the Public-Private Partnership. (PPP) Act of 2009. The legislation seeks to strengthen safety regulation of water transport, and streamlines the registration and surveys of vessels. Under the Merchant Shipping Act, the Department of Maritime and Inland Waterways is responsible for monitoring activities in inland water transport. There are no trade restrictions in water transport or on routes or number of operators on waterways. Legislation does not restrict any company or individual from operating a water craft or establishing a company to provide inland water transport services provided the vessel has been surveyed and registered with the Department of Maritime and Inland Waterways.

Foreign operators may hire foreign staff where there is no local experience. There is no discrimination against foreign operators. However, company boards are required to have at least one director resident in Zambia. The Patent and Companies Registration Agency (PACRA) provides guidelines for the minimum or maximum foreign capital requirements for investors. There is no discrimination in the allocation of operating licences; the survey and registration of vessels is done annually and is renewable.

The policy objective is to encourage private-sector participation in the provision of water transport services and maintenance. Most operators are private. Foreign operators provide cross-lake services to and from Tanzania, Burundi and DRC. The policy is to liberalise the transport sector. There is no stakeholder group or business organisation with a special interest to impede liberalisation. Price is determined by market demand. The Zambia Competition Commission is responsible for implementing competition and fair trading laws and policies. Zambia has Bilateral Agreements on cross-lake transport with Tanzania, Burundi and DRC which include recognition of other countries' licences, certificates and training. Zambia has an open-ended policy on transport and offers no preferential access to other countries. It has implemented its liberalisation commitments for Inland Water Transport.

Zambia operates 2 ferries at Kazangula on the Zambezi, providing commercial services to freight and passenger vehicles on one of the busiest trucking routes in the region with 220 trucks per day carrying about 2.0 million tons p.a. for both directions.

## **12 DESCRIPTION OF PIPELINE TRANSPORT**

### **12.1 Overview**

The PTC does not have any provision on pipeline transport services. Nonetheless, pipelines were included in the TOR for this study. Pipelines are a significant mode in the eastern maritime states, i.e., Mozambique, Tanzania and South Africa, but also serve the landlocked countries of Zambia and Zimbabwe. Because their construction entails high capital outlays and requires complex land expropriation procedures, pipeline construction and operation is typically in the hands of the state and there is little or no competition.

In Mozambique, the pipeline to Zimbabwe is managed by the local parastatal for the fuel industry while the gas pipeline is a joint venture between the governments of Mozambique and South Africa.

In Tanzania, the sector is controlled by the government. The parastatal for the petroleum industry holds shares in the Tanzania-Zambia pipeline (Tazama Pipeline Ltd), jointly owned by the two governments i.e. Tanzania and Zambia. The government, the power utility and the private sector (including a Canadian company) participate in a company (Songas) operating a gas pipeline.

In South Africa, the network is in the hands of existing or former parastatals and is controlled by the industry regulator which issues licences and deals with annual applications for tariff increases. The Competition Commission has full jurisdiction over the sector in South Africa. More recently, however, a private foreign firm has been contracted by the Malawi government to build and operate a gas pipeline from Beira to Malawi, while a joint South Africa-Mozambique company has been granted a licence to build and operate a cross-border gas pipeline. These represent the entry of the private sector into the industry. Nonetheless, control of the pipeline industry remains in state hands

### **12.2 Angola**

There is a 2-km gas and an 87km crude oil pipeline in Angola, but the consultants have been unable to obtain any details about the operations. In April 2012 the Zambian Development Agency and an Angolan company signed a memorandum of understanding to build a multi-product pipeline from the Port of Lobito to Lusaka in order to supply various refined products to Zambia. Thus, the sector appears to have been liberalised to the extent of allowing private investment.

### **12.3 Mozambique**

The oldest pipeline development in Mozambique was the line from Beira to Harare built in the 1990s in an attempt to circumvent the need to traverse South Africa. Zimbabwe currently imports fuel through the 287-km pipeline from Beira to the

Feruka oil refinery outside Mutare. The pipeline is managed by Petromoc, the Mozambique parastatal.

A gas pipeline was constructed from the Temane -Buz-Devhine gas field as a joint venture between Sasol and the Mozambique government in 2009, and supplies raw natural gas to the Sasol plant in Secunda in South Africa. The tariff is determined in terms of the Mozambique Pipelines Agreement between Sasol Limited and the Government of South Africa, and is adjusted quarterly by the South African PPI. A contract has been awarded to build a gas pipeline from Ressano Garcia to Matola to supply gas to the Mozal aluminium smelter.

Malawi has recently signed an agreement with a Qatari firm, Vanessia Petroleum, to construct a pipeline from Beira to fuel storage facilities at Nsanje. At present, Malawi imports fuel mainly by road from the ports of Dar-es-Salaam in Tanzania, Beira and Nacala in Mozambique, and Durban in South Africa. Malawi's existing fuel storage facilities can hold enough fuel to last only 15 days, whereas Vanessia plans to build facilities that will hold enough oil to last about 90 days.

Zimbabwe plans to build a second oil pipeline from the Savana area in the eastern part of Mozambique 50 km north of Beira to Mutare, with a planned capacity of 10 million litres per day. Another recent development was the licensing of a South African-Mozambican consortium, Petroline, to build a petroleum products line from Maputo to Kendal in South Africa. The venture has yet to be initiated due to capital constraints and environmental clearance.

The pipelines sector in Mozambique is heavily state-controlled. Private-sector operators are licensed by the state, usually with a public-private-partnership arrangement. Pipeline construction and operation policy in Mozambique is controlled by government through the state-owned oil company, Petromoc. There is no evidence of adherence to the terms of PTM.

#### **12.4 South Africa**

The current pipeline network is mainly in the hands of a parastatal (Transnet Pipelines) and an ex-parastatal (Sasol), and is controlled by the industry energy regulator, the National Energy Regulator of South Africa (NERSA).

Road and rail provide competition to pipelines. Latest figures are that 40 million tons of fuel/gas per annum move by pipeline, 4.5 million by road and 4.0 million by rail. The existing Durban-Gauteng pipeline was built in 1965 and is operating at full capacity. There is also a petroleum products pipeline from the port of Saldanha to Cape Town, originally built as part of the National Strategic Fuel reserve but now operated by a private-sector oil company, which carries crude oil to the refinery in Cape Town.

In 2012 a new multi-product pipeline from Durban to Heidelberg was commissioned, and is scheduled to be fully operational by the end of 2013 with a capacity four times that of the existing line. The ex-parastatal fuel and chemicals company Sasol imports gas from northern Mozambique by pipeline.



The sector is government regulated, and licences are issued at the discretion of NERSA. The Petroleum Pipelines Act requires NERSA to promote competition and facilitate investment in the sector. All existing pipelines are 100% state-owned.

The first private operator was licensed in 2007 but is not yet functioning. NERSA granted Petroline a licence to construct a pipeline from the Mozambique border; this signalled the entry of the private sector into the pipeline industry. Environmental authorisation is still to be received for this project. Petroline shareholders are South African and Mozambican. In 2009 NERSA rejected Gigajoule Africa's application to build a gas pipeline, and in 2010 it decided not to grant Unigas a licence. Transnet is required to apply to NERSA for a tariff increase. Prices are determined in terms of an annual tariff application to NERSA. The Competition Authority has full jurisdiction over the sector. Some applications for licences by private operators have been refused. Some private engineering companies provide various services to Transnet and Sasol, and large civil engineering firms provide the commercial supply of services independent from the transport operators. The state controls all energy pipeline operations.

### **12.5 Tanzania**

The pipeline industry in Tanzania is controlled by the government, but the pipelines are privately owned. The Tazama pipeline which runs 1800 km from Dar es Salaam to Ndola in Zambia is privately owned (jointly by Tanzania and Zambia governments), and accounts for a large portion of the country's crude oil transportation capacity. Volumes amount to 600,000 tons of crude oil per year, but the pipeline is designed to handle 1.1 million tons. Crude is pumped ashore from a single buoy mooring off the coast at Dar es Salaam to the tank farm on the Tazama pipeline.

A pipeline to exploit gas reserves in the Songo Songo island area has been developed by Chinese. Gas is processed on the island and is then transported by pipeline 225km to Dar es Salaam. The pipeline is operated by Songas. Fuel companies set up their own storage facilities. Licences are allocated at the discretion of the ministry and government regulators. Prices are determined by the government and the operators. Ancillary services consist of private engineering services.

## **13 CHALLENGES AND POSSIBLE MITIGATION OF RISKS FROM LIBERALISATION**

### **13.1 Road Freight and Passenger**

#### **Conflicts of Regulatory Priorities**

The process of introducing liberalisation in transport holds many challenges, both for the authorities and for the participants in the market. For the authorities there is the problem of conflicting interests and which players need the support of government. The users of transport want best possible service at least cost, the suppliers want market protection and priority treatment for domestic operators.

#### **National Priorities**

The conflicting demands of the different parties often results in unsatisfactory or desultory application of competition regulations as evidenced in many SADC Member States where the terms of the PTCM are largely ignored at the ground level where the regulations actually take effect. The problem is exacerbated by the generalisations and misinformation produced in support of contentions such as “carriers from country X are getting all the contracts”; “country Y deliberately stalls permit applications”; “Country Z insists on local registration of drivers even with SADC licences”. The result is vaguely defensive blockage of all liberalisation to “protect our operators”. In this scenario the end user, who pays for the inefficiencies is largely excluded from the debate and efficiency suffers.

#### **Market Saturation can Decrease Quality**

It must be recognised that if liberalisation reduces the cost and complexity of entry for transport businesses without effective control of quality standards, there is the risk of encouraging more operators to enter into over-traded markets thereby causing casualties and in many cases inducing more operators to cut corners, lower maintenance and attempt other ways to reduce costs by lowering expenditure. In many areas of SADC it is clear that road transport is performed by sub-standard, ill equipped and incompetent operators of both passenger and freight services.

#### **Need to Reward Competence**

The most practical medium term solution is to identify and certify a corps of “qualified operators” that can be expected to manage their transport operations well in spite of cost pressures and market competition. To promote this it is necessary to create an environment where the best operators get the best contracts and the system therefore promotes voluntary compliance and aspiration to get into the higher grades to improve business. The creation of “competence” will need a focus on development of professional transport managers including training, testing and certification.

## **Grading and Accreditation of Operators**

The regulatory control system should be designed to give operators regular ratings on a range of parameters including, overloading, vehicles condition, annual COR, driver performance, submission of returns etc. Users should be encouraged to choose high grade operators which give quality service, and the authorities should design their systems to promote ease of business for compliant registered operators and increased pressure on those that do not comply.

## **Technical and Managerial Skills Deficiencies**

A major challenge to be met in the development of trade in services in transport throughout the region is the lack of effective skills training for all levels of personnel in the transport industries. The shortage of skills is likely to reduce the quality of transport operations and where it is aggravated by use of second hand and inferior equipment it will have severe impacts on road safety, breakdowns and road obstructions, service and costs, and will promote further lawlessness as roads are sabotaged in remote areas and broken down vehicles are pillaged.

## **13.2 Rail Transport**

### **Institutional and Structural Changes**

The challenge for liberalisation of railways lies with the need to introduce institutional and structural changes at the highest level to create an environment conducive to investment and competition. The government policies that created the parastatal monopolies have effectively destroyed whole sections of the rail system and left the remainder operating below optimum efficiency with the result that road transport of freight and passengers is the dominant mode throughout the region.

### **Technical and Operational Changes**

In addition to the institutional reorganisation is necessary to make decisions on the structure of the railway system in order to prepare it for competition. The separation of track management and train operating can be done effectively, but there is need for a regulatory entity that will control track access, slot allocations, and rates and charges between the various participants. The challenge that is implied in this process is one of controlling the operations of each party to agreed standards and putting regulatory inspections, checks and balances in place to ensure safety and efficiency.

### **Skills Shortages**

One of the challenges facing the reorganisation of railways is the lack of available technical and managerial personnel in all countries of the region. The situation aggravated by deliberate decisions to replace senior staff and failure to recognise the need to recruit for competence and experience. The result of sub-standard management at all levels is very poor operational control, poor maintenance,

deteriorated equipment and minimal development of competence within the railway organisations. There is likely to be severe difficulty in persuading governments of the need to attract immigrant technical and managerial staff due to the fact that so most of the unionised present incumbents have been employed and promoted without qualifications.

### **13.3 Ports and Maritime**

#### **Institutional Changes**

The ports suffer many of the same problems as the railways in most of the countries of the region, with total control by parastatal monopolies that exercise conflicting functions of operator, landlord and regulator. The challenge is to get acceptance for the concept of reform that will confine the role of government to ownership and regulation of ports and encourage private sector investment and establishment of service operations within the ports.

#### **Skills Shortages**

The ports and maritime sectors suffer from skills shortages and the lack of effective training institutions and systems to provide the necessary port operational and seagoing functions. Historically the training period for seagoing officers was a five to ten year process but as there is minimal local maritime activity there are limited options for training and therefore a reliance on immigrant skills.

#### **Investment and Development**

Most of the countries of the region have plans to develop their ports for increasing imports of general cargo and manufacture goods and export of bulk commodities. The developments are hampered by reliance on government fiscal allocations that are inadequate to permit modernisation and upgrading of ports that were built in the last century. Government ownership and control deters Foreign Direct Investment (FDI) and immigration laws discourage prospective entrepreneurs.

#### **Competition**

It is to be expected that as reforms are made in the countries that have decided to promote competition there will increased efficiencies and lower costs which should result in attraction of cargo from less efficient ports. It would be expected that the salutary effect of port efficiency would then be increased throughput and switching of cargo flows. In some countries this may happen but in many others there is no effective competition due to monopoly caused by the location of the ports on the corridors to the interior.

### **13.4 Air Transport**

The air transport sector in most countries has been liberalised to the extent of permitting numbers of competing airlines to provide services. In some countries ground handling is reserved for local companies or parastatals.

The presence of national carriers and partially state owned airlines is having distortionary effects even though market forces are allowed to determine pricing. The subsidisation of national carriers (SAA, R6 billion in 2012) means that the entrance of new participants into the market is frequently followed by collapse and exit, (in SA, 9 out of past 11 start-ups). In relation to the PTIS and likely supply of services, there is a huge skills deficit and opportunities for supply of services and there appears to be little need for defensive terms as the overall supply barely matches the market needs without additional regulation.

### **13.5 Waterways**

From reported activities on the major waterways it appears that the major challenge is to attract investment and operators to supply the services due to low demand and revenue. There would seem to be little pointing barring competition or excluding would be operators from the rather slim markets that exist.

## **14 OBSERVATIONS AND RECOMMENDATIONS**

### **14.1 Potential for Requests and Offers**

The adoption of the PTIS marks a new dimension in the development of Inter-State trade in the region. Many countries have recorded horizontal commitments and Lesotho, South Africa and Swaziland have made significant commitments in a number of areas.

As noted elsewhere in this report, there is already a groundswell of trade in the transport services as the result of commercial initiatives and market demand factors, rather than conscious developmental efforts by governments. In particular there is further potential for supply of technical services and opportunities created by the general skills deficiencies in the region. International automotive companies have established networks and provide services to truck and bus industries. The services include parts supplies, assembly, repairs towing and other services. As the road transport sector is totally controlled by private sector interests the opportunities are purely commercial. South Africa as the country with the most developed manufacturing, technical and transport services will presumably be wishing for opportunities in most of the road transport ancillary markets of the region. Liberalising the markets for vehicle repairs, spares, fuel retailers, towing services and insurers by general commitments in Modes 2, 3, and 4 should assist with market development between SADC countries.

In the rail sector there is potential for service providers in engineering (civil and mechanical, electrical, track maintenance and building). In several countries no operators are permitted due to parastatal monopoly. The procurement processes in most countries are skewed in favour of local or BEE entrepreneurial companies, usually partnered by international expertise and capital. In some countries major investments must include a share offer to government and in some cases a proscribed period in which local management must be trained. It is noteworthy that several countries have apparently abandoned the normal tender procedures to take advantage of Chinese and Indian offers of aid packages linked to transport projects such rail lines, port, airports etc.

One of the aspects of trade in the region that is of concern to investors is the sometimes arbitrary nature of company regulation and conditions prescribed for foreign businesses.

In relation to some countries in the region there is general awareness that all contracts and deals may be amended, terminated or revoked by officials, often without redress. In some countries there is total embargo on property ownership by foreigners and in others visa renewal requirements that may be subject to arbitrary refusal or delays.

Another major consideration that may hamper commitments is the relatively small size of markets in most of the countries of the region. There is a perception that

encouragement or permission for establishment of service businesses by numbers of Asian immigrants can effectively exclude the local participants. There are a number of reasons for this including skills, diligence and access to capital , but it is almost certain that several countries will weigh up the potential for political backlash from commitments to liberalisation of trade in transport services and other fields.

One of the major considerations in relation to the PTIS that will no doubt be carefully watched by potential investors is the degree of compliance by Member States and the extent to which countries renege on the commitments to suit national priorities or changing circumstances. As noted elsewhere there is widespread "interpretation" and selective adherence to the PTCM due to lack of any effective mechanism to enforce compliance, a factor that has no doubt contributed to the long drawn out implementation process.

## **16.2 MFN Obligation and Bilateral Agreements**

As noted above, there are potential conflicts between the terms of the bilaterals and the need to comply with the MFN clauses of the PTIS. This will be aggravated where expatriates having established businesses in Country A then use them as a springboard into Countries B and C. there will no doubt be serious reservations regarding MFN when neighbouring countries view such practices as threatening to domestic service industries.

Where countries intend to reserve rights to coastal maritime trade for own national flag carriers they are likely to contravene the MFN provisions unless otherwise scheduled.

It is to be expected that SADC countries will have reservations and make serious and diligent enquiries regarding the implications of any GATS commitments that may open doors for MFN liabilities for countries around the world that may then challenge their rights to protect their local transport service industries and operators.

## **16.3 Other Services Agreements**

Several of the SADC countries have regular dealings with countries that are members of the Tripartite but not SADC members. Tanzania in particular has extensive transport connections with EAC countries as well as providing corridor access to Zambia, DRC and Malawi of the SADC. It is not clear which commitments made via COMESA, EAC and the Tripartite will lead to direct offers and requests to SADC Member States.

## **16.4 Observations by Transport Modes**

The Protocol on Transport, Communications, and Meteorology (PTCM) is intended to promote coordination and free movement of the transport of goods and passengers in the SADC region. The terms of the PTCM indicate that harmonised liberalisation of movement of transport in all modes is the primary objective of the protocol. It is apparent that commitment to the liberalisation clauses in PTCM by Member States is somewhat arbitrary and selective. It remains to be seen whether the commitment to PTIS will prove to be more binding in practice.

### **a) Road Freight and Passenger**

#### **Customs Procedures:**

The objectives of the PTCM and PTIS are complementary and are not intended to introduce conflict, but in reality, the processes to achieve control of the goods being carried by the mode of transport, has inevitable consequences for the movement of the transport unit and the current situation is that the customs regulatory regime in



many countries is actually the major negative influence on road and rail freight transport efficiency for cross border trade.

Throughout the region, there is a concerted movement for coordination of customs measures in order to attempt to reduce the influence of cross border delays on the effectiveness of the transport system. This is hampered in many ways by the different custom classification systems, e.g. South African SARS System and ASYCUDA in other countries, as well as the different operating practices of the various revenue authorities in each country. The concepts of paperless coordinated electronic processing (EDP) of cross-border documentation is hampered by infrastructure and staffing limitations and it may take some time to achieve the objectives of speeding up transport movements at borders.

### **Import Export Regulations**

This situation is aggravated by the fact that customs revenue is an extremely important element of the total government taxation income in many of the SADC and other Southern African countries. Most countries in the region have high levels of general cargo imports requiring complicated customs classifications, regulations and control of declared values. By contrast, most exports from the region are bulk agricultural and mining products with minimal customs declaration implications due to the homogenous nature of the bulk cargoes.

Cross border trade between the SACU countries where procedures are more or less harmonised and coordinated within the customs union structure, is relatively efficient and trouble free apart from occasional glitches when one or other agency changes procedures without due notification to all users. A worst case regulatory scenario is evident at the Namibia-Angola border at Oshikango, where the complex permit and customs regulations in Angola have led to development of a whole town of bonded warehouses full of imported and SADC produced goods to be sold in Angola and collected by Angolan carriers.

### **Transit Bonds**

Another major issue is the need for transit bonds in respect of goods which enter a country and transit its territory on route to other countries along corridors. In the north-south corridor for instance, various countries do not accept transit bonds from banks in neighbouring countries. The proposed SADC transit bond has failed to unite the countries in acceptance of a single bond methodology with the result that there is a continual need for initiating bonds at point of entry and acquitting them at the exit border posts. The process is repeated at each border in order to transit the next country en route to a third country adding costs and delays. The SADC Transit regulations have major potentials for introducing further. The concept of customs authorities licencing "Transit Vehicles" which are supposed to have signs at front and rear (as described in the Protocol on Trade)<sup>83</sup> has been ignored in most SADC countries(although rigorously applied in EAC).

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<sup>83</sup> SADC Protocol on Trade – Maseru :1996 Annexure 4 - Articles 5 - 9

The question of customs regulations, transit bonds and other major obstacles to transport efficiency are “technically speaking”, not road transport regulatory issues and are therefore not within the ambit of the PTCM although they are major issues within PTIS. This fact also add complications in that the inter-state negotiating processes in RECs tend to separate “transport issues” from “trade issues” thereby complicating resolution by integrating the solutions to problems into one forum.

### **Market Size and Dominance**

A factor that may complicate acceptance of liberalised trade in transport services is that the cross-border road freight transport markets in many interior countries are relatively small and confined to the transport of export bulk commodities. Nearly all imports are delivered from coastal states where import and transport arrangements are coordinated by freight forwarders at the ports of entry. This situation means that the trade in services within interior countries is relatively low except for major long distance road hauliers which target mining and agricultural bulk commodities. The situation is aggravated by the fact that vehicles delivering into the country have “spare” backhaul capacity that effectively undermines local carrier pricing. The small market situation where limited transport takes place, results in high levels of local protectionism in order to try to assist local carriers and protect them from competition by larger expatriate carriers.

The commercial reality is that large transporters with sufficient revenue to establish connecting depots and to attract cargoes on contracts from major mining and agricultural corporations as well as industries such as fuel, chemicals, and exporters of agricultural products, favour the coastal countries where larger volumes are generated.

### **Road Transport Permits**

The issue of permits by each country in terms of the bilaterals, authorises domestic carriers of goods to enter neighbouring States unload, reload and return to base. There is minimal interaction between issuing country and receiving country so that the permits do not achieve any form of quantity regulation. For passengers there is notionally a request and confirmation process, but these are generally viewed as defensive means to protect local operators rather than a means of promoting trade (in some countries the applications are reviewed by the local passenger operators association). It can be stated that regulation of supply of transport services is currently ineffective, and in any case undesirable in terms of the objectives of liberalisation.

### **Regulation and Enforcement**

A feature that poses severe problems in addressing the above-mentioned issues is that the enforcement of transport regulation for by passenger and goods transport and the application of trade and customs rules tend to be intertwined by the fact that they are administered by the same regulatory agencies along the major routes. Within each country enforcement is by national police forces, traffic officials, municipal traffic departments and in some countries by mixtures of these categories

of enforcement agencies, causing repeated stops, inspections and for drivers, the continual need to negotiate with officials to make progress along the corridor. Much enforcement is arbitrary by untrained “officials” bent on extracting dues from passing vehicles.

It is clear that in order to achieve the effective implementation of the GATS process in relation to road transport services, there is a need for each country to commit to a review of current practices and institutional commitment to the objectives of the PTCM and the PTIS and then introduce legislation and procedures that are aligned with the liberalisation process.

## **b) Rail Freight**

### **State Control and PTCM**

The fact that all railways have a heavy State involvement in the commissioning and regulation of the mode means that the objectives of the PTCM Article 7.2<sup>84</sup> must be interpreted as advisory. Member States are to “consider” issues such as autonomy, commercialisation, reforming management, and improving service standards, and in Article 7.3 reference to private sector ownership, operations or competition.

### **Liberalisation**

The fact that liberalisation appears to be happening, largely as the result of complete collapse of government owned rail services, and the need for recapitalisation, is encouraging. Mozambique, Malawi, Zambia, Zimbabwe, Tanzania and Swaziland all have various initiatives in hand to revitalise various sections of their railway systems by promoting private sector investment and operational capacity. There is a definite need for the region to develop a model for competitive operation of trains within a regulated track access system in order to promote investment and competition in ways that will attract general cargo from road to rail. This should be reflected in the PTCM and be an objective of negotiations within the ambit of the PTIS.

## **c) Internal Waterways and Maritime**

### **State Regulation**

With the exception of Mozambique, all ports in the region are fully controlled by governmental or parastatal organisations, as landlord and regulator. The implementation of the commitments in the PTCM in relation to private sector investment and operations is different throughout the region. While legislative frameworks for private sector participation are in place, effort is needed to remove both formal and informal barriers that hinder efficient commercial activities.

### **Partial Liberalisation**

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<sup>84</sup> PTCM – Chapter 7 Railways

In many countries there are aspects of ports operations that have been privatised, including terminals handling services and operation of offshore discharge facilities. In most countries, there is need for further restructuring and divestment by government within a regulatory framework that encourages competition in order to encourage private sector investment. In many countries the labour and immigration regulations impose severe limitations, aggravated by the lack of trained local candidates for managerial positions in the ports industries. Cargoes often move to ports that should be logistically disadvantaged but are selected due to congestion and other operational issues. Failure to liberalise will limit port development and efficiency and can lead to ports becoming feeder ports, thus increasing cost and transit times and lowering service levels

### **Shipping**

Nearly all shipping to and from the region is controlled by international shipping lines which operate in terms of external regulations and are therefore unaffected by the PTCM except in so far as inefficiencies may affect their costs and therefore services provided. Capacity constraints and performance issues are experienced in all ports in the region. This has made competition between shipping lines less attractive in these ports, resulting in dominance by certain lines.

### **d) Air Transport**

Ten countries in the region have airlines that have partial or complete state ownership and varying levels of subsidisation in competition with private sector airlines. Only two countries rely on foreign operators due to the limited size of their markets. SAA is the largest regional carrier owned and heavily subsidised by the South African government (R 6 billion in October 2012). The airline is in competition with other domestic and international carriers. It can be said therefore that there has been limited liberalisation in the region in terms of the Yamoussoukro decision, or the PTCM.

### **e) Pipelines**

Pipeline transport in the region has historically been used primarily for petroleum imports and is almost universally controlled by governments. There are signs of interest by private sector following discoveries of gas and possibly oil in some countries of the region. This trend may be promoted by commitment to the PTIS as an encouragement to investors. Inclusion of the mode in the terms of a revised PTCM would add impetus to liberalisation.

## **16.5 Recommendations**

In order to promote more effective participation by Member States in the liberalisation envisaged in the PTCM to be complemented by liberalisation under PTIS, there is need for considerable introspection on the part of authorities. It is critically important that there is redefinition of their economic and social objectives in relation to the concepts of "liberalisation".

There is very apparent adherence in many countries to “protectionism” and centralised state control, even in the face of incapacity, inefficiency, low levels of economic activity, lack of sufficient capital for development and very high levels of unemployment. There is need to encourage foreign investment in manufacturing, agriculture and services rather than simply in the extraction of minerals, in order to create work and economic growth. This will require acceptance by national authorities that regulated immigration and investment are positive forces in creating employment, training and social upliftment, and not necessarily a threat to the local population. The continued application of restrictive labour and investment conditions will hinder the benefits of the PTIS in relation to transport services.

### **Road Transport**

In the field of road transport there is a need for a rewrite of the terms of Section 5.3 of the PTCM in order to obtain commitment from all Member States to deregulate the supply of transport services and to focus on the achievement and promotion of the quality of transport services to meet the standards envisaged in PTCM Chapter 6. The process of quality regulation is described in Chapter 3 of this report and the necessary integration of market access and operator quality regulation should be defined in the PTCM and support the PTIS.

### **Railways**

There is 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.. In this respect, the developments in Swaziland are proving the feasibility of the concept with three operators running over about 310kms of track.

### **Ports and Maritime**

There is 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. This will improve competition for services, encourage investment and permit expansion of services in terms of the PTIS objectives.

### **Air Transport**

The most important potential development in air transport would be commitment and action to implement the Yamoussoukro decision.

## **16.6 Future Development of Efficient Transport Services in ESA**

All of the inter-state protocols and bilaterals in the SADC and ESA regions have the stated intentions of promoting concepts such as efficiency, competition, least cost, user responsive services, market access, equity, integration, and coordination. It is noteworthy that all these objectives are expressed by the authorities but the reality

is that the major thrust for implementation of all of those factors is in the hands of private sector businesses and most of the regulation in place and most government involvement is in fact restrictive of these conditions.

If the PTCM is to make progress in achieving the above objectives there is need for coordinated plans for harmonised basic conditions that can be agreed by Member States countries to achieve efficiently regulated competition, in all modes.

The effective implementation of the PTIS will to an extent depend on the level of underlying agreement by Member States on a liberalised framework within the PTCM. It is evident that there is still considerable resistance to transport market integration for various reasons that need to be resolved in order to support wider liberalisation.

## **Annexure A – Terms of Bilaterals and MOUs**

### **1. SACU MOU – (Botswana, Lesotho, Swaziland, South Africa)**

Definitions: Passenger – more than 9 seats

Goods – “propelled road vehicle or trailer or semi-trailer”

- 1 (a) To regulate the conveyance of goods and passengers....for reward or in the course of a carriers own industry or trade....between or across....territories of contracting parties

**Article II (3)**... shall provide all relevant information....meet ...and review the operation....

Article III – shall agree on a quota for journeys and permits...

8. fees are to cover (a) administrative costs (b) infrastructure costs ....

9. permit only valid for one vehicle or combination...

10. permit to used only by the authorized carrier.....

Article IV (3) - cabotage prohibited

(4) - may not convey goods to third parties without transit in own country

Annexure A – Method for Calculating and Phasing in of Quotas

Based on the number of journeys –

Annexure B – SACU Road Transport Permit

Annexure C – Registers to be kept

Annexure D – SACU Consignment Note

Annexure E – SACU Passenger List

Annexure F – Harmonised vehicle standards

### **2. Mozambique - Bilateral Agreement for Conveyance of passengers between Tanzania and Mozambique.**

**Bilateral Agreement for Transport of Goods between Mozambique and Zimbabwe** (Portuguese)

Artigo B - (... to achieve equitable distribution of permits.

Artigo 3 - Cabotage prohibited

Artigo 4 - permits for Freedom 1 and transit traffic only.

**Bilateral Agreement for Transport of Passengers between Mozambique and South Africa** (Portuguese)

Artigo 3 - Cabotage prohibited

Preambulo - desiring to promote fair and just treatment between respective transporters

The intention is to give carriers of the respective countries equal access (to the market) on a reciprocal basis.

### **3. Tanzania and Mozambique - Bilateral Agreement for Carriage of Goods**

#### **Article 2 – Objectives**

- b) to ensure the development of a strong and competitive road transport industry in which the capacity is related to demand and effectively utilised so that operators may compete successfully for a fair share of available traffic between the territories of the contracting parties.

#### **Article 3 – Cabotage prohibited**

#### **Article 4 – Application and authorisation of cross-border freight transport**

- 4 (a) the competent authority of a party in receipt of an application for extended transit facilities show prior to issuing the permit forward such application to the competent authority of the other party.
- 5 (a) the joint committee may determine the number of permits which may be issued to the carriers of each party in terms of paragraph 3 within any given transport year.
- (b) determine the maximum number of outward and return journeys which the carrier may be authorised to undertake in respect of a permit issued in terms of paragraph 3 (b) and
- (c) determine the maximum periods of validity for a permit other than those described in this article.
- 6. – Carriers only require to obtain permits from one party.
- 12. – Cabotage prohibited

### **4. Tanzania – Zambia: Bilateral Road Transport Agreement for the Transport Of Goods**

#### **Article 2 – Objectives**

- b) to ensure the development of a strong and competitive road transport industry in which the capacity is related to demand and effectively utilised so that operators may compete successfully for a fair share of available traffic between the territory of contracting parties.

#### **Article 3 – Cabotage not permitted**

Article 4 – both competent authorities shall furnish to each other, on a quarterly basis, all relevant information available, concerning the manner in which the traffic covered by this agreement has developed.

#### **Article 13 –**

- (i) information management, competent authority of each contracting party shall maintain a register containing the information related to vehicles such as ownership transfer, permits, licenses, accidents and traffic levels.
- (ii) Competent authorities shall whenever necessary provide each other with information contained in the register in Article 1.



### **Item 3 - Joint Route Management**

Joint route management committee is to:

- (a) determine freight transport needs on the route.
- (b) monitor carriers on the route,
- (c) promote effective law enforcement on the route,
- (d) exchange all information pertaining to the route,
- (e) address any issue pertaining to the route and
- (f) execute any other functions determined by the joint committee.

Article 6 – Cross-border passenger transport

Article 7 – (i) the competent authority to keep a register  
(ii) the competent authority shall collect and exchange information on a three monthly basis.

### **5. Bilateral Road Transport Agreement between South Africa and Malawi**

Effectively the same as the agreement between South African and Zimbabwe

### **6. Bilateral Agreement on Road Transport between South Africa and Zambia**

Effectively the same as the agreement between South African and Zimbabwe

### **7. Bilateral Road Transport Agreement between Namibia and Zambia**

Effectively the same as the agreement between South African and Zimbabwe

### **8. Bilateral Road Transport Agreement between Zimbabwe and Botswana**

Article 2 – objectives

- (b) to ensure the development of a strong competitive road transport industry which the capacity is related to demand and effectively utilised, preferably so that operators are in general able to compete successfully for a fair share of the transport market between the contracting parties.
- (d) to ensure as far as realistically possible, that transport operators of a contracting party compete under conditions of fair competition.

### **The Joint Road Transport Committee and Route Management Groups**

Article 9 – capacity management

The competent authorities may, as provisionally required, mutually agree to fix the number of permits that may be issued to passenger transport carriers.

3 – the joint route management groups shall;

- (a) determine the transport needs on the road; (b) monitor the carriers on the route

No mention of register or number of permits

## **9. Bilateral Agreement between Tanzania and Malawi**

Concerning the Malawi/Tanzania corridor transport system  
Basically a trade agreement rather than transport regulations

## **10. Memorandum of Understanding between Botswana, Namibia and South Africa on the Trans-Kalahari Corridor**

Relates to trade and customs and borders.

## **11. SADC Draft Multi-Lateral Agreement on Regulating Cross-Border Road Traffic, 1989**

Article 4 – Authorisation of cross-border goods transport

7 the competent authority of each contracting party may issue the following permits or licenses: (i) permit valid for one journey, (ii) permit valid for unlimited amount of journeys over three months and (iii) a permit valid for an unlimited amount of outward and return journeys over a period of one year.

19 the competent authorities of each contracting party may:

- (i) Fix the number of permits or licenses that can be issued
- (ii) Specify the number of outward and return journeys a carrier may be authorised to undertake or
- (iii) Determine the maximum periods of validity of permits

Approximately the same conditions are suggested for passenger transport.

Article 8 – Information management

- (i) The competent authority of each contracting party shall maintain a register
- (ii) Competent authority shall regularly provide each other with information
- (iii) Contracting parties shall secure the return of unused permits

## Annexure B – SADC Road Taxes and other Charges – 2012

Table 3 SADC Road Taxes – 2012

	Name of Tax	Unit of Measure	Currency	Value	Basis for Calculation
Angola	RUC (Road User Charges)	Per 100 Kms travelled	US\$	\$10 per 100 km	Rate fixed for all foreign registered vehicles
Namibia	RUC (Road User Charges)	Per 100 Kms travelled	N\$	See table below:	Rate calculated by Treasury and determined by the number of axles; Collection administered by Iroko Investments & collected at borders - all non cargo vehicles below 3500 kg & private vehicle (passenger) do not pay an MDC but are subject fixed entry fees determined mass or type of vehicle, Cargo vehicle are subject to both (*see below).
Botswana	RUC (Road User Charges)				No Road User Charges apply at present, but Cross border charges consist of either a Transit Permit (US\$ 127) or Road Permit for cargo delivery within Botswana (US\$ 68) & both permits include return trip, but are issued per trip, Permit application fee is \$15 and Road Safety Tax or MVA fund is \$3 - Collection by BURS at borders
Zambia	RTSA - Road Tax	Per 100 Kms travelled	US\$	\$10 per 100 km	Charges for transit are one way only, charges for cargo off-loaded with in Zambia includes the return trip to exit Zambia - charges collected at entry point or border post.
DRC	RUC (Road User Charges)	Per 100 Kms travelled	US\$	\$10 per 100 km	Rate fixed for all foreign registered vehicles
Zimbabwe	VID Coupons	Per 100 Kms travelled	US\$	\$10 per 100 km	Charges for transit are one way only, charges for cargo off-loaded with in Zimbabwe includes the return trip to exit Zimbabwe - charges collected at entry point or border post.
South Africa	Fuel Tax Road Tolls	Fuel per litre : Tolls per passage	Rands	R x per litre	Fuel Tax set by Treasury : Road tolls set by SA Nat, Roads Agency / DOT
Lesotho	RUC (Road User Charges)		US\$		No Road User Charges apply at present, but Cross border charges consist of a Transport Permit - Single entry = \$18, 30 days = \$33 & 90 days = \$39, there is also of \$7 per entry road toll fee and all fees are collected at the border.
Swaziland	RUC (Road User Charges)	Fixed Charge per Vehicle Category	US \$	\$6 for cars & bakkies and 11\$ for commercial vehicles	Rate fixed by vehicle category
Mozambique	RUC (Road User Charges)	Per 100 Kms travelled	US \$	\$ 15 per 100 km (COMESA) & \$25 per 100 km (Other)	Rate for COMESA member countries differs from rates for SADC member countries and others
Malawi	RUC (Road User Charges)	Per 100 Kms travelled	US \$	\$ 15 per 100 km (COMESA) & \$16 per 100 km (Other)	Rate for COMESA member countries differs from rates for SADC member countries and others
Tanzania	RUC (Road User Charges)	Per 100 Kms travelled	US \$	\$16 per 100 km	Rate fixed for all foreign registered vehicles

*Namibia Road charges.					
Type	Description (Petrol and Diesel Driven)	Entry fee (N\$)	Entry fee per 100km (N\$)	Assumed km travelled per entry	Travelling Distance Charge
Type 1	Motor cycles, motor tricycle and motor quadrucylce Caravans and light trailers drawnby type 2 vehicles.	90	-	-	-
Type 2	All passenger cars, station wagons, S/C and D/C bakkies, 2x4 and 4x4 bakkies, Kombis, Microbus and minibus (less than 25 passengers)	140	-	-	-
Type 3	Light goods vehicles/delivery vehicles (GVM <3500kg)	290	-	-	-
Heavy vehicles : (single units)					
Type 4	Bus with 2 axles. (carrying capacity of 25 or more Passengers)	350	8.6	1.465	126
Type 5	Bus with 3 axles. (carrying capacity of 25 or more Passengers)	440	8.73	1.552	136
Type 6	Single unit Truck with 2 axles	350	9.44	1.032	97
Type 7	Single unit Truck with 3 axles	440	11.62	795	92
Heavy vehicles : (Traction unit as part of a combination vehicle)					
Type 8	Truck tractor : with 2 axles	350	8.7	909	79
Type 9	Truck tractor : with 3 axles	440	10.19	1.418	144
Type 10	Truck tractor : with 4 or more axles	830	11.05	822	91
Heavy trailers as part of a combination vehicle					
Type 11	Trailer : with 1 axle	230	8.73	1.346	118
Type 12	Trailer : with 2 axle	350	10.37	1.469	152
Type 13	Trailer : with 3 axle	440	11.12	1.373	153
Type 14	Trailer : with 4 axle	580	12.18	975	119
Type 15	Trailer : with 5 or more axle	710	12.97	2.202	286
Construction vehicles					
Type 16	Tyre dozer, grader motor, front-end loaders,excavators. self-propelled vibratory rollers	1200	3.95	905	36
Type 17	Any other vehicle not listed REGULAR USER PERMIT	230 200	3.95	985	39
Information supplied by the Namibian Road Fund Administration. Private Bag 13372 WINDHOEK Tel: 0026461 - 250897  <b>NAMIBIA DISTANCES</b>  Ariamsvlei - 778km Windhoek - Buitepos - 320km Windhoek - Holweg - Windhoek 712km Ka-Twe-Twe - 1013km Windhoek - Ka-Twe-Twe via Rundu - Windhoek 868km Klein Manassa - 688km Windhoek - Muhembo - 932km Windhoek - Ngoma - Windhoek 1278km Noordoewer - 786km Windhoek - Oshikanga - 733km Windhoek - Ruacana via Oshakati - Windhoek 860km Ruacana via Kmaryab - Windhoek 757km Waneta - Windhoek 1215km					

COUNTRY	ADDITIONAL COSTS				
	Discription of Charge	Local Currency		Local Transporters	Foreign Transporters
ANGOLA		<b>Kwanza</b>	<b>US\$</b>	<b>US\$</b>	<b>US\$</b>
	Visa		249		249
	Insurance for one month		30	0	30
	Temp. Import permit		27	0	27
	Trade Facilitation on route US\$		5000		5000
	Toll fee	78000	100		100
BOTSWANA		<b>Pula</b>	<b>US\$</b>	<b>Pula</b>	<b>Pula</b>
	Visa	500	74	500	500
	TA Road permit	860	127		860
	BA Road permit	460	68		460
	Permit application fee	100	15		100
	Road safety tax p/a	20	3		20
	MVA (Accident fund)				
	Insurance	0	0	0	0
DRC		<b>Franc</b>	<b>US\$</b>	<b>US\$</b>	<b>US\$</b>
	Visa				
	Temp. Import permit		300	300	300
	Government tax		50	50	50
	Carbon tax per entry		35	35	35
	Card entry		15	15	15
	Insurance per week		30	0	30
	Tourism yellow fever		35	35	35
	Fumigation		50	50	50
	Visa - Truck		25	25	25
	Beakbulk Cargo		20	20	20
MALAWI		<b>kwacha</b>	<b>US\$</b>	<b>US\$</b>	<b>US\$</b>
	Visa	0	0	0	0
	Temp. Import permit	2400	16		16
	Insurance 30 days		25		25
MOZAMBIQUE		<b>Meticals</b>	<b>US\$</b>	<b>US\$</b>	<b>US\$</b>
	Harbour Permit per year 2009		20	20	20
	Visa		95		95
	Temp. Import permit		50	0	50
	Insurance		16	60	16
	Weighbridge		350	350	350
	Road toll Maputo	92	13	13	13
TANZANIA		<b>Shilling</b>	<b>US\$</b>	<b>US\$</b>	<b>US\$</b>
	Visa		50		50
	Temp. Import permit Truck	812400	600	600	600
	Temp. Import permit Trailer	406200	300	300	300
	Insurance yellow card		0	0	0
ZAMBIA		<b>Kwacha</b>	<b>US\$</b>	<b>US\$</b>	<b>US\$</b>
	Visa	0	0	0	0
	Carriers License per yr	540000	114		114
	Road Service License 3 Mths	563000	119		119
	Insurance	800000	169		169
	Municipality fee		20		20
	Carbon tax 3 Mths		60	60	60
	Parking Fee per night		5	5	5
ZIMBABWE		<b>Zim.dollar</b>	<b>US\$</b>	<b>US\$</b>	<b>US\$</b>
	Visa	0	0	0	0
	Temp. Import permit				
	Insurance per 30 days				30
	Bridge Toll (NLB)		55	55	55
	Carbon tax per mth		30		30
	Parking fee per night		5	5	5

## **Annexure C – Questionnaire Template for Country Modal Profiles**

**COUNTRY: MODE: SUB-SECTOR:**

**(A)**

- A1 the structure and competitiveness of the domestic and regional transport sector;
- A2 the state of liberalisation in transport services, including the existence of both regulatory restrictions and restrictive business practices;
- A3 sector development and reform policies, both national and regional;
- A4 the level of implementation of the commitments under the TCM Protocol, its achievements, and the relationship between the TCM and Trade in Services Protocols;
- A5 the interests of various stakeholders, including end consumers.

**(B) Relevant Regulatory:**

B1 policies

B2 laws and regulations ; governing the sub-sector:

**(C) Trade restrictions:**

- Quotas**
- C1 the number of operators in the market,
  - C2 the volume of operations;
  - C3 that segment the market in
  - C4 any other restrictions (e.g. permission either to operate domestically or internationally, but not in both markets)

**Restrictions**

- C5 e.g., requirements on the legal form of enterprises on terms of establishment
- C6 or requirements to establish a joint venture with a local partner?
- C7 How do investment measures affect services transport operations?
- C8 Are there maximum or minimum foreign capital requirements for investors?

C9 How do immigration measures affect transport service operations?

C10 Are foreign operators limited in the hiring of foreign staff?

C11 Are there measures that discriminate between operators based on nationality (i.e. favour local operators or operators from other countries) such as nationality

C12 requirements for boards of directors or employees,

- or restrictions on the repatriation of earnings?
- Are there discriminatory requirements/practices in the allocation of licenses (e.g. length of license, period and requirements for renewal

### **Policy and development agendas**

C13 What are the policy objectives and development agendas in the sectors?

C14 Are there empowerment or national ownership policies/clauses?

C15 Are the regulatory authorities independent from the policy-makers?

C16 Are the regulatory authorities accountable to any of the operators?

C17 How are licenses in the sector allocated

- first come first served?,
- competitive tender?,
- or at the discretion of the licensing authority

### **(D) Structure of the sector:**

D1 Are there private operators in the sector?

D2 Are there foreign operators, and if so, what is their number, size and market share?

D3 Which services according to WTO classification do they offer?

D4 What evidence is there of exporting and importing (including inward and outward foreign investment) in the sub-sector?

D5 Is there any stakeholder group or business organisation with a special interest in the sector that will impede liberalisation commitments?

**(E) Level of competition:**

E1 Are there any dominant services providers in the various markets (e.g. fuel haulage: dry cargo; passenger transport) and what is their market share?

E2 How are prices determined in each market and how do these compare to international benchmarks?

E3 What jurisdiction does the competition authority have over the sector?

E4 Is there any evidence of anti-competitive behaviour?

**(F) State of liberalisation:**

F1 What are the Member States' liberalisation commitments in transport services under other agreements such as WTO, EAC, COMESA, concessions and other bilateral agreements?

F2 How do these commitments compare to actual regulations and the level of applied openness?

F3 In which sub-sectors do restrictions exist and have these been scheduled in existing agreements?

F4 To what extent do Member States recognise licences, certificates (incl. insurance) and training obtained in another Member States?

F5 Do Member States offer any preferential access to other countries, or enforce any specific requirements, which may impede the implementation of a regional MFN and mutual recognition agreement in individual sub-sectors?

**(G) Specific Mode:**

G1 To what extent have the Member States implemented liberalisation commitments foreseen in article 5 of the TCM Protocol



G2 To what extent have they moved to harmonise regulatory mechanisms and domestic road transport policies,

G3 in particular what progress has been made in the harmonisation of drivers licencing and systems for 3<sup>rd</sup> party insurance?

G4 What is the practice in Member States with regard to; route allocation; road user charges, discriminatory levies and taxes, the 3<sup>rd</sup> country and cabotage rules?

G5 What is the outlook for reforming/abolishing these restrictions on road transport services?

G6 **For bilateral road transport agreements:** Do the agreements oblige foreign trucks to tranship the cargo on to a truck belonging to a domestic company?

## **Annexure D – Terms of Reference**

### **For a Short Term Expertise (STE) Study Liberalizing Transport Services in Southern Africa Development Community**

#### **1. Project information**

The small size of the individual markets of most of the Member States of the Southern African Development Community (SADC) inhibits economies of scale and frustrates the optimal allocation of labour and capital. Consequently, advancing market integration is a core priority of SADC. However, the implementation of the SADC Regional Indicative Strategic Development Plan (RISDP) is proving difficult at both the regional and national levels. Problems at the SADC level include weak coordinating and monitoring mechanisms, and inadequate technical, sector-specific capacities for the design of appropriate reform measures. At the same time, decision-makers and institutions within Member States are not fully able to prepare and implement effective regional agreements at the national level.

The GIZ financed Programme “Strengthening of economic and trade-related capacities and competences in SADC” based at the SADC Secretariat in Gaborone, Botswana, aims to address these key problems. Its main objective is to strengthen the economic and trade policy capacities and competences of the relevant institutional regional and national actors for intensifying regional economic integration within the context of the RISDP priorities. The Programme seeks to build institutional capacities within the SADC Secretariat, particularly at the *Trade, Industry, Finance and Investment Directorate (TIFI)*, helping it to perform its function of steering and coordinating/moderating the process of regional economic integration. It also promotes the development of sector-specific competence at the TIFI Directorate. Finally, it aims to strengthen the implementation of regional rules at the Member State level. In doing so, the programme contributes to the goals of the SADC Treaty and the RISDP. The target group of this intervention is the entire population of the SADC Member States, numbering around 262 million.

The Programme consists of 4 components, of which Component 1, 2 and 4 are implemented directly by GIZ. A consortium composed of GFA Consulting Group GmbH, Hamburg, Germany, and DNA Economics, Pretoria, South Africa, has been entrusted with providing technical assistance to the SADC TIFI Directorate to ensure the proper and timely implementation of Component 3 of the Programme. The overall objective of Component 3 and the related Project is “The integration process with regard to trade in services within the SADC is structured coherently and in a manner promoting development.” This Project will run until 31 December 2012.

## **2. Description of Assignment**

### **2.1 Background**

SADC Member States have been engaged in a work programme on the liberalisation of trade in services in the SADC region since 2000. The Committee of Ministers of Trade adopted the Draft Protocol on Trade in Services in July 2009. The Draft Protocol, which contains general obligations modelled largely on the GATS, provides for gradual liberalisation through schedules of commitment; requires signature and ratification by Member States in order to enter into force. While these processes are underway, Member States have launched negotiations on the liberalisation of the six priority sectors during 2012 (communication, construction, energy related, financial, tourism, and transport services) in April 2012. Member States will produce requests and offers in four of these sectors (including on transport) by June 2013.

The negotiating process will be supported through dedicated sectoral meetings (“sector fora”) at which regional and national sector regulators, experts, industry representatives, and trade negotiators will address issues related to liberalization of the respective sectors. The requested study will be a critical input into the sector forum on transport services, as well as a background document for member States throughout the negotiating process.

Also, SADC has adopted Protocol on Transport, Communication and Meteorology (TCM) which provides for market liberalisation of road transport services among other issues. The Protocol also deals extensively with infrastructure development; policy harmonisation; and regulatory and institutional frameworks that will facilitate cross-border transport services. Since entry into force of this Protocol, a lot of work on transport services has been carried out, and a number of achievements have been registered such as on road networks, establishment of national road agencies/authorities, harmonised axle load standards.

In preparation for the negotiations on transport services, Member States need to be acquainted with a range of important information. This includes:

- the structure and competitiveness of the domestic and regional transport sector;
- the state of liberalisation in transport services, including the existence of both regulatory restrictions and restrictive business practices;
- sector development and reform policies, both national and regional;
- the level of implementation of the commitments under the TCM Protocol, its achievements, and the relationship between the TCM and Trade in Services Protocols; and
- the interests of various stakeholders, including end consumers.

A lot of information has been collected through various studies and papers, most of which are not comprehensive, up to date, and inclusive of all SADC Member States. In addition, much of the existing analysis has been prepared in other contexts than trade liberalization.

Therefore, the Project is commissioning a study to compile and structure existing information, to fill information gaps, and to identify those issues that are particularly relevant in the context of the SADC trade in services negotiations.

## **2.2 Purpose**

The purpose of the study is to take stock and update the existing body of information on trade in transport services in SADC in order to facilitate Member States' preparations for and participation in the regional SADC trade in services negotiations.

## **2.3 Scope of Work**

The study will cover transport services as per the WTO classification of services in air (excluding traffic rights)<sup>85</sup>, internal water ways, maritime, pipeline, railway and road transport. The WTO classification of transport services includes passenger and freight transportation, rental of transportation equipment with crew, push and towing services, maintenance and repair of transportation equipment/vessels, supporting services (e.g. catering for air and maritime transport) and ancillary services to all modes (such as cargo handling, storage and warehousing, freight agency) and other transport services.<sup>86</sup>

Due to its economic importance, a particular focus of the study in terms of time allocated will be put on road and maritime transport.

The study is expected to cover the following aspects for each SADC Member State:

### **A. Issues to be addressed for each sub-sector**

- **Regulatory regimes in the SADC Member States.**
  - What are the relevant policies and laws and regulations that govern the sub-sector (i.e. air, maritime, pipeline, railway, and road)?
  - What trade restrictions exist in the Member States?
    - Are there quota measures that restrict (1) the number of operators in the market, (2) the volume of operations; (3) that segment the market in any other way (e.g. permission either to operate domestically or internationally, but not in both markets) ?
    - Are there any restrictions or requirements on the legal form in which enterprises can establish, or requirements to establish a joint venture with a local partner?
    - How do investment measures affect services transport operations? Are there maximum or minimum foreign capital requirements for investors?

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<sup>85</sup> Article 3:3 (a) of the SADC Protocol on trade in Services (like the GATS), limits the coverage of the agreement to (a) aircraft repair and maintenance services, (b) computer reservation system (CRS) services, and (c) the selling and marketing of air transport services. Measures affecting (i) traffic rights, however granted; or (ii) services directly related to the exercise of traffic rights, are excluded from the coverage of the agreement. The study will focus on limitations in the covered services activities.

<sup>86</sup> For classification purposes, please refer to the WTO classification "W/120", contained in Attachment 8 to WTO document S/L/92. For the classification of Maritime Transport Services, also the Maritime Model Schedule.

- How do immigration measures affect transport service operations? Are foreign operators limited in the hiring of foreign staff?
  - Are there measures that discriminate between operators based on nationality (i.e. favour local operators or operators from other countries) such as nationality requirements for boards of directors or employees, or restrictions on the repatriation of earnings? Are there discriminatory requirements/practices in the allocation of licenses (e.g. length of license, period and requirements for renewal)?
- What are the policy objectives and development agendas in the sectors?
  - Are there empowerment or national ownership policies/clauses?
  - Are the regulatory authorities independent from the policy-makers?
  - Are the regulatory authorities accountable to any of the operators?
  - How are licenses in the sector allocated – first come first served? Competitive tender? or at the discretion of the licensing authority?
- **Structure of the sector:** Are there private operators in the sector? Are there foreign operators, and if so, what is their number, size and market share? Which services according to WTO classification do they offer? What evidence is there of exporting and importing (including inward and outward foreign investment) in the sub-sector? Is there any stakeholder group or business organisation with a special interest in the sector that will impede liberalisation commitments?
  - **Level of competition:** Are there any dominant services providers in the various markets (e.g. fuel haulage; dry cargo; passenger transport) and what is their market share? How are prices determined in each market and how do these compare to international benchmarks? What jurisdiction does the competition authority have over the sector? Is there any evidence of anti-competitive behaviour?
  - **State of liberalisation:** What are the Member States' liberalisation commitments in transport services under other agreements such as WTO, EAC, COMESA, concessions and other bilateral agreements? How do these commitments compare to actual regulations and the level of applied openness? In which sub-sectors do restrictions exist and have these been scheduled in existing agreements? To what extent do Member States recognise licences, certificates (incl. insurance) and training obtained in another Member States? Do Member States offer any preferential access to other countries, or enforce any specific requirements, which may impede the implementation of a regional MFN and mutual recognition agreement in individual sub-sectors?

## **B. Specific sub sector coverage**

- i. **Air transport:** Due to the exclusion of traffic rights and services directly related to traffic rights, the section on air transport services will focus on the activities covered by the Protocol. While their status under the Protocol is questionable, the study should also look at ancillary services such as ground handling, catering, and airport management. However, a basic description, on the basis of available information of the following should be provided also with regard to the actual transport services: to what extent have the Member States implemented the commitment undertaken in article 9.2 (a) of TCM Protocol (to gradually liberalise intra-regional air transport markets for SADC airlines): to what extent have the Member States implemented Yamoussoukro decision? What is the

state of play across countries? Are there foreign owned airlines that operate in the domestic market in Member states? How many of the foreign airlines are owned by nationals of SADC? Is there foreign presence in ancillary air transport services or ground handling services? What are the trade restrictions (such as transit quotas and access to airport facilities) in the industry? Is there any competition for the market introduced through vertical integration/concessions; and what are the prospects for further liberalisation?

ii. **Maritime and internal water ways transport:** Are there any quotas for or preferences granted to national shipping lines with regard to private cargo? Are there any preferences granted to national shipping lines with regard to government cargo? Do agreements between maritime transport carriers (such as conferences) benefit from exemptions from competition law? To what extent have the Member States implemented the commitments to develop harmonised maritime and inland waterway transport policies, and progressively remove cabotage restrictions, as set out in Article 8.2 of the TCM Protocol? To what extent are Member States granting each other national treatment on access to port facilities as foreseen in article 8.3(4) of the TCM Protocol? How many countries signed bilateral agreements for internal water bodies in the region? What has been the impact of these agreements on trade? Considering the WTO Maritime Model Schedule, what are liberalisation options in this regard? In what sub-sectors might suppliers from SADC Member States be able to exploit new liberalization commitments? Or would liberalization's most significant benefit lie in the reduction of the cost of business for all operators/users of the respective services?

iii. **Pipeline transport:** How many countries in the region use pipelines? What volumes of fuels/gases are transported via pipelines compared to transport through other means? What ownership structures exist (are there any private operators, and if so, from what countries)? How is cross-border trade carried out? Is there a potential for liberalising this sector?

iv. **Railway transportation:** Assess the state of implementation of article 7.2 (i) and (ii) and 7.3:2 of the TCM Protocol across Member States. What has been the achievement of the railway development projects in the region? What are the challenges? Is there any private participation in these projects? Is there foreign participation in the projects? Are there feasible options for liberalisation beyond M1? What regulatory reforms are required to improve efficiency in this sub sector?

V. **Road transport:** To what extent have the Member States implemented liberalisation commitments foreseen in article 5 of the TCM Protocol and moved to harmonise regulatory mechanisms and domestic road transport policies, in particular what progress has been made in the harmonisation of drivers licencing and systems for 3<sup>rd</sup> party insurance? What is the practice in Member States with regard to route allocation; road user charges, discriminatory levies and taxes, the 3<sup>rd</sup> country and cabotage rules? What is the outlook for reforming/abolishing these restrictions on road transport services? **For bilateral road transport agreements:** Do the agreements oblige foreign trucks to tranship the cargo on to a truck belonging to a domestic company? Do the agreements impose a quota on cargo (e.g. on an annual basis)? Does the agreement impose a quota on transit cargo?

- VI. **Services auxiliary to all modes of transport**, i.e. cargo handling, storage and warehousing. To what extent is there commercial supply of these services in the region independent from the transport operators? Are there any restrictions as set out in section 2.3.A above?

### **3. REQUESTED SERVICES**

#### **3.1 Duties and responsibilities**

Due to the different knowledge sets required for its completion, the assignment will be divided in three parts, each to be handled by a different short-term expert. The short-term experts are responsible for carrying out the work envisaged above in coordination with the Project Team Leader.

Duties of short term expert 1:

Overall days allocated: 75

- Carry out the activities under 3.2 in order to address the issues set out in 2.3.A and B with regard to the following transport services, as set out above: 1. road transport (2.3.B.v); 2. rail transport (2.3.B.iv); 3. auxiliary transport services (2.3.B.vi).
- Maintain overall responsibility for the drafting of the assignment, and coordinate all inputs with short-term experts 2 and 3.

Duties of short-term expert 2:

Overall days allocated: 20

- Carry out the activities below under 3.2 in order to address the issues set out in 2.3.A and B with regard to the following transport services: 1. air transport (2.3.B.i), 2. pipeline transport (2.3.B.iii); 3. inland waterway transport (2.3.B.ii).
- Coordinate inputs with short-term expert 1

Duties of short-term expert 3:

Overall days allocated: 15

- Carry out the activities under 3.2 in order to address the issues set out in 2.3.A and B with regard to the following transport services: maritime transport (2.3.B.ii).
- Coordinate inputs with short-term expert 1

***All documents created by the short-term experts have to be acceptable for publication, and must therefore comply with professional standards in terms of language and formatting.***

### 3.2 Activities

Each short-term expert is expected to carry out the following activities in order to deliver expected results of the assignment:

- Undertake desk research of existing literature on transport services, in particular:
  - the structure and competitiveness of the domestic and regional transport sector;
  - the state of liberalisation in transport services, including the existence of both regulatory restrictions and restrictive business practices;
    - sector development and reform policies, both national and regional; and
    - the interests of various stakeholders, including end consumers;
- Analyse key commitments on transportation issues made under the Protocol on TCM; assess the TCM's implementation across Member States; analyse the TCM's implications for the services liberalisation agenda under the Protocol on Trade in Services; and identify areas of complementarity and/or conflicts between the two Protocols;
- In order to complement, update and verify any missing information, prepare a checklist of questions based on the issues to be addressed. Depending on the data collection approach recommended by the short-term expert, in consultation with the Project team, collect and analyse the data;
- Based on the outcome of the above activities prepare a draft report and present the same at the regional sectoral forum or Trade Negotiating Forum (TNF). Refine the draft report based on the comments from the sectoral stakeholders, Project team and SADC Secretariat as appropriate; and submit a final report (in soft and hardcopy).
- A total maximum of 25 days of travel (to be coordinated between the three short-term experts) for a maximum of 5 trips are possible under this assignment. All travel will need to be coordinated with and authorized by the project team leader.

### 3.3 Expected results

It is expected that the study will provide a report containing the following results:

- Comparative analysis of the size, structure, openness (state of liberalisation and existing trade restrictions), and state of competition of the transport sector, by sub-sector, across all SADC Member States;
- Comparative analysis of the key policies and interest groups in the transport sector, by sub-sector, across all SADC Member States;
- Comparative analysis of the implementation of commitments under the Protocol on TCM in transport services across SADC countries; and
- Options for making liberalisation commitments under the Trade in Services and expected implementation challenges (including potential complementarities and conflicts with the TCM).



## Annexure E – Correspondents and Contacts

Name	Country
Ian Hunt	Botswana
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Cyrille Mubimba	DR Congo
Tlohelang Peter Aumane	Lesotho
Fako Hakane	Lesotho
Alicia Rautenbach	Lesotho
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V.Lungu	Malawi
N. Garden	Malawi
Carrie Davies	Mozambique
G.Machado	Mozambique
Francois Uys	Namibia
Alistair Christison	South Africa
Mike Fitzmaurice	South Africa
Jitesh Naidoo	South Africa
Eric Cornelius	South Africa
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Newman Sizwe Ntshangase	Swaziland
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Mandla Ntshalintshali	Swaziland
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Mandla Mamba	Swaziland
Atul Mittal	Tanzania
Samuel Nyantahe	Tanzania
G. Nasari	Tanzania
A. Botes	Tanzania
D. Kerna	Zambia

## **Annexure F – Literature Consulted**

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- ii) Republic of Malawi and United Republic of Tanzania Malawi-Tanzania Corridor System
- iii) United Republic of Tanzania and The Republic of Zambia Road Transport Agreement
- iv) United Republic of Tanzania and The Republic of Mozambique Carriage of Goods by Road
- iv) United Republic of Tanzania and The Republic of Mozambique Conveyance of Passengers by Road
- v) The Republic of Namibia and The Republic of Zambia Road Transport Agreement
- vi) Republic of Zimbabwe and the Republic of Botswana Road Transport Services between and Beyond Their Respective Territories.
- vii) South Africa and Zimbabwe Agreement on Road Transportation
- viii) South Africa and Mozambique Agreement on the Carriage of Goods by Road
- vii) South Africa and Zambia Agreement on Road Transport
- vii) South Africa and Malawi Agreement on Road Transportation

viii) Acordo Bilateral de Transporte Rodoviario de Mercadorias entre o Governo da Republica de Mocambique e o Governo do Reino da Swazilandia

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