UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

TOWARDS SADC SERVICES LIBERALIZATION: BALANCING MULTIPLE IMPERATIVES

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LIST OF ACRONYMS AND ABBREVIATIONS

ACP	African, Caribbean and Pacific
ASANRA	Association of Southern African National Road Agencies
BEE	Black Economic Empowerment
BPC	Botswana Power Corporation
CCBG	Committee of Central Bank Governors
COMESA	Common Market for Eastern and Southern Africa
CRS	Computer Reservation System
DBSA	Development Bank of Southern Africa
DRC	Democratic Republic of Congo
DSTV	Digital Satellite Television
EAC	East African Community
ESAF	Eastern and Southern African Banking Supervisors Group
EU	European Union
FESARTA	Federation of East and Southern African Road Transport Associations
FIP	Finance and Investment Protocol
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GDS	Global Distribution System
ICM	Integrated Committee of Ministers
IPP	Independent Power Producers
LDC	Least Developed Country
MEFMI	Macroeconomic and Financial Management Institute of Eastern and Southern Africa
MFDP	Ministry of Finance and Development Planning
NAMFISA	Namibian Financial Institutions Supervisory Authority
NEPAD	New Partnership for Africa's Development
NRZ	National Railways of Zimbabwe
NTB	Non Tariff Barrier

PPP	Public-Private Partnership
REPN	Regional Energy Planning Network Project
RETOSA	Regional Tourism Organization of Southern Africa
SABC	South African Broadcasting Corporation
SACU	Southern African Customs Union
SADC	Southern African Development Community
SAPP	Southern Africa Power Pool
SATCC	Southern African Transport and Communications Commission
SME	Small Medium Enterprises
SRII	SADC Regional Information Infrastructure
SSBS	SADC Subcommittee on Bank Supervisors
TAZARA	Tanzania-Zambia Railways
TFCA	Transfrontier Conservation Areas
TRC	Tanzania Railway Corporation
UNCTAD	United Nations Conference on Trade and Development
VANS	Value Added Networks
VOIP	Voice Over Internet Protocol
WESTCOR	Western Corridor Project
WTO	World Trade Organisation
ZESA	Zimbabwe Electricity Supply Authority
ZTV	Zimbabwe Television

1 BACKGROUND

The Southern African Development Community (SADC) has set itself an ambitious regional integration agenda. Where economic integration is concerned the Regional Indicative Strategic Development Programme (RISDP)[1] envisages the creation of a Free Trade Area by 2008, a Customs Union by 2010, a Common Market by 2015, and a Monetary Union by 2016.

As is the norm in many regional economic communities across the world, the SADC agenda covers the intra-regional liberalisation of trade in services. SADC countries affirmed their intention to liberalize trade in services in the region since the signing of its Trade Protocol in 1996. And while initiatives relating to services trade have been successfully launched in recent years (including through a number of sectoral protocols) and Member States are engaged in a number of negotiations relating to services liberalization (e.g. in the context of the WTO and the Economic Partnership Agreement negotiations between the EU and ACP countries), the adoption of a framework for the liberalization of services in the region is still pending.

The Trade Protocol was signed in 1996 and came into force on September 1, 2000. Its objectives are to further liberalise intra-regional trade in goods and services; ensure efficient production; contribute towards the improvement of the climate for domestic, cross-border and foreign investment; and enhance economic development, diversification and industrialisation of the region[2]. In practical terms it aims to have 85% of all intra-SADC trade at zero tariffs by 2008 and the remaining 15% to be liberalized by 2012.

While the major focus of the Trade Protocol is the liberalization of trade in goods, Article 23 underlines the importance of trade in services for overall economic development and encourages Member countries to adopt policies and implement measures with a view to liberalizing their services sectors within the region. In order to implement the provisions of Article 23 SADC countries decided to have a separate Protocol on Trade in Services which was approved in July 2007 (details) and is expected to be adopted and signed in 2008. The draft Protocol sets out the framework for the liberalization of trade in services between SADC members and will serve as a basis for negotiations. Starting with six key services sectors (construction, communication, transport, energy (energy is not really a services sector per se, although there are important auxiliary services relevant for energy, e.g. distribution), tourism and financial)[3], the envisaged liberalization process seeks to eventually cover substantially all sectors and modes of supply. The aim is to reach a stage where each member state will treat the services emanating from other members, and the suppliers of such services, in the same way as its own services suppliers, and the services they supply. In

[1] The RISDP seeks to provide strategic direction with respect to SADC programmes, projects and activities. It aligns the strategic objectives and priorities with the policies and strategies to be pursued towards achieving those goals over a period of fifteen years.

[2] See http://www.sadc.int/english/documents/legal/protocols/trade.php

[3] These are backbone infrastructure services and by starting with them SADC countries are demonstrating that their interest in trade liberalisation is driven by the need to foster development.

terms of this plan substantial liberalization of intra-regional trade in services is to be achieved no later than 2015.

Under its project of support to SADC regional integration and multilateral trading system UNCTAD has provided technical assistance in institution and capacity building to the SADC Secretariat, SADC negotiating machinery and SADC government officials in initiating and conducting negotiations on trade in services with a view to supporting regional integration as well as building a coherent and mutually supportive approach for the SADC region in interregional and multilateral trade negotiations. The project assisted the process of negotiations of trade in services in SADC which takes place through the Trade Negotiating Forum (TNF) for services. It also provided capacity building assistance at national level and to delegates in Geneva in relation to the World Trade Organisation (WTO) services negotiations and the Economic Partnership Agreement (EPA) negotiations with the European Union. In addition, UNCTAD undertook assessment studies for SADC Member States.[4] This report reviews studies received from SADC member states, covering the six services sectors slated for liberalization under the SADC Protocol on Trade in Services (a list of reports on which this synthesis is based is contained in annexure 1).[5]

This regional assessment study contributes to this objective by providing the SADC Member States and the SADC Secretariat with elements necessary to them to participate in a more informed manner in regional, interregional and multilateral trade negotiations relating to services and to ensure coherence in trade policy-making at these different levels.

Each sector is briefly assessed in terms of its economic role in the member states concerned and across the region; then the regulatory and institutional structures governing the conduct of business within each sector is discussed with a view to identifying an initial list of regulatory issues suited to liberalization. The final sections proffer a suggested overarching approach to liberalization of services in SADC, and conclude, respectively.

[4] For more information on UNCTAD's work in the areas of trade negotiations and commercial diplomacy see http://www.unctad.org/Templates/StartPage.asp?intItemID=1917&lang=1 and for more information on its assistance to SADC see http://www.unctadxi.org/templates/Startpage____6748.aspx.

[5] A caveat is necessary here: the quality and coverage of the country and sector reports we reviewed was highly variable; hence we have supplemented from our own sources where possible and when time permitted.

2 ROLE OF SERVICES IN SADC AND NEGOTIATING APPROACHES

2.1 ECONOMIC IMPORTANCE

Services are critical to the development of most economies in the SADC region. They provide the bulk of employment and income in many countries and they are major contributors to GDP and trade. In 2006 the services sector contributed an average of 50% to the region's GDP. The contribution varied across countries with Madagascar, Mauritius, Namibia, South Africa, Swaziland, Zambia and Zimbabwe exceeding 50% in 2000 and 2006 (see Table 1 below). Services exceeded 40% of GDP in Botswana, Lesotho, Malawi and Mozambique.

Table 1: Distribution of GDP, (% share of GDP)

	Agriculture		**Services**		**Manufacturing**		**Industry**	
	2000	2006	2000	2006	2000	2006	2000	2006
Angola	5.66	--	22.21	--	2.89	--	72.12	--
Botswana	2.41	1.97	38.64	44.52	4.38	3.75	58.95	53.51
Congo, Dem. Rep.	49.97	45.67	29.73	26.60	4.82	6.49	20.30	27.73
Lesotho	17.92	17.17	40.69	41.85	16.96	18.07	41.38	40.98
Madagascar	29.21	27.54	56.56	57.21	12.24	13.40	14.23	15.25
Malawi	39.54	35.52	42.54	44.71	12.88	12.84	17.92	19.77
Mauritius	5.95	5.56	62.85	67.57	23.71	19.13	31.20	26.87
Mozambique	26.06	21.74	47.33	49.28	13.29	13.37	26.61	28.98
Namibia	10.96	11.26	60.69	57.73	11.09	12.88	28.35	31.01
South Africa	3.27	2.52	64.94	67.03	18.98	18.19	31.78	30.45
Swaziland	15.51	10.94	39.73	43.47	35.84	36.77	44.76	45.59
Tanzania	45.04	45.30	39.22	37.33	7.45	6.91	15.74	17.37
Zambia	22.31	16.05	52.40	59.20	11.42	11.54	25.29	24.75
Zimbabwe	18.49	21.91	56.52	50.69	15.80	15.49	24.98	27.40

Source: World Bank Development Indicators

On average regional services contribution to GDP in the region has grown from 48.6% in 2000 to 49.8% in 2006. Botswana, Zambia, Swaziland and Mauritius recorded modest growth rates between 2000 and 2006, whereas Zimbabwe, Tanzania and Namibia's services contribution declined.

The economic structures of the SADC countries also reflect great heterogeneity. They fall into two broad groups: those that rely on agriculture and those that are mineral based. The main economic activity of Mozambique, Malawi and Tanzania remains the agricultural sector. All three are also least developed countries (LDCs). In Mauritius the economy has for quite some time been driven by the agricultural sector. But due to adjustment programmes undertaken from the early 1980's, economic development has been fostered through export led industrialization, agricultural diversification and the expansion of the tourist industry. The mining sector continues also to be one of the most important sectors for some countries such as Botswana and Angola. Whereas this sector previously played a key role in the economies of South Africa, Namibia and Zimbabwe, it has been relegated to a secondary economic role in the past two decades.

Table 2: Basic economic indicators of SADC member states (2006)

	Land area (million km^2)	Population, total (millions)	GDP (current billion US$)	GDP per capita
Angola	1.200	16.4	44.0	1,970
Botswana	0.582	1.8	10.3	5,570
Congo, Dem. Rep.	2.267	60.6	8.5	130
Lesotho	0.030	1.8	1.5	980
Madagascar	0.587	19.1	5.5	280
Malawi	0.119	13.2	2.2	230
Mauritius	0.002	1.3	6.4	5,430
Mozambique	0.802	20.1	7.6	310
Namibia	0.824	2.1	6.4	3,210
South Africa	1.200	47.4	255.0	5,390
Swaziland	0.017	1.1	2.6	2,400
Tanzania	0.945	39.5	12.8	350
Zambia	0.753	11.9	10.9	630
Zimbabwe	0.391	13.1	5.0	340
TOTAL	**9.719**	**249.4**	**378.7**	

Source: World Bank Development Indicators

SADC countries vary considerably in population and land area (see Table 2 above). Together the 14 member countries of SADC cover 9.7 million square kilometres (the equivalent of the USA or China), have a population of approximately 249 million and had a combined GDP of US$ 378 billion in 2006. The DRC is the largest country of the region with the highest population of about 60.6 million. At the other extreme, Mauritius, the island covers only 0.02 thousand square km and has a population of 1.3 million. The other remaining countries vary widely in both land area and population size.

One of the main aspects of economic performance in the SADC region is South African dominance. The country represents more than 67% of the combined regional GDP and about 19% of its population. The role of South Africa is also important through trade and transport. With respect to transport, Botswana, Lesotho, Malawi, Swaziland, Zambia, Zimbabwe, all landlocked countries, are highly dependent on South African ports with 90% of their trade passing through South Africa[6] . Countries in the sub-region also depend significantly on South Africa's railways, highways, airports and other transit transport facilities. South Africa is a major player in the export of services as it is among the top 15 developing country services exporters which account for 80 percent of all developing country services exports.

Beyond the services sector's immediate contribution to GDP, it plays a critical role in the broader development of economies. Furthermore, the structure of foreign direct investment (FDI) has shifted toward services sectors such as finance, electricity, water and telecommunications over the past three decades. This sector accounted for approximately 25% of FDI in the 1970s

[6] Mpata et al (2004 and 2005), Improving Transportation of Logistics for Competitiveness of Lesotho, Namibia and Swaziland, Southern Africa Global Competitiveness Hub, Regional Center for Southern Africa, USAID

and has since grown to an estimated $4 trillion in 2002[7]. Key producer services such as telecommunications and financial services have been shown to be closely linked with economic growth. The role of services as inputs to many production processes means that a country with an efficient services sector is also likely to gain more from goods liberalisation.

According to the theory and models of comparative advantage, the benefits to liberalisation accrue to consumers of imports through cheaper services and to the producers of services exports, if they have a comparative advantage in the production of the service. In the case where service liberalisation results in the equalisation of factor income, there will be no gains from the liberalisation of services as services will be traded by being embodied in goods. For example, if a country does not have the skills necessary to exploit a natural resource or where local transport services are sub-standard. Should factor equalisation not occur (the more likely case given differences in technology and domestic policy), then the gains from trade would be similar to that for trade in goods. These models also predict that the gains from goods liberalisation will be larger if it is accompanied by services liberalisation. In scenarios like these, where local and foreign factors are complements, trade liberalisation results in increased productivity and demand for local factors. This may imply that small countries can gain significantly from services liberalisation because of their limited domestic markets[8].

This conventional, economists' view of the gains to liberalizing services trade lends itself to unilateral approaches to liberalization. It also supports multilateral liberalization via the World Trade Organization (WTO), particularly through recourse to the General Agreement on Trade in Services (GATS) article 2, which requires application of the most-favoured-nation clause to multilateral liberalization.

On the other hand, many developing countries remain committed to developing domestic capabilities in order to underpin diversification of their economies. In this paradigm, temporary protection for local producers may be necessary, which translates into maintaining policy space to pursue such actions. Hence liberalization is approached cautiously, and the gains from specialization and greater efficiencies may be deliberately postponed in order to achieve broader societal goals as defined by government. This approach lends itself to regional liberalization approaches, or a case of testing the market regionally before opening to the world. It also suggests a cautious approach to liberalization in the WTO, for fear of foreclosing policy space.

The broad debate précised in the preceding two paragraphs has been raging for years, with no resolution in sight. The choice of approach to liberalization in any country hinges on domestic political-economy factors, which in the SADC case vary widely and consequently cannot be analysed here. Yet this

[7] UNCTAD (2004), World Investment Report 2004: The Shift Towards Services, United Nations, Geneva, Switzerland.
[8] Copeland, B. (2002). Benefits and Costs of Trade and Investment Liberalization in Services: Implications from Trade Theory see http://www.dfait-maeci.gc.ca/eet/pdf/16-en.pdf.

debate has a direct bearing on the approaches SADC countries may take to services liberalization, and is reflected in varying policy stances to the six sectors covered in this paper across the countries surveyed.

Negotiations on the liberalization of trade in services are taking place in different forums and at different levels (bilateral, regional and multilateral). All negotiations are interrelated, since commitments adopted at one level influence developments in others, making the whole negotiating process rather complex. The deeper the level of commitments adopted in the multilateral framework and the wider their scope, the smaller is the space left for preferential liberalization to take place in the framework of bilateral or regional agreements. For instance in the Tourism sector, most of the countries have put no limitations to market access under consumption abroad i.e. mode 2[9]. Whereas this might be beneficial as mode 2 is critical to the tourist industry, it means that even if commitments were made under SADC in Mode 2, they would either be more restrictive than at the Multilateral level or would be the same. Thus it would be meaningless to make commitments under SADC when countries already have a better deal at the multilateral level. It would also mean that giving preferential market access treatment to SADC countries under mode 2 would virtually be impossible unless done at the horizontal level. Furthermore and according to Fink and Jansen,[10] if one assumes that the effects of “learning by doing” are important and have an impact, then liberalization at the regional rather than at the multilateral level will encourage efficiency as service providers within the Free Trade Area (FTA) will face competition from within the FTA but will be protected from global competition. This will prepare service providers within the FTA for competition at the global level and would reduce adjustment costs once countries within the FTA open up to global competition. Countries which therefore make deeper and wider commitments at the multilateral level therefore lose out on this learning process and its benefits.

All regional services agreements offering preferential liberalization concluded among WTO members are supposed to be compatible with Article V of the GATS[11] and ensure a greater depth of liberalization among members than that of the GATS (known as GATS plus). It is important to bear in mind, however, that there is no consensus on what this means, practically, in terms of extent and levels of liberalization. Unlike GATT Article XXIV, covering the liberalization of goods trade in a regional agreement, there are no tariffs or flows of goods to measure; rather in the GATS countries grapple with regulations and serious data constraints. Therefore GATS Article V is open to substantial interpretation.

[9] See table on GATS commitments in the Tourism sector below.

[10] *Services Provisions in Regional Trade Agreements: Stumbling or Building Blocks For Multilateral Liberalization* at page 6 available at www.wto.org/english/tratop_e/region_e/con_sep07_e/fink_jansen_e.pdf

[11] Article V stipulates that RTAs should: (a) have substantial sectoral coverage; and (b) provide for the “absence or elimination of substantially all discrimination” through elimination of existing discriminatory measures and/or through the prohibition of new or more discriminatory measures either at the entry into force of the agreement or on the basis of a reasonable time-frame. The “substantial sectoral coverage” refers to the number of sectors, volume of trade affected and modes of supply. In order to meet this condition, agreements should not provide for the *a priori* exclusion of any mode of supply.

Many regional trade agreements offer greater predictability to service providers through their provisions than does the GATS. Several preferential agreements in the western hemisphere include an explicit “status quo” or “standstill” provision for the treatment of existing service measures which precludes the introduction of any new restrictions on services trade among members, while other agreements provide for this implicitly. Regional trade agreements can in principle target deeper integration among members than can an agreement at the multilateral WTO level which currently encompasses approximately 151 members. So if substantial liberalization is the aim, a regional trade agreement may be the most politically feasible means to achieve it.

But regional services trade liberalization will be more complicated than liberalization of goods. Supply of services mostly requires proximity between producers and consumers. This requires movement of either service producers or service consumers, or movement of capital to invest in service activities. Further, barriers to services trade are mostly embedded in national laws and regulations. Liberalising regulations is a more challenging task than simply reducing tariffs. It requires careful design of an appropriate way, timing and forum in which to carry out the liberalization. Successful liberalization will require introducing competition (not just changing ownership) and effective regulation to correct market failure and in some sectors ensure social goals such as universal access. Appropriately designed domestic regulations can help reform at national level and provide meaningful market access at both regional and international levels.

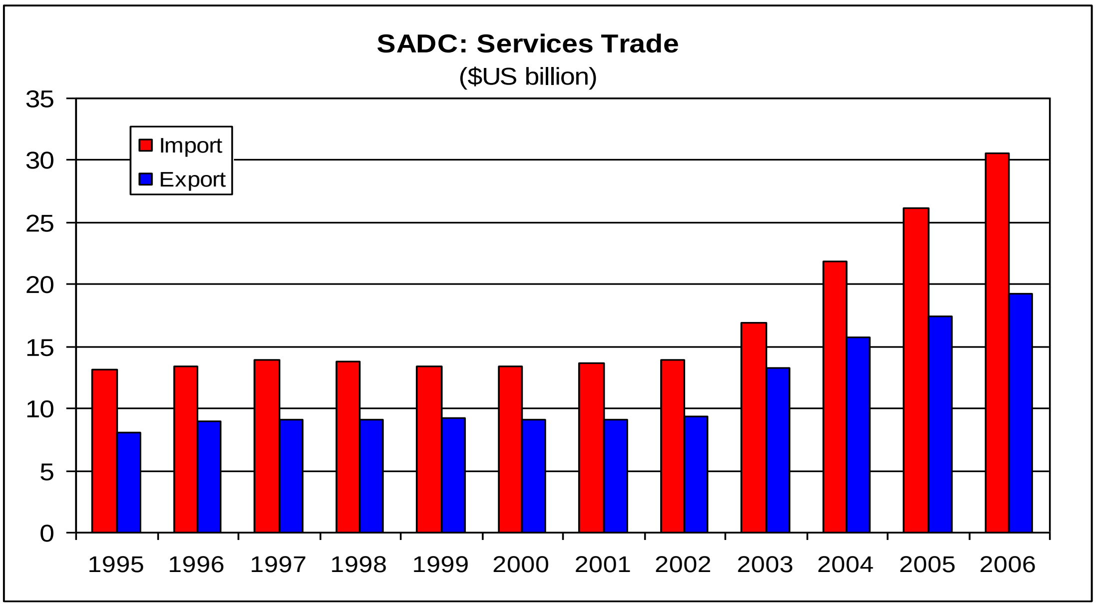
Furthermore, although some developing countries have been able to implement successful service export strategies aimed at the world market, for most SADC countries export markets are primarily neighbouring countries. Thus, on the face of it regional (SADC) and sub-regional (SACU) integration is better suited to providing opportunities for regional firms to expand trade in services and strengthen their capacities prior to exporting to the world market.

However, private sector capacities in the region are very weak, therefore the supply response is likely to be weak, and so the economic objectives associated with regional services liberalization are not likely to be met through regional liberalization alone. Consequently, in the analysis below we point out where we think unilateral and/or multilateral liberalization may bear more fruit. Offsetting this in some cases, such as Mode 4 liberalization, there are serious constraints to pursuing liberalization in the WTO.

2.2 TRADE

Figure 1 show that total SADC total SADC services trade was over US$30 billion in 2006. This was 37.9 per cent of regional GDP.

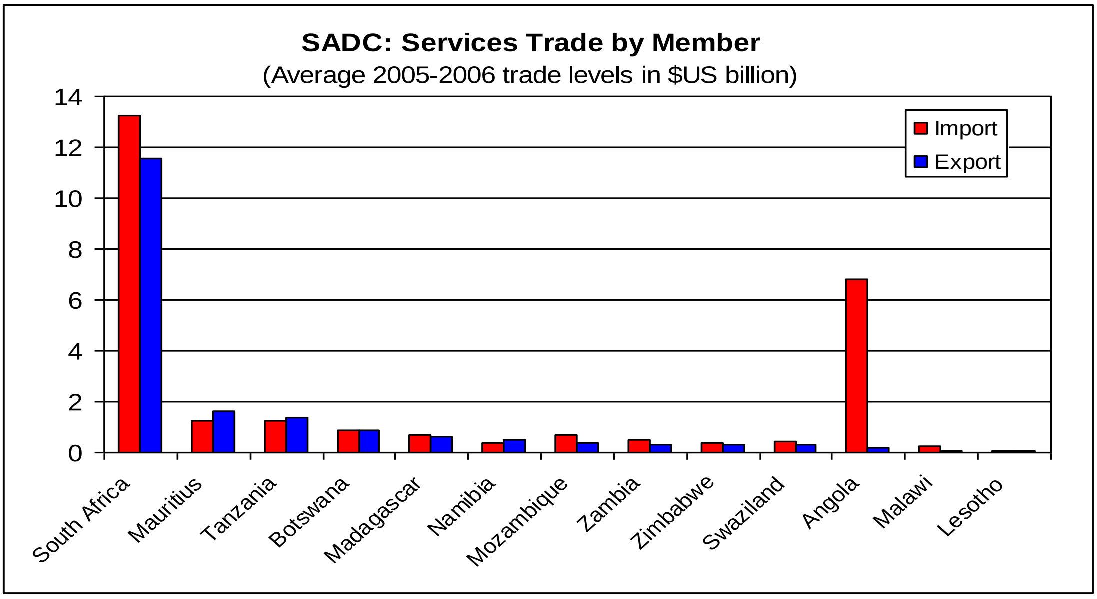
Figure 1: SADC Services Trade



Source: UNCTAD Handbook of Statistics 2007

Total services trade was highest in South Africa and Angola (see Figure 2 below). It was lowest in Malawi and Lesotho. Furthermore, most countries are net services importers. Only Mauritius, Namibia and Tanzania had a surplus on their services account in 2006. This pattern of external trade in services exhibits a great potential to increase services exports and diversify SADC trade in goods into services trade.

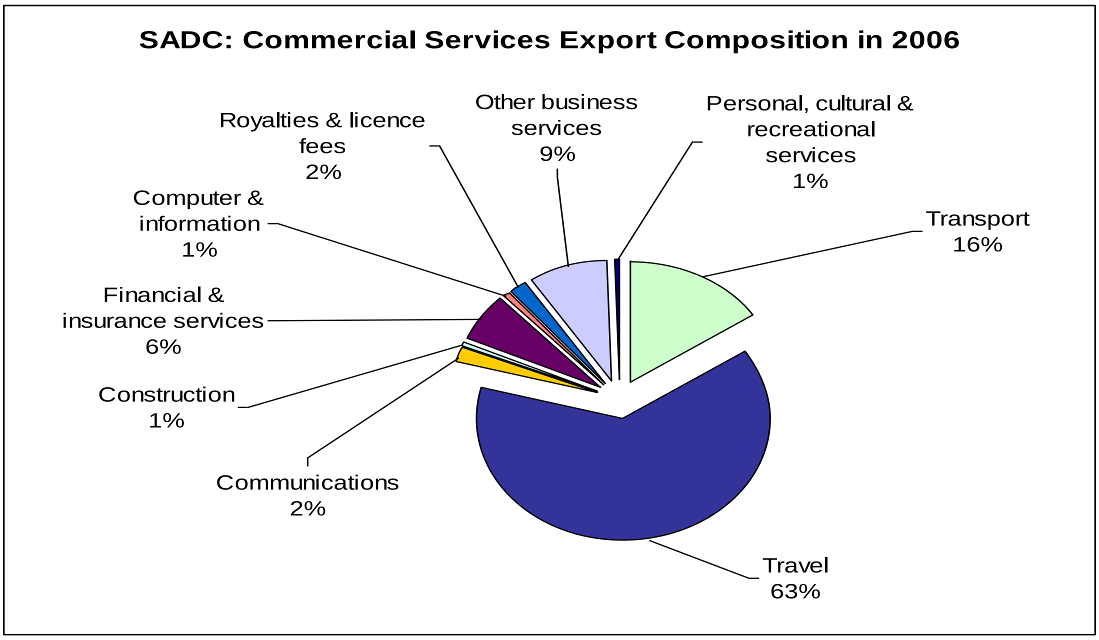
Figure 2: SADC Services Trade by Member Country



Source: UNCTAD Handbook of Statistics 2007

Figure 3 below shows that tourism services dominated the export composition of total services exports in 2006. This was followed by transport services (16%), other business services (9%), financial services (6%) and communication services (2%). Construction services accounted for a mere 1%.

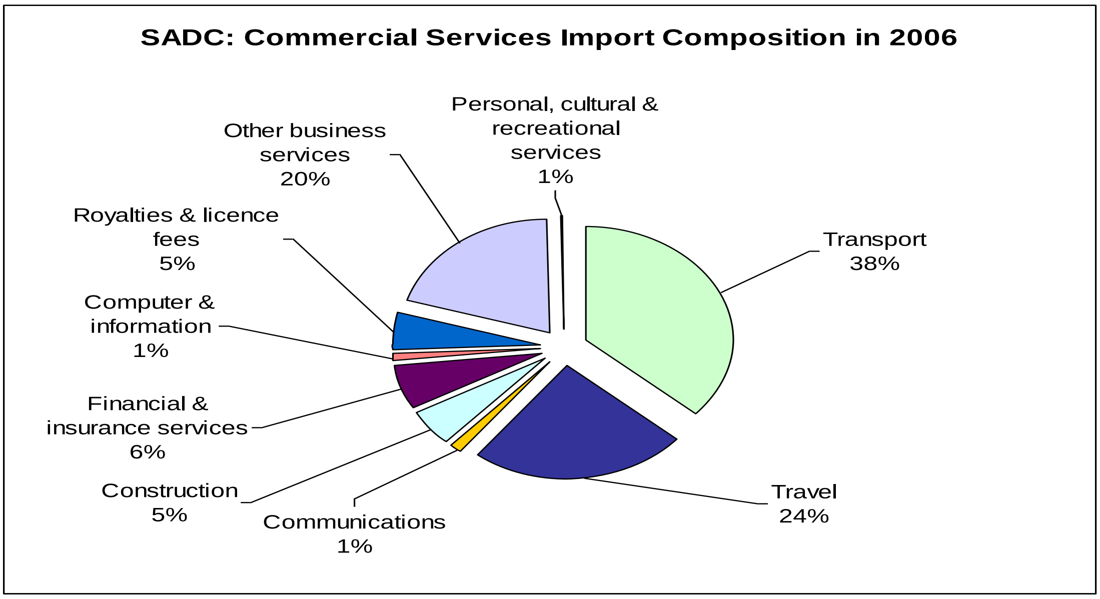
Figure 3: SADC Composition of Services Export



Source: UNCTAD Handbook of Statistics 2007

According to Figure 4 below transport and tourism services were the dominant services imports to the region in 2006, both accounting for over 60% of total services imports. Other banking services, financial and construction services respectively accounted for 20%, 6% and 5% of total services imports in 2006

Figure 4: SADC Composition of Services Imports



Source: UNCTAD Handbook of Statistics 2007

3 SADC PRIORITY SERVICES SECTORS[12]

This section assesses the six services sectors. The assessment covers both economic and regulatory/institutional aspects pertaining to each sector from a regional perspective. A summary of key sector-specific recommendations is contained in Annexure 2.

Overview of WTO Commitments

All of the countries studied are members of the WTO and are parties to the General Agreement on Trade in Services (GATS). Article XVI:2 of the GATS lists six categories of restriction which may not be adopted or maintained. A country is allowed to maintain any of these limitations provided it inscribes such limitation in its schedule of commitments[13]. The prohibited limitations are: limitations on the number of suppliers; limitations on the total value of service transactions or assets; limitations on the number of service operations or on the total quantity of service output; limitations on the total number of natural persons that may be employed; measures which restrict or require specific types of legal entity or joint venture; and limitations on the participation of foreign capital. Market access limitations in schedules therefore fall into one of these categories.

Most countries have put no restrictions in the financial services sector. The only restrictions which exist relate to mode 4 where they are unbound and apply horizontally. This includes the fact that for a non-resident to work in another member country, he/she has to have the necessary visas and there are limitations as to how much money can be carried

In the tourism sector, some countries have opened completely. For example Zambia and Zimbabwe have opened their sectors while Tanzania hasn't. Telecommunications is also an area where the majority of the countries have not made any restrictions except for fixed line services. The energy sector is also unbound and hence restrictions to market access as well as national treatment apply.

Some horizontal measures which apply in all of the countries are with regard to Mode 4. This area requires that foreign entities should have work and residency permits in order to supply certain services. Furthermore, where a

[12] During the 2nd TNF-Services, held in Geneva, from 30th November to 1st December, 2000, Member States agreed to start negotiations in six priority sectors namely: communication, construction, energy-related, financial, tourism and transport services.

[13] If a country decides to offer market access on Mode 3 for example, it has to specify any or all of the 6 limitations in GATS Article XVI.2 if it wishes to maintain them. Failure to do so mean that it cannot be allowed to introduce such limitation. This provision also fosters transparency, as it allows trading partners to have a clear idea about the extent of openness a country has agreed to.

supplier of a service belongs to a professional body, proof of membership in such professional body has to be shown

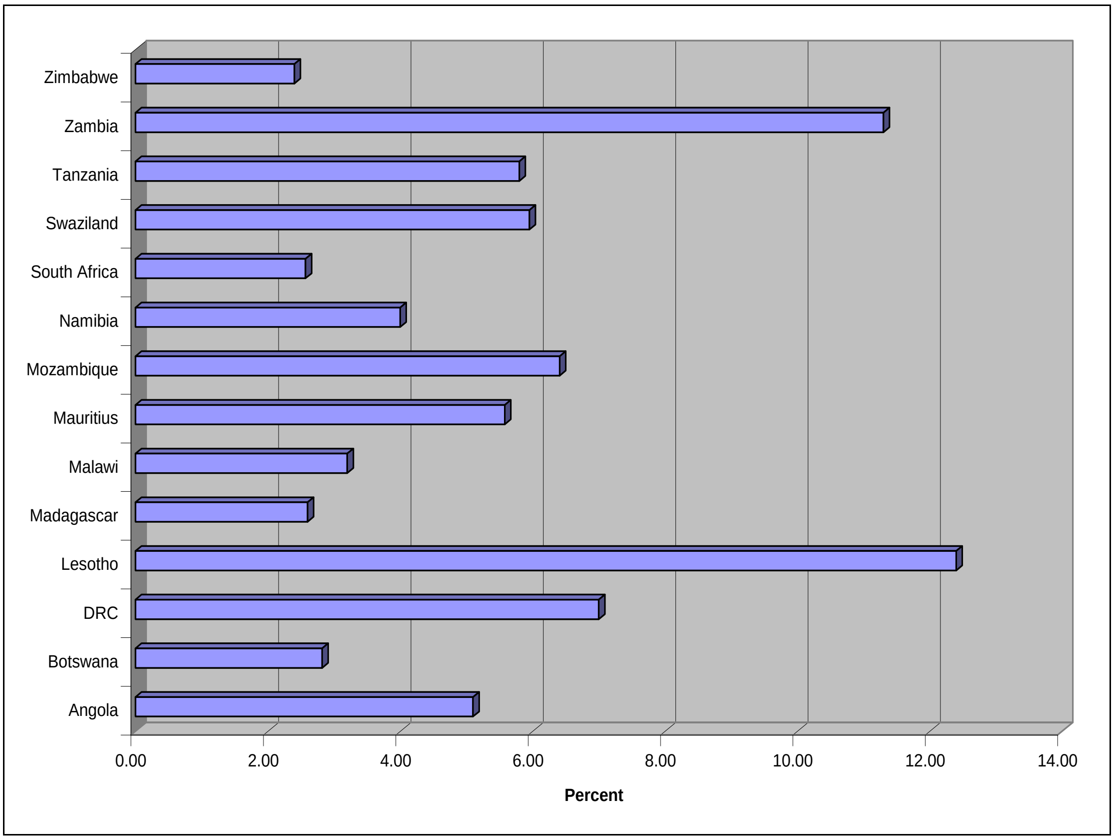
Next we turn to the sector studies, beginning with construction.

3.1 CONSTRUCTION SECTOR

3.2.1 Economic Issues

SADC countries view construction as a key infrastructure service and as a tool for upgrading welfare. Development of this sector directly contributes to the attainment of Millennium Development Goals. The construction sector contributes 12.4% and 11.3% of GDP in Lesotho and Zambia, respectively (by far the highest in the countries surveyed), 7.% in the DRC, 6.4% in Mozambique, 5.9% in Swaziland, 5.8% in Tanzania and less than 3% in Zimbabwe. Furthermore, this sector accounts for approximately 5% and 9% of national employment in Tanzania and Zimbabwe, respectively.

Figure 5: Contribution of construction services to GDP (2006)



Note: Figures for Mozambique, Swaziland & Zambia are for 2005. Data for Angola is not available
Source: SADC

South Africa boasts a number of large and extremely competent construction firms that dominate the regional market. Though South Africa has a large number of highly skilled engineers in the region this is dwindling owing to emigration, ageing, and inadequate replenishment. Yet other SADC countries experience chronic skills shortages in the sector and are forced to import relevant skills, primarily from South Africa (which has its own shortages), India and China.

The movement of foreign nationals in developed countries is often subject to visa and residency requirements, and economic needs tests, even for project related work of short duration, and frequently with little transparency as regards the criteria applied in the issuance of visas and work permits, which may penalize nationals of developing countries. Therefore, the construction sector and the regional economy as a whole would benefit from a more open and transparent approach to skilled migration.

In recent years sensitivities to immigration have worsened owing to increases in international terrorism and organised crime. This makes it unlikely for the GATS negotiations to effectively liberalise Mode 4 in the near future even though this is a viable option in dealing with migration as it promotes temporary and circulatory flows as opposed to long-term or permanent migration. Because of these difficulties unilateral reforms and regional or bilateral Mode 4 liberalisation pacts are increasingly seen as an alternative option. The multilateral framework is weak in the sense that it fails to provide guarantees that the movement of persons will be temporary. This may require both the receiving and sending country to work together. Indeed, international experience shows that it is relatively easier to make headway on certain issues of developmental importance (i.e. regulatory harmonisation in transport etc) in RTA's among a smaller subset of countries than in the slow moving multilateral negotiations forum in terms of GATS. These RTA's are also important as means of 'testing the waters' and then provide lessons for the multilateral trading system. The liberalisation of movement of natural persons is a classic example in this regard.

Furthermore, the strengthening of domestic and export supply capacity relies upon the ability of SADC countries to continuously upgrade their technological capacity. SADC countries may seek to attach requirements of associations and joint ventures, so as to include local companies in the design and implementation of construction projects. This is seen to be an effective way of obtaining technology transfer. A SADC services deal could assist in developing regional approaches to such transfers.

Currently there seems to be little foreign competition in the regional market, though most major firms enjoy some minority level of foreign ownership. Small market sizes, complex domestic procurement practices, and the dominance of a few large South African construction firms, suggest that future competition is likely to be limited. Offsetting this is the growing presence of Chinese construction firms in several SADC countries, and the potential for Indian investments down the line. The potential for Asian firms in particular to invest in regional markets again suggests that a multilateral and/or unilateral liberalization approach would be more beneficial than a purely regional one which simply opens to South African firms already entrenched in the region.

Since the majority of firms doing construction work within the region are foreign, this could imply that most of the funding for these works does not stay within the country. SADC countries therefore lose out substantially. In order to minimize this loss it is necessary that SADC member states leverage procurement in construction in order to promote certain developmental gains. For instance procurement of construction works could be subject to conditions that construction firms should employ locals or that they should enter in joint ventures with local construction firms. This could promote local participation and would have the added advantage of retain funds for the projects. However there is a danger that this may violate Article XVI of the GATS which prohibits certain restrictions unless they are specifically mentioned in each country's schedules. This could present problems for SADC countries which have already made commitments in the construction sector as they have made no limitations to market access and national treatment. The only restrictions which apply are those mentioned in the horizontal commitments within the sector. Thus for these SADC member states there only recourse could be to resort to these horizontal commitments. However their impact would be minimal as they only apply to Mode 4. As for the other countries which haven't made any commitments at all, they have to factor in these limitations when making their commitments at the multilateral level.

However it should be noted that the fact that some countries have in essence liberalized the construction industry while others haven't could make it difficult to come up with one regional policy on leveraging construction procurement to promote local participation and to offset some of the consequences of liberalization as it would be difficult to reconcile the different commitments made at the multilateral and regional level.

3.2.2 Regulatory Issues

The construction industry is one of the highly regulated sectors within the SADC region. It is regulated by Government as well as a plethora of professional bodies performing different functions, from setting quality standards to determining procurement procedures and enforcing codes of conduct in the different professions within the construction industry. Construction firms within this industry operate as companies with subsidiaries or branches, and in some cases they operate as joint ventures. The industry within the region[14] allows 100% private ownership of construction firms and foreign participation in the countries for which information is available is allowed without any limitation as to the equity which foreigners can own in such firms, except in Tanzania. Table 3 summarises regulatory constraints regarding operations of foreign companies in the construction sector.

[14] This refers to Mauritius, Namibia, South Africa, Tanzania, and Zimbabwe. There is no information on ownership for the rest of the SADC countries

Table 3: Regulation in the construction sector

Country	maximum equity	licenses	membership of professional body	new entrants	minimum capital requirements	Preferences in tenders
Angola	100%(no information)	no information	required	allowed	no information	no information
Botswana	no information	no information	no information	no information	no information	no information
DRC						
Lesotho	no information	yes	no information	not allowed	no information	no
Madagascar						
Malawi	100 %(100%)	yes	no information	allowed	no information	no
Mauritius	100%(100%)	yes	required	allowed	not required	no information
Mozambique	100%(100%)	yes	no information	not allowed	no information	no
Namibia	no information	yes	required	allowed	no information	Yes
South Africa	100%(100%)	yes	required	allowed	required	Yes
Swaziland	100%(no information)	no information	no information	no information	no information	no information
Tanzania	100%(100%)	yes	required	allowed	required	Yes
Zambia	100%(100%)	yes	required	allowed	required	Yes
Zimbabwe	100%(100%)	yes	required	allowed	no information	no information

Source: UNCTAD questionnaires

Furthermore, professionals such as civil engineers and architects have to be registered under and belong to a professional body. The requirements for belonging to these professional bodies are very similar within the region in that one must have the minimum qualification which is a degree from a recognized university and must have some practical experience for a specific timeframe usually between one to two years depending on the profession and country. These requirements apply to foreigners as well. There are no mutual recognition agreements within the region. This is probably because most of the countries within the region are construction services importers and hence only import from developed and developing countries such as South Africa and China. There is therefore an informal recognition of the standards and qualifications of these construction service providers by the mere fact that they originate from a country which is more developed than the importing country. However if countries within the region especially the LDC's were to export construction services, the need for mutual recognition agreements would arise. As to whether developing countries within the region have mutual recognition agreements, there is no information available.

For those countries within the region for which information is available,[15] licences are required in order for firms to provide construction services within those countries. Requirements for acquiring these licenses are also similar. For instance the following requirements have to be met before such license is issued: payment of license fees, proof of qualifications, cash bond has to be made, the firm has to show proof of previous works and enrolment in a professional or trade register.

[15] i.e. Mauritius, Namibia, South Africa, Tanzania, Zambia and Zimbabwe.

The sector also has regulators in all the countries studied. However some of these regulators are simply government departments. For instance in Mauritius, Zimbabwe, Botswana and Namibia the construction industry is regulated by the Ministry responsible for Public Works and Infrastructure. This ministry works hand in hand with the different professional bodies. In Zambia and South Africa there is a body independent from the Government which regulates the construction sector. In South Africa all of the professional bodies fall under the regulator which is called the Council for the Built Environment. In addition to this body, there is another regulator called the Construction Industry Development Board whose role is to regulate all companies wishing to compete for public sector work by grading them according to the size and type of project for which they may compete.

For all the countries which submitted information on procurement procedures[16], all the countries provide preferences to local contractors in their tendering processes when awarding contracts. In addition, for all the countries which submitted information with the exception of Mauritius, firms have to meet minimum capital requirements before applying for contracts whether such contracts are donor funded or government funded.

However there are a number of problems relating to education, exchange control, taxation, quality, standards and government procurement practices in the construction sector. Together, these appear to impose severe constraints on the development of a safe and competitive industry. Addressing these constraints requires greater coordination and action.

Most striking is the prevalence of preferences within the region. That is to say some countries[17] have adopted measures which favour the awarding of contracts to local firms. The rationale is to ensure that locals also benefit economically from these projects.

Closely linked to this is the need to provide opportunities to previously disadvantaged groups of people. For instance Namibia has a national employment policy and legislation which gives priority to employment of Namibians including in the public works framework where skills transfer to Namibians is part of the sectoral policy. Employment of non-nationals is permitted when the required expertise is not available at local level. Construction works are usually awarded on a tender basis. However, due to Namibia's affirmative action policy, procurement policy provides for preferences which favour Namibian domiciled contractors and consultants. Namibia also has an affirmative action Act which applies to all sectors - private or public - with regards to employment of previously disadvantaged Namibians. Further preferences are awarded if the project employs a number of small local industries, develops rural areas or implements Namibia's affirmative action policy.

[16] i.e. Namibia South Africa Tanzania and Zambia.
[17] South Africa, Namibia, Tanzania and Zambia.

This is similar to South Africa which has a black economic empowerment (BEE) charter within the construction sector and though companies are not forced to implement it, they get an added advantage in the tender awarding process if their proposals take the charter into account. Just like Namibia, the country's immigration policy also affects trade in construction services as foreigners can only work in South Africa if they have a work permit and for a local or foreign company to employ a foreigner it has to prove that there aren't locally available skills. The immigration policy has incorporated a different permit called a quota permit which has less stringent requirements; however the quotas are usually too low to make a significant impact. On the other hand South Africa has managed to export construction services to the rest of Africa as its firms possess the skills, capital and material to undertake basic infrastructure projects in nearby countries and this gives them a comparative advantage.

Zambia also has requirements that favour local construction companies as preferences are awarded to local construction firms. However, these rules have been watered down, apparently due to World Bank and donor pressure as they fund most construction projects in Zambia. The construction industry is therefore dominated by foreign construction companies. However, it is likely that foreign companies would dominate the local market even in the absence of the mentioned liberalization policies and if the playing field was levelled.

Tanzania has similar requirements to Zambia and South Africa with regard to employment. It also has requirements that limit foreign participation, for instance a construction company can only have 49% of its equity in the hands of foreigners. Still private ownership of construction companies is allowed. Contracts are also awarded on a tender basis and the Procurement Act encourages joint ventures with locals by awarding preferences to companies which team up with locals. Furthermore foreign construction firms can only tender for works whose value is more than one billion shillings or more. All firms have to have licenses to operate and there are four different licenses that a firm can possess. The fees for these licenses are lower for local companies than for foreign companies. Furthermore minimum capital requirements are lower: domestic firms need to have minimum capital of one hundred thousand dollars while foreign firms need to have a minimum of three hundred thousand dollars. Only locally established foreign companies and domestic companies can participate in construction of donor-funded works procured by government entities. Thus foreign companies with no commercial presence cannot participate. Locally based foreign firms can be prime contractors and therefore the government does not restrict their role to that of mere sub-contractors. Immigration rules are not too strict. For instance a firm can automatically employ 5 expatriate workers without having to apply for a work permit. The government also does not offer any incentives to any companies local or foreign.

3.1.3 GATS Commitments

For those WTO Members that made commitments on construction services their schedules mainly covered general construction work for building and for civil engineering. Most such commitments focus on commercial presence and Mode 1, while Mode 4 has the lowest number of commitments; and there are few MFN exemptions on construction services. In SADC only Lesotho, Malawi, South Africa, Democratic Republic of Congo, and Zambia made GATS commitments in this sector.

Table 4: Construction services: WTO GATS commitments of the SADC countries

COUNTRY	LIMITATION ON MARKET ACCESS				LIMITATION ON NATIONAL TREATMENT			
	Mode 1	Mode 2	Mode 3	Mode 4	Mode 1	Mode 2	Mode 3	Mode 4
Angola:	***	***	***	***	***	***	***	***
Botswana	***	***	***	***	***	***	***	***
DRC	None	None	None	“Unbound”	None	None	None	“Unbound”
Lesotho	Unbound*	None	None	“Unbound”	Unbound*	None	None	“Unbound”
Madagascar								
Malawi	None	None	None	“Unbound”	None	None	None	“Unbound”
Mauritius	***	***	***	***	***	***	***	***
Mozambique	***	***	***	***	***	***	***	***
Namibia	***	***	***	***	***	***	***	***
South Africa	Unbound*	None	None	“Unbound”	Unbound*	None	None	“Unbound”
Swaziland	***	***	***	***	***	***	***	***
Tanzania	***	***	***	***	***	***	***	***
Zambia	None	None	None	“Unbound”	None	None	None	“Unbound”
Zimbabwe	***	***	***	***	***	***	***	***

EXPLANATORY NOTES: Restrictions=bound with restrictions; Unbound=MFN not applicable, “Unbound”=unbound except as indicated in the Horizontal section; Unbound= Unbound due to lack of technical feasibility; ***= No commitments; None= no limitations. Where the sub-sector is mentioned it means the country made commitments in that sub-sector only. For instance in the financial services table banking is mentioned for Angola because it made commitments in this area. Where no sub-sector is specifically mentioned as for South Africa in the Construction table above, it means that the commitments made in all the sub-sectors within the construction sector are the same. Hence South Africa made no limitations for mode 2 in the construction sector as a whole from CPC 512-517.*
Source: WTO

3.1.4 Remarks

The supply of construction industry services is affected within the region by the lack of skills in this sector. This lack of skills means that the supply and quality of construction works is compromised. And this in turn restricts the capability of SADC countries to export these services. Apart from South Africa, most SADC countries do not export construction works and hence their role in trade in these services is that of importers. Furthermore, the lack of technological capacity has the effect of hindering mode 1 supply of construction services such as the electronic supply of design, and project management services as these services can be provided through the internet especially with the construction industry increasingly becoming more dependent on computer use. The lack of these skills within the SADC region means that the region cannot become an exporter of these services and therefore they cannot benefit from outsourcing. Therefore, it would appear there is much to gain through introducing greater competition and technologies into regional construction markets.

Secondly most of the countries do not recognize each others qualifications and this makes it harder for mode 4 movement of workers. Coupled to this is the need for natural persons in these sectors to belong to certain professional bodies before they can undertake any construction projects. If the process for attaining membership into these bodies is restrictive or if qualifications are not duly recognized, this can be a barrier to entry. Therefore mutual recognition agreements need to be put in place.

Furthermore, restrictions arise during the procurement of these works. Since in all the countries it is a legal requirement that most construction works are awarded based on a tendering process, the manner in which this process is conducted is critical. For instance, in South Africa, the documentation for tendering is apparently so large that the process becomes cumbersome. And some governments such as Tanzania provide preferences to local firms or to firms which have a majority local shareholding. This unequal treatment means that foreign entities face barriers to trade, whilst construction efficiency may be compromised. It could therefore be important for procurement processes to allow for more participation of foreign firms by limiting the extent of preferences granted to local firms. This could be achieved by, for instance, extending preferences to foreign firms if they have a good track record in similar projects. Furthermore, the criteria for awarding tenders should not look at the price only but also other factors such as the quality of the work. This will ensure that more firms participate in construction projects. Owing to the potential political sensitivity of these proposals they could be adopted initially on a regional basis.

While BEE has contributed to expansion of opportunities for small and medium enterprises (SMEs), and black - and women-owned enterprises in the general contracting category both in Namibia and South Africa, it hasn’t created similar opportunities in specialist contracting sectors that require specialist skills and greater capital resources including, for example, electrical and mechanical engineering. This would seem to indicate the limitations of BEE and preferential procurement as drivers of empowerment and the need for programmes aimed at development of specialist enterprises.

3.1.5 Specific Policy Recommendations

- ✓ Adopt unilateral liberalization measures for mode 1 supply of technology-based services, notably design, on an MFN basis.
- ✓ Establish mutual recognition agreements to encourage portability of skills within the region;
- ✓ Promote mode 4 liberalization on an MFN basis in order to attract skills from outside the region;
- ✓ Consider loosening procurement policies in order to encourage greater participation by regional firms;
- ✓ Bind commitments in these areas in the WTO.

3.1 ENERGY SECTOR

Unlike other services, energy services are often very difficult to categorize because they have elements of both goods trade and services trade. For instance, electricity itself is considered a good. However, transmission and distribution of electricity is a service, as is consulting in the electricity industry.

3.1.1 Economic Issues

The region has proven reserves of coal, oil and natural gas. Below we focus on trade in electricity, which in Southern Africa is generated mainly through thermal or hydroelectric resources (with one nuclear facility in South Africa). Natural gas is also becoming more significant to the region's energy sector as fields off Mozambique, Namibia, South Africa and Tanzania are developed. Furthermore, a majority of Southern Africa's population still relies on the use of bio fuel (wood and charcoal) as its primary source of energy.

As shown in Table 5 below, SADC total electricity production was 308.762 billion kWh in 2005. The leading electricity producers were South Africa at 264 billion kWh, followed by Mozambique (13.170 billion kWh), Zimbabwe (9.950 billion kWh), and Zambia (8.850 billion kWh). In the same year, total regional electricity consumption was 286.773 billion kWh, led by South Africa (241.400 billion kWh), Zimbabwe (12.270 billion kWh), Mozambique (9.127 billion kWh) and Zambia (8.655 billion kWh).

Table 5: SADC electricity production and consumption

Country	Electricity			
	Production (bil. kWh, 2005)	Consumption (bil. kWh, 2005)	Exports (bil. kWh, 2005)	Imports (bil. kWh, 2007)
Angola	2.585	2.201	0.000	0.000
Botswana	0.912	2.602	0.000	1.754
DRC	0.352	0.572	0.000	0.418
Lesotho	0.350	0.339	0.000	0.013
Madagascar	1.046	0.973	0.000	0.000
Malawi	1.397	1.299	0.000	0.000
Mauritius	2.122	1.973	0.000	0.000
Mozambique	13.170	9.127	12.000	9.588
Namibia	1.688	2.863	0.078	1.567
South Africa	264.000	241.400	13.420	11.320
Swaziland	0.460	1.300	0.000	0.872
Tanzania	1.880	1.199	0.000	0.136
Zambia	8.850	8.655	0.243	0.465
Zimbabwe	9.950	12.270	0.000	3.013
TOTAL	**308.762**	**286.773**	**25.741**	**29.146**

Source: CIA World Factbook and authors' own calculations

The SADC region is a net importer of electricity, by virtue of having exported and imported 25.741 and 29.146 billion kWh, respectively in 2005. South Africa and Mozambique were the leading exporter and importer countries, together accounting for approximately 45% and 39% of total electricity trade in SADC respectively.

Notwithstanding the existence of huge power generation potential in the region, in most SADC countries energy generation is not enough to meet domestic needs. Consequently, some countries purchase power from their neighbours within the SADC region and elsewhere. The region is overly dependent on South Africa's electricity parastatal, Eskom, for electricity provision. Yet Eskom is currently running out of excess capacity as regional demand is outstripping supply. This chronic shortage is expected to grow if investment in new energy projects is not made.

The DRC has extensive potential energy resources to relieve the shortage. The country reportedly has hydroelectric reserves of approximately 100,000 MW. The Inga dam alone, on the Congo River, has a potential capacity of 40,000-45,000 MW, which could supply all of Southern Africa's electricity future needs[18]. However, due to political and economic risks in the country investment is lacking to optimally develop this amount.

Additional salient country features include, inter alia:

<u>Mozambique</u>: the country is seeking funds to modernize the Cahora Bassa facility at an expected cost of $40 million. This facility has a potential capacity of 2.075 MW. Furthermore, the country is seeking investment for a new 2,400 MW hydroelectric facility on the Zambezi River, and South Africa's Eskom has expressed interest in constructing a 100-MW power station adjacent to Mozambique's Moatize coal fields[19].

Recent media reports point out that Riversdale Mining has initiated a study into building a 500-MW power station in the country and this could be commissioned by 2012[20]. To this end the company has signed a memorandum of understanding with the Mozambican energy authorities to begin work on the coal-fired power station.

<u>Botswana</u>: the country plans to provide electricity to 70 percent of the population by March 2009 and to the rest of its citizens by 2016. Currently, only 22 percent of Botswana's population has access to electricity. The generating capacity of the Botswana Power Corporation (BPC) is centered on the 132-MW Morupule power station. Currently nearly 70 percent of national demand is fulfilled by power imports.

<u>Namibia</u>: About 50 percent of Namibia's electricity is generated domestically, mainly from the 240-MW Ruacana hydropower plant. The production level is cyclical – being dependent on adequate rainfall, so imports from South Africa

[18] US Energy Information Administration, 2005, SADC Country Analysis Brief. See http://www.eia.doe.gov/emeu/cabs/SADC/Full.html

[19] US Energy Information Administration, 2005, SADC Country Analysis Brief. See http://www.eia.doe.gov/emeu/cabs/SADC/Full.html

[20] Hill M (2008), "Mozambique may get new 2000-MW coal fired power station", Engineering News, 18 April 2008. See http://www.engineeringnews.co.za/print_version.php?a_id=131604

are needed to cover the periodic gaps in production. The Namibian government is actively seeking new energy sources, including the proposed 800-MW gas-fired power plant at the Kudu gas fields, a wind powered plant at Luderitz and potential hydroelectric supplies from the Kunene River on the Angolan border.

Zimbabwe: Zimbabwe imports about 35 percent of its electricity requirements and the country's power supply has grown increasingly irregular over the past year. In 2004, Eskom and HCB of Mozambique both refused to renew contracts with the Zimbabwe Electricity Supply Authority (ZESA). In late 2004, however, Zimbabwe's government signed contracts with China's National Aero-Technology Import (Caltic) and China Electric Technology Import and Export Corporation (Cetic) to expand the Karib and Hwange stations, and with Iran for the construction of an additional gas powered plant. In March 2005, a transmission failure in the DRC has left ZESA unable to import electricity from SNEL. At the same time, generators at Zimbabwe's Kariba and Hwange power stations have gone offline due to a shortage of spare parts. Construction of a thermal plant at the Sengwa Coal mine has been delayed due to lack of investor interest.

Zambia: The 100-MW gas-powered Songas plant in Ubungo went on-line in August 2004 and was expanded to 180 MW in June 2005. Zambia, Tanzania and Kenya are also pursuing a $230 million project to connect their grids. Rwanda and Uganda have expressed interest in joining the Zambia-Tanzania-Kenya interconnection. Zambia has abundant hydroelectric resources and meets most of its energy needs from its own hydroelectric stations; Zambia exports electricity to its neighbours, especially Tanzania and Kenya.

Mauritius: It is the only country in SADC and broadly Africa to boast full electrification, largely thanks to its early start and political commitment to electrification. Liquefied petroleum gas is becoming an increasingly popular energy source on the island.

3.1.2 Regulatory Issues

Studies focused mainly on electricity services. Key regulatory issues are summarised in Table 6

Table 6: Regulations in energy (electricity)

Country	incumbent generator	licenses	no. of regulators	new entrants (IPPs)	cross border supply	no. of generators
Angola	100% govt owned	yes	1	not allowed	no information	1
Botswana	100% govt owned	yes	1	info not available	allowed to Import	at least 1
DRC						
Lesotho	100% govt owned	yes	1	allowed (100%)	allowed to import	2
Madagascar						
Malawi	100% govt owned	yes	1	allowed (100%)	no information	more than 1

Mauritius	100% govt owned	yes	1	allowed (100%)	not possible	more than 1
Mozambique	100% govt owned	yes	1	allowed (100%)	allowed to Import	4
Namibia	100% govt owned	yes	1	not allowed	allowed to Import	1
South Africa	100% govt owned	yes	1	allowed (100%)	allowed	more than 1
Swaziland	100% govt owned	yes	1	no information	allowed to Import	1
Tanzania	100% govt owned	yes	1	allowed (100%)	allowed to Import	3
Zambia	100% govt owned	yes	1	allowed (100%)	allowed to Import	6
Zimbabwe	100% govt owned	yes	1	allowed (100%)	allowed	1

NB: Incumbent Generator is the electricity supplier within a country which produces at least 50% of electricity in that particular country.
Source: UNCTAD questionnaire

Currently the energy sector in SADC is dominated by governments through state-owned enterprises[21] which generally monopolise the electricity supply-chain, although Zambia allows small and medium enterprises to provide services such as generation, transmission, distribution and supply of electricity.

Some governments in the region are reluctant to allow a bigger role for private investors in the energy sector which remains largely funded and owned by the public sector. In Namibia, for example, the government has repeatedly stated that private investors will be allowed to participate in regional energy distribution but it has not taken any serious steps to facilitate such participation. This has been augmented by associated policies that discourage competition. In South Africa, Eskom has recently been confirmed by cabinet as the single buyer of all electricity generated in the country, thus forcing any prospective IPP to negotiate with only one player to purchase its electricity. As South Africa remains the biggest market for any potential IPP by far, this significantly limits the opportunity to investigate and find alternative markets and brings into question the longer term success of the Southern African Power Pool (SAPP)[22] market mechanisms and regional competition.

Nonetheless, governments in the region are looking to Independent Power Producers (IPP), or combinations of IPP's and state owned utilities, to meet the rapidly growing regional demand. In South Africa, for example, the government requires that 30 percent of all new generation capacity come from IPPs – although it is not clear whether producers will want to move into a monopsonistic market.

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[21] Botswana Power Corporation (BPC), Central Electricity Board in Mauritius, Electricity Supply Commission in South Africa, Namibia Power Utility in Namibia, Independent Power Tanzania Ltd & Songas in Tanzania, ZESCO Limited in Zambia, and ZESA in Zimbabwe

[22] The SAPP currently has an installed capacity of about 53,000MW, out of which about 41,000MW is dependable capacity. During the 2006 winter peak, the non-coincidental peak for the interconnected SAPP grid was about 42,000MW leading to a supply shortfall of about 1,000MW without the provision for reserve margin (4,000MW).

SADC countries are thus faced with the challenge of achieving more reliable and efficient access to energy through the enhanced availability of energy services, particularly those provided by IPPs. To allay concerns over energy sovereignty, regional governments could ensure that the link between market access and development is clearly established by making access to energy markets conditional on:

- ✓ transfer of technology and managerial know-how;
- ✓ the acceptance by foreign suppliers of public services obligations; and
- ✓ setting up alliances between foreign and domestic firms, including small medium enterprises (SMEs).

The electricity sub-sector within the SADC was previously regulated by Government Ministries responsible for energy. However from 2000 there has been a move towards creating independent regulators such that ministries in most countries have been stripped of their powers to regulate this sub-sector and such powers have been vested in independent regulators. The only exceptions in our sample group are Angola, Mauritius and Botswana. But the latter two countries are looking into ways of creating independent regulators.

The regulators within the region are responsible for issuing licences to new entrants within the specific country involved and hence promoting competition. They are also responsible for regulating energy prices. Licenses within the region are granted after certain conditions are met. However information on what these conditions are was not available for our sample group except for Zimbabwe. This makes it hard to assess and compare the conditions for licenses within the region – a major gap.

In Zimbabwe licenses are granted once the applicant has shown that it has experience in the energy field, conformed to technical and safety standards, and has paid license fees which are a certain percentage of the applicant's revenue. These licenses are granted either in perpetuity or for a specific period.

In Angola, where IPPs are not allowed, licenses are granted in perpetuity to state-owned enterprises which produce and distribute the electricity. However this will change as Angola has a bill which will allow IPPs into the market once it is enacted. The same applies to Botswana as it is considering allowing IPPs to enter the market. In the other countries licenses are granted for a specific period.

The market for electricity comprises different players depending on the country. In Botswana for instance, there is only one company involved in the generation, transmission and distribution of electricity. Namibia is currently considering letting IPPs operate but in the mean time there is only one supplier of electricity. This company is a monopoly which is protected from competition by government policies and laws. In Zimbabwe this used to be the case until the government divided the sole electricity company into three companies: one responsible for generation, another for transmission and the last one for distribution. It also encouraged IPPs to be established within the country.

This is similar to the approach adopted by the Tanzanian government which has allowed IPPs; currently there are two which produce electricity from gas and residual fuel oil, respectively. Two more are about to enter the market – one each in gas and residual fuel oil segments. The Tanzanian approach has been more successful than the Zimbabwean one despite the fact that they have similar policies on foreign entry; Tanzania is attracting more investment and hence entrants in this sector than Zimbabwe. Private investment in the provision of electricity services is not allowed for existing operators except in the generation sub-sector, and new entrants for generation, transmission and retail are allowed to service only one segment. However, there are no entry restrictions for foreign and local private firms (i.e. commercial presence) in power generation and retailing. Since 1999 IPPs have been allowed to enter the market with guaranteed access to the grid under long term contracts on wholesale prices (tariffs). The transmission grid is not linked to that of neighbouring countries, although Uganda informally sells electricity to Tanzania and Zambia sells to Tanzania in the South West. This is probably along the Uganda-Tanzania Border were Tanzania citizens purchase there electricity from Uganda. In order to promote competition within the generation segment in Tanzania, commercialisation has occurred in the three sub-sectors. Privatisation has also occurred though only in the generation sub-sector where up to a maximum of 40% of a firm's equity can be privately owned.

In Zambia, the only electricity supplier was also commercialized in order to improve efficiency. In terms of supply of electricity, small and medium sized enterprises (SMEs) are allowed to provide services to encourage competition in the sector. Unlike in Tanzania, SMEs can provide any type of services including generation, transmission, distribution and supply. So far there isn't an SME that supplies electricity on a large scale.

Swaziland is the only country which has privatized its state owned electricity producing company by changing it from a parastatal to a company registered under Swaziland's companies act. According to the Central Bank of Swaziland's 2007 Annual report, this has led to an increase in generation of electricity and the number of people with access to electricity. As noted above, the rest of the region seems to favour commercialization rather than privatization. This is probably due to the fear that once privatized, government will lose control of the electricity company and will not be able to achieve certain public policies such as universal access as the company will become more profit orientated.

With the exception of Tanzania, these countries are connected to regional power grids and thus import power.

Except for Mauritius and Namibia countries have a regulator in the energy sector; Mauritius and Namibia are in the process of establishing a regulator.

In most countries studied,[23] the regulatory frameworks governing the energy sector are based on single vertically integrated state-owned entities that act as primary generator, wholesaler and in most cases, also significant retail suppliers of electricity. Consequently regulators face difficult challenges in promoting competition and associated pricing of energy as uncompetitive acts are promoted and protected legally and deliberately. This means that competition regulators cannot reprimand any acts which are detrimental to competition within this sector. Moreover, national regulatory bodies in the region are often hindered by lack of clear government policy and proper legislative frameworks to guide their participation in a competitive energy market. For example, regulations on exports and imports of energy are not well developed and licensing regimes are often incomplete. Furthermore, political imperatives often drive the setting of prices in the consumer's favour, hampering private sector involvement and new investments – not only because new IPPs' generation costs are unaffordable, but also because associated transmission infrastructure - owned by the same utilities - is often insufficient.

In order to promote universal access, countries within the region have universal service policies. This is the case for Botswana, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.[24] Universal service is defined as access to electricity for everyone and different policy instruments are used to achieve this. In Swaziland and Botswana, rural electrification schemes have been set up to provide electricity to those who do not currently have it. In South Africa and Tanzania, the government provides consumer/producer subsidies. This usually entails keeping prices low and providing government funding to the incumbent electricity generating company. In Zambia the government has developed appropriate policy, legal, institutional and regulatory frameworks promoting universal service. It also allows firms to import all types of equipment for generating, transmitting, distributing and supplying electricity duty free. Zimbabwe has enacted a rural electrification fund act which provides for the funding of universal service through cross subsidisation, budget allocation and levies among other things.

3.1.3 GATS Commitments

There is no separate classification of energy services in the current WTO Sectoral Classification List which is based on the United National Central Product Classification. Under GATS, energy services were not negotiated as a separate sector during the Uruguay Round. Therefore there are no Uruguay Round commitments made by SADC countries in energy services. Only a few WTO Members made specific commitments in energy- related services i.e. pipeline distribution of fuels (a sub sector of transportation services); services incidental to energy distribution and services incidental to mining. Much of the global energy services industry is therefore not covered by specific commitments under the GATS.

[23] Botswana, Namibia, Mauritius, South Africa, Tanzania, Zambia, Zimbabwe and Angola.
[24] There is no information for the rest of the countries.

Moreover there is no single definition or clear notion of what is understood under energy services and the existing classification does not explicitly include many new energy services, such as the operation of power pools, energy trading and brokering and energy management. Some developed countries have proposed the development of a new, comprehensive classification for energy services in the Doha round of talks. Therefore the first task of a regional energy services liberalization process is to define and categorise the services to be subject to liberalization.

Table 7: Energy services: WTO GATS commitments of the SADC countries

COUNTRY	LIMITATION ON MARKET ACCESS				LIMITATION ON NATIONAL TREATMENT			
	Mode 1	Mode 2	Mode 3	Mode 4	Mode 1	Mode 2	Mode 3	Mode 4
Angola	***	***	***	***	***	***	***	***
Botswana	***	***	***	***	***	***	***	***
DRC	***	***	***	***	***	***	***	***
Lesotho								
• F. (h). Services incidental to mining	Unbound	Unbound	Unbound	“Unbound”	Unbound	Unbound	Unbound	“Unbound”
• Whole Sale Trade Services	None	None	None	“Unbound”	None	None	None	“Unbound”
• Retailing Services	None	None	None	“Unbound”	None	None	None	“Unbound”
Madagascar								
Malawi								
• Banking	None	None	None	“Unbound”	None	None	None	“Unbound”
Mauritius	***	***	***	***	***	***	***	***
Mozambique	***	***	***	***	***	***	***	***
Namibia	***	***	***	***	***	***	***	***
South Africa								
• F. (h). Services incidental to mining	Unbound	Unbound	None	“Unbound”	Unbound	Unbound	None	“Unbound”
• Whole Sale Trade Services	None	None	None	“Unbound”	None	None	None	“Unbound”
• Retailing Services	None	None	None	“Unbound”	None	None	None	“Unbound”
Swaziland	***	***	***	***	***	***	***	***
Tanzania	***	***	***	***	***	***	***	***
Zambia	***	***	***	***	***	***	***	***
Zimbabwe	None	None	Restricted	“Unbound”	None	None	None	“Unbound”

EXPLANATORY NOTES: Restrictions=bound with restrictions; Unbound=MFN not applicable, “Unbound”=unbound except as indicated in the Horizontal section; Unbound= Unbound due to lack of technical feasibility; ***= No commitments; None= no limitations. Where the sub-sector is mentioned it means the country made commitments in that sub-sector only. For instance in the financial services table banking is mentioned for Angola because it made commitments in this area. Where no sub-sector is specifically mentioned as for South Africa in the Construction table above, it means that the commitments made in all the sub-sectors within the construction sector are the same. Hence South Africa made no limitations for mode 2 in the construction sector as a whole from CPC 512-517.*
Source: WTO

3.1.4 Remarks

It is important to note that trade in energy services (electricity) is already taking place in the region through the Southern African Power Pool, which was established to expand electricity trade and to reduce energy costs. The Protocol on Energy (see box 1) in particular seems to combine cooperation in development of the energy sectors and the creation of a conducive climate for intra-regional trade in services.

Significant measures have been made to implement the provisions of the Protocol. These efforts include (covering both current and envisaged projects):

Multi-stakeholder participation in SAPP - In 2006, SAPP member states signed the Revised Inter-Governmental MOU in Gaborone, Botswana. Because of this amendment, apart from the National Power Utilities and Independent Power Producers; other stakeholders can now participate in SAPP activities.

SAPP Power Market Plan - The objective of the SAPP Power Market project is to help promote regional multi-country competitive electricity trade in order to foster regional integration and economic development in SADC.

The Short Term Energy Market (STEM) - facilitates contracts of periods up to a month long for the supply of electrical energy to individual customers and utilities. It is the 'Stock Exchange' of regional power supply, and the SAPP Coordination Centre is the facilitator. Its primary objective is to offer attractive economical energy through competition. STEM complements the existing long-term bilateral contract among members but it is increasingly viewed as a first stage towards full competitive electricity trade in the region. However, not all SAPP members participate in STEM, as there are only eight participants, namely; Botswana Power Corporation, Botswana; Eskom, South Africa; Electricidade de Mozambique and Hidroeléctrica de Cahora Bassa, Mozambique; Kariba North Bank, Zambia; NamPower, Namibia; Swaziland Electricity Board, Swaziland; and ZESA, of Zimbabwe.

The Western Corridor Project (WESTCOR) - This is a SADC project conceived through the combined initiative of the SADC Secretariat and the power utilities of Angola, Botswana, DRC, Namibia and South Africa. The project's aim is to harness the large water resources of the Congo River at Inga, to produce and supply electric power, initially for the five countries involved but ultimately to the whole SADC sub-region. The project will comprise the construction of a 3500MW hydroelectric dam, a transmission line and a telecommunications line.

Transmission Expansion Plans - a number of priority projects that would enable the exchange of energy to improve system economy have been identified. These include several inter-connectors to counter the situation where some countries are not linked to the SAPP network. For example, currently Angola, Tanzania and Malawi are not connected to the SAPP network and are therefore not in a position to participate in the SADC power pooling arrangements.

Regional Electricity Regulatory Association of Southern Africa (RERA)[25] – the overall objectives of this body are to facilitate the operation of the national electricity regulators to exchange information on their activities, identify areas of common interest and engage in regional cooperation in electricity regulation by inter alia: building regulatory understanding, capacity and skills among regulators and other entities with regulatory responsibilities; promoting the timely creation and establishment of regulators in countries where such presently do not exist; assisting the harmonization of legal and regulatory systems and practices governing electricity markets in the region; and to undertake economic regulation of electricity interconnection and trade between SADC Member States

SADC is undergoing a process of restructuring which has to date resulted in the SADC Energy Sector Utilities being administered from SAPP in Harare, and regulatory issues being administered by RERA from Windhoek. The process of consolidating and updating information on SADC energy programmes and projects is in line with the RISDP. Some of the more prominent challenges and constraints are:

- Inadequate financial resources to implement projects
- Inadequate human resources capacity due to scale down of personnel in the new SADC structure
- The limited resources at the disposal of RERA remain a major constraint and continue to hamper the implementation of some of the planned projects and activities. Its major challenge is to enhance its institutional capacity and develop a multi-year strategic plan that is able to, among other things: ensure continued commitment and involvement of members and other relevant stakeholders in implementing its work programmes; and to accelerate the establishment of regulators and harmonisation of the regulatory environment in the region;

Diminishing power generation - the power demand in the SADC region is increasing at a rate of about three percent per annum implying an addition of 1200MW per year. The total installed capacity in SAPP is about 52,000MW and the available or effective capacity is about 42,000MW. Accordingly by the year 2007 the region had run out of generation surplus capacity. This is a major challenge to SAPP - addressing the decreasing generation reserve capacity in the region.

To address these challenges the region should inter alia increase the pace of restructuring loss-making state-owned power utilities. In relation to this, SADC countries should ensure that pricing systems are cost-reflective, in order to attract private investments and extend access to electricity to all consumers.

25 RERA has six members, namely, Zambia, Namibia, Malawi, South Africa, Lesotho and Zimbabwe. Some of the remaining SADC member states have promised to form regulators once all formalities have been completed in their respective countries.

It is clear that for SADC countries to achieve the objectives of the SADC Energy Protocol, incentives have to be put in place to encourage IPPs to enter the market. This will entail government removing some regulations that protect state-owned energy companies, if not all. Furthermore, in light of future Kyoto commitments for non-annex 1 countries alternative sources of energy generation ought to be adopted rather than relying solely on coal-fired and hydro electricity generation.

It is commendable that some countries have already started promoting IPPs by, for instance, guaranteeing them access to the transmission grid as in Tanzania. Restrictions on entry into this sector have also been scaled down to allow for foreign participation. This is crucial as electricity generation and transmission is very capital-intensive, hence well-resourced foreign entities ought to be allowed to participate.

Box 1: SADC Protocol on Energy

In a bid to tackle the energy challenges in the region and to foster cooperation in this sector, SADC countries signed the Energy Protocol in 1996, which entered into force in 1998. The Protocol provides the broad legal and policy framework for cooperation in the energy sector and identifies four priority areas:

- ✓ Energy Trade;
- ✓ Information and Experience Exchange;
- ✓ Training and Organisational Capacity Building;
- ✓ Investment and Funding.

The sub-sectors for cooperation include: wood fuel; petroleum and natural gas; electricity; coal; new and renewable sources; and energy efficiency and conservation[1].

The Protocol's overall objectives are to:

- ✓ Foster harmonisation of national and regional energy policies;
- ✓ Cooperation in the development of energy and energy pooling;
- ✓ Promote the provision of reliable and sustainable energy services in the most efficient and cost-effective manner;
- ✓ Promote joint development of human resources and organisational capacity building;
- ✓ Cooperation in research, development, adaptation, dissemination and transfer of low-cost energy technologies.

These processes have given rise to a number of projects designed to give effect to the protocol, including:

- ✓ Establishment of the Southern African Power Pool. Its objective is to help promote regional multi-country competitive electricity trade in order to foster regional integration and economic development in SADC.
- ✓ The Western Corridor Project (WESTCOR). The project's aim is to harness the large water resources of the Congo River at Inga, to produce and supply electric power, initially for the five countries involved but ultimately to the whole SADC sub-region. The project will comprise the construction of a 3500MW hydroelectric dam, several transmission lines and a telecommunications line.
- ✓ Transmission Expansion Plans - a number of priority projects that would enable the exchange of energy to improve system economy have been identified. These include several inter-connectors to counter the situation where some countries are not linked to the SAPP network.
- ✓ SADC Regional Energy Planning Network Project (REPN). The project aims to empower the national energy planning institutions of the member states to efficiently and effectively perform energy planning tasks, undertake energy forecasting and projections, and formulate energy projects.

The development of international power grids is another way of encouraging trade in energy services. However this is curtailed when demand in exporting countries outpaces supply. This is the case with South Africa which previously used to export surplus electricity to Swaziland (which imported up to 80% of its electricity supply from South Africa), Namibia and Botswana but has had to stop as there isn't enough supply to meet domestic demand – the country has had to resort to "load shedding". Owing to the central role South Africa plays in the SAPP, this has potentially serious implications for meeting regional power needs and reinforces the case for seeking to introduce private providers into domestic and regional networks.

Despite the usual horizontal measures which affect modes 3 and 4 supplies, Mode 1 supply of electricity services has no doubt been affected by the inadequate generating capacity within the region. This has been well documented above.

Regulation of prices within the region has also had a trade barrier impact on modes 1 and 3. For mode 1, regulation of prices means that generators of electricity often are not able to sell electricity at a price which is enough to cover the cost of production. This in turn means that profits cannot be generated which can be reinvested to improve generating capacity. Where price controls are too rigid this can be a deterring factor for IPPs which intend to establish a commercial presence. Some of these negative effects can be mitigated by for instance giving IPPs tax breaks and incentives which exempt them from paying import duty.

Still, it is to be noted that the regulation of prices is central to universal service policies as price is one of the factors which affects access to electricity for predominantly poor consumers. Thus the region needs to come up with a way of balancing the need to increase generating capacity and the need for universal service.

3.1.5 Specific Policy Recommendations

- ✓ Define and categorise energy services to be subject to liberalization and support a multilateral process on this issue at the WTO;
- ✓ Speed – up restructuring of state – owned electricity companies with a view to introducing greater competition, on an MFN basis concerning mode 3 in particular, into national and regional markets;
- ✓ Investigate where restrictions in cross-border trade in energy, and related energy services, may obtain and remove them where universal service obligations will not be compromised, particularly those pertaining to pricing;

- ✓ Increase oversight and powers of regulatory agencies, specifically in respect of state-owned company pricing policies concerning purchase of electricity from IPPs.
- ✓ Formulate and implement projects on new and renewable sources of energy – the high cost of grid electrification and conventional energies in rural areas make renewable energies and other alternative energy sources an economic option for the provision of energy services. On the other hand, recent worldwide concern about environmental and climate change, and the escalation of the price of fossil fuels has stimulated interest in new and renewable sources of energy technologies in the region, as one way of mitigating against greenhouse effects caused by increased use of fossil fuels.

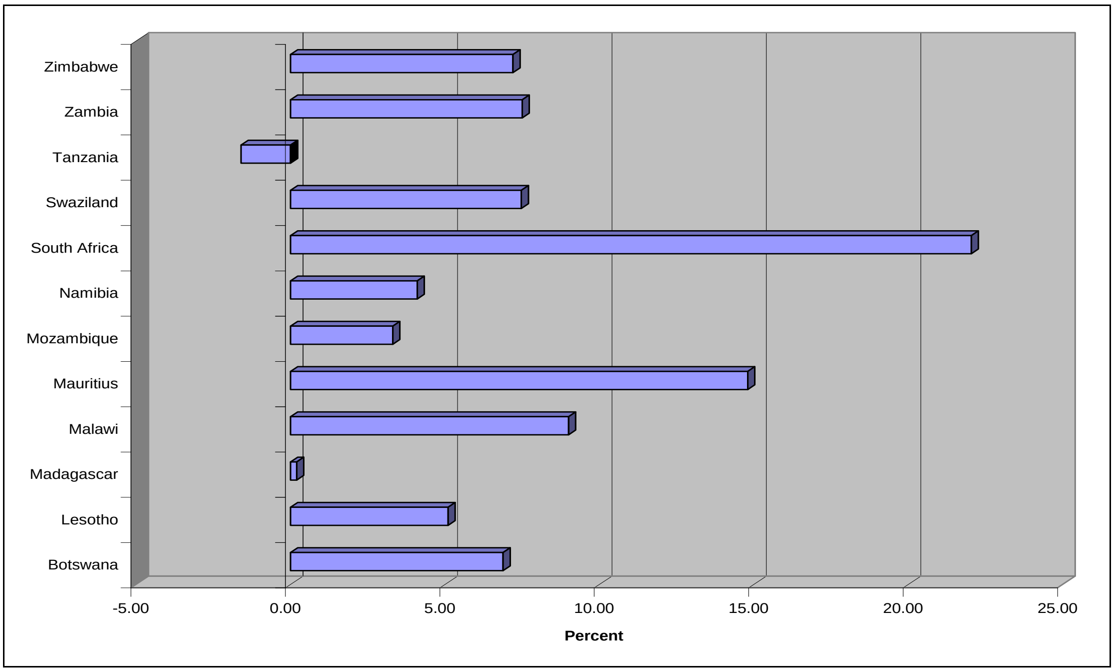
3.2 FINANCIAL SERVICES

3.2.1 Economic Issues

Financial services are divided into banking and other financial services (e.g. financial leasing, guarantees and commitments), and insurance and insurance-related services (e.g. broking and agency services)[26]. South Africa is by far the major player in the region, and has a significant outward investment stock in financial services. Figure 6 show that financial services contribute approximately 22% to South Africa's GDP (which is the highest in the region). SADC countries are mainly importers of financial services, from South Africa and elsewhere. Hence most SADC countries are not in a position to engage in international export of financial services. However, financial services are crucial inputs into many economic activities; therefore importing them should be regarded as enabling economic development.

[26] WTO (1991), Services Sectoral Classification List, World Trade Organisation, Geneva. See http://www.wto.org/english/tratop_e/serv_e/mtn_gns_w_120_e.doc

Figure 6: Contribution of financial services to GDP (2006)



Note: Figures for Mozambique, Swaziland & Zambia are for 2005. Data for Angola and the DRC is not available
Source: SADC

Furthermore, there is potential for greater intra-regional trade. To the extent it is developed and extends beyond South African exports, it could be used as a platform for building the necessary capacity to export internationally. South Africa forms a large part of regional penetration followed by Zimbabwe. Moreover, Mauritius endeavours to establish itself as a global financial centre and Botswana intends to establish itself as a regional financial centre.

The potential problem with South Africa's dominance is that the South African 'oligopoly' is exported to other countries, restricting competition in each market. For example, the dominance of South African banks in Namibia has limited competition and raised lending rates. Further, Namibia relies heavily on South African human capital in the form of bank managers and other managerial staff 'imported' from South Africa to run its subsidiaries in Namibia. The sector is stigmatised as having an 'outpost mentality' due to the posting of the more conservative South African managers to these posts.

However, in some quarters concerns have been expressed that concluding a regional financial services liberalization pact would lock-in imports of allegedly high-cost South African financial services, which slow-down adoption of the latest techniques and impose a higher cost burden than more competitive markets would afford. To the extent this is true, unilateral and multilateral liberalization remain important policy tools that should not be ignored.

3.2.2 Regulatory Issues

All banking and non-banking institutions are generally regulated by the Central Bank in each country. Some banks are allowed to deposit some of their money with banks in other countries. Banking regulations in countries for which information is available are summarised in Table 8.

Table 8: Regulation in financial services (banking)

Country	maximum equity	licences	regulator	cross border supply	Legal Form	minimum capital requirements
Angola						
Botswana	100%(100%)	Yes	central bank	no information	subsidiary	required
DRC						
Lesotho	100%(100%)	Yes	central bank	allowed	branches	required
Madagascar						
Malawi	100%(100%)	Yes	central bank	allowed for banks	subsidiary	required
Mauritius	100%(100%)	Yes	central bank	allowed	no information	no information
Mozambique						
Namibia	100%(100%)	Yes	central bank	no information	no branches	required
South Africa	no information	no information	no information	no information	no information	no information
Tanzania	100%(100%)	Yes	central bank	allowed for banks	no branches	required
Zambia	100%(100%)	Yes	central bank	restricted	all forms	required
Zimbabwe	no information	no information	no information	no information	no information	no information

Source: UNCTAD questionnaire

However in some countries, non-banking financial services such as stock brokers and insurance are regulated by other bodies which in some cases are independent from the Central bank but fall under the Ministry responsible for finance. For instance, in Mauritius the Banking sector is regulated by the Bank of Mauritius while the Financial Services Commission regulates all non-banking services. In Botswana the central bank regulates all deposit taking institutions while the Ministry of Finance and Development Planning (MFDP) serves as regulator of the building committees, insurance companies and pension funds. The Stock Exchange Committee runs the Botswana Stock Exchange but is supervised by the MFDP. In Zambia the Pensions and Insurance subsectors are regulated by the registrar of Pensions and Insurance which is a semi-autonomous entity without a distinct legal personality. In Namibia whereas the Central bank regulates all banking institutions, all nonbanking institutions including the insurance and securities sectors are regulated by the Namibian Financial Institutions Supervisory Authority (NAMFISA)

Legislation objectives are generally to oversee the licensing process and qualification as a bank and regulation of market entry, the management and liquidation of banks in distress, the enforcement of prudential requirements such as capital adequacy, restrictions on exposures, liquidity, quality of management and provision of information to the regulatory authority and generally compliance with international standards.

Competition within this sector is present especially in the banking sector. In order to enhance competition, foreigners are allowed to have 100% shareholding. This is the case in all countries for which information is available. In Botswana, Namibia and Tanzania there are no limits as to how many foreigners can sit on the board of directors.

In Zambia only 25% of the members of the board of directors can be foreign citizens while a bank cannot employ more than five expatriates. In Zambia's securities sector no foreign incorporated securities firm is allowed to do securities dealing, mergers and acquisitions or any other services offered by such companies in the Zambian or domestic market. Furthermore, security services firms can only operate in Zambia if they have established commercial presence through local incorporation or a subsidiary.

In Namibia foreign ownership in the provision of investment banking, stock brokerage, and mutual funds is allowed, for both existing operators and new entrants. A maximum of 50% foreign equity for the provision of stock brokerage is allowed for both the existing operators and new entrants.

In Botswana investment banking, mutual funds and stock broking services can be provided by existing operators and new entrants, both local and foreign. There are no limits to the maximum foreign equity permitted.

Within the insurance industry, all countries require that insurance service providers should have the requisite qualifications as well as licenses. For instance in Botswana insurance agents should possess professional qualifications and all insurers and brokers should renew their licenses annually. Furthermore the same person is not allowed to manage more than one insurance company.

In some countries domestic residents and firms can purchase cross border insurance. However the types of insurance which can be purchased are limited. For instance, in Namibia residents cannot purchase life insurance, medical insurance, or broking cross-border from a foreign insurance company while in Mauritius they cannot purchase motor insurance across-borders.

3.3.3 GATS Commitments

It is not surprising that the financial sector is one of the most open sectors within the SADC region. Angola, Lesotho, Malawi, Mauritius, Mozambique, South Africa and Zimbabwe have made GATS commitments in financial services. Most countries have made commitments in the banking sector, but only three, namely Lesotho, Mauritius and South Africa have made commitments in insurance as well. Most countries applied their horizontal GATS commitments to Mode 4 (movement of natural persons). Access is limited to skilled labour linked to commercial presence. Apart from South

Africa and Lesotho[27], the SADC countries have imposed few restrictions on national treatment but have restricted market entry. The restrictions are mainly on commercial presence and cross-border supply. Exchange controls are a common reason for limiting cross-border supply whereas restrictions on commercial presence revolve mostly around complying with domestic regulations and being incorporated locally.

SADC countries' GATS commitments do not provide a complete picture of the extent of trade liberalization in the region. A number of SADC countries have undergone significant reform of their financial systems but have not committed the reforms in the GATS. For example, Botswana abolished all forms of exchange control but made no commitment in the GATS. The failure to commit the reforms in the GATS is a reflection of lack of SADC countries' participation in the GATS negotiations, and also an indication that some countries may not want to bind themselves until they are certain that those reforms will bear fruit.

Table 9: Financial services: WTO GATS commitments of the SADC countries

COUNTRY	LIMITATION ON MARKET ACCESS				LIMITATION ON NATIONAL TREATMENT			
	Mode 1	Mode 2	Mode 3	Mode 4	Mode 1	Mode 2	Mode 3	Mode 4
Angola: • Banking	Restrictions	Restrictions	Restrictions	Restrictions	None	None	None	None
Botswana	***	***	***	***	***	***	***	***
DRC	***	***	***	***	***	***	***	***
Lesotho • Banking • Insurance	Unbound Unbound	Unbound None	Restrictions Restrictions	"Unbound" "Unbound"	Unbound Unbound	Unbound None	None None	"Unbound" "Unbound"
Madagascar								
Malawi • Banking	None	None	None	"Unbound"	None	None	None	"Unbound"
Mauritius • Banking	Unbound	None	Restricted	"Unbound"	None	None	None	"Unbound"
Mozambique	***	***	***	***	***	***	***	***
Namibia	***	***	***	***	***	***	***	***
South Africa • Banking • Insurance	Unbound Unbound	Unbound Unbound	Restricted Restricted	"Unbound" "Unbound"	Unbound Unbound	Unbound Unbound	Restricted None	"Unbound" "Unbound"
Swaziland	***	***	***	***	***	***	***	***
Tanzania	***	***	***	***	***	***	***	***
Zambia	***	***	***	***	***	***	***	***
Zimbabwe • Banking	None	None	Restricted	"Unbound"	None	None	None	"Unbound"

EXPLANATORY NOTES: Restrictions=bound with restrictions; Unbound=MFN not applicable, "Unbound"=unbound except as indicated in the Horizontal section; Unbound= Unbound due to lack of technical feasibility; ***= No commitments; None= no limitations. Where the sub-sector is mentioned it means the country made commitments in that sub-sector only. For instance in the financial services table banking is mentioned for Angola because it made commitments in this area. Where no sub-sector is specifically mentioned as for South Africa in the Construction table above, it means that the commitments made in all the sub-sectors within the construction sector are the same. Hence South Africa made no limitations for mode 2 in the construction sector as a whole from CPC 512-517.*
Source: WTO

[27] The restrictions are of a prudential nature i.e. SA specifies in its schedule of commitments that branches of banks not incorporated in South Africa must maintain a minimum balance of R1 million on the deposit accounts of natural persons. Therefore you will find Mode 3 entered as bound with restrictions. Exchange control regulations are the motivation behind restrictions on Mode 1 for both SA and Lesotho.

3.3.4 Remarks

Financial services sectors in SADC countries are generally open. The Protocol on Finance and Investment (once ratified and implemented) would clearly be an important complement to the Trade Protocol and the Protocol on Trade in Services.

Box 2: SADC Protocol on Finance & Investment

The importance of financial services to the region is reinforced by the recent adoption of the SADC Protocol on Finance and Investment, which seeks to:

a. provide a framework for co-operation in the area of finance;
b. promote the development of sound investment policies and encourage savings;
c. facilitate and stimulate investment flows and technology transfer and innovation in the region.

It has a range of annexes covering, inter alia: tax cooperation; macroeconomic convergence; investment cooperation; cooperation amongst development finance institutions; cooperation amongst non-bank financial institutions; and cooperation amongst stock exchanges. Ten out of the 14 SADC member states have signed and ratified it, with the remaining 4 being in the process of doing so. This clearly attests to the importance SADC member states attach to developing regional financial services.

Already, there has been substantial liberalization of the banking, finance and capital markets as well as investment services in SADC unilaterally and through a number of agreements and memoranda of understanding. Further liberalisation, for instance in insurance services, must be preceded by macroeconomic stabilisation, and must be accompanied by a strong regulatory regime. Such liberalisation should also be used to lock in reforms.

Trade in services in this area is robust and covers almost all modes of supply. However, despite the fact that market access in this sector has improved tremendously, the objectives prescribed by the protocol on finance and investment have not been achieved as there hasn't been an increase in competition and/or savings have not risen. Furthermore, access to credit and capital still remains an area of concern for small to medium enterprises and vulnerable groups such as the disabled and women. However, on the basis of documents reviewed it is difficult to see how a regional liberalization process of financial services could address these gaps, given the current openness of the sector. For this reason we only have two broad policy recommendations.

In as early as the year 1993, there was a drive to harmonize the prudential and supervision regulations of the financial services sector with the establishment of the Eastern and Southern African Banking Supervisors Group (ESAF). This was due to the belief that harmonization would encourage regional expansion as banks would be subject to one set of rules and this would make mutual recognition easier. It would also reduce the costs including compliance costs.[28] ESAF was a grouping of 16 central banks from SADC countries as well as from east Africa including Kenya, Uganda and Rwanda.[29]

The harmonization programmes under ESAF were endorsed by the SADC Committee of Central Bank Governors and these programmes include the harmonization of licensing standards, harmonization of supervision IT systems and the harmonization of accounting and auditing standards.[30] The harmonization of licensing standards programme aims at ensuring that banks meet international standards. The harmonization of supervision IT systems aims at developing common information systems which will support bank supervision processes within the region. The overall goal is to enhance the member countries' ability to monitor regional banks' efficiently and improve Bank Supervision operations. The harmonization of accounting and auditing standards programme is involved with the development of common enhanced standards for the publication of financial statements by banks of the region, in keeping with international accounting standards and providing for the necessary disclosures.

ESAF cooperates with the Basel Committee to come up with these standards and programmes which are modelled on the Basel Committees Core Principles for Effective Banking Supervision. According to the South African Reserve Bank ESAF was disbanded in 2004 and its functions have now been taken over by the SADC Subcommittee on Bank Supervisors (SSBS) which focuses solely on SADC countries. Though the SSBS has adopted the harmonization programmes, the body, just like its predecessor, is more focused on being a training and reporting body rather than one that sets agendas on Basel II compliance. This is because there are divergent views within SADC as to when countries should become Basel II compliant. South Africa and Mauritius have committed themselves to become Basel II compliant by 2008, in line with other G10 countries. This is because both countries have intentions of becoming financial centres of Africa. However, other SADC members which do not share these goals have only agreed in principle to become Basel Compliant by 2010. These members belong to a grouping called Macroeconomic and Financial Management Institute of Eastern and Southern Africa (MEFMI). Thus, most of their Basel activities and agendas are performed under this grouping. Strange enough, this group comprises non-SADC members such as Uganda and Tanzania. This inevitably creates a problem for harmonization in the similar to those created by the overlapping of memberships of certain countries in both SADC and COMESA. That is to say, as long as countries have different goals especially targets for achieving basel II compliance, the SADC region cannot converge to have similar rules and regulations. It also in essence means that though the SSBS was established to focus on SADC membership only, by belonging to the MEFMI, these

[28] See *Liberalizing Financial Services Trade In Africa: Going Regional and Multilateral* by Marrion Jansen and Yannick Vennes at Pg 9-10 available at http://www.wto.org/english/res_e/reser_e/ersd200603_e.pdf .
[29] This group consists of Angola, Botswana, Ethiopia, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.
[30] See Reserve Bank of Zimbabwe's *Banking Supervision 2000 annual Report* available at www.rbz.co.zw/bsannual/2000g.asp.

countries have virtually reverted to the ESAF system by simply substituting one organization for another. Thus the SSBS will not be as effective as envisioned and hence defeating the purpose for which it was created will be defeated.

To make the situation more complex, the FIP also intends to adopt Basel II principles in regulating the banking sub-sector. However, only 10 countries have signed the FIP. This means that those countries which have not signed the FIP cannot partake in the harmonization process unless they do so on an informal basis. Since before the 2004 dissolution of ESAF, ESAF was not involved in the FIP process as most of the memorandum of understandings under the FIP relating to regulation and supervision of financial services were signed in September 2005, long after ESAF was disbanded. It would further seem that due to the fact that some of the members of ESAF were not SADC members, e.g. Kenya, ESAF did not follow the FIP process as the latter was exclusive to SADC members. However, the SSBS has been mandated by the Committee of Central Bank Governors (CCBG) which focuses on implementing the FIP process, to develop a memorandum of understanding on Co-operation and Co-ordination in the Area of Banking Regulatory and Supervisory Matters which it finalized in 2007. To this extent, it can be argued that the SSBS is not merely a reporting and training body. The SSBS is also playing the following roles: conducting workshops, collecting financial soundness indicators and banking industry information and developing a regional database using the *Compilation Guide on Financial Soundness Indicators* by the IMF. So it is clear that the SSBS has played a significant role in promoting the FIP process.

3.3.5 Policy Recommendations

- ✓ Bind unilateral reforms, where politically feasible, in the WTO – the gains to a country from an efficient financial system far outweigh any potential gains from keeping an inefficient and restricted system in place. It was for this reason most SADC countries embarked on liberalisation in the first place. As such, it makes little sense to go ahead with liberalisation regardless of the GATS process.

- ✓ Consider extending GATS commitments to insurance – in those countries where no commitments have been made.

- ✓ If harmonization is going to occur, it is clear that it will first occur at the regional level. This is because there is already a lot of work being done on the regional front and this means that once some of the challenges on the regional front have been sorted out, then SADC can try to harmonize multilaterally. The major problem affecting regional harmonization is the different goals which different member states are following which seems to divide the SADC group into two camps. Those who participate fully in the Basel II processes and the MEFMI group which is taking a cautious approach. It is therefore recommended that these member states should first revert to the SSBS structure where all non-SADC members are asked to leave the grouping. Secondly once this has been done, then member states can try to work out how to achieve Basel Compliance. Since South Africa and Mauritius are already ahead of the pack, timeframes should be set for the remaining member states to achieve compliance. Perhaps those member-states which are struggling could be given some form of assistance. Clearly since the Basel II principles are recognised internationally, harmonization at the multilateral level will not be a long step from the regional situation.

3.3 COMMUNICATION SECTOR

3.3.1 Economic Issues

Telecommunications are a key enabling technology at the centre of the Information and Communications Technology revolution. Modern manufacturing processes such as just-in-time production and supply-chain management are inconceivable in the absence of secure, affordable access to both basic and advanced telecommunications. A telecommunication sector that is efficient will impact other sectors such as tourism and the financial sectors. Similarly, the digital entertainment industry depends on the communications infrastructure. In all cases it is not enough to have a self-sufficient telecommunications sector; it has to be plugged into global networks via a variety of cross-border channels such as fibre-optic cables and satellite systems.

Fixed line, mobile and internet communication services

Table 10 shows the level of development of the SADC telecommunications sector. When comparing fixed line, mobile and Internet penetrations in SADC, it becomes evident that mobile cellular telephony is the most widely used medium of communication. Affordability, mobility and easy use favour mobile cellular technology.

Table 10: Communication network in SADC (2006)

Country	Main Telephones		Mobile Cellular		Internet	
	Lines (millions)	Density (p/100 inhabitants)	Subscribers (millions)	Density (p/100 inhabitants)	Users (millions)	Density (p/100 inhabitants)
Angola	0.098	0.62	2.264	14.33	0.950	0.60
Botswana	0.137	7.78	0.823	46.78	0.800	4.55
DRC	0.010	0.02	4.415	7.44	0.180	0.30
Lesotho	0.053	2.97	0.358	19.99	0.515	2.87
Madagascar	0.130	0.68	1.046	5.47	0.110	0.58
Malawi	0.103	0.80	0.222	1.80	0.597	0.45
Mauritius	0.357	28.45	0.772	61.50	0.320	8.00
Mozambique	0.067	0.33	2.339	11.60	0.178	0.90
Namibia	0.139	6.84	0.495	24.37	0.806	3.97
South Africa	4.729	9.97	39.662	83.33	5.100	10.75

Swaziland	0.054	4.27	0.250	24.29	0.042	4.08
Tanzania	0.157	0.40	5.767	14.78	0.384	1.00
Zambia	0.093	0.79	1.663	14.02	0.500	10.75
Zimbabwe	0.336	2.56	0.849	6.49	1.220	9.32
TOTAL	**6.463**	**4.749**	**60.925**	**24.019**	**11.702**	**4.151**

Source: International Telecommunication Union

Most of the region's main (fixed) telephone lines are concentrated in just four of its 14 economies: Botswana, Mauritius, Namibia, and South Africa account for approximately 80% of all fixed lines in SADC. Similarly, South Africa, Tanzania and the DRC registered high subscribers for 2006, together accounting for over 80% of the region's mobile subscribers. If we use the number of mobile phones per 100 people; Botswana, Mauritius, Namibia, and South Africa are relatively more developed than the other SADC countries. These are also the countries with higher incomes per capita in the region. During 2006, SADC had 60.9 million mobile subscribers. Vodacom South Africa and MTN South Africa are the leaders in SADC with regards to the numbers of mobile cellular subscribers, with 21.8 and 12.5 million subscribers in 2006[31].

SADC countries vary greatly in their Internet penetration rate. While the average Internet user penetration stands at 4.2 percent in the whole of SADC, South Africa and Zambia for example as countries with the highest rate, report penetration of 10.5 per 100 inhabitants. On the other extreme, the DRC and Malawi had an Internet penetration rate of 0.3 and 0.45, respectively

It is clear that this sector still faces numerous challenges. Accordingly, the SADC Regional Information Infrastructure (SRII) Project has been launched as part of efforts to develop this sector at the regional level. The objective of the project is to provide the necessary telecommunications infrastructure connectivity within the region as well as bridging the digital divide. Still this objective will not be met because most countries haven't opened up their fixed line sub-sector which is crucial as the fixed line infrastructure often provides the underlying infrastructure (e.g. leased line and international gateway services), for nearly every other telecom service, including mobile services, thus establishing an artificially high floor on many prices. Furthermore, private ownership is restricted in some countries. In these circumstances, this sector cannot develop because it requires huge capital investment which can only be provided by large, generally foreign owned companies especially those from developed countries. Hence limitations on foreign equity held by foreign shareholders are detrimental as such shareholders are less likely to pump capital into the sector if they cannot exercise effective control over their investments.

High tariffs also affect access to telecommunication facilities. The fact that most regulators are not independent means that they are less likely to check such anticompetitive acts. This is because in the telecommunications sector, most anticompetitive practices or most monopolies occur within the fixed line segment which is dominated by government owned entities. This means that

[31] International Telecommunication Union (2007), *Telecommunications/ICT Markets and Trends in Africa 2007*, ITU

regulators closely tied to government are less likely to take to task government entities.

Postal services

In most SADC countries postal and courier services are provided by state-owned enterprises such as Lesotho Postal Services, Mauritius Post Limited, Namibia Posts Limited and South African Post Office, among others. All these institutions have demonstrated operating self-sufficiency and the ability to fund their capital expenditure programmes through retained profits. In recent years, however, privately owned courier companies in South Africa and Mauritius, for example, have been spearheading the courier of parcels and other goods. This move has been exponentially growing due to the efficiency and certainty of the delivery process by private owned courier companies. Notable companies include DHL, Fed-Ex, and Cargo Express, among others.

Audiovisual services

Radio and television services are state owned in all SADC countries and access is now by digital satellite which allows for more universal coverage. The South African Broadcasting Corporation (SABC) is the largest radio and television transmission company in the region, comprising 18 radio stations targeting a combined audience of over 20 million. South African has also by far the largest television audience in SADC, comprising over 4 million licenced television households. Furthermore, South Africa's M-Net, a privately-owned subscription television, has over 1.2 million subscribers in 49 countries across Africa, including SADC

Piracy of music and videos is a real problem and this is due to none existence or lack of enforcement of regulatory measures and or laws in the industry

3.3.2 Regulatory Issues

One of the most important issues facing the SADC region is the promotion of competition in the telecommunications industry as it is characterized by both monopolistic and oligopolistic competition.

In 1998 the Southern Africa Transport and Communications Commission's Committee of Ministers approved the Telecommunication Policy Document as a common policy guideline for adoption and implementation at the national level and the Model Telecommunication Bill as a guideline for national legislation for implementing the agreed telecommunications policies. SADC countries were urged to expeditiously adopt and implement the policies and the Model Bill in the interest of early regional integration and economic development.

SADC telecommunications strategy is outlined in the SADC Telecommunications Policy Document and the Model Telecommunications Bill. The Bill deals with principles for the design of policies aimed at providing information and communication services crucial to the overall achievement of universal service and universal access. The Bill also deals with the establishment of regulatory authorities, licensing of telecommunication services and the duties of public telecommunication service providers. In 1998 the SADC Protocol on Transport, Communications and Metrology was adopted (see box 3).

Box 3: SADC Protocol on Transport, Communications and Meteorology

The SADC Protocol on Transport, Communications and Meteorology, which came into force in 1998, provides the legal and broad policy framework for cooperation, and defines the strategic goals for the transport, communications and meteorology sectors.

Article 10.2 of the Protocol requires SADC countries to develop harmonized regional telecommunications policies. The pace and actual sequence of reform in SADC will, however, depend on the circumstances of individual countries. The protocol is implementing an orderly economic and institutional restructuring of the telecommunications sector, expanding and strengthening the institutional capacity to manage the sector, policy development and legislation.

Key regulations governing the different sub-sectors within communications are summarised in Table 11 below.

Table 11: Regulation in communications

Country	maximum equity	licenses	no. of regulators	new entrants fixed	new entrants: mobile	new entrants postal	legal form	labour market testing
Angola	100%(100%)	yes	1	allowed	allowed	allowed for courier	No information	No information
Botswana	100%(100%)	yes	1	not allowed	limited to 2	allowed for courier	no information	required
DRC								
Lesotho	100%(100%)	yes	1	allowed	not allowed	allowed for courier	any form	no information
Malawi	100%(100%)	yes	1	not allowed	not allowed	allowed for courier	any form	no information
Mauritius	100%(100%)	yes	2	allowed	allowed	allowed for courier	no information	no information
Mozambique								
Namibia	100%(49%)	yes	1	not allowed	allowed	allowed for courier	no information	required
South Africa	100%(100%)	Yes	1	Not allowed till expiry of a specific timeframe which can be extended	Allowed	No information	Any form	required
Swaziland	100%(51%)	yes	1	Not allowed	Allowed after November 2008	allowed for courier	No information	No information
Tanzania	100%(65%)	yes	1	allowed	allowed	allowed for courier	any form	required
Zambia	100%(75%)	yes	1	not allowed	allowed	allowed for courier	any form	not available
Zimbabwe	100%(49%)	yes	1	allowed	allowed	allowed for courier	any form	required

EXPLANATORY NOTE: Under the maximum equity column, the figures in parentheses represents foreign ownership in an entity while the figure with no parentheses represents private as opposed to government equity owned in the entity. Number of regulators represents the different regulatory bodies which oversee the sector. Legal form represents the kinds of incorporation vehicles that foreign entities

can be established in the country i.e. a company, subsidiary, branch or joint venture.
Source: UNCTAD questionnaires

Fixed line basic telecommunications

All the SADC countries have adopted a cautious liberalization strategy on telecommunications. Within the fixed line sector the liberalization strategy has generally involved:

- ✓ Separation of the incumbent from government ministries;
- ✓ Granting of an exclusivity period during which a foreign equity partner is found to inject capital and technical know-how while the incumbent prepares itself for competition, and
- ✓ Introduction of a second national operator.

As far as the telecommunications sector is concerned, there is generally a similar trend in all the countries. There is one fixed line operator that provides fixed line services accept for Mauritius which opened up its fixed line segment and has allowed the entry of another fixed line operator which has already introduced rates that are 20% lower than the incumbent. Zimbabwe also opened up its fixed line sector. Botswana is in the process of developing a services neutral licensing framework for both mobile and fixed line operators which will allow operators to provide a wide range of services including both fixed line and mobile services. In some countries, notably Tanzania, Namibia and Zambia, the law prohibits the entry of new operators into the fixed line segment. The reasons given are that the government wants the sector to develop before it is exposed to international competition. Furthermore, governments have universal service obligations and thus would want to ensure that all their citizens have access to fixed line services. If these sectors are opened up government purportedly [32]won't be able to provide these services across the board. However, alternatives to this approach to universal services are increasingly common as mobile telephones and wireless broadband technologies can now offer the potential to make available a full range of consumer and business services once only possible by means of fixed networks.

Mauritius and Tanzania have partially privatized the national operator; Zambia has immediate plans to privatize, while Botswana is still conducting feasibility studies. Most SADC countries have begun exclusivity periods that will see a second national operator being licensed in the near future. However, with the rising popularity of mobile services over the last decade, it has become increasingly difficult for late liberalizers to attract new fixed-line operators to their markets, resulting in a *de facto* monopoly and a continuation of the associated infrastructure inadequacies and high costs of network services. As a result, in this respect as well, outside the region alternative approaches have been introduced, such as allowing mobile or other companies to establish independent international gateways, converting operators to "next

[32] Mobile telephony has become so competitive with fixed line services that it is not inconceivable mobile operators would provide such services into poor and rural areas more efficiently. In South Africa, for example, the mobile companies have pioneered "pay – as – you – go" systems, ensuring ever greater penetration into poorer customer segments.

generation" IP-based networks, and allowing value-added networks to evolve are possible remedies, and converting.

Further policy issues that significantly reduce the potential to provide lower cost service to consumers include:

- In terms of voice resale competition, only Tanzania has opened up while Botswana permits domestic resale only.
- Zambia allows VOIP but only in rural areas.
- Most SADC countries, except Tanzania and Zambia, require Mobile and VANS operators to lease networks from the incumbent for international and domestic long-distance traffic routing. Botswana allows domestic networks only in the VANS sector.

Mobile telecommunications

The most striking feature of telecommunications development in Southern Africa is the rapid rise of mobile telephones. In the last eight to ten years, mobile subscribers have grown from being non existent to outnumbering fixed line subscribers. Mobile subscribers, on average, make up almost 70% of all subscribers. SADC countries made significant gains in access to telephones (mostly in Botswana, and Mauritius). However, the number of fixed lines has been declining over the past two years due to increasing numbers of subscribers disconnecting.

All the SADC countries underestimated the demand for mobile phones. Most countries began with one or two licenses. The market has grown substantially and there is an urgent need to introduce new operators in order to bring down costs. All the SADC countries have licensed mobile operators and have some limited competition in the sector with the exception of Swaziland Tanzania has a fully liberalized market with no foreign ownership restrictions. Zambia has a 60% domestic partner requirement, which is 29% higher than the standard for the region.

Cross-cutting issues

Some countries have restrictions on the equity which foreign suppliers can hold in a telecommunications company. In Namibia and Tanzania the maximum is respectively 49% and 65% for both facilities-based service suppliers as well as retail-based service suppliers. In Zambia however, foreigners can only own a maximum of 75% of an existing facilities-based operators' equity while they can only own 25% of a new entrant facilities-based operator. There are no limitations on equity held by foreigners in retail-based operators in Zambia such that these can be 100% owned by foreigners whether it is in an existing entity or a new entrant.

In Tanzania foreign retail-based service suppliers can only establish as a joint venture or partnership while in Zambia there are no restrictions on the legal form. This means that joint ventures are in any case required.

Routing restrictions also exist in Zambia and Namibia; while in Tanzania there are no restrictions. For Zimbabwe and Botswana the studies did not mention anything thus the picture is not clear. The picture is also not clear for Mauritius; however, since it has taken a liberal approach to telecommunications it is most likely that there are few if any restrictions on cross-border supply and consumption of telecommunication services.

In all of the countries, the communications sector is regulated by statutory bodies. In some countries there is one regulatory body which regulates both the telecommunications sub-sector and the postal/couriers. This is the case in Tanzania and Zimbabwe while in Mauritius the two sub sectors are regulated by two different regulators. Some of these entities are independent from government. For example in Mauritius the regulator reports to the National Assembly rather than a particular ministry or the executive. On the other hand, the regulator in Namibia is not independent as it reports to the Minister of Information and Broadcasting and 80% of its funding comes from the national budget. In Tanzania the regulator is also independent as it is institutionally separate from the minister responsible for Postal/couriers and its funding is 100% from licenses and other fees.

Postal Services

Postal operators in the region are now reporting on performance as a way to evaluate performance against targets including mail delivery standards, reducing mail violations, and improving on the overall level of quality of service provided by determining the optimum mail routes and measurements systems to be used at central sorting offices in each Member State.

The postal sector is embarking on a number of projects to improve quality of service, namely, the regional project to improve quality of service, regional approach to field support of service improvement, and a feasibility study to improve mail circulation in the SADC region. The postal sector is also embarking on a project to install a regional network to facilitate electronic money transfer and payment system through the postal network for which the Universal Postal Union has made a commitment. The SADC Ministers responsible for Postal, Telecommunications and ICT directed that a Technical Committee be formed comprising of the Operators, Regulators and Member States to come up with a policy and legislative framework that will guide the implementation of the project.

In Mauritius, postal services are provided by Mauritius Post Limited which is wholly owned by government. In Namibia, government does not restrict the entry of new suppliers into the postal and courier services sector. In terms of the posts and telecommunications legislation, new firms may freely engage in postal and courier services for the supply and delivery of letters and parcels to different destinations. However, limitations on the entry of new suppliers have been set for counter services and mailbox rental services for both local and foreign owned firms. Private ownership of services suppliers is permitted for all forms of postal and courier service. Foreign ownership is also permitted, provided that the majority shareholding (51%) is maintained by locals. This condition applies to all possible services in the sector. A standard approach is utilized to license all candidate suppliers of postal and courier services.

In Tanzania, Zambia and Zimbabwe the supply of letters weighing up to 500g, counter services and mailbox rental services is restricted to one supplier which is state-owned. For the other segments, private ownership as well as foreign ownership is open. In Mauritius and Zambia a foreign supplier can own up to 100% of a courier supplier, in Tanzania up to 65% and Zimbabwe and Namibia up to 49%.

In Tanzania there are restrictions on the cross-border supply or consumption of Postal/Courier services in any of the sub-sectors listed especially re-mailing while in Zambia there are no restrictions.

Overall regulations vary widely, hence if regional trade is to take off the harmonization process established by Ministers under the SADC umbrella needs to be expedited.

Audiovisual Services

Audiovisual services comprise motion picture projection services, motion picture and video tape production and distribution services, radio and television services and transmission services. This subsector is one of the most important especially the radio and television services and transmission services. This importance is reflected at the multilateral level where very few SADC countries have made commitments. Even where commitments are made, it is mostly in motion picture projection services and motion picture and video tape production and distribution services while very few commitments are made in the areas of radio and television services or transmission services. This is because:

- the audiovisual sector has a high value owing to its social, economic and cultural influence which can impact on a country's growth, development, innovation and job generation;
- the audiovisual sector is of particular interest to developing countries because it generates jobs while it also is a vehicle of expression of cultural identities; and therefore
- countries feel compelled to protect the audiovisual sector and are reluctant to conduct negotiations or take on specific liberalisation commitments within the framework of the WTO.

This trend is reflected at the regional level within SADC as audiovisual services have not been addressed in the SADC Protocol on Transport, Communications and Meteorology.

Furthermore the regulatory framework within the SADC region is very restrictive in radio and television transmission services while in the motion pictures projection services and motion picture and video tape production and distribution services is quite liberal. For instance in Zambia, Zimbabwe, South

Africa, Tanzania, and Namibia[33] the sector regulator is mainly responsible for regulating radio, television and transmission services. It is responsible for issuing licenses, maintaining standards, and dispute resolution. It rarely regulates motion picture projection services and motion picture and video tape production and distribution services. The latter is mostly regulated by copyright and censorship boards.

Ownership of radio and television services or transmission services suppliers in the above named countries is similar in that there is no exclusive right to supply public service (i.e. not for profit) broadcasting and hence both government and private owned broadcasters can supply these services whether on a commercial or public service basis. In Tanzania however, only a state owned broadcaster has the right to supply public service broadcasting. Foreign ownership of suppliers of radio and television services or transmission services is also allowed, however in Tanzania foreign ownership of suppliers is limited to 49% while in Zimbabwe the study states that foreign ownership is not permitted but at the same time also mentions that locals must have a 10% maximum equity in a foreign owned supplier.

Licenses have to be acquired in order to provide audiovisual services. In the radio and television or transmission services sub-sector, an entity has to possess two licenses before operating: an operational license which allows the entity to supply the audiovisual service and a spectrum license which is a license for the use of certain frequencies.

Conditions for acquiring licenses vary from country to country. In Zimbabwe, the applicant for a license has to ensure that majority domestic ownership, pay license fees, present a business plan and must meet minimum domestic content (75%) requirements. In Tanzania the same requirements have to be met with additional requirements that the supplier must have minimum capital to invest. In Zambia the new entrant does not have to prove that majority ownership is domestic, nor does it have to meet any minimum capital requirements. It however has to adhere to limitations on opening hours and floor space or screen-size. A new entrant from another country also has to show that it has adhered to its home country regulations for providing audiovisual services.

The communications sector in each country in the region is regulated by a single regulator. In Tanzania however the telecommunications sector has its own regulator (i.e. Tanzania communications regulatory authority) while the postal services has its own (i.e. the Tanzania Regulatory Authority.) The independence of these regulators varies. For instance in Tanzania the decisions of the Tanzania Regulatory Authority are not self executing and require the minister of information to approve them while the decisions of the Tanzania Communications Regulatory Authority are self executing.

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[33] The available studies do not provide much information on the audiovisual sector except for Zambia, South Africa, and Zimbabwe. The motion picture projection services and motion picture and video tape production and distribution services part of the Tanzania report is blank while it deals with the radio and television services or transmission services.

In South Africa the Independent Communications Authority of South Africa regulates the whole sector and is run by councillors who were appointed by the President after recommendations from Parliament. However there was an amendment to the communications Act and now the councillors are appointed by The Minister of Communications. Some feel this has weakened the regulator by making it answerable to the executive rather than parliament which is less likely to interfere in the regulator's operations.

Cross - border supply or consumption of communication services is generally not restricted within the SADC area. This is particularly so for the audiovisual sector and to a large extent the telecommunications sector. Television services are restricted by some countries. For instance, under the Digital Satellite Television[34] (popularly known as DSTV) only Botswana's local television station can be viewed in other countries. Other stations such as the South African SABC TV and Zimbabwe Television (ZTV) can only be viewed in the home countries. This is for different reasons. For instance, in South Africa one has to pay an annual license fee to watch these TV channels. Since people outside South Africa do not pay this license, they are restricted from watching even though previously they used to watch. In Zimbabwe the cross-border supply/ consumption of audiovisual services which are a threat to national security is prohibited.

3.4.3 GATS Commitments

In SADC only Mauritius, South Africa, Zimbabwe and Lesotho made GATS commitments in the telecommunications sector. Only Lesotho has made commitments on audiovisual services while Botswana, Lesotho and South Africa have made commitments in the couriers sub-sector. Furthermore, South Africa is the only SADC member to have subscribed to the Telecom reference paper. Most of the commitments were made to liberalise value-added services and did not open the fixed network market. Zimbabwe bound the existing level of domestic liberalisation while South Africa and Mauritius went beyond the status quo[35].

Table 12: Communication services: WTO GATS commitments of the SADC countries

COUNTRY	LIMITATION ON MARKET ACCESS				LIMITATION ON NATIONAL TREATMENT			
	Mode 1	Mode 2	Mode 3	Mode 4	Mode 1	Mode 2	Mode 3	Mode 4
Angola:	***	***	***	***	***	***	***	***
Botswana • Courier	None	None	Restricted	"Unbound"	None	None	Restricted	"Unbound"
DRC • Telecommunications	None	None	Restricted	"Unbound"	None	None	Restricted	"Unbound"
Lesotho • Courier • Telecommunications	None None	None Unbound *	None None	"Unbound" "Unbound"	None None	None None	None Unbound*	"Unbound" "Unbound"

[34] This is a subscription based digital satellite television service which broadcasts on K- and C- Band in

[35] See Hansohm D, Hodge J, and Ndulo M, (2005) 'State of Trade in Services and Service Trade Reform in Southern Africa'. Available on line http://www.nepru.org.na/publications/NRR/PDF/NRR31.pdf

Madagascar								
Malawi	***	***	***	***	***	***	***	***
Mauritius • Telecommunications	None	None	Restricted	"Unbound"	None	None	Restricted	"Unbound"
Mozambique	***	***	***	***	***	***	***	***
Namibia	***	***	***	***	***	***	***	***
South Africa • Courier • Telecommunications	None Restricted	None None	None Restricted	"Unbound" "Unbound"	None None	None None	None None	"Unbound" "Unbound"
Swaziland	***	***	***	***	***	***	***	***
Tanzania	***	***	***	***	***	***	***	***
Zambia	***	***	***	***	***	***	***	***
Zimbabwe • Telecommunications	None	None	Restricted	"Unbound"	None	None	None	"Unbound"

EXPLANATORY NOTES: Restrictions=bound with restrictions; Unbound=MFN not applicable, "Unbound"=unbound except as indicated in the Horizontal section; Unbound= Unbound due to lack of technical feasibility; ***= No commitments; None= no limitations. Where the sub-sector is mentioned it means the country made commitments in that sub-sector only. For instance in the financial services table banking is mentioned for Angola because it made commitments in this area. Where no sub-sector is specifically mentioned as for South Africa in the Construction table above, it means that the commitments made in all the sub-sectors within the construction sector are the same. Hence South Africa made no limitations for mode 2 in the construction sector as a whole from CPC 512-517.*
Source: WTO

3.4.4 Remarks

Much progress has been made in ensuring telecommunications infrastructure network connectivity and implementation of the agreed regulatory framework as part of the Protocol on Transport Communications and Meteorology. Nonetheless, SADC countries should give more attention to liberalising this sector, particularly strengthening the regulatory framework once privatisation and liberalization has taken place in order to prevent large companies from abusing their dominant positions and blocking benefits from reaching consumers.

However, the way competition in the telecommunications industry is developing is likely to produce a substantial change in the way the industry operates. Most observers predict that decades of regulatory scrutiny will give way in the near future to a competitive market place from which detailed regulation will withdraw. Legislators, regulators, and antitrust authorities all envision a transitional period followed by the substitution of competition policy for regulatory supervision.

In a multi-operator environment, interconnection is a crucial regulatory issue for telecommunications policy. No new entrant into the market will be able to compete effectively unless it is able to interconnect its network with the facilities of the incumbent operator and to do so at terms that allow the entrant to provide quality service at an affordable price. In the course of transition to competition, a pivotal issue is how best to meet the requirements of interconnection of each of the service providers. Competition in the market can flourish only if entrants are able to interconnect their facilities with those of the incumbent A “fair and reasonable” interconnection policy is a critical input in promoting competition in telecommunication markets in SADC.

Linked to interconnection and competitive efficiency is the issue of tariffs and tariff policy. It is widely recognized that enhancing efficiency and investment in telecommunications requires the introduction of competition, which in turn needs a regulatory mechanism to facilitate competition. An essential ingredient of transition from a protected market to competition is alignment of prices to costs (i.e. cost oriented or cost based prices), so that prices better reflect their likely levels in a competitive environment.

It is clear that a substantial agenda for services liberalization, spanning access, competition, and ownership exists within the region. What is less clear is the form(s) this should take. Clearly a regional agenda should address inter-connectivity and cross-border supply; whereas a multilateral agenda could address ownership and competition issues.

3.4.5 Specific Policy Recommendations

- ✓ Promote interconnection across borders and within national jurisdictions through appropriate regulatory harmonization;
- ✓ Promote consequent competition through establishing robust competition frameworks with regional jurisdiction where feasible, in order to ensure appropriate pricing;
- ✓ Limit the monopoly perquisites of national fixed line companies through greater deregulation, taking care to ensure universal access goals are not compromised;
- ✓ Revisit ownership restrictions, especially in fixed line communications and postal services, with a view to encouraging greater foreign ownership in order to promote productivity improvements;
- ✓ Initiate discussions on provision of audio-visual services, especially radio and television transmission, in order to probe flexibilities in this sub-sector.

3.4 TRANSPORT SECTOR

Owing to the complexity of this sector, in this section we have merged the economic and regulatory issues discussion into sections covering the four dominant modes of transportation: road; rail; ports, maritime and inland waterways; and air transport.

The transportation system in the SADC region comprises road, railway, air and port systems principally serving regional transit traffic. Most of the infrastructure and operating organizations are owned wholly or partly by States. The operational and financial problems being faced are gradually being resolved through restructuring and increased involvement of the private sector in the provision of transport services.

The transformation of the traditional transport corridors into development corridors or Spatial Development Initiatives (SDIs) represents a landmark achievement for SADC's long term development. The concept of Development Corridors is to view the major transport routes from the sea ports to the hinterlands that they serve not merely as transport, but as economic corridors with activities related to agriculture, industry, commerce, communications, and tourism. The development corridors such as Maputo, Beira, Walvis Bay, Nacala and Lobamba have already shown that they can generate sustainable growth for the underdeveloped areas of the region. Nonetheless, as Table 13 reveals transport infrastructure is still predominantly located in South Africa.

Table 13: SADC transport network (2007)

Country	Airports	Railways (km)	Roads (km)	Waterways (km)	Ports	Pipelines (km) Gas
Angola	232	2,761	51,429	1,300	4	1,220
Botswana	85	888	24,355	0	0	0
DRC	237	5,138	153,497	15,000	11	133
Lesotho	28	0	5,940	0	0	0
Madagascar	104	854	49,827	600	4	0
Malawi	39	797	15,451	700	5	0
Mauritius	5	0	2,020	0	1	0
Mozambique	147	3,123	30,400	460	3	1,242
Namibia	137	2,382	42,237	0	2	0
South Africa	728	20,872	362,099	0	6	3,648
Swaziland	18	301	3,594	0	0	0
Tanzania	124	3,690	78,891	0	1	1,178
Zambia	107	2,157	91,440	2,250	1	771
Zimbabwe	341	3,077	97,440	0	2	0
TOTAL	**2,332**	**46,040**	**1,008,620**	**20,310**	**40**	**8,192**

Source: CIA World Factbook

The costs of international transport services are also crucial determinants of SADC countries' competitiveness, a problem that is particularly acute for the many land-locked countries in the region (see Table 14 below).

Table 14: Pricing of transportation in SACU (2006)

Country	Average time to ship 20 ft container from port to final destination (days)		Average cost to ship 20 ft container from port to final destination ($)	
	Import	Export	Import	Export
Angola	58	64	2,325	1,850
Botswana	43	33	2,595	2,328
DRC	62	50	3,308	3,120
Lesotho	49	44	1,210	1,188
Madagascar	48	48	1,282	982
Malawi	54	45	2,500	1,623
Mauritius	16	16	683	683
Mozambique	38	27	1,185	1,155
Namibia	24	29	1,550	1,539
South Africa	35	30	1,195	1,087
Swaziland	34	21	1,820	1,798
Tanzania	51	30	917	822

Zambia	64	53	2,840	2,098
Zimbabwe	67	52	2,420	1,879
TOTAL	**46**	**39**	**1,845**	**1,582**

Source: Africa Development Indicators 2007, n.a. = information not available

The lowest cost country is Mauritius, both in terms of number of days and dollar cost. Zambia is the most expensive country to conduct international trade in SADC as indicated by the number of days and the cost of trade. Several factors contribute to differences in cost levels and structure, including the efficiency of distribution systems, the quality of transportation infrastructure, and the regulatory and institutional frameworks.

Hence the SADC Protocol on Transport, Communications and Meteorology was adopted in 1998 to address these problems. It lays out a comprehensive framework for cooperation in all modes of regional transport. Its general objective in the transport sector is to establish 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.

3.4.1 Air Transport

Air transport services comprises aircraft repair and maintenance services, computer reservation services, selling and marketing of air transport services.

Chapter 9 of the SADC Protocol on Transport, Communications and Meteorology creates a framework for cooperation in civil aviation. The main objective is to ensure the provision of safe, reliable and efficient services in support of socio-economic development in the region. It also aims to overcome the constraints of small national markets, market restrictions and the small size of some SADC airlines in order to further ensure the competitiveness of regional air services in a global context[36]. The Protocol seeks to encourage the involvement of the private sector and underlines the need for the restructuring of state owned enterprises; and integration of regional systems through compatible policies and legislation.

In pursuit of a common objective, namely, liberalization of air transport services, the Common Market for Eastern & Southern Africa (COMESA), East African Community (EAC) and SADC decided to base their activities on the Yamoussoukro Declaration of 1988 which was elaborated upon in November 1999 when the Yamoussoukro Decision concerning the Liberalisation of Access to Air Transport Markets in Africa was adopted.

Accordingly, a joint meeting of COMESA, EAC and SADC Ministers responsible for Transport was held in November 2006, in Harare, Zimbabwe at which they:

36 See http://www.sadc.int/english/documents/legal/protocols/transport.php#article91

- ✓ Adopted the Guidelines, Provisions and Procedures for the Implementation of Regulations for Competition in Air Transport Services within COMESA, EAC and SADC; and
- ✓ Urged COMESA, EAC and SADC Secretariats to develop Action Plans to facilitate the implementation of the Regulations for Competition in Air Transport Services within COMESA, EAC and SADC by December 2007. We do not know if this deadline was met.

The air transport sector in each of the countries studied is regulated by legislation enacted with a general objective of prescribing how airlines are to operate within the country, creating a national regulator, providing for licenses as well as the different ownership structure i.e. how much a foreign entity can own in a particular service supplier or how much equity can be held in private hands. In some countries, legislation has been enacted to establish a statutory body which supplies services incidental to the airline business, including, inter alia: ground administration and supervision; passenger and baggage handling; freight and mail handling; ramp handling; aircraft services i.e. small planes, fuel and oil handling. For all the countries except South Africa[37] these services are provided by a single company and hence there is no competition. However some countries such as Tanzania are planning on privatizing these services and are in the process of formulating laws which will facilitate the privatization process.

Competition within this sector occurs in the international air scheduled transportation segment. In this segment airline carriers other than national flag carriers are allowed to operate. For instance in Botswana, Air Botswana competes with South African Airways and Air Namibia. On the other hand international airlines are not allowed to operate within the domestic air scheduled transportation segment in Botswana. In some countries this segment is dominated by the national flag carrier. In other countries such as Tanzania, foreign airlines are allowed to serve the domestic market as long as they do not own the majority of shares in the airline company. Hence South African Airways and Air Tanzania own a domestic airline called ATC. 100% private ownership of domestic airlines is also permitted however foreigners can only own a maximum shareholding of 49% in such entities.

Air ticket prices are generally determined by market forces with little intervention from government. This encourages competition. However there is also a risk of price fixing which can stifle competition. In countries like South Africa, which has a competition commission which operates efficiently, price fixing can in principle be checked properly.

Within this sector, there is one regulator which generally issues licenses and ensures that international standards are met. Regulators are generally statutory bodies falling under the supervision of the ministry responsible for transportation; or are themselves government departments. Funding is usually from the government, supplemented by license fees.

[37] South Africa is an exception because there was no sectoral study available for this sector.

GATS does not apply to traffic rights and the services related to air traffic rights. Its disciplines only apply to services related to aircraft repair and maintenance, selling and marketing, and the computer reservation systems. No SADC country made commitments to liberalise the above-mentioned services under GATS.

3.4.2 Road Transport

Road transport services cover passenger and freight transport, rental of commercial vehicles, maintenance and repair of road transport equipment, and supporting services for road transport services.

The SADC regional road network is extensive, comprising more than 1,000,000 km. The SADC regional trunk road network connects capital cities, regional ports and major industrial areas. With the exception of Angola and Mozambique, the region’s main road system is generally good or in fair condition.

Road transportation is the main mode of transport for landlocked countries within the SADC region. There has been significant growth in the road transport sector in the last 10 years, as SADC countries have continuously shifted from rail transport to road transport for moving both freight and passengers. This has created a problem of overloading, which has increased the cost of maintaining roads. Hence SADC countries are carrying out major reforms in the road services sector.

Chapters 4 (road infrastructure), 5 (road transport) and 6 (road traffic) of the SADC Protocol on Transport, Communications and Meteorology provide a framework for achieving harmonization of regional road traffic and transport systems.[38]

Article 13 of this Protocol encourages the creation of regional bodies that should play an important role as equal partners in the implementation of the Protocol through collective participation with the member states. Such regional bodies are to become consultative members of the Technical Committees to which they report on progress regarding implementation of the Protocol in their areas of responsibility.[39]

Some of the Regional Associations in place and already taking part in the implementation of the Protocol include the Federation of East and Southern African Road Transport Associations (FESARTA), and the Association of Southern African National Road Agencies (ASANRA)[40] which aims to enhance regional policy coordination and enhance the management of the region’s road infrastructure.

38 See http://www.sadc.int/english/documents/legal/protocols/transport.php#article42
39 See http://www.sadc.int/english/documents/legal/protocols/transport.php#article1313
40 http://www.asanra.int.mw/

In addition to building the necessary implementation framework, significant progress has been made to give effect to the above-mentioned chapters of the Protocol. Such achievements include:

- ✓ *SADC Drivers License*[41]*.* In 1999, SADC adopted the SADC Drivers License as an Annex to the SADC Protocol on Transport, Communications and Meteorology. The license is part of several proposals to harmonise the way in which drivers are trained, examined and licensed across the region. Since the adoption of the Annex on the Drivers License, all countries covered here except Zimbabwe now issue the SADC Drivers License.
- ✓ *Corridor Infrastructure Development*[42]. A number of measures have been taken to enhance the performance of trade routes or development corridors in Southern Africa. Major progress has been made with the evaluation of corridor facilitation effectiveness for the Beira, Walvis Bay, North-South, and Dar es Salaam-Kapiri-Mposhi corridors and preparation of measures for corridor performance improvement have been concluded.
- ✓ *Provision of Rural Roads*. In order to raise awareness of these recent developments and current knowledge in the provision of rural roads, a study was commissioned to develop "Guidelines for Low Volume Sealed Roads in the SADC Region." The final version of the document was completed in 2004 and distributed to each of the SADC member states in early 2005. The guidelines provide a compendium of recent approaches to the planning and investment appraisal techniques, innovative technology in construction and maintenance and latest knowledge in labour-based and other construction techniques, which will ensure the cost-effective provision and sustainable integrity of these roads through local participation and ownership. The guidelines were produced with participation of regional experts from the public and private sectors in the region.
- ✓ *Regional Traffic Facilitation.* Efforts are underway to improve cross-border traffic facilitation. These include regional projects on:
  - o Road user charges;
  - o Overload control;
  - o Vehicle equipment & dimensions;

Each country has legislation whose main objective is to license vehicles, provide for different classes of licenses for different vehicles, and establish regulatory bodies which issue licenses. In some countries such as South Africa, legislation aimed at protecting the environment has affected the transportation industry including the road transport sector. Whereas in some countries all these functions were performed by the ministry responsible for transport, due to World Bank and other donor influences, certain agencies have been established which have limited the role of such ministries. For

41 See, Kritzinger-van Niekerk L and P Moreira, Regional Integration in Southern Africa: Overview of recent developments. Washington: World Bank, December 2002, http://www.sarpn.org.za/documents/d0000329/Regional Integration.pdf

42 For more information on corridor infrastructure development see, Kritzinger-van Niekerk L and Moreira P, Ibid.

instance in Zambia there are three semi-autonomous agencies in the road sector: The Road Transport and Safety Agency; the Road Development Agency; and the National Road Fund Agency. Each has a Board of Directors comprising private and public sector membership. The Road Transport and Safety Agency is the regulator of traffic and safety management, while the Road Development Agency is charged with the responsibility of developing, rehabilitation and maintenance of the entire road network. The National Road Fund's mandate is to manage and administer the Road Fund.

Competition within the road transport sector exists in some countries between foreign entities and local entities. However there are certain restrictions on market access in some segments. For instance, in Zimbabwe, there are restrictions on entry of new firms whether local or international in passenger transportation, freight transportation, rental of commercial vehicles with operator, maintenance and support services for road transport services. On the other hand Tanzania does not restrict new entries in these sub-sectors. Furthermore some countries require that foreign firms establish themselves as subsidiaries only while in others they can also establish as branches or representative offices. Table 15 summarises some of the key regulations referred to above.

Table 15: Regulation in road transport

Country	maximum equity	licenses	no. of regulators	foreign entrants	Legal Forms	Cross border supply
Angola	100%(100%)	yes	1	allowed	all forms	no restrictions
Botswana	100%(100%)	yes	1	allowed	all forms	no restrictions
DRC						
Lesotho	100%(100%)	yes	1	allowed in some sub-sectors	no information	no restrictions
Madagascar						
Malawi	no information	yes	1	allowed	no information	no restrictions
Mauritius	no information	no information	no information	no information	no information	no information
Mozambique						
Namibia	no information	yes	1	no information	no information	no information
South Africa	no information	yes	2	allowed in some sub-sectors	all forms	allowed
Swaziland	100%(100%)	yes	1	allowed	no information	allowed
Tanzania	100%(no information)	yes	1	allowed	all forms	restricted
Zambia	100%(100%)	yes	1	allowed	no information	allowed
Zimbabwe	100%(49%)	yes	1	restricted	subsidiary/joint ventures	restricted

Source: UNCTAD questionnaires

In SADC only Lesotho and South Africa made GATS commitments in the road services sector. The two countries made commitments on passenger, freight and the maintenance and repair of road transport equipment. They provide for limitations to market access and national treatment in respect to the presence of natural persons through horizontal limitations. They provide for limited access for skilled personnel and the provision of training for local personnel.

3.4.3 Rail Transport

Rail transport services cover passenger and freight transport, maintenance and repair of rail transport equipment, and supporting services for rail transport services.

The SADC railway industry comprises 13 operating railways, all of which are State owned. Of these, 10 form the Interconnected Regional Rail Network (IRRN), with a total of nearly 33,600 route-kilometres of standard gauge (1.067 metre) track. Of the 10, South Africa’s Spoornet accounts for 61.8 percent of the network. The other IRRN railways are National Railways of Zimbabwe (NRZ), two railways of Mozambique’s CFM, the Tanzania- Zambia Railway (TAZARA), which is jointly owned by the two governments, Zambia Railways, TransNamib Rail, Botswana Railways, Swaziland railways, and the DRC’s Sizarail. The IRRN serves most of the principal ports of continental SADC, the exceptions being the Mozambique port of Nacala and Angolan ports.

The port of Dar es Salaam is served not only by the IRRN, but also by Tanzania Railway Corporation (TRC), which operates a 2,600 kilometre network of metre-gauge track. The port of Nacala is served by a standard-gauge network of 1,640 route-kilometres, comprising Malawi railways and CFM (North). Angola has four railways, none of which are currently in operation for most of their respective lengths. One of these, the Benguela Railway connects to the port of Lobito, and, if in operation, would add more than 1,300 kilometres to the IRRN, since it connects to the Sizarail system.

Chapter 7 of the SADC Protocol on Transport, Communications and Meteorology lays out a comprehensive framework for regional cooperation in rail transport. Its objective is to ‘facilitate the provision of seamless, efficient, predictable, cost-effective, safe and environmentally-friendly railway service which is responsive to market needs and provides access to major centers of population and economic activity’[43]. To this end, the provisions of chapter 7 include:

- ✓ A harmonized regional railway policy which incorporates a phased and coordinated economic and institutional restructuring of railways;
- ✓ Monitoring the adequacy of rail infrastructure required to meet the region’s developmental needs;
- ✓ Cooperation on operational matters and the development and implementation of compatible technical standards in respect of infrastructure and operational equipment and human resource development.

43 See http://www.sadc.int/english/documents/legal/protocols/transport.php#article71

SADC countries realize the importance of reform in this sector and there have so far been commendable efforts through the Southern African Transport and Communications Commission (SATCC), including the establishment of the Southern African Railway Association[44] with the objective of increasing rail efficiency. Since most challenges faced by this sub-sector emanate from lack of investment and maintenance, current reform measures seek to attract private sector participation through inter alia concessioning of railways, encouragement of public-private sector partnerships, and the general improvement of the regulatory environment.

Accordingly, a number of railway lines have been concessioned in SADC, including: the Bulawayo – Beitbridge line (Zimbabwe), the Ressano Garcia line (Mozambique), Malawi railways which became Central East African Railways, Zambia Railways now known as Railway Systems of Zambia and the Sena line in Mozambique. As such, several railway operations[45] are now outside direct government involvement requiring that regulatory regimes including safety oversight should be strengthened.

Still, in most countries for which reports were available the railway sector is dominated by state-owned enterprises, with regard to both passenger and freight services. Some countries do not see the need to open up the sector while in some countries competition is difficult due to the small size of the market. This is because operating railway companies is very expensive and requires huge amounts of capital. Tanzania for instance tried to open up this sector but was not able to attract any investment. In those countries where only one company is allowed to operate foreign firms are allowed to provide maintenance, repair and support services in the sub-sector. In these areas there is competition between different operators. For instance in Namibia, Transnamib Limited, a government parastatal, exclusively provides passenger and freight transportation as well as pushing and towing services while both local and foreign entities can provide maintenance, repair and support services.

No SADC country made GATS commitments in the rail transport services sector.

3.4.4 Maritime Transport

Maritime transport encompasses all forms of transport by sea, inter-modal links and inland ports and still remains the main mode of international transport of goods[46]. Services consist of access to and use of port facilities, auxiliary services and ocean transport.

SADC has a system of 15 key ports, which are classified as regional. Mauritius is served by Port Louis. Continental SADC is served by eight

44 For more details see http://www.sararail.org/site/issues.html.

45 The concessioning of railway operations covers both trains and tracks but a country may decide to concession railway tracks without necessarily including trains.

46 See Hansohm et al, op cit 67

regional ports along the Indian Ocean coast, and six along the region's Atlantic coast. The Indian Ocean ports include Dar es Salaam, the Mozambican ports of Nacala, Beira and Maputo, and the South African ports of Richards Bay, Durban, East London and Port Elizabeth. The Atlantic Ocean ports include Cape Town and Saldahna in South Africa, the Namibian port of Walvis Bay, and the Angolan ports of Luanda, Lobito and Namibe.

Landlocked SADC countries rely on their neighbours' ports and other maritime services for the bulk of their exports and imports. Maritime transport is covered by Chapter 8 of the SADC Protocol on Transport, Communications and Meteorology and is seen as an area of strategic importance to regional economic growth. Cooperation in this area is aimed at, *inter alia*, developing and implementing harmonized international and regional transport policies in respect of the high seas and inland waterways. Significant progress seems to have been made so far. For instance, SATCC has been co-coordinating the development of facilities of 12 ports in SADC[47]. It has also engaged in upgrading and rehabilitating ports in Angola and Mozambique.

As far as inland waterways are concerned[48], a Model Agreement is being developed. The SADC Maritime and Inland Waterways Transport Sub-Committee at its last meeting in November 2004 formed a Task Force of experts from its member states to develop, together with the Secretariat, the model agreement. The Model Agreement is apparently inspired by bilateral agreements between some SADC countries on utilisation of inland waterways and some developments in the international arena. For example:

- ✓ Malawi and Tanzania have a bilateral agreement covering the utilisation of inland waterways, signed in 1995.
- ✓ In 2000, Malawi and Mozambique signed a bilateral "Lake Shipping and Port Services Agreement" covering shipping and port operations over the shared Lake Malawi/Niassa.
- ✓ In 2001 and 2002 the International Maritime Organisation (IMO) developed Safety Regulations for Inland Waterways Vessels and Non-Convention Size Craft, including Fishing Vessels Operating in Africa. Since the IMO regulations covered most of the same issues the SADC Model would deal with, it was agreed that these regulations should be revised first before proceeding with a regional Model.
- ✓ In 2002 the SADC Ministers of Transport directed that a trilateral agreement on Lake Malawi/Nyasa/Niassa should be developed. Cognisance was also taken of the existence of other lakes in the region where bilateral or multilateral agreements were necessary, notably Lake Kariba (Zimbabwe and Zambia) and Lake Tanganyika (Zambia, Tanzania, DRC and Burundi).
- ✓ In 2002 the responsible SADC Sub-Committee recommended the development of a model multilateral agreement for inland waterways which could be used as a basis for agreements on several waterways.
- ✓ In July 2004 seven SADC States, namely, Angola, Botswana, Malawi, Mozambique, Namibia, Tanzania, Zambia and Zimbabwe signed an agreement establishing the Zambezi Watercourse Commission in

47 Ibid
48 See SADC I&S Directorate's 2006 Report to the Integrated Committee of Ministers.

Kasane, Botswana. The Commission establishes a permanent arrangement that would ensure that the Zambezi basin's water resources are utilised in a sustainable manner for the socio-economic benefit of all the citizens living within the basin.

Ports in the SADC region are run by statutory bodies - usually one statutory body has been created to provide such services. In the countries analysed ports are generally owned by the state, but foreign entities are allowed to provide services. Hence they cannot own the harbour but can lease it from government to provide their services. Market access for foreign entities is also restricted in some countries. For instance, in Namibia only two companies can provide port services. This has been the case since independence and the rationale behind this is that exclusive rights are necessary to attract strategic investment. Furthermore, foreign entities cannot provide certain services such as towing services. In Tanzania however supply of marine services is predominantly carried out by foreign operators. Only a small market share is serviced by local companies and access to all services is mandatory – pilotage, towing, tug assistance, navigation-aid, bathing, waste disposal and anchorage - i.e. a firm which has been granted permission to operate at the port has to provide these services to all ships. The port of Dar es Salaam does not discriminate foreign carriers from domestic ones in their access to these mandatory services. It is the government's deliberate policy to ensure competition in this sector.

No SADC country made GATS commitments in the maritime services sector.

Table 16: Transport services: WTO GATS commitments of the SADC countries

COUNTRY	LIMITATION ON MARKET ACCESS				LIMITATION ON NATIONAL TREATMENT			
	Mode 1	Mode 2	Mode 3	Mode 4	Mode 1	Mode 2	Mode 3	Mode 4
Angola	***	***	***	***	***	***	***	***
Botswana	***	***	***	***	***	***	***	***
DRC	***	***	***	***	***	***	***	***
Lesotho								
• Passenger transportation	Unbound	Unbound	None	"Unbound"	Unbound	Unbound	None	"Unbound"
• Freight transportation	Unbound	Unbound	None	"Unbound"	Unbound	Unbound	None	"Unbound"
• Maintenance and repair of road transport equipment	Unbound *	None	None	"Unbound"	Unbound*	None	None	"Unbound"
Madagascar								
Malawi	***	***	***	***	***	***	***	***
Mauritius • Banking	***	***	***	***	***	***	***	***
Mozambique	***	***	***	***	***	***	***	***
Namibia	***	***	***	***	***	***	***	***
South Africa								
• Passenger transportation	Unbound	Unbound	None	"Unbound"	Unbound	Unbound	None	"Unbound"
• Freight transportation	Unbound	Unbound	None	"Unbound"	Unbound	Unbound	None	"Unbound"
• Maintenance								

and repair of road transport equipment	Unbound *	None	None	"Unbound"	Unbound*	None	None	"Unbound"
Swaziland	***	***	***	***	***	***	***	***
Tanzania	***	***	***	***	***	***	***	***
Zambia	***	***	***	***	***	***	***	***
Zimbabwe	***	***	***	***	***	***	***	***

EXPLANATORY NOTES: Restrictions=bound with restrictions; Unbound=MFN not applicable, "Unbound"=unbound except as indicated in the Horizontal section; Unbound= Unbound due to lack of technical feasibility; ***= No commitments; None= no limitations. Where the sub-sector is mentioned it means the country made commitments in that sub-sector only. For instance in the financial services table banking is mentioned for Angola because it made commitments in this area. Where no sub-sector is specifically mentioned as for South Africa in the Construction table above, it means that the commitments made in all the sub-sectors within the construction sector are the same. Hence South Africa made no limitations for mode 2 in the construction sector as a whole from CPC 512-517.*
Source: WTO

3.5.5 Remarks

From the foregoing it is evident that, at least on paper, substantial progress towards integrating regional transport markets is being made, particularly in the road and maritime sub-sectors. However, some of the practices within the transportation industry are contrary to the provisions and objectives of the SADC Protocol on Transport, Communications and Meteorology.

The road transport sector is relatively liberal in all the SADC countries. However, different regulatory policies in the road services sector complicate the flow of intraregional traffic. These include trade facilitation issues such as administrative documentation requirements at borders, customs inspections, security checks, transit and other charges, and immigration controls which differ from country to country. For example, a trucker driving from South Africa to Malawi may have to pass through Zimbabwe and Mozambique going through six different check points at the three international border points, each requiring a different permit to pass and long delays. Time spent at border check points may exceed travel time.

The liberalisation of the road transport sector under the SADC Protocol on Transport, Communications and Meteorology is mostly guided by the SADC RISDP which contains a target of 2008 for SADC to have liberalised regional transport markets as well as harmonised transport rules, standards and policies. This will be achieved by liberalisation of market access in respect of carriage of international road freight, introduction of international regulatory mechanisms, and regional harmonisation of road traffic legislation. In road and rail transportation, foreign firms, especially, those which do not have a presence within a particular country are restricted from providing passenger services and freight services in those countries. This is clearly an impediment to the liberalization process within the sector. In light of the importance of the road transport sector, especially when looking at its impact on mode 4 trade in services (i.e. if mode 4 trade in services is going to occur significantly, modes of transportation also have to be effective) liberalization ought to take place.

With regard to air transportation, the protocol aims to reduce market restrictions by among others liberalising the air transport market using the Yamoussoukro Decision as the guiding principle. However, it is clear that some governments are not yet ready to open up their domestic markets for international airlines to provide domestic scheduled air transport services. Government usually protects the national flag carrier especially where it has vested interests (mostly political as for instance having a national flag carrier is a source of national pride) and where parastatals are a source of revenue for government. South African Airways' regional dominance, and the fact that it is state-owned, further complicates the liberalization impulse. Furthermore foreign entities are only allowed entry in services incidental to the airline industry such as catering. These anomalies need to be rectified by encouraging foreign entry. This strategy has worked in South Africa where companies such as Comair - a British Airways subsidiary - have introduced no frills flights which have benefited the customer.

However this does not mean that the SADC Protocol on Transport, Communications and Meteorology is not being implemented successfully by SADC member countries. There has been progress in for instance the railway sub-sector where countries such as South Africa and Tanzania have established regulators which are independent. In the maritime sub-sector, the development of waterways in order to reduce the negative impact of being land locked is also being promoted. It is presumed that independent regulators including competition commissions are more likely to check anticompetitive acts than those which are not independent and hence encourage more foreign participation.

3.5.6 Specific Policy Recommendations

- ✓ Simplify and where possible standardise documentation requirements, especially in the road transportation sector - addressing this would reduce cross border delays and related opportunity costs, thereby significantly improving SADC's competitiveness
- ✓ In road and rail transportation, consider liberalizing foreign ownership requirements i.e. mode 3, especially where these demonstrably discourage foreign investment; and also liberalize and/or lock in reforms in consumption abroad (mode 2) concerning access for transport operators to regional markets. Both should be locked in via GATS liberalization.
- ✓ In air transport consider unilaterally liberalizing access to domestic air transport sectors in order to introduce greater pricing competitiveness; this could be locked in via a regional agreement since there is no GATS framework beyond ancillary services.
- ✓ Ensure the SADC Protocol on Transport, Communications, and Meteorology is properly implemented.

3.5.7 Private-Public Partnerships in Transport Infrastructure Development

Resources for infrastructure financing remain a key challenge for Sub-Saharan Africa in general and the SADC region in particular. Whilst infrastructure has been wholly funded by governments through internal and external loans, there has been a paradigm shift with most infrastructure potentially being funded through Public-Private Partnerships (PPPs) options. The role of SADC is to motivate the planning of regional transport projects, facilitate multinational consensus on projects as well as leveraging funds for the packaging of projects to bankable state. Amongst the partnership supporting this process are the New Partnership for Africa's Development (NEPAD), World Bank and the Development Bank of Southern Africa (DBSA).

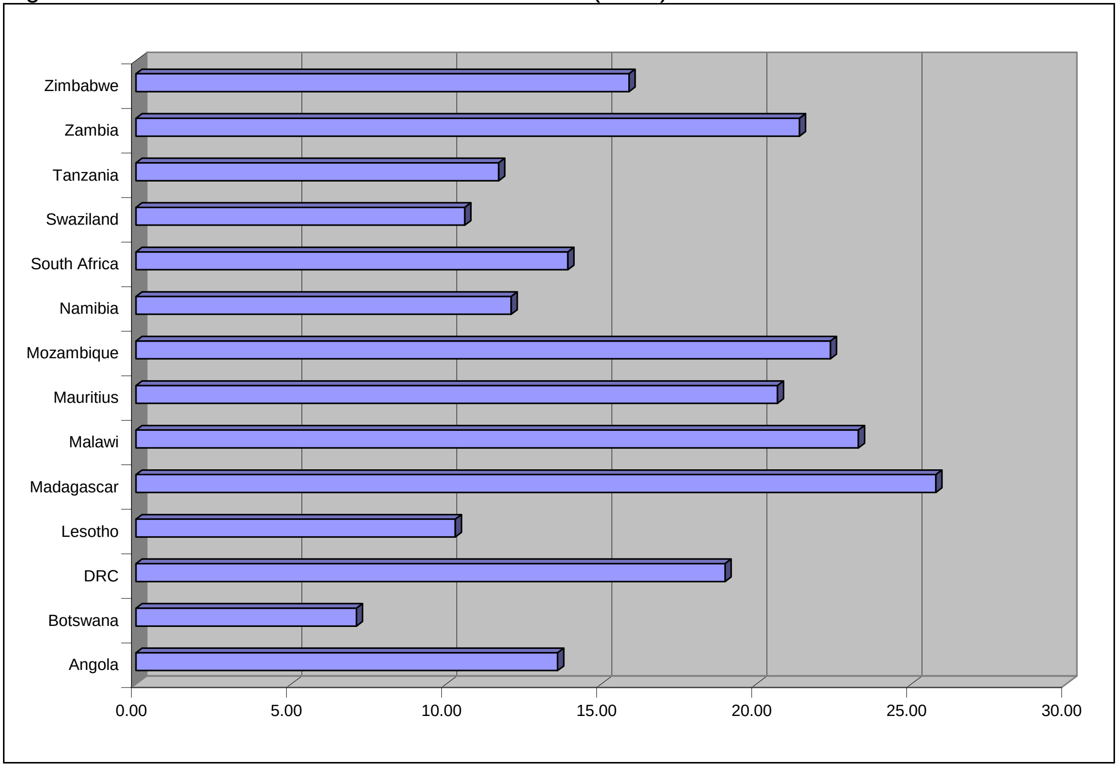
In order for PPP and private sector funding to be sustainable, there is need to put into place a deliberate "user pays principle" based on a total cost recovery framework for users of infrastructure. The toll roads in South Africa and Mozambique are examples.

3.5 TOURISM SECTOR

3.5.1 Economic Issues

The sector is of strategic importance to almost all SADC countries considering its high contribution to GDP (see Figure 7 below), trade, foreign currency receipts and employment. However, development in the tourism sector is constrained by lack of capacity and inefficiency in the supporting services sectors, such as telecommunications, finance and transport.

Figure 7: Contribution of tourism services to GDP (2006)



Note: Figures for Mozambique, Swaziland & Zambia are for 2005.
Source: SADC

In the SADC region alone demand for travel and tourism grew from US$12.656 billion in 1990 to US$28.939 billion in 2006, reflecting an average annual growth rate of 10 percent. Furthermore, the region received 16.9 million arrivals in 2006 accounting for 1.98 percent of the global market. Tourism contributed 3.4 percent to the GDP of the region and was responsible for 1.75 million direct jobs in 2006[49].

Table 17: Tourist arrivals to the SADC region

Country	**2006 (000)**
Angola	55
Botswana	1,160
DRC	87
Lesotho	308
Madagascar	220
Malawi	257
Mauritius	1,072
Mozambique	88
Namibia	1,010
South Africa	8,100
Swaziland	460
Tanzania	980
Zambia	918
Zimbabwe	1,880
TOTAL	**16,920**

Source: SADC

[49] Mfune F 2008), "Tourism Development in Southern Africa", *The Official SADC Trade, Industry and Investment Review* 2007/08, SADC ,

South Africa attracts the most tourists in the region. Annual tourist arrivals grew from 1 million in 1990 to approximately 8.1 million in 2006 with an anticipated 10 million arrivals by 2009. Zimbabwe is the second most attractive destination followed by Mauritius, Botswana and Namibia. .

Strong growth in the region can be attributed to the growing numbers of tourists coming from Europe, the region's traditional primary tourism market; continued improvements in air connectivity; development of new and compelling tourism products; and the generally competitive currency exchange rates in the region.

The build up to the 2010 FIFA World Cup (to be hosted by South Africa) continues to positively fast track tourism development generally in the region. There are concerns however about the growth of air capacity to and within the region, and the continued requirement for integrated marketing of the region and quality of service in the industry with the concomitant impact this may have on access to tourists and repeat tourists in the future.

From the papers reviewed it appears that the tourism sector in SADC has tremendous potential for growth and to become a key foreign exchange earner for many countries, but, tourism activities are being held back by the lack of coordination and regulatory harmonization across the region especially with respect to transport and movement of persons. Many tourism opportunities cannot be realized without a reliable regional transport network. A coordinated plan under the Services Protocol to expand air travel to meet the needs of regional and foreign tourists will go a long way in assisting SADC to reach its tourism targets. Another area where SADC Member States need to coordinate their efforts to enhance regional tourism is visa requirements.

SADC policy reforms in tourism

The region has established a SADC Tourism Sector Coordinating Unit to reform the tourism sector. In 1998, SADC countries signed a Protocol for the Development of Tourism and it has been in force since 2002. The Protocol aims to strengthen the competitiveness of the sector by, among others, removing travel and visa restrictions, harmonizing tourism legislation and immigration procedures in order to facilitate the movement of both regional and international tourists in the SADC region, and strengthening institutional capacity.

Furthermore, SADC member states formed the Regional Tourism Organization of Southern Africa (RETOSA) in 2002. RETOSA covers 14 Southern African countries with diverse offerings such as wildlife adventures, coral coastlines, wine routes, mountain resorts and tropical beaches. The organization is seen as the marketing and promotional arm of the SADC tourism sector.

SADC Ministers have committed themselves to work towards the establishment of a “UNIVISA”[50] for the region by 2010 – in time for the World Cup Soccer tournament, to be hosted by South Africa. This would enable visitors to the region to travel freely using a single visa (where this is required). SADC has already had experience in the free movement of persons through, for example, the establishment of the Great Limpopo Park, which spans Mozambique, South Africa and Zimbabwe. The Tourism Protocol also makes provision for the free movement of vehicles used by visitors around the region in terms of the relevant provisions of the SADC Protocol on Transport, Communications and Meteorology. It is not known if this has been implemented yet.

In June 2006 it was agreed that SADC Member States should implement the relevant sections in the Protocols on Tourism Development and the Facilitation of Movement of Persons simultaneously, and that SADC Member States should participate in the process all the way and not by way of having a few pioneer countries to begin the process. SADC countries are to grant visa exemption to the key tourism source markets as these are in any case already exempt from visas by most of the SADC Member States and grant visa exemption to citizens of other SADC Member States as listed in the UNIVISA Workshop Report. Furthermore, Working Groups are to be constituted to develop and produce common rules and procedures that will guide issuance of Visas in particular in the areas of, inter alia, police cooperation, immigration, judicial cooperation, computerization and statistics.

2010 FIFA World Cup

At its meeting held in Gaborone, the Integrated Committee of Ministers (ICM) endorsed the strategy to use SADC’s Transfrontier Conservation Parks as the primary basis of the 2010 FIFA World Cup Tourism Strategy and directed that Ministers responsible for Tourism should convene a meeting of all Member States to discuss their submissions, involvement and present a programme to the ICM. SADC Council, in August 2006 noted the progress on development of the 2010 FIFA World Cup Strategy for all SADC Member States and directed that the Ministers responsible for Sport and Information come on board to finalise the process of participation.

Council further noted that, in line with its decision in Gaborone in February 2006, South Africa in August 2006 made a presentation on the Transfrontier Conservation Areas (TFCAs) as anchor projects for the 2010 FIFA World Cup and how SADC countries can benefit from the event. In the spirit of promoting information sharing on the 2010 FIFA World Cup, South Africa will supply

[50] Implementation of a UNIVISA and VISA Exemption System in SADC will require a general agreement being signed by SADC States on VISA implementation procedures. The two main tenets of the VISA system are that first, SADC countries should by 2009 exempt requirements for VISA for citizens of countries referred to as key tourism source markets and the citizens of countries of SADC. The second tenet would refer to citizens of all other countries which are not tourism source countries or SADC countries. In both cases, a VISA exemption and a UNIVISA would permit the holder of the VISA to enter a SADC country.

information on the FIFA World Cup requirements and guidelines for the information of SADC Member States.

3.5.2 Regulatory Issues

All the countries for which reports were available have legislation that regulates the tourism industry. The main objective of these pieces of legislation is to provide for licensing of different tourist service providers and to ensure quality within the sector. Some countries also aim at protecting the environment and certain national heritage sites.

Table 18: Regulations in tourism

Country	maximum equity	licenses	no. of regulators	foreign suppliers	cross-border supply	foreign tourist entry
Angola	100%(100%)	yes	1	not restricted	no information	allowed
Botswana	100%(100%)	yes	2	not restricted	no information	no information
DRC						
Lesotho	100%(100%)	yes but different fees	none	not restricted	no restrictions	allowed
Madagascar						
Malawi	no information	yes but different fees	1	not restricted	no restrictions	restricted(visas etc)
Mauritius	100%(varies)	yes	1	restricted	no restrictions	Visas required for some
Mozambique	100%(100%)	yes but different fees	1	not restricted	no restrictions	restricted(visas)
Namibia	100%(100%)	yes	1	no information	no information	restricted
South Africa	100%(100%)	yes	vary	restricted	restricted	restricted(visas etc)
Swaziland	no information	no information	no information	no information	no information	no information
Tanzania	100%(varies)	yes but different fees	1	restricted in some	restricted	restricted
Zambia	100%(100%)	yes	5	allowed	allowed but restrictions exist	restricted for non-commonwealth countries
Zimbabwe	100%(70%)	yes	1	no information	no information	no information

Source: UNCTAD questionnaires

There are different provisions which promote competition within the sector. Some countries openly allow competition while others have enacted different regulations which stifle competition. For instance Botswana's tourism policy paper of 1990 discourages any restrictions on the ownership, control and operation of tourism enterprises by nationality, as that is likely to have inhibiting effects on foreign investment in tourist facilities. It however recognizes that participation of locals is important and in order to achieve this balance, the government encourages graduated ownership for trained and experienced local entrepreneurs in tourism.

Mauritius also has no restrictions on cross-border supply of tourist services except for rules relating to immigration. It also doesn't have restrictions on commercial presence except that licenses have to be acquired in order to operate. Different license conditions apply between local and foreign firms. For instance Rs 5 million rupees is required from foreign firms to establish tour operator services. The percentage of equity which a foreign firm can hold also varies according to the sub-sector. For instance foreign participation in diving centres is limited to 30% while car rental services are limited to Mauritian nationals only.

South Africa has adopted a tourism BEE charter and score-card which applies to all organs of state and public entities (for example, in guiding their procurement of tourism services in favour of BEE firms), organised labour, and communities involved with or interested in the tourism sector. It also applies to private firms.

The competition commission has played a significant role in promoting the tourism industry in South Africa. For instance it has fined some airlines for anticompetitive practices such as price fixing.

In Zimbabwe the main regulations in the sector pertain to investing and operating in the tourism sector. Any foreign investment in the sector has to be approved and licensed by the Zimbabwe Investment Authority. Projects are approved on the basis of their viability and bankability. The general shareholding structures in terms of foreign ownership are that for the provision of service only the structure is 70% foreign and 30% domestic. Where there is huge infrastructural development foreign ownership can be up to 100%.

In Zambia there is no restriction on the purchase of cross-border tourism services. However restrictions exist in the cross-border supply of tourism services by foreigners as only one Safari Hunting Operator is allowed in any one Game Management Area Hunting block for a period of 5 years – 10 years as Safari Hunting is done on a concession basis. The license is granted through a tender process by the Zambia National Tender Board and the Zambia Wildlife Authority. A foreign investor has to have a minimum of $500,000. The reason for this is because government wants to safeguard the interests of national operators as there are very few local operators in this sector. It is also believed that the market can sustain a limited number of operators especially hunting due to ecological sustainability and environmental requirements. However there are no restrictions in the cross-border supply of Computer Reservation System (CRS) and Global Distribution System (GDS) services by foreign providers.

One aspect which has apparently affected the tourism industry across the region is tourism leakage i.e. foreign exchange generated by trade in tourism services being siphoned out of the country because the services are provided by non-citizens or international entities, including airlines and hotels, which remit their profits outside the country where the service is offered.[51] In Zambia, this problem has reportedly been magnified by liberalisation of the foreign exchange regime which has made it easy for investors to externalise or not bring the valuable foreign exchange into the country. Some countries have already started to implement measures to curtail this problem. For instance in Tanzania the government imposes preferences to locals in tourist activities relating to Operators, Travel Agents, Guides, Car hire, Mountain Climbing and Hunting Safaris.

South Africa is relatively immune from this because it has a local industry that has skills and the relevant capacity to compete on an international scale. This means that the sector industry is characterized by strong local ownership and a loyal domestic market which at times even makes it hard for international entities to penetrate the sector. Companies such as Protea have managed to capture a huge part of the market. Therefore it can be concluded that the development of local skills and capacity within the region will go a long way to stem tourism leakage.

3.6.3 GATS Commitments

All SADC countries covered in this report made GATS commitments in this sector except Madagascar and Mozambique. In terms of coverage, SADC countries have made more GATS commitments in the tourism sector than in any other services sector. For example, Mauritius, Malawi and Zambia have made specific commitments in all sub-sectors. Mauritius made commitments in other tourism services such as tourist transport operation (car rental), yacht chartering and cruising services, and tourist duty free shops. Namibia has not kept the movement of qualified persons unbound and is the only SADC country that does not maintain any limitations to foreign suppliers of tourism services. These commitments may be motivated by a desire to attract both demand and foreign investment. They also point to the limited utility of a regional liberalization agenda.[52]

Table 19: Tourism services: WTO GATS commitments of the SADC countries

COUNTRY	LIMITATION ON MARKET ACCESS				LIMITATION ON NATIONAL TREATMENT			
	Mode 1	Mode 2	Mode 3	Mode 4	Mode 1	Mode 2	Mode 3	Mode 4
Angola:	None	None	None	"Unbound"	None	None	None	"Unbound"
Botswana • Hotels and Restaurants	None	Restricted	Restricted	Unbound	None	Unbound	Restricted	Unbound
DRC	None	None	None	Unbound	None	None	None	Unbound

51 Presumably offsetting this dynamic is employment of locals in the hotels and other services rendered; in addition some expenditure by tourists must surely take place in the destination country.

52 Although cognisance should be taken of the fact that the regional agenda is far broader than just liberalisation. It includes the development of the sector as a whole. The objectives of the Tourism protocol for example are to ensure equitable, balanced and complementary development of the tourism industry in the region; to optimise resource usage through joint development of infrastructure; involve small and micro-enterprises, local communities and women and youth; and to facilitate intra-regional travel through easing of visa-restrictions.

Lesotho								
• Hotels and Restaurants	Unbound	None	“Unbound”	Unbound	Unbound	None	Unbound	Unbound
• Travel Agencies and Tour Operators	Unbound	Unbound	Unbound	Unbound	Unbound	Unbound	Unbound	Unbound”
• Tourist Guide Services	Unbound*	None	None	Unbound	Unbound*	Unbound	Unbound	Unbound
Madagascar								
Malawi	None	None	None	Unbound	None	None	None	Unbound
Mauritius								
• Hotels and Restaurants	Restricted	None	Restricted	Unbound	Restricted	None	Restricted	Unbound
• Travel Agencies	Restricted	None	Restricted	Unbound	None	None	None	Unbound
• Tour Operators	Restricted	None	Restricted	Unbound	Restricted	None	Restricted	Unbound
• Tourist Guide Services	Restricted	None	Restricted	Unbound	Restricted	None	Restricted	Unbound”
• Tourist Transport Operations (car rental) Yacht Chartering and Cruising Services	Restricted	None	Restricted	Unbound	Restricted	None	Restricted	Unbound
• Tourist Duty Free Shop	Restricted	None	Restricted	Unbound	Restricted	None	Restricted	Unbound”
Mozambique	***	***	***	***	***	***	***	***
Namibia								
• Hotels and Restaurants	None	None	None	None	None	None	None	None
• Travel Agencies and Tour Operators	None	None	None	None	None	None	None	None
South Africa								
• Hotels and Restaurants	Unbound	None	None	Unbound	None	None	None	Unbound
• Travel Agencies and Tour Operators	None	None	None	Unbound	None	None	None	Unbound
• Tourist Guide Services								
Swaziland	Unbound	None	None	Unbound	None	None	None	None
Tanzania	None	None	Restricted	None	None	None	None	Unbound
Zambia	None	None	None	“Unbound”	None	None	Unbound	Unbound
Zimbabwe								
• Hotels and Restaurants	None	None	None	Unbound	None	None	None	Unbound
• Travel Agencies and Tour Operators	***	***	***	***	***	***	***	***
• Tourist Guide Services	None	None	Restricted	Unbound	None	None	Restricted	Unbound

EXPLANATORY NOTES: Restrictions=bound with restrictions; Unbound=MFN not applicable, “Unbound”=unbound except as indicated in the Horizontal section; Unbound= Unbound due to lack of technical feasibility; ***= No commitments; None= no limitations. Where the sub-sector is mentioned it means the country made commitments in that sub-sector only. For instance in the financial services table banking is mentioned for Angola because it made commitments in this area. Where no sub-sector is specifically mentioned as for South Africa in the Construction table above, it means that the commitments made in all the sub-sectors within the construction sector are the same. Hence South Africa made no limitations for mode 2 in the construction sector as a whole from CPC 512-517.*
Source: WTO

3.6.4 Remarks

Perhaps owing to wider awareness of its importance and a strong desire to attract more FDI, the tourism sector in the region has generally been more open than other services sectors. SADC should maximise its international competitiveness as a tourist destination by abolishing remaining restrictions that relate mainly to immigration policies and visa issues. Specific attention must be given to promoting the intra-SADC movement of visitors. The current proposals to create a universal-visa system to help facilitate intra-regional travel through the easing or removal of travel and visa restrictions; as well as the harmonization of immigration procedures and movement of international tourists in the region in order to increase the market share and revenue of the region in world tourism should be implemented soon.

In order for the tourism sector in the SADC region to thrive, there is a need to ensure that the regulatory framework is harmonised within the whole region. The industry is, in most countries, regulated by different sets of legislation and regulators. For instance the Tourism industry in Namibia is regulated by the Environmental Management Act, Parks and Wildlife Management Act, Pollution Control and Waste Management Act, Bio-safety Act and the Access to Biological Resources and Associated Traditional Knowledge Act. All these acts aim to protect the environment from different threats. However it would be more efficient if they were all consolidated into one Act; or at least if investors could access a one-stop environmental approval facility. It is therefore important that these regulations are reviewed in order to make them more effective and to reduce the red tape that can affect provision of these services.

Furthermore some requirements for licenses discriminate between local and foreign operators. This applies, for instance, to the fees paid in order to acquire a license as well as to the different sub-sectors in which foreign providers can operate. In Tanzania, for instance non-citizens cannot operate as tour guides unless they have ten years experience and have been granted permission. These restrictions may affect the quality of the services provided and limit investment within the sector, although it is likely they were established to promote domestic participation in the industry.

More exceptions should be incorporated in legislation which restricts service providers in sub-sectors within the tourism sector. This will ensure market access in that by increasing the number of exceptions it means that the number of providers that are restricted will be less since some will be exempted from the application of the restrictions. For instance if a law states that only nationals can operate in the supply of car rental services, exceptions stating that foreign operators will be allowed if for instance they bring in new technology within the sector or make investments whose value is above a specified figure would encourage market access. Furthermore, if preferences are going to be granted to locals, they should be granted in order to achieve a legitimate objective. For instance, in order to develop local skills so as to reduce tourism leakage. Alternative solutions can also be adopted. For instance, allowing foreigner entities to enter on condition that they train locals in all aspects of the business. Hence it would be important to ensure that before adopting any preferences, such preferences have a high probability of success. This would entail regularly evaluating the impacts of the preferences to determine whether they are fulfilling the purpose they were set up to achieve.

3.6.5 Specific Policy Recommendations

- ✓ Fast-track regional harmonization of mode 4 commitments, including establishment of the proposed uni-visa system;
- ✓ Promote regional harmonization of environmental regulations governing investment in tourism facilities;
- ✓ Explore the use of exceptions to local preference policies, where such exceptions clearly encourage sustainable foreign investment, technology transfer, and other societal benefits.

4 TOWARDS SERVICES LIBERALIZATION IN SADC

Making sustainable and effective liberalization of SADC countries' services sectors will rest upon creating a supportive domestic policy and regulatory environment. Fair trade will not be achieved in imperfect markets, where information is not equally available to all, and dominant players impose their own terms of doing business whereas the rest have few tools to address anti-competitive practices. Among all these concerns asymmetries in the level of development and the weak position of the SADC countries in global services trade are the most essential problems to be addressed.

In this light, a few trenchant themes emerge from our review above. First, ***interconnections*** within the producer services analysed (energy, communications, finance, and transport), and between transport and tourism, are strong. For example, more competition in air transport would promote tourism flows, thus increasing demand for visas, and stimulating improvements in telecommunications, energy supply, and demand for tourism-related construction. More competition in road transport would stimulate improvements in border procedures, and vice-versa, whilst the concomitant need to increase regulatory coordination between countries this gives rise to would stimulate adoption of better telecommunications linkages and ICT systems. And so on.

Second, ***South Africa*** is uniquely placed to competitively export producer and construction services to its neighbours. This has enabled building of competitive services sectors and spreading of best practices and entrepreneurship in the region. This may generate some concerns of South African dominance of national economies; albeit supply of such services does promote economic development and diversification, via their linkage effects, into other economic activities. South African investment into SADC economies in these sectors is already significant; and further liberalization within SADC is likely to continue this dominance[53]. The SADC Protocol will provide a framework not only for liberalization but also for cooperation to build supply capacity competitive and develop infrastructure. In this context South Africa's competitiveness will allow it to contribute positively to this process. This is not a situation unique to the SADC region. Similar situations, where one or a few countries have a dominant position, exist in other regional groupings and bilateral agreements. Moreover, as will be discussed further unilateral and/or multilateral liberalization approaches will not necessarily nor automatically lead to investment diversification.

However, ***unilateral liberalization*** has already occurred across the region, partly voluntarily and in part through external influence from donors most

53 This sense of South African dominance may explain why some member states are interested in negotiating services liberalisation with the European Commission uunder the rubric of EPAs. There is a feeeling in the region that providing greater competition to SA operators may lead to cheaper and better quality services. For more information on this issue see; Draper P,.and Khumalo N., (2005) 'Friend or Foe? South Africa and Sub-Saharan Africa in the Global Trading System,' in Peter Draper (ed.). Reconfiguring the Compass: South Africa's Africa Trade Diplomacy. Johannesburg, SAIIA.

notably the IMF and World Bank. Countries have undertaken unilateral liberalization in different sectors. For instance Namibia undertook unilateral liberalization of its construction industry. Botswana and Zambia abolished all exchange control. One Sector in which most countries undertook unilateral liberalization is the Telecommunications sector. This was before the SADC telecommunications strategy was adopted. Botswana, Mauritius, Namibia, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe all have privatized state owned telecommunication companies or are in the process of privatizing these entities. Unilateral liberalization has also occurred in the Transportation sector where some countries such as Zambia have separated the regulation of road transportation sector from central government.

Some of this liberalization has occurred without making any commitments under ***GATS***. From one angle, this could mean that SADC countries which have liberalized unilaterally have lost some bargaining chips in the multilateral negotiations as they cannot make concessions in these areas as they are already open. On the other hand they could, in theory, use this to ask for concessions especially by threatening to raise barriers unilaterally since they are not bound by WTO rules. However, the reforms were presumably designed to meet economic objectives, so threats such as these may not be credible.

Third, in some cases domestic regulatory environments are relatively open, yet ***foreign investment*** has not flowed in. The dilemma remains that owing principally to the small size of these and neighbouring markets liberalization may still not attract FDI, although in time it may encourage nascent domestic producers to enter the market. So South African companies may continue to be the main companies supplying regional markets

Fourth, the ***cross - cutting*** importance of mode 4 regulatory issues, the broader trade facilitation agenda, mode 3 issues pertaining particularly to ownership forms and thresholds for foreign companies, and competition policy to regulate small domestic markets are apparent. These concerns highlight the central role of ***regulators*** of producer services; and of ***competition policy*** frameworks, in national and possibly regional markets. These are unfortunately beyond the scope of this paper. But one can conclude that an appropriate balance has to be reached: sufficient liberalization to attract foreign investors versus retaining sufficient space to regulate the sector concerned and involve domestic operators.

Fifth, ***national prerogatives*** are retained in the areas of procurement, local preference, and movement of people. Given the pervasive weaknesses in capacity to supply producer services in most markets studied, it is not clear that such prerogatives are optimal. Furthermore, countries which have made GATS commitments in some sectors need to ensure that they adhere to the national treatment principle as well as Article VI of the GATS which stipulates that all regulations should be applied fairly, reasonably and objectively.[54] If

[54] Of particular concern is the difference in fees payable in order to acquire licences. For instance Mauritius charges foreigners a higher fee for a tourist license even though it has made commitments in the Tourism industry.

member states feel strongly about retaining policy space in this area at the multilateral level, then liberalization at the regional level may be the best option in the immediate term (with the added benefits that harmonization and national treatment could bring) and this could provide a useful stepping stone to subsequent liberalization, once the SADC countries are ready to liberalize further at the multilateral level.

In this respect ***construction*** is subject to complicated and varying procurement systems and regulations across the SADC countries analysed. Even though a regional agreement could play an important role for smaller projects, larger projects should be liberalized at the multilateral level. If they have reserved some policy space in this sector they could apply this different approach to liberalization. Furthermore, preferential ***procurement*** systems could be opened up to regional competition, or at least regional norms and standards could be developed.

That suggests the importance of a horizontal agenda at the regional level across the sectors, encompassing ***mode 4 liberalization*** and regulatory harmonization in order to facilitate trade in the services analysed. Concerning mode 4 liberalisation it is necessary because a regional shortage of human skills can hamper efforts to develop the targeted core infrastructure services sectors. Furthermore, there is a strong case for such liberalisation to extend to the multilateral level since the SADC region may not have all the skills needed to boost the key services sectors mentioned above[55]. Support for the natural tendency to export to countries in the same region may be provided, for instance, by establishing common curricula among the members of the regional grouping, which would greatly facilitate the mutual recognition of diplomas and other professional qualifications; and easing the requirements for obtaining the necessary permits and authorizations for foreign firms to conduct various aspects of their operations in the host country.

In light of these observations, SADC members need to determine a common position as to the sectors in which access to foreign services providers could have the greatest positive impact on their respective economies and development goals. The first priority should be to strengthen and harmonize the regulatory structures governing a ***priority list of services slated for liberalization***, at the sub-sectoral level. This should be accompanied by an explicit ***standstill clause*** preventing introduction of new restrictions. This should be applied only once the regulatory frameworks have been strengthened. Access to the regional market and the existence of a regional or sub-regional institutional structure can provide the framework within which investment could be attracted. Export capacities can be enhanced by preferential access to neighbouring developing countries, and that access can in turn be enhanced by cultural and linguistic factors.

In most SADC countries, the first problem to be addressed in drawing up services strategies is to correct regulatory and fiscal disincentives that penalize the export of services in relation to goods. As services have

[55] See Khumalo N. (2007) 'Trade in Services: From Controlling to Managing the Movement of Persons in SADC'. Trade Policy Report 16, SAIIA, Johannesburg.

traditionally not been viewed as an export sector, ***mechanisms used to promote exports of goods are not available to service producers***. Ensuring the positive impact of liberalization requires that commitments be devised in clear recognition of the specificities of the national services sectors concerned and the relationships between sectors. The expected benefits of trade liberalization in the services sectors may be frustrated by the inadequacy of domestic policies and by the lack of a well-articulated domestic regulatory framework. An appropriate legal framework is required to prevent abuses in deregulated markets and protect domestic consumers, while ensuring transfer of technology and the development of domestic competitive supply capacities.

Annexure 3 contains a sample matrix of where, broadly speaking, liberalization commitments could best be targeted, i.e. at the multilateral and/or regional levels. In our view, and from a theoretical, economic perspective, several among the services priority sectors in SADC economies studied are most suited to liberalization in the GATS. Telecommunications, transportation, financial and energy-related services, in particular, require large amounts of ***capital*** to operate and ***economies of scale*** to produce. Therefore the optimum level of liberalization for such sectors would be the largest market possible. Liberalization restricted to the SADC level would limit the ability of a country to draw upon the most efficient suppliers and thus maintain higher-cost, services. Having said that, liberalization at the South-South regional level can play an important role as countries may be more willing to take binding commitments among a smaller group of like-minded countries than under the GATS. Moreover, it is generally easier to develop a common set of criteria for the recognition of qualifications and regulatory harmonization at the regional level. This is particularly important for services such as construction services which are subject to strict regulation national standards and for which regional liberalization can therefore be considered the first best option. Finally, in sectors such as tourism most countries have already liberalized extensively so the question is no longer that of determining the optimal level of liberalization. Rather benefits may come from other harmonization and cooperative mechanism related to deeper integration.

Regional commitments can then serve as the basis for binding commitments at the intra-regional or GATS level at a later stage.

Nonetheless, it is important to note that SADC countries (like most developing countries) have been slow in incorporating services into regional and sub-regional integration agreements. In fact, the GATS commitments were the first exchange of obligations among the SADC countries in such schemes.

The liberalization of trade in services - notably commercial presence - can make a major contribution to the achievement of developmental and social goals. However, certain prerequisites must usually be met for liberalization to have a positive impact. For example, liberalization of the financial services sector should be preceded by the implementation of sound prudential legislation.

Notwithstanding the fact that the draft Protocol on Trade in Services is yet to be adopted, signed, ratified and implemented, SADC countries have already undertaken integration efforts that have a positive effect in facilitating both trade in services and goods across the region. Various Protocols and memoranda of understanding that contain provisions that foster both the liberalization of services sectors and the harmonization of regulatory regimes have been concluded and are at various stages of implementation. Generally, regional cooperation has focused on developing the sectors concerned by pooling together resources and developing important regional services infrastructure and strengthening the institutional framework with actual trade liberalization being incidental to this process and not its goal. However in some cases both development cooperation and trade in services have been achieved.

Further, broader liberalisation of trade in services in the sectors analysed above must be complemented by freer temporary movement of natural persons services providers. The free movement of people within SADC must be enhanced. Accordingly, member states should ratify the recently signed Protocol on the Facilitation of the Movement of Persons in order to increase business mobility, create greater trade opportunities, and achieve economic growth.

Offering legitimate regional travellers visa-free entry should not be unnecessarily delayed if the region is to optimally benefit from the tourism boon expected from the 2010 FIFA World Cup. Emphasis should also be placed on liberalization of temporary or circulatory movement of skilled professionals. Such measures should be attempted at the level of training as well. As the Protocol on Health provides, SADC countries can introduce regional exchange and internship programmes especially in the health profession. There is need for these countries to think regionally such that professionals can move freely across the region for the benefit of all countries. Efforts to confine highly skilled people are doomed to fail since they are often welcome even to stay permanently in many developed countries.

Moreover, one of the key interventions being addressed in the Education Implementation Plan is the development of a SADC Qualifications Framework that is aimed at promoting comparability of qualifications of the educational systems of all SADC member states. This is important for both facilitating mobility of students and academic staff especially to the higher institutions of learning and subsequently for enhancing labour mobility and clearly relates to the Protocol on Facilitation of Movement of Persons.

While some progress has been made particularly in regulatory harmonization in many cases cooperation has not yet resulted in actual trade liberalization of services at a regional level. A number of challenges remain. In particular, the slow ratification and implementation of Protocols is a serious concern.

Indeed, the cooperation, harmonization, and trade development initiatives must be enhanced by stronger system of monitoring and enforcement of the legal instruments. The current framework is undermined by lack of a robust mechanism to ensure that all countries at least undertake to implement a minimum of agreed legal instruments. This problem manifests itself in two ways. First, while the current system where legal instruments bind only those countries which accede to them may have been designed to afford maximum flexibility for member states to proceed at a pace they are comfortable with, it leads to a very slow integration process and those Members that wish to move forward are often held back by others that do not due to insufficient ratifications. This is because some member states have committed to very legal instruments.

Second, for most of those instruments that have been ratified by the majority of member states and are in force the means to ensure their actual implementation are very weak. Being "indicative in nature" even the RISDP does seem to address this problem.

Further, in order to manage all the work that is ongoing and pending, to increase implementation rate of protocols as well as to move towards adoption of the Annex on Trade in services and negotiations, staffing in the SADC Secretariat and different entities will have to be improved. The need for the SADC Secretariat's role and capacity to monitor and evaluate the implementation of protocols and other legal instruments to be strengthened cannot be over-emphasized. As Isaksen and Tjonnelan[56] argue, though this issue was stressed in the restructuring documents, it only received limited attention in the actual institutional restructuring. The challenge posed by having insufficient human resources or technical capacity has to be urgently dealt with if adequate progress is to be made[57].

In addition, provisions that have a bearing on liberalization of trade in services are scattered over a plethora of protocols and other legal instruments to the extent that though some progress has been achieved, it is difficult to get a comprehensive picture of what is going on. There are also overlaps from one instrument to another which further complicate the situation. There is clearly a need for a consolidation process whereby all services trade liberalizing provisions are located within a single instrument which in this case should be the Protocol on Trade in Services. The level of liberalization or openness of each economy that has been reached under the protocols; unilaterally, and under GATS would then be reflected in that country's schedule of commitments.

To prevent some of the protocol implementation difficulties, SADC member states should adopt a clear common agenda on implementation of the Protocol on Trade in Services. Such an agenda should ensure that all member states automatically become part of the liberalization process even though the speed of implementation may differ. In addition, there should be an effective sanction system in place to encourage all member states to take their obligations seriously.

56 Isaksen J; and Tjonnelan E N, "Assessing the Restructuring of SADC – Positions, Policies and Progress". A Report Commissioned by the Norwegian Agency for Development Cooperation (NORAD), December 2001

57 This problem has been identified by almost all the SADC Secretariat members interviewed by the author.

Indeed, apart from critical domestic needs, the pressures brought about by the multilateral services liberalization agenda as well as the Economic Partnership Agreement (EPA) negotiations with the European Union militate against procrastination.

In terms of approaches to trade negotiations intra-SADC services liberalisation should ideally run ahead of or in parallel with liberalisation to the EU, building on the basis of unilateral reforms already conducted or in the pipeline. From a negotiating and regional integration perspective there is clearly a need for the regional agenda to get up to speed in order to keep up with the EPA negotiations and should ideally provide for more liberalisation at a faster pace than the one regional countries will offer to the EC with a view to multilateralising key commitments in the GATS negotiations. This is critical otherwise the regional agenda runs the risk of being overtaken by events and becoming irrelevant. Timely intra-regional services liberalization would enable these countries to have coordinated positions vis-à-vis third parties and gain clout at the multilateral level.

However the EPA process seems poised to trail blaze the SADC agenda. Therefore it may be prudent for SADC countries to simply take on board what has been offered to the EC under EPAs and then use those commitments as a benchmark for making deeper commitments to one another. Member states should also ensure that whatever they offer to the EC is automatically offered to other SADC states if deeper integration is to be promoted.

The EPA negotiations should focus on the producer services, plus construction and tourism, already slated for liberalization in SADC. Under the Interim Economic Partnership Agreements (IEPAs) services provisions, SADC EPA Group countries are expected to put in place plans to liberalise one

sector by the end of 2008. These plans could include a phased-in approach. By the end of 2010 the participating countries will be expected to have in place a programme aimed at achieving liberalisation in “substantially all” services sectors in line with the GATS.

As such SADC countries should consider engaging in a fully-fledged liberalisation process covering as many sectors as possible not just the six sectors mentioned above. Depending on the actions of SADC states the EPAs could either be a catalyst for deeper liberalisation in the region or a serious distraction and threat to the regional processes. At this stage it’s difficult to tell what the eventual impact of the EPAs would be in light of the fact that the SADC EPA group members have not decided yet which sectors they wish to negotiate with the EU.

Suggestions Regarding Expansion to other Services Sectors

The opening up of the health and education sectors might be more significant in the regional framework. SADC is characterized by poor quality and unavailability of education and health services. Yet these services not only have export potential, but also can expand the regional human resource base and reduce poverty. The importance of these services in the social development of the regional economy can be measured against the United Nations Development Programme's indicators for social development (e.g. adult illiteracy rates, number of people without access to health services, etc.). These may point to the extent that the domestic health and education sectors are able/not able to provide their services adequately and the need for reform.

Furthermore, in most SADC countries governments are spending significant share of total government expenditure on health and education. In some countries (Botswana, South Africa, Swaziland and Tanzania) expenditure on education makes up over 20% of total government expenditure, whereas expenditure on health average about 7.8% of total government expenditure in the region[58]. These are the sectors that government may want to consider opening up to foreign investors as part of services liberalization in order to reduce the financial burden of the government. Of course, the process has to be followed by proper regulatory instruments to ensure that people are not disadvantages through higher prices, thereby limiting access to health and education.

Even though it may be easier to reach agreements on standards regarding educational and health services at regional level, the reality of the region is that the majority of the countries are net importers of advanced educational and health services. Limiting the provision of services to the region will deprive the consumers advanced methods of teaching and health care. A careful mix between the GATS and regional preferences would be beneficial to the consumers.

Database Development

Any analyses aimed at informing policy-makers must rely on robust and precise data in order to be effective. This is not yet the case for the data on services sectors in SADC. SADC need a monitoring process that ensures the connection between the sources/repositories of information and supports an ongoing stable, reliable and predictable information exchange. Performance monitoring is still very limited and, as yet, there is no fully operational services sectors' monitoring system in place.

Past studies are useful but the information is outdated and has limitations. Ideally there is a need for regular data updates and trend analysis that interprets information gathered. There are various repositories of very useful and relevant information (e.g. SADC Secretariat and regional research institutions). What is lacking is a nodal point where a model database accommodating cross-SADC and cross-services sectors data can be housed. Such data should be current and therefore be updated on a quarterly basis. Ownership of the database should vest with all participating repositories of source information and be widely disseminated through vehicles such as a

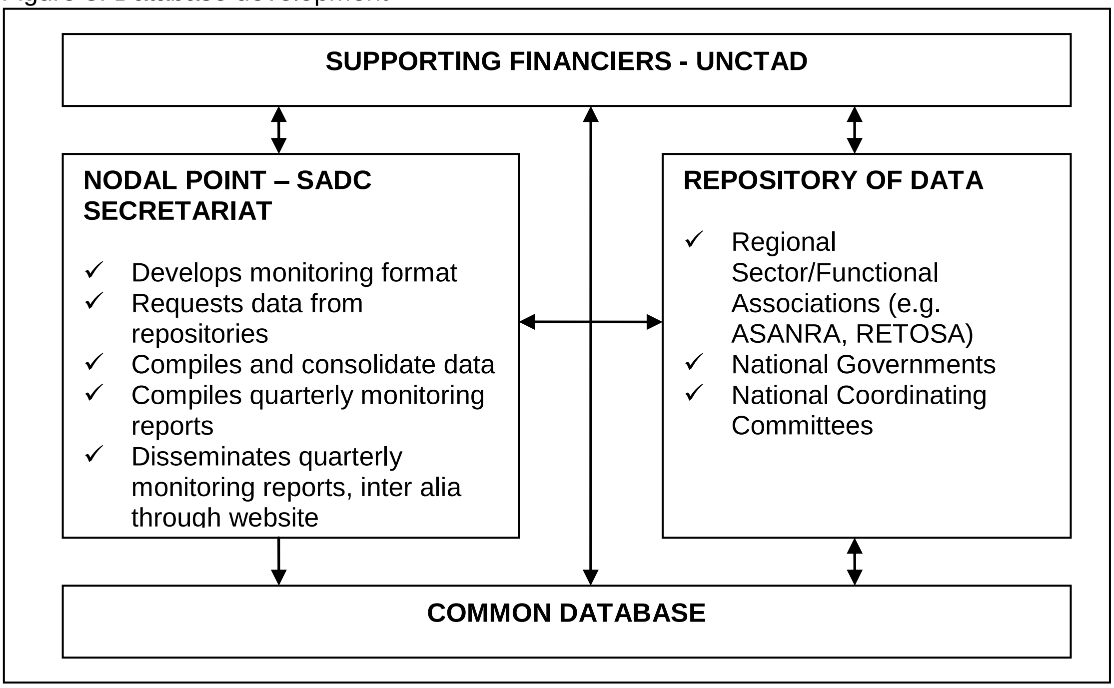
[58] Countries' Central Statistics Offices

“monitoring database” website. The regular updating of the data will facilitate ongoing enrichment of the database and validation of the information contained therein.

Participation of existing repositories of information such as the SADC and regional associations will not present an add-on but would fold into their already existing functional profile. The assignment of a nodal point to consolidate and package the data comparatively will add value to the harmonization, implementation, operations and monitoring undertaken by each of the participating repositories. The value of the coordinated approach lies in the ability to draw on the collective strengths of the various governments and regional associations. The nodal point will, on behalf of the stakeholder platform, have to identify its information needs and develop the appropriate electronic submission forms to elicit the required information from role players. In particular, the challenge will be to know what information to request and how the request will be couched to facilitate prioritisation of investment and funding.

It is recommended that consideration be given to developing a model database to assist with services sectors’ performance monitoring. As such, the database needs to be multi-purpose and responsive to planning needs of national governments and international financiers. Figure 8 below illustrates the relative role of repositories, the nodal point and supporting financiers to the development of a model database.

Figure 8: Database development



Impact of Overlapping Membership

The SADC countries are members of different regional organisations, such as COMESA, SADC and SACU. This creates a complex problem of navigation between the different constellations of member countries' regulations. Furthermore, the investment barrier created by a non-existent regional agreement on trade regulations or their harmonisation acts as a disincentive to foreign investors to invest in the region. This is because the possibility to service the whole SADC region is constrained by trade barriers between countries within SADC

The mix of membership of countries in the region to the three regional organisations is a barrier to an effective reduction of barriers to foreign direct investment in SADC. Investors look at the size of both the domestic and export markets when making an investment decision. Overlapping membership further complicates the harmonisation of services trade-enhancing regulations in the region.

There are immense benefits to the unification of existing regional bodies or of finding ways to end the multiple memberships of countries in regional bodies. This would facilitate process of creating a conducive investment environment within a regional common market.

Technical Support

Technical support can be split into the following categories:

Public sector support – emphasis should be on technical support for both regulatory design and ongoing regulation capacity. Ideally, this could be coordinated with efforts by other donors (governments and international institutions). It is apparent that in many service sectors the benefits depend on effective regulation so this would realise benefits. Capacity-building is also required to facilitate the establishment or strengthening of implementation affiliated bodies, which include regulatory associations, and operator associations. These bodies are an integral part of the implementation structures of the SADC Programme of Action in Infrastructure Development. Such institutions implement projects on behalf of SADC within an agreed framework and require sector specific expertise for the purpose.

Private sector support – translating export opportunities into actual exports requires not only the removal of trade barriers but also building the supply capacity of firms to take advantage and assisting them in overcoming the fixed costs of engaging in exports (establishing linkages, promotion of products and meeting product requirements).

ANNEXURE 1: COUNTRY AND SECTOR STUDIES RECEIVED

	Reports Received
Angola	✓ Full study incorporating the six sectors under review
Botswana	✓ Full study incorporating the six sectors under review ✓ Energy services questionnaire ✓ Financial services questionnaire
DRC	
Lesotho	✓ Full study incorporating the six sectors under review ✓ Construction services questionnaire ✓ Energy services questionnaire ✓ Financial services questionnaire ✓ Communication services questionnaire ✓ Transport services questionnaire ✓ Tourism services questionnaire
Madagascar	
Malawi	✓ Full study incorporating the six sectors under review ✓ Construction services questionnaire ✓ Energy services questionnaire ✓ Financial services questionnaire ✓ Communication services questionnaire ✓ Transport services questionnaire ✓ Tourism services questionnaire
Mauritius	✓ Full study incorporating the six sectors under review
Mozambique	✓ Full study incorporating the six sectors under review ✓ Construction services questionnaire ✓ Energy services questionnaire ✓ Tourism questionnaire
Namibia	✓ Full study incorporating the six sectors under review
South Africa	✓ 1 study on communications services ✓ 1 study on energy services ✓ 1 study on construction services ✓ 1 study on transport services ✓ 1 study on tourism services ✓ Construction laws & regulations review ✓ Laws on financial services ✓ Laws on telecommunications ✓ Laws on transport ✓ Tourism questionnaire
Swaziland	✓ 1 study incorporating 5 (construction, energy, financial, transport and telecommunications) of the six sectors under review
Tanzania	✓ 1 study on communication, construction and tourism services ✓ 1 study on energy, finance and transport services ✓ Laws on construction ✓ Laws on energy ✓ Energy sector questionnaire ✓ Laws on financial services ✓ Financial services questionnaire ✓ Laws on telecommunication services ✓ Laws on transportation ✓ Transportation questionnaire ✓ Laws on tourism ✓ Questionnaire on tourism
Zambia	✓ 1 study on construction services ✓ 1 study on energy services

	✓ 1 study on financial services ✓ 1 study on communications services ✓ 1 study on transportation ✓ 1 study on tourism ✓ Questionnaire on construction ✓ Tourism questionnaire ✓ Communication questionnaire ✓ Financial services laws and regulations
Zimbabwe	✓ 1 study on construction ✓ 1 study on tourism ✓ 1 study on communications ✓ 1 study on energy ✓ Road transport questionnaire ✓ Rail transport questionnaire ✓ Energy questionnaire

ANNEXURE 2: SUMMARY OF SECTORAL RECOMMENDATIONS

Construction:

- ✓ Adopt unilateral liberalization measures for mode 1 supply of technology-based services, notably design, on an MFN basis.
- ✓ Establish mutual recognition agreements to encourage portability of skills within the region;
- ✓ Promote mode 4 liberalization on an MFN basis in order to attract skills from outside the region;
- ✓ Consider loosening procurement policies in order to encourage greater participation by regional firms;
- ✓ Bind commitments in these areas in the WTO.

Energy:

- ✓ Define and categorise energy services to be subject to liberalization and support a multilateral process on this issue at the WTO;
- ✓ Speed – up restructuring of state – owned electricity companies with a view to introducing greater competition, on an MFN basis concerning mode 3 in particular, into national and regional markets;
- ✓ Investigate where restrictions in cross-border trade in energy, and related energy services, may obtain and remove them where universal service obligations will not be compromised, particularly those pertaining to pricing;
- ✓ Increase oversight and powers of regulatory agencies, specifically in respect of state-owned company pricing policies concerning purchase of electricity from IPPs;
- ✓ Formulate and implement projects on new and renewable sources of energy

Finance:

- ✓ Bind unilateral reforms, where politically feasible, in the WTO;

- ✓ Consider extending commitments to insurance – in those countries where no commitments have been made;

- ✓ Member states should first revert to the SSBS structure and once this has been done, then member states can try to work out how to achieve Basel Compliance.

Communications:

- ✓ Promote interconnection across borders and within national jurisdictions through appropriate regulatory harmonization;

- ✓ Promote consequent competition through establishing robust competition frameworks with regional jurisdiction where feasible, in order to ensure appropriate pricing;

- ✓ Limit the monopoly perquisites of national fixed line companies through greater deregulation, taking care to ensure universal access goals are not compromised;

- ✓ Revisit MFN ownership restrictions, especially in fixed line communications and postal services, with a view to encouraging greater foreign ownership in order to promote productivity improvements;

- ✓ Initiate discussions on provision of audio-visual services, especially radio and television transmission, in order to probe flexibilities in this sub-sector.

Transport:

- ✓ Simplify and where possible standardise documentation requirements, especially in the road transportation sector;

- ✓ In road and rail transportation, consider liberalizing foreign ownership requirements i.e. mode 3, especially where these demonstrably discourage foreign investment; and also liberalize and/or lock in reforms in consumption abroad (mode 2) concerning access for transport operators to regional markets. Both should be locked in via GATS liberalization.

- ✓ In air transport consider unilaterally liberalizing access to domestic air transport sectors in order to introduce greater pricing competitiveness; this could be locked in via a regional agreement since there is no GATS framework beyond ancillary services.

- ✓ Ensure the SADC Protocol on Transport, Communications, and Meteorology is properly implemented.

Tourism:

- ✓ Fast-track regional harmonization of mode 4 commitments, including establishment of the proposed uni-visa system;
- ✓ Promote regional harmonization of environmental regulations governing investment in tourism facilities;
- ✓ Explore the use of exceptions to local preference policies, where such exceptions clearly encourage sustainable foreign investment, technology transfer, and other societal benefits.

ANNEXURE 3: SAMPLE MATRIX OF LIBERALIZATION PRIORITIES

MEANS OF LIBERALIZATION			
SECTOR	**AREA OF LIBERALISATION**	**MEANS OF LIBERALIZATION**	
		Regional	**Multilateral**
ENERGY	New entrants		✓
	Legal form		✓
	labour market tests		✓
	access to the power grid	✓	✓
	cross border supply	✓	✓
TELECOMMUNICATION	New entrants		✓
	Legal form		✓
	labour market tests		✓
	cross border supply	✓	✓
	Requirements for licenses	✓	✓
CONSTRUCTION	New entrants		✓
	Legal form		✓
	recognition of qualifications	✓	✓
	procurement procedures	✓	✓
	movement of natural persons		✓
FINANCIAL SERVICES	New entrants		✓
	Legal form		✓
	labour market tests		✓
	cross border borrowing		✓
	licensing	✓	✓
	cross border supply of insurance		✓
TRANSPORTATION	New entrants	✓	✓
	competition rules and regulations	✓	
	cross border supply of transport	✓	

	commercial presence	✓	✓
	infrastructure development	✓	✓
	Legal form		✓
TOURISM	New entrants		✓
	Legal form		✓
	movement of natural persons		✓
	consumption abroad		✓
	regulatory framework	✓	✓