

SOUTHERN AFRICA TRADE HUB



Technical Report: Road Freight Transport Services Diagnostic Study

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LIST OF ACRONYMS

| | |
|---------|-----------------------------------------------------------------|
| COMESA | Common Market for Eastern and Southern Africa |
| DTRS | Department of Transport and Road Safety |
| FESARTA | Federation of East and South African Road Transport Association |
| GATS | General Agreement on Trade in Services |
| GDP | Gross Domestic Product |
| LPI | Logistics Performance Index |
| NLA | Namibia Logistics Association |
| MDC | Mass Distance Charge |
| MoU | Memorandum of Understanding |
| RFA | Road Freight Association |
| RIA | Regulatory Impact Assessment |
| RTOA | Road Transport Operators' Association |
| SABS | South Africa Bureau of Standards |
| SACU | Southern Africa Customs Union |
| SADC | Southern African Development Community |
| SARS | South African Revenue Service |
| SATH | Southern Africa Trade Hub |
| TDC | Travelling Distance Charge |
| TKCMC | Trans Kalahari Corridor Management Committee |
| VAT | Value Added Tax |
| WTO | World Trade Organization |

EXECUTIVE SUMMARY

Services are essential inputs into the production of goods and other services. Distorted services markets are tantamount to a tax on the overall economy as the effects of expensive and inefficient services are multiplied in the production of other goods and services. This is especially true for infrastructural services such as road freight services which represent the main arteries through which producers obtain their inputs and deliver their products to end users.

There is a relatively high demand for road transport services within the region. As international interest in the Sub-Saharan Africa market continues to grow, the potential for road transport operators in the Southern African Development Community (SADC) to attract increased business appears to be more promising. However, trade and investment in road freight services are hindered by a number of barriers including rules which limit competition and limitations on routes.

The SADC negotiations on services provide a useful vehicle to address barriers to trade and investment in the road freight transport sector. The removal of these barriers is likely to result in providing transport operators with an expanded market in which to offer their services and hence the opportunity to expand the scope of their operations and lower prices.

Nevertheless, some issues faced by the transport industry can be better resolved through regulatory co-operation and harmonization. These include issues related to trade facilitation, such as documentation, technical standards for heavy goods vehicles and improving the efficiency of border posts.

In order for the regional trade in services negotiations to yield commercially relevant market access, private sector actors need to be meaningfully integrated into the process. Transport operators will need to articulate where their export interests lie, that is, which markets they are most interested in penetrating and the modes through which they want to provide these services. Further, transport operators should identify the barriers to exporting to these countries through the four modes of supply and their experiences should inform this process.

The potential gains from liberalization can be significantly bolstered by regulatory reforms which improve the efficiency of service industries. The transport industry must be more organized and proactive in highlighting areas where regulatory reforms would facilitate transport operations and where existing rules constrain the industry.

Efforts must also be made to build the capacity of regulatory authorities. Regulators will need to enhance their knowledge of trade in services issues for the transport sector. A solid understanding of the relevant issues should assist them in contributing meaningfully to the negotiations. Early engagement with regulatory authorities will allow them to identify where they need to strengthen capacity to regulate a more liberalized environment before the implementation of the agreement.

INTRODUCTION

Southern African Development Community (SADC) member countries have recently initiated discussions to negotiate a regional agreement on trade in services. The main purpose of this agreement is to reduce barriers to trade and investment across priority services sectors. This, in turn, should contribute to increased competition, improved efficiency and lower prices throughout the region.

The value of efficient and competitive services industries is widely recognized. Services are essential inputs into the production of goods and other services and distorted services markets are tantamount to a tax on the overall economy. This is especially true of key infrastructural services such as transport, telecommunications, finance and energy. Reforms aimed at improving the efficiency of these industries are likely to have far-reaching effects.

This study focuses on the road freight industry. In Sub-Saharan Africa, up to 90 per cent of goods and passengers are carried by road transport¹ and transportation *prices* are much higher than international benchmarks.² The gains from regulatory reform and increased competition in this sector could therefore be substantial, particularly for the region's many landlocked countries.

The ability of SADC negotiations to facilitate real and meaningful reform in this sector will depend absolutely on the commitment of member states. Preliminary indications are that the SADC Protocol on Trade in Services will contribute to increased transparency in services regulation. It will also help to highlight some of the remaining barriers to trade and investment in individual sectors and countries, but it may not be sufficient to stimulate change. This is partly because the agreement itself is not very ambitious, but also because sector regulators and service providers are not sufficiently involved in the negotiations.

The main purpose of this study is to raise the involvement of private and public sector stakeholders in SADC services negotiations, and to identify ways in which the Southern Africa Trade Hub (SATH) can assist in promoting appropriate reforms. To do so, requires a better understanding of the interests of service operators and regulators in the road freight industry, and the constraints that they experience in moving goods across regional borders.

The report begins with an overview of the SADC road freight industry and the regulatory environment in four case study countries: Botswana, Malawi, Mozambique and Namibia. Section 2 documents some of the barriers to trade identified in these countries, and Section 3 describes how regional services negotiations might contribute to resolving some of these constraints.

The study concludes with some suggestions on how SATH might contribute to enhancing the capacity of the private and public sector to engage in regulatory reform and services negotiations. Specifically, SATH proposes to assist the private sector in documenting its interests in the region while enhancing the capacity of transport regulators to evaluate the economic costs and benefits of existing rules and potential change.

¹ African Development Bank website- www.afdb.org

² Gaël Raballand and Supee Teravaninthorn, *Transport Prices and Costs in Africa: A Review of the Main International Corridors*, World Bank: Washington, D. C., 2009, 14.

SECTION 1: THE SADC ROAD FREIGHT INDUSTRY

Market Size and Structure

It is estimated that the road freight industry accounts for between 1 and 5 per cent of GDP in most countries, and roughly similar, albeit often slightly smaller, shares of total employment, depending on the countries' level of development, geographical characteristics and transport network infrastructure.³ Although no country specific data is available for detailed analysis in SADC, these statistics are in line with what was observed in the four countries reviewed in this study. While this figure may seem small, transport services have substantial importance for the rest of the economy.

In many countries in the region, the market is characterized by a few large players, a modest number of medium and small sized companies and a very large number of micro-sized operators and owner-drivers, many of whom operate in the informal sector. The informal sector is a source of substantial price competition. However, this competition sometimes comes at the expense of other factors, such as vehicle maintenance and adherence to regulations, such as overloading limits.

In general, respondents suggest that levels of competition are on the rise within SADC states. In Namibia, for example, a small operator with five trucks indicated that competition in her segment of the market has grown significantly due to the entry of a number of owner-drivers. Similarly, a Malawian transport operator indicated that competition was significantly greater than 6 or 7 years ago.

The market structure for fuel carriage in the region appears to be somewhat different. Economies of scale and technical standards for fuel trucks contribute to relatively high barriers to entry. In Botswana, for instance, there are only two primary fuel transport providers. There also appears to be a higher prevalence of foreign providers in this sub-sector, with the South African operator, UNITRANS, particularly visible.

Cost and Competitiveness

The World Bank's Logistic Performance Index (LPI) provides a reasonable benchmark for evaluating the competitiveness of the SADC freight services industry. The LPI measures performance in six key aspects of the logistics environment:⁴

- Efficiency of the customs clearance process.
- Quality of trade and transport related infrastructure.
- Ease of arranging competitively priced shipments.
- Competence and quality of logistics services.
- Ability to track and trace consignments.
- Frequency within which shipments reach the consignee within the scheduled or expected time.

Of particular interest to this study is the quality of trade and transport related infrastructure. One of the variables measured within this category is the quality and competence of core

³ World Trade Organization. Road Freight Transport Services: Background Note by the Secretariat. S/C/W/324, 29. October 2010, 8.

⁴ World Bank, Connecting to Compete: Trade Logistics in the Global Economy 2010, 4.

logistics service providers - transport operators, distributors, freight forwarders, customs and border agencies and shippers.

Table 1 highlights some of the main findings of the World Bank study as they relate to Southern Africa. The results reveal that most SADC countries included in the study, with the exception of South Africa, ranked relatively low on the index. Further, with respect to the specific ranking for logistics quality and competence, SADC countries again performed relatively poorly. This would suggest that there are major problems with the cost and efficiency of regional logistics in general, including the road freight industry.

Table 1: International LPI Results for Southern Africa⁵

| Economy | LPI Rank | LPI Score 5 = high 1 =low | % of the highest performer ⁶ | Logistics Quality and Competence | |
|--------------|----------|---------------------------------|-----------------------------------------|----------------------------------|-------|
| | | | | Rank | Score |
| South Africa | 28 | 3.46 | 78.9 | 25 | 3.59 |
| Mauritius | 82 | 2.72 | 56.3 | 97 | 2.43 |
| Madagascar | 88 | 2.66 | 54.1 | 102 | 2.40 |
| Tanzania | 95 | 2.60 | 52.4 | 105 | 2.38 |
| Botswana | 134 | 2.32 | 42.3 | 119 | 2.29 |
| Mozambique | 136 | 2.29 | 41.5 | 130 | 2.20 |
| Zambia | 138 | 2.28 | 41.2 | 149 | 2.01 |
| Angola | 142 | 2.25 | 40.1 | 147 | 2.02 |
| Namibia | 152 | 2.02 | 32.8 | 144 | 2.04 |

Given the importance of the road transport sector for trade in SADC, significant attention has been devoted to improving road infrastructure across Southern Africa since the 1960s. More recently, these have been complemented by a number of trade facilitation initiatives aimed at enhancing efficiencies between and within countries along key transport corridors.

In most cases, the economy-wide benefits from these investments and initiatives are not yet apparent. Whereas the costs faced by road transport operators have decreased, prices for transport services have remained high. Even in the face of poor efficiency factors (low yearly vehicle utilization rates, aging vehicle fleet, etc.) - which should give rise to higher costs - trucking companies in Africa are still able to charge high prices and maintain relatively large profit margins along some corridors.⁷

⁵ World Bank, Connecting to Compete: Trade Logistics in the Global Economy 2010, 28 – 31.

⁶ This percentage reflects the performance of the country as compared with the country which ranked first in the LPI, that is, Germany.

⁷ Gaël Raballand and Patricia Macchi, Transport Prices and Costs: The Need to Revisit Donors' Policies in Transport in Africa, BREAD Working Paper No. 190, 2008, 18 – 19.

Several studies have been undertaken to explain the high price of road transport services in the region. Some explanatory factors advanced include industry structure; low levels of competition; freight characteristics and infrastructure problems; and governance and rent-seeking activities. Raballand and Macchi conclude that market regulation is an important price determinant hindering improved efficiency and competitiveness of the trucking industry that contributes to high transport prices in Africa. To produce reliable, high quality and competitively priced transport services, more needs to be done to improve the regulatory framework in which the road transport sector operates.⁸ Market regulations raise substantial barriers to regional and international trade in transport services and it is these barriers that are the focus of the upcoming SADC negotiations.

Trade in Road Freight Transport Services

As with all other services, there are a number of different ways in which road transport companies can export their services. The barriers they face can differ substantially, depending on how this trade takes place. For these reasons, the General Agreement on Trade in Services (GATS) and other trade in services agreements find it necessary to distinguish between four different 'modes' of services supply:

- Mode 1 refers to cross-border trade in freight services. Consider, for example, a Zambian-based truck leaving Lusaka to deliver goods to a client in Zimbabwe.
- Mode 2, or consumption abroad, includes services provided within a country to a foreign consumer. For example, a Malawian developer doing business in Namibia might contract a Namibian transport operator to deliver cargo to Walvis Bay.
- Mode 3 relates to investments (i.e. a commercial presence) made by foreign service providers in order to deliver a service domestically. For instance, Cargo Carriers of South Africa has established a business in Mozambique to provide services in Mozambique and to other countries.
- Mode 4 refers to the temporary movement of foreign natural persons, such as truck drivers as well as technical or managerial staff, between countries, in order to deliver freight services.

Given the nature of this particular sector, almost all trade is likely to take place across borders through Mode 1. But in doing so, there is likely to be a large amount of mode 4 trade (the movement in truck drivers), and the evidence suggests a reasonably high level of foreign investment (mode 3 trade) in some countries.

Although there is no available data on the level of trade in freight services between SADC countries, such trade will be greatly influenced by the volume of a country's exports (imports are more likely to be delivered by foreign transport companies). See **Table 2**.

⁸ Ingo Borchert, Batshur Gootiiz and Aaditya Mattoo, Trade Policy Restrictiveness in Transportation, World Bank, OECD Expert Meeting on Transport Services, November 2010, 14.

Table 2: Value of Imports and Exports for Select SADC States in US\$ millions, 2010⁹

| Country | Imports | Exports |
|------------|---------|---------|
| Botswana | 5656.8 | 4693.2 |
| Malawi | 2173.0 | 1066.2 |
| Mozambique | 3564.2 | 2243.0 |
| Namibia | 4688.5 | 4729.3 |

Trade in road freight is also likely to be influenced by the availability, or lack, of other transport options. In Mozambique and Namibia, a large proportion of total exports are shipped by sea. With both Botswana and Malawi being land-locked, almost all imports and exports are likely to be transported by road freight. While rail remains a potential competitor for the carriage of goods and rail rates are generally cheaper, freight forwarders indicated that road transport is preferred because it is much more reliable.

Finally, the nature of the good to be transported has some bearing on the mode of transport used. This circumstantial evidence is substantiated by the World Bank's *Connecting to Compete* Report which found that Malawian exporters face different trade-offs in determining the mode of transport they chose for the delivery of their products.¹⁰ This is illustrated by the case of sugar and garments:

For sugar – an inexpensive and time-insensitive commodity – exporters prefer to save money by using a very unreliable railway to intermediate storage in the small and not-very-productive port of Nacala in northern Mozambique. But garment manufacturers participating in the preferential African Growth and Opportunity Act program with the United States pay the cost of trucking to the distant but efficient ports of Durban or the Cape in South Africa (2,500 to 5,000 km and up to US\$10,000) to use as direct a maritime connection as possible.

The Institutional and Regulatory Environment

In three of the four SADC states assessed, government ministries and their departments are responsible for the development of policy and the enforcement of road freight regulations.

In Botswana, the Ministry of Transport and Communications formulates policy for the sector and regulates the sector through the Department of Road Transport and Safety (DRTS). The DRTS is composed of several divisions, each of which is in charge of a major operational area, such as vehicle registration and licensing, road safety, transport, regulation and promotion.

Similarly, in Mozambique, the Ministry of Communications and Surface Transport formulates policy, while the Department of Road Traffic is responsible for regulation. The Minister of Transport and Communications (or a delegated person or agency) issues licenses for international road transport while the licensing authority for national road freight transport is the Provincial Governor (or an agency to which this is delegated).

⁹ COMTRADE Database. Only 2008 data were available for Namibia.

¹⁰ World Bank, *Connecting to Compete* 2010, 21.

Mozambique issues three types of licenses: for provincial operations; for inter-provincial operations; and for international operations. The main issuing authority is the Provincial Directorate of Transport and Communications.¹¹

Malawi's Ministry of Transport and Public Infrastructure oversees the formulation of transport policy, with separate line departments responsible for regulating each of the four modes of transport.¹²

The situation in Namibia is a little different. Whereas the Ministry of Works and Transportation formulates policy and regulations for the road freight transport services sector, an independent Roads Authority has been established to enforce these regulations. Among other things, this agency is responsible for the enforcement of vehicle/load related standards; road safety regulations for commercial vehicles; mass distance and entry fee charges and cross border road transportation.

Whereas Namibia and Malawi have developed and made public their transport policies, Botswana is in the process of drafting such a policy. With reference to international road transport, Namibia's White Paper on Transport Policy emphasizes minimum government intervention and allows competition with foreign road haulers.¹³ The Malawian National Transport Policy, which dates back to 2004, emphasizes the principles of liberalization (the removal of entry and exit restrictions), deregulation (market-determined tariffs), privatization, and promotion of competition within and between modes of transport.¹⁴ Mozambique also has a transport policy, but the focus for the road freight transport sector is oriented toward infrastructure and training.¹⁵ For example, it addresses issues such as the establishment of cargo terminals to prevent the movement of heavy goods vehicles on urban streets and training in transport logistics and management for domestic transport operators.

Box 2 below summarizes the legal framework for road transport in the four case study countries and captures the main elements of their road traffic acts and regulations. Some of these frameworks date back to as far as 1975 while others are as recent as 2010.

Box 1: Highlights of Road Traffic Legislation Directly Affecting Private Sector Operators in Select SADC States

Botswana

Road Traffic Act Chapter 69:01 of 1975

This Act provides broadly for the classification and general registration requirements for vehicles, requirements for public service vehicles, requirements for cross-border traffic and prescription of axle load limits and penalties imposed for contravention. It sets out in regulations the conditions under which permits are issued to Botswana registered

¹¹ World Bank, Removing Obstacles to Economic Growth in Mozambique: Diagnostic Trade Integration Study, Main Report, Vol. 2, 2004, 35 – 36.

¹² WTO, Trade Policy Review: Report by the Secretariat- Malawi, WT/TPR/S/231, 15 May 2010, 50.

¹³ Republic of Namibia, Ministry of Works, Transport and Communication, Department of Transport, White Paper on Transport Policy, 23 June 1995, 10.

¹⁴ WTO, Trade Policy Review: Report by the Secretariat- Malawi, 50.

¹⁵ Maputo Corridor Development, <http://www.transport.gov.za/library/docs/corridm6.html>.

companies for international travel and those under which vehicles registered outside Botswana issued with the requisite licenses and permits may be allowed in Botswana.

Road Transport (Permits) Act Chapter 69:03 of 1973

The regulations relate to, *inter alia*, certificates of roadworthiness; dimensions of vehicles and allowable projections; loads on vehicles; fees payable in respect of licenses and permits; and the requirement of the BW designation for crossing borders.

Road Transport (Permits) (Amendment) Regulations of 2004

These regulations essentially prescribe the permit fees for Botswana operations and those chargeable for Southern Africa Customs Union (SACU) countries.

Namibia

Road Traffic and Transport Act 22 of 1999

The Act provides for the control of traffic on public roads, registration and licensing of vehicles and control and regulation of road transport across Namibia's borders. It provides for registration of vehicles and for holders of foreign drivers licences. With respect to cross-border transport, the Act prescribes that any person undertaking road transportation requires a permit issued by a competent authority in Namibia or any contracting country. No foreign carrier is allowed to undertake cabotage without a cross border permit issued in Namibia.

Road Traffic Act and Transport Regulations of 2001

The regulations relate to, *inter alia*, cross-border permits; categorization of classes of vehicles and driving license requirements; roadworthiness certificates; vehicle specifications; operator's registration; driving hours and the compulsory affixing of a recording device to measure driving time on certain classes of vehicles; speed limits; carriage of dangerous goods.

Malawi

Road Traffic Act of 1997 (Revised in 2000)

The Act is primarily concerned with issues related to road traffic management and traffic control.

Road Traffic Regulations, 1997

These regulations cover issues related to, *inter alia*, operator registration and road service permits; fitness certificates and vehicle inspection stations; transit charges on vehicles engaged in international transport operations in Malawi; vehicle dimensions and permissible loads; licensing categories and procedures; carriage of hazardous cargo; speed limits; and insurance and liability limits.

Mozambique

Road freight transport is regulated by the Decree no.24/89 Road Transport Regulations. This legislation was amended by Decree no.15/96. The updated legislation concerns mainly the licensing system for road transport operations. There is a 2010 Road Transport Act; however, the text was unavailable.

SECTION 2: BARRIERS TO TRADE AND COMPETITION

Identifying Barriers to Trade in Services

The previous section described how trade takes place in the freight transport sector and provides an indication of the size and structure of the industry in four SADC member states. It also highlights the fact that transport costs are relatively high and services relatively inefficient. Many of these inefficiencies arise from inappropriate, ineffective or absent regulations that impede the development of a competitive domestic industry and frustrate cross-border trade in transport services. It would seem that further legislative reform is needed. To do so requires a better understanding of the main barriers to investment and trade in this sector.

As part of this study, both private sector and public sector stakeholders were asked to identify the key regulatory challenges and constraints experienced across the SADC road freight transport sector. For this information to be useful for negotiations, it is important to organize it in a way that is consistent with the trade in services negotiating framework. Table 3 provides an illustrative example of how trade in transport services takes place across the four modes and some of the typical types of restrictions that might be found in each of these modes.

Table 3: Modes of Supply for Road Transport Services

| Mode of Supply | Description | Example | Measures which Restrict Trade |
|-----------------------|---------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| Mode 1 | Cross-border trade | A domestic trucking company transports goods from its home base to consumers located in another country | Quotas on the number of foreign trucks entering the destination country |
| Mode 2 | Consumption abroad | Nationals or companies from one country use road transport services within another country to move their merchandise within that territory | Foreign exchange restrictions in the consumers' country of origin that prohibit him from purchasing a service abroad |
| Mode 3 | Commercial presence | A road transport operator from one country sets up a business in another country to supply services from within that country (either domestically or cross-border) | Joint venture requirements that limit the foreign ownership permitted in locally established and registered businesses |
| Mode 4 | Temporary movement of natural persons | A road transport operator uses a local driver to deliver cargo in a foreign territory or a road transport operator uses foreign personnel in the operation of a commercial presence | Requirements to obtain a visa or work permits / lack of recognition of drivers' licenses between countries |

World Trade Organization (WTO) negotiations on trade in services follow a similar framework to identify and classify limitations to trade. The commitments that have been made by WTO member states during the negotiations of the GATS should therefore describe the extent of service liberalization (and the type of barrier) by country and sector. That said, with the exception of South Africa and Lesotho, no SADC countries have undertaken commitments at the multilateral level to liberalize the road freight transport sector. Moreover, these two countries have only made commitments in Mode 3, allowing foreign service providers to establish businesses in their territories free from any limitations on market access or national treatment.¹⁶

Box 2 shows South Africa’s current multilateral (GATS) commitments in freight transport. Lesotho has undertaken an identical commitment in the sector. The SADC services negotiations are likely to follow this same format and it is therefore important to understand what this schedule means. Leaving Modes 1, 2, and 4 ‘unbound’ does not indicate that barriers do or do not exist in South Africa or Lesotho, it simply means that both countries are not prepared to make any legally binding commitments outside of Mode 3. Similarly, the fact that other SADC countries have not made any commitments in this sector, does not mean that a foreign service provider cannot establish a business these other countries. Rather, most SADC states have simply made no legally binding commitments to permit foreign providers to do so and hence reserve the right to limit access to their markets as they deem necessary.

Box 2: South Africa’s GATS Schedule¹⁷

| Freight transportation (CPC 7123) | Limitations on Market Access ¹⁸ | Limitations on National Treatment ¹⁹ |
|-----------------------------------|-------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| | 1) Unbound 2) Unbound 3) None 4) Unbound except as indicated in the horizontal section | 1) Unbound 2) Unbound 3) None 4) Unbound except as indicated in the horizontal section |

Despite the above sector-specific commitments, South Africa and Lesotho have included some ‘horizontal’ limitations which effectively apply to all sectors (including transport

¹⁶ The lack of market access limitations means that these countries commit not to adopt limitations on the number of services suppliers; the total value of services transactions or assets; the total number of services operations or the total quantity of service output; the total number of natural persons that may be employed in a particular sector or that a service provider may employ; not to impose measures which restrict or require specific types of legal form; or not to adopt limitations on the participation of foreign capital. The lack of national treatment restrictions means that these countries commit to accord to foreign service suppliers treatment no less favorable that they accord to their own service suppliers.

¹⁷ South Africa- Draft consolidated Schedule of Specific Commitments, S/DCS/W/ZAF 24, January 2003.

¹⁸ This column specifies the conditions under which a specific service may enter a country’s market.

¹⁹ This column lists any discriminatory measures which discriminate against foreign services and service suppliers and benefit domestic services or service suppliers.

services). Lesotho's commitments on Mode 3, for example, are subject to three limitations on market access:

- wholly foreign-owned companies require a minimum equity capital outlay of US\$200,000
- joint-venture companies should have a minimum foreign-equity capital outlay of US\$50,000 in cash or in kind; and
- agency establishment must have authority to negotiate and conclude contracts on behalf of foreign parent company.

South Africa's commitments on Mode 3 are subject to a limitation on national treatment, namely that local borrowing by South African registered companies with a non-resident shareholding of 25 per cent or more is limited.

In the GATS, South Africa has also registered a Most Favored Nation (MFN)²⁰ exemption in line with GATS II: 2 for the road transport sector. By registering this exemption, South Africa has reserved the right not to extend the more preferential treatment granted in regional and bilateral road transport agreements to other WTO member states. For example, in some bilateral agreements, South Africa grants its treaty partners the opportunity to provide cabotage services.²¹

While the GATS schedules of South Africa and Lesotho provide a preliminary indication of the main barriers to trade in the road freight sector in these countries; the commitments made under the GATS are relatively broad and do not describe all regulations (especially if these are not deemed to limit market access or national treatment). The situation, on the ground, is sometimes very different. This is reflected in the views of private operators and government regulators in the four case study countries as summarized below.

Barriers to Cross-Border Trade in Transport Services (Mode 1)

Throughout the region, the issue of backhaul is of critical importance. While domestic operators seem to enjoy preferential access to export business,²² they find it difficult to service the import market on the return leg of their journey. The total cost of the journey therefore needs to be amortized into one leg of the trip, greatly increasing the cost for exporters (and also of imports). This is particularly problematic for operators in land-locked states because transport operators in the coastal state are usually the first point of contact for freight forwarders based at the ports.

There are a number of ways in which transport rules limit the transport operators' opportunity to legally engage in backhaul operations.

Firstly, regional cabotage rules usually preclude foreign transport providers from transporting cargo between two points within a country. It is of interest that some countries

²⁰ The most favored nation principle is one of the main cornerstones of the multilateral system. It essentially requires a WTO member state to immediately and unconditionally grant to services and service suppliers of any other Member treatment no less favorable than that it accords to like services and service suppliers of any other country.

²¹ Gaël Raballand, Charles Kunaka and Bo Giersing, *The Impact of Regional Liberalization and Harmonization in Road Transport Services: A Focus on Zambia and Lessons for Landlocked Countries*, Policy Research Working Paper 4482, World Bank: Washington, D.C., 2008, 13.

²² The reasons for these outcomes tend to vary according from country to country. Explanations for domestic operators having better access to export business include the fact that domestic operators possess a wider network of contacts with the business community than a foreign based transport operator; domestic operators have better knowledge of their own market.

in the region have taken steps to relax their cabotage regimes. For example, South Africa does issue some cabotage permits, however, they are considered to be relatively expensive (see Table 4). Namibia also issues some cabotage permits. Such concessions are reflective of the commercial interest of these countries. As a major exporter to the rest of the region, South African exporters require a reliable and adequate supply of road freight transport services in order to serve their export markets. Namibia is seeking to develop Walvis Bay as an alternative to Durban and hence there is a need for adequate capacity on an *ad hoc* basis to get goods delivered to their final destinations.

Table 4: South Africa’s Cabotage Permit Fees for 2011 (ZAR)²³

| Permit type | Duration | Application fee Per Vehicle per Country ²⁴ | Permit issue fee Per Vehicle per Country | Total fee Per Vehicle per Country |
|------------------|-----------|-------------------------------------------------------|------------------------------------------|-----------------------------------|
| Temporary Permit | 14 days | 2,000 | 1,820 | 3,820 |
| New permit | 3 months | 2,000 | 6,000 | 8,000 |
| | 3 months | 2,000 | 18,000 | 20,000 |
| | 12 months | 2,000 | 18,000 | 20,000 |
| Renewal | 3 months | 2,000 | 6,000 | 8,000 |
| | 12 months | 2,000 | 18,000 | 20,000 |

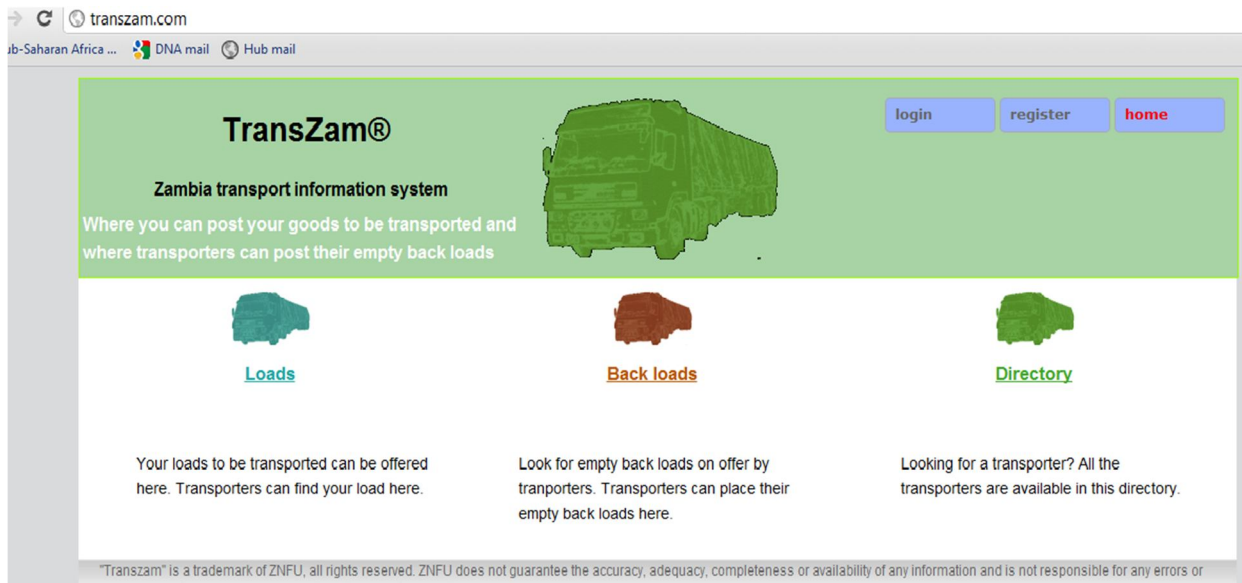
Secondly, the third country rule prevents foreign transport operators from picking up cargo in one country and delivering it to a third country, unless the operator transits its own country of origin. This rule is widely applied in the SADC region.

Zambia, on the other hand, has embarked on an interesting initiative to enable transport operators to secure backloads in Zambia, the rest of the SADC region and even destinations in the wider sub-Saharan African region, such as Kenya (see Figure 1). The TransZam website enables clients to post information on loads which require transport, and provides transport operators with an opportunity to advertise available backload capacity. The posts detail the origin and the destination, the cargo to be transported and the type of packaging and the weight of the cargo. The site also features a directory of transport operators, including the name of a contact person, telephone contacts and email addresses and other information such as the size of the operators’ fleet and the capacity of the trucks.

²³ Cross Border Road Transport Agency.

²⁴ The application fee and issuing fee are payable in respect of each country in which the applicant wishes to pick up or set down goods or passengers.

Figure 1: TransZam: Taking the Guess Work out of Backhaul Operations²⁵



Another restrictive rule impeding the cross-border provision of transport services is the limitation on routes. For example, Malawi imposes a restriction on foreign registered vehicles which prevents them from engaging in operations along secondary routes.²⁶ As a result, foreign operators importing into Malawi are only allowed to deliver goods to specified warehouses along the Blantyre-Lilongwe-Mzuzu route.

Barriers to Consumption Abroad (Mode 2)

No specific cases were identified whereby countries prevent consumers in their own jurisdiction from accessing freight transport services in another market.

Barriers to Establishment (Mode 3)

There is a significant level of foreign investment (Mode 3 trade) in the transport services sector across SADC member countries. Larger investors include France, the United Kingdom, South Africa and India. There is also investment from Zambia and Zimbabwe. Such trade appears to be driven by the existence of different legal and regulatory regimes in the different countries, which require foreign operators to have a local presence to deal with national level market and regulatory peculiarities.

Figure 2 provides a snapshot of some of the regulations in SADC which restrict Mode 3 trade. These include foreign equity limits and restrictions on the legal form that a business must take. In general, competition from foreign transport operators is permitted in most SADC states.²⁷ However, in some countries, such as Zimbabwe, the entry of new firms – whether local or international – is severely restricted. Furthermore, Zimbabwe requires

²⁵ <http://www.transzam.com/>

²⁶ World Bank, Malawi Integrated Framework: Diagnostic Trade Integration Study, Final Report, Vol. 1. February 2004, 51.

²⁷ UNCTAD, Towards SADC Services Liberalization: Balancing Multiple Imperatives 2009, 58.

that foreign firms establish themselves as subsidiaries or joint ventures only, while in other member states they can also establish as branches or representative offices.

Figure 2: Regulations in the Road Freight Services Sector in SADC^{28, 29}

| Country | Maximum equity | Licences | 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 |
| Dem. Rep. of the Congo | | | | | | |
| 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, Utd. Rep. of | 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 |

Barriers to the Temporary Movement of Workers (Mode 4)

Although there is clear evidence of temporary movement of natural persons across borders in the transport sector, Mode 4 trade is somewhat more difficult to track. Box 3 below captures some of the issues that have arisen in the South African transport industry relating to this mode of supply.

In Botswana, transport operators may employ foreign drivers only when holding a residence and work permit (or if they are in the process of undergoing the application process). A Botswana official did indicate, however, that because Botswana does not have a training school, the domestic pool of trained drivers is limited. As such, there may be cases where operators need to contract foreign drivers. Some drivers undertake training in South Africa and some larger transport operators, such as UNITRANS, carry out their own training. In the case of Malawi, a few private sector operators indicated that they would not hire foreign drivers for security reasons: they know the Malawian drivers

²⁸ UNCTAD, Towards SADC Services Liberalization: Balancing Multiple Imperatives 2009, 59.

²⁹ Under the maximum equity column, the figures in parentheses represent foreign ownership in an entity, while the figures with no parentheses represent 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.

and can locate them much more easily. In addition, the operators did not consider the added expense of securing a work permit to be justified.

In addition to difficulties relating to the employment of foreign drivers, some operators reported problems in getting permission for their domestic drivers to work across borders. In Namibia, for example, it was noted that Zambian truck drivers had been required by Namibian authorities to apply to the Namibian Embassy in Lusaka for a visa for each trip to Namibia. The application process proved to be time consuming and Zambian drivers often exceeded the 90 days stay permitted under their visas. Namibia assisted Zambia in establishing an electronic system whereby Zambian drivers could apply for the requisite visas. The processing time for visas decreased by half and visas are issued for 12 month periods.

The approach by some SADC members in restricting the activities of foreign workers within their own labor markets is not unusual. Countries have fiercely guarded their sovereign right to determine entry into their country. Even at the multilateral level, the Annex on the Movement of Natural Persons Supplying Services under the GATS makes it clear that the agreement in no way compromises the member state's ability to regulate the entry of natural persons into or, temporary stay in, its territory. The GATS Annex also clarifies that member states are free to impose different visa requirements for nationals of different countries. Moreover, if SADC Member States are contemplating concluding a GATS inspired agreement on road freight transport, commitments could cover the temporary movement of highly skilled workers such as managers for foreign established transport operations. However, SADC member states could use the opportunity of negotiating a regional services pact to overcome the bias found generally in multilateral commitments towards highly skilled persons by undertaking commitments related to the movement of lower skilled natural persons such as drivers.

Box 3: South Africa's Implementation of Visa Requirements for Foreign Truck Drivers³⁰

In March 2010, the South African Department of Home Affairs (DHA) announced that it would refuse to grant foreign drivers of trucks permission to enter the country without a work permit. Previously, foreign drivers were allowed to enter on a visitor's permit.

An official of the Department of Home Affairs' national immigration branch explained that there is no reason for South African companies to employ foreigners. However, one private sector stakeholder indicated that about 80% or more of the truck drivers on the north/south route are Zimbabweans, as there are not enough South African drivers within the industry and many locals are not willing to spend weeks on the road outside South

³⁰ 'Trucking Companies win Temporary Reprieve to Driver-permit System,' July 1, 2010, <http://www.engineeringnews.co.za/article/trucking-companies-win-temporary-reprieve-to-driver-permit-system-2010-07-01>; Skills Portal, 'Work Permit Crackdown could Cost SA millions,' July 4, 2010, <http://www.skillsportal.co.za/page/human-resource/work-permit/613724-Work-permit-crackdown-could-cost-SA-millions>; J.B. Cronjé, 'South African Immigration Regulation and the Movement of Persons in the Region,' May 5, 2010, http://www.tralac.org/cgi-bin/giga.cgi?cmd=cause_dir_news_item&cause_id=1694&news_id=86480&cat_id=; Tarryn Pokroy Rietveld, 'Work Permits for Foreign Truck Drivers,' June 8, 2010, <http://www.southafrica.co.za/2010/06/08/work-permits-for-foreign-truck-drivers/>; 'Looming Problems for SA Road Transport,' January 10, 2011 <http://www.freightintoafrica.co.za/news/302-sa-transport-legislation>; Chanel de Bruyn, 'Transport firms to return to court over foreign truck driver permits,' October 10, 2011, <http://www.engineeringnews.co.za/article/transport-firms-to-return-to-court-over-foreign-truck-driver-permits-2010-10-20> and <http://www.dha.gov.za/Counties%20Exempy%20from%20SA%20Visaa.html>

Africa. “Some of the drivers we employ spend only two or three days loading here, and then three or four weeks outside South Africa. We’ve had South African drivers going up to Beitbridge and leaving the trucks there because they didn’t want to cross the border.” In addition, there are not many South Africans who know the loading and off-loading points in Zimbabwe and Zambia, or who speak the languages of those countries and are familiar with the customs-clearing processes.

In the face of significant protest, the DHA stalled the implementation of this measure until July 1, 2010. However, enforcement of the new work permit regime resulted in hundreds of trucks standing stranded at some land border posts for a few days. This led to legal action, and on July 30, the North Gauteng High Court ordered the DHA to delay the implementation of its new work-permit regime for foreign truck drivers working for local companies, until October 28. The previous system made no distinction between foreign drivers that were employed by foreign or domestically established transport operations or those driving foreign registered trucks or locally registered trucks.

The DHA’s official website currently states that there is a general visa exemption for:

“Commercial heavy-duty vehicle drivers who enter the country from Swaziland, Botswana, Namibia, Zambia and Malawi provided that their visits do not exceed 15 days and on condition they produce a letter confirming their employment with a transport company or entity.”

The same principle applies to Zimbabwean commercial heavy-duty truck drivers, except that their sojourn may not exceed 30 days at a time.

However, this does exemption does not apply to commercial heavy-duty truck drivers who transport goods for a South African transport company. From October 28, such drivers must be in possession of a valid work permit.

Other Barriers to Trade – Domestic Regulations, Standards and Charges

Whereas regulations imposed only on foreign operators tend to diminish competition, many of the barriers to the development of a competitive transport sector lie within countries’ own legislative framework and apply equally to foreign and domestic operators. Box 4 describes how such domestic regulations can have unintentional and negative impacts on the efficiency and performance of the transport industry.

Box 4: Use of Namibian Special Permits to Transport Transit Cargo Containing Vehicles

The interface between Customs and the Roads Authority as it relates to the movement of transit goods poses serious challenges for the transport industry. From a customs perspective, all items on a waybill should transit together to the final destination; however, where vehicles are included in the cargo being moved, Regulation 66 (4) of the Namibian Road Traffic and Transport Regulations of 2001 does not permit a vehicle using a special permit to be loaded with any other cargo for transit purposes. For example, in the case of a shipment of a truck, a car and spare parts for those vehicles, the law prevents the transport operator from loading the car and spare parts onto the truck for delivery to its destination.

Transport operators currently use a special permit to deliver bonded vehicles that transit through Namibia to neighboring countries like Angola, Botswana, Zimbabwe and Zambia. Special permits were originally intended for domestic purposes only – for example – for vehicles pending roadworthy tests. Hence, this permit prohibits the carriage of any other goods under the same permit.

Transport operators have argued that bonded cargo in transit should not be treated in the same way as vehicles destined for the local market. In particular, these additional goods tend to be other vehicles, spare parts for the same vehicle or personal effects.

The corridors are therefore becoming unpopular with clients. Many importers have reverted their business back to Nacala, Beira and Dar es Salaam.

The alternative solution to the problem is for the client to send an empty truck to load the additional goods thereby doubling the costs of delivering the imported vehicle. This would make it economically unviable for the client to import via Namibia.

It is the view of transport operators that the Roads Authority should reconsider the implementation of this regulation. One solution proposed is that the Roads Authority grant a special concession for bonded vehicles in transit to be allowed to pass through Namibia on a special permit together with the load with which it was imported.

Another example of a problematic domestic regulation was observed in Mozambique. In the Beira municipality of Sofala, at least 8 large transport operators are located on Estrada Nacional N° 6 and a number of smaller operators maintain their warehousing facilities along this stretch of road. Estrada Nacional N° 6 is the only access route to these operations. However, Lei da Postura Municipal da Cidade da Beira, Article 108, makes it illegal for heavy duty vehicles to travel on this road.³¹ Consequently, truck drivers are frequently fined when entering and exiting the operators' premises. It is estimated that the fines cost truck operators approximately US\$167 (Mt 5,000) per month and can total up to US\$2,000 per year.

Standards can and do also create conflicts in the regional road freight transport services sector. Specifically, there are frequent reports of differences in vehicle weight readings between SADC member countries. This can be particularly burdensome when the trucks cross borders and are faced with penalties for overloading. At the SADC level, it has been agreed that weighbridges should be subject to annual calibration and standardized weights have been agreed. But to date, Botswana and Namibia have been unable to develop and legislate domestic standards on the calibration of weighbridges. Box 5 illustrates some of the practical challenges that can arise as a result.

Box 5: South African Weighbridge Calibration Standards

Namibian legislation stipulates that weighbridges require calibration once a year. By law, this calibration must be done in accordance with established standards. As Namibia does not have its own standards for calibration, it relies on standards issued by the South Africa Bureau of Standards (SABS) to calibrate weighbridges.

³¹ The rationale behind this restriction remains unclear. There are sometimes legitimate cases where the restriction of trucks on certain roads is partly related to pavement strength.

In order for the standards to be given legal effect in Namibia, there must be an agreement between an appropriate national institution and SABS. The Namibian Standards Institute (NSI) entered into an agreement with SABS on the use of the standards. However, it appears that NSI's status as a parastatal entity does not qualify it to be legally recognized as an appropriate national institution for the purpose of addressing the issue of weighbridge standards.

The Roads Authority has approached the SABS to negotiate a Memorandum of Understanding (MoU) on the use of the standards. However, these discussions have not yet produced a positive outcome.

As a result, Namibia is unable to impose fines for overloading.

The road freight industry is subject to a number of taxes and charges, some of which are discriminatory. The South African value added tax (VAT) regime as it relates to foreign truckers is a case in point. The South African Revenue Service (SARS) permits exported goods to be zero rated for VAT purposes if they are being hauled via a transport operator which is registered to pay VAT in South Africa. However, if the South African exporter opts to contract a Botswana transport operator, who is not registered to pay VAT in South Africa, then VAT is applied on the goods. In order to have the VAT refunded, the foreign customer must submit a claim to SARS within a prescribed time limit. This process can be time consuming and the customer is not refunded the full amount paid in VAT as a commission fee is charged. Consequently, customers manifest a preference for using the services of South African haulers.

Namibia's flawed attempt to impose a mass distance charge on the road freight industry, as outlined in Box 6, highlights the cost to industry and government of getting the method of implementation of taxes and charges wrong. Clearly a more considered approach is required and this includes up-front analysis of the potential impact of all substantive regulatory decisions before they are enforced.

Box 6: Namibia and the Implementation of the Mass Distance Charge³²

The Road Fund Administration sought to impose a travelling distance charge (TDC) with effect from June 1, 2006 via General Notice No.126 of 2006.³³ The TDC was based on the mass of a heavy motor vehicle for on-road use in Namibia. The charge was calculated with reference to the tare of vehicles and trailers. Self-propelled vehicles of more than 3000 kilograms and trailers exceeding 2000 kilograms are liable to pay TDC.

The annual TDC increased proportionally to the increase in tare. The lowest annual TDC was N\$5,952 and the highest was N\$8,604 for a vehicle ranging from 19,505 kg to 20,000kg in tare. Thereafter the annual TDC would increase by N\$216 for every 500kg increase in tare. The Notice also set out the TDC per 100km in respect of every class of vehicle.

³² The mass distance charge represents of a travelling distance charge.

³³ High Court of Namibia, The matter between Namibia Road Carriers' Association, F P Du Toit Transport (Pty) Ltd, WesBank Transport (Pty) Ltd, Blaauw's Transport (Pty) Ltd, Namibia Agricultural Union (applicants) and The Road Fund Administration (respondent). Case No. : (P) A 183/2006.

The Notice sought to introduce a system whereby TDCs would have been imposed annually on the basis of an assumed average travelling distance. The assumed travelling distance in respect of vehicles up to 17,500 kilograms in tare was 85,000 kilometers and for vehicles exceeding 17,500 kilograms the assumed average traveling distance was 90,000 kilometers.

The TDCs were payable annually in advance on the same date that the license fee for the vehicle was due. If the owner of the vehicle considered that the vehicle was likely to have travelled less than the assumed distance, he could at that same time and on payment of N\$100, apply to the Administration to be refunded for the distance not travelled. The owner would have been required to give details of the manner in which the actual distance travelled will be measured. On the expiration of the license, the owner could then pay an administrative fee of N\$400, and apply for a *pro rata* refund in respect of the difference between the assumed distance and the actual distance travelled, if the actual distance is shorter than the assumed distance. The owner was required to prove the actual kilometers travelled in a manner agreed upon by the Administration.

The applicants (the Road Carriers Association, three transport operators and the Agricultural Union) challenged the notice on two grounds:

1. The method of imposing the TDC is invalid by reason of not being authorized by the enabling legislation and thus that they are *ultra vires* the respondent's powers.
2. The charges are unfair and unreasonable and therefore in conflict with Section 18 of the Act and Article 18 of the Namibian Constitution.

The High Court concurred with the plaintiffs' arguments that section 18(1) (a) clearly contemplates a road user charge that is related to "on-road use". Section 18(8) (b) defines "on-road use" as "the operation of a motor vehicle on a public road..." The purpose of the charge is to require persons who use and consume the road network to pay towards the costs related thereto. Section 18(3) states that in determining the rates of such a charge, the Administration "shall ensure... that the rates ... of such charges affecting different classes of motor vehicles are equitable in relation to their use of the road network and the benefits derived from such use".

In the view of the Court, these provisions contemplated actual use of the road network and not an assumed use. This fits in with what the Administration called the "user pay principle" and the "equity principle" as provided for in section 18(3)(b). The Court further reasoned that these principles did not contemplate an advance payment for the future use of the road network based on a fiction of an as yet undetermined, but assumed, extent of use.

The Court ruled that the applicants' contention that the decision to impose the TDC on the basis as set out in the Notice is *ultra vires* the Act. In light of that determination the Court did not deem it necessary to rule on the applicants' second claim.

The Court therefore set aside the RFA's decision to impose the TDC and declared the imposition of the charges in Notice 126 to be invalid and null and void.

A number of issues arise with respect to documentation and in some cases, the volume of paperwork. In SADC countries, the national regulatory agency provides permits for operators to engage in cross-border operations and these permits are supposed to be recognized in other states. However, there have been some instances where these cross-

border permits are not recognized by enforcement officials, resulting in significant costs and delays for the transport operator, until one national authority contacts its counterpart in the foreign country to resolve the situation. It is claimed that Mozambican officials, for example, demand that original documentation be presented by transport operators and that, sometimes, they refuse to accept certified copies.

Finally, insurance portability also appears to be an issue in some parts of the SADC region. Box 7 describes the Yellow Card insurance scheme which has facilitated movement within the COMESA region. However, some countries do not recognize insurance coverage purchased outside of their jurisdiction. For example, Mozambique does not recognize the COMESA insurance scheme and hence operators are required to purchase insurance at the Mozambican border.

Box 7: Regulatory Co-operation Yields Dividends for the Transport Industry

The COMESA Third party Motor Vehicle Insurance Scheme, also known as the Yellow Card, has become one of the most important instruments for the facilitation of movement of vehicles, goods and persons in the COMESA and non-COMESA region.³⁴

A road hauler can travel to all member states that are party to the scheme with a single card. This has made the cost of insurance inexpensive and removed delays, inconvenience and extra expenses at border posts, thereby reducing the cost of transport. Equally important, when motorists are involved in an accident, they are at liberty to proceed with their journey after reporting the accident to the police and the National Bureau; thus free from detention and/or harassment.

The Scheme is envisaged to expand beyond the region. In this regard, COMESA and SADC are working together to harmonize the Yellow Card Scheme with the fuel levy system implemented in SACU countries, with a view to enabling motorists from South Africa, Botswana, Swaziland, Namibia and Lesotho to use the Yellow Card cover for their travel in the COMESA Region.

³⁴ COMESA Website - http://about.comesa.int/attachments/059_yellow-card-compendium.pdf and http://www.africaexpedition.de/wp-content/uploads/filebase/yellow_card.pdf.

SECTION 3: THE POTENTIAL CONTRIBUTION OF REGIONAL TRADE IN SERVICES NEGOTIATIONS

Existing Regional Agreements

SADC member states have concluded a number of agreements that impact on trade in transport services.

The SADC Protocol on Transport, Communications and Meteorology reflects the intention of SADC member states to progressively liberalize market access in respect of the cross-border transport of goods. Article 5.3 (7) of the Protocol allows for bilateral road freight agreements to be introduced in three liberalization phases:

- 1) PHASE 1 - Abolition of restrictions on carriers of two member states to carry goods on a defined route between (a) such states or (b) in transit across the territory of another member state en route to a third member state or non-member state.
- 2) PHASE 2 - Abolition of restrictions on carriers of one member state to carry goods on a defined route between another member state and a third member state or non-member state, irrespective of whether the carrier's vehicle traverses the territory of its home state.
- 3) PHASE 3 - Abolition of restrictions on carriers of one member state to carry goods between another member state and a third member state or a non-member state.

There has been limited progress against this liberalization agenda which was supposed to have been completed by 2008.

At the SADC level, it was determined that market liberalization should be achieved through the development of a regional transport agreement and work has been ongoing in this regard – the SADC Secretariat has completed an assessment of existing bilateral agreements in the region and is currently undertaking an assessment of the legal and institutional elements required to support the liberalization process.

Several of the SADC Member states, namely, Democratic Republic of Congo, Madagascar, Malawi, Mauritius, Swaziland, Zambia and Zimbabwe, are also members of COMESA. Under the COMESA Treaty, the parties agree to *inter alia*, harmonize the provisions of their laws, standards, formalities, regulations, transit traffic, and ensure equal treatment of common carriers and road operators in all countries of the Common Market. The COMESA Carrier's License, which was also introduced in 1991, was supposed to permit commercial goods vehicles to operate in all Member States with a single license valid throughout the region. It would have meant that vehicles could pick up backloads in other countries, making for more efficient use of the region's transport fleet and reducing the cost of trade.³⁵ However, only Kenya and Uganda are implementing the partial Carrier Licensing through mutual recognition.³⁶

There is also some measure of liberalization within SACU. The 1990 Memorandum of Understanding (MoU) on Road Transportation in the Customs Union permits individual states to issue cross-border permits for carrying commercial loads in the SACU region generally. While in the beginning, the member states regulated the number of cross

³⁵ Corridor Diagnostic Study 2011, 15; and COMESA website http://programmes.comesa.int/index.php?option=com_content&view=article&id=55&Itemid=63&lang=en

³⁶ COMESA, Accelerating the Rate of the Regional Transport and Trade Facilitation Instruments, Regional Conference on the Northern Corridor, Mombasa, Kenya, 30 September - 1 October, 2009, 8.

border permits issued to balance the share of each member country, it appears that this practice of regulating the number of permits to ensure that each country gets a share of the regional transport market has fallen into abeyance.

The SADC Protocol on Trade in Services

SADC's 1996 Protocol on Trade signaled the intention of member states to liberalize trade in services. While the major focus of the trade protocol is the liberalization of trade in goods, Article 23 recognizes the importance of trade in services for economic development and mandates member states to adopt policies and implement measures in accordance with their GATS commitments with a view to liberalizing services in the region. In order to implement the provisions of Article 23, the SADC countries have decided to develop a separate Protocol on Trade in Services.

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 which are expected to commence in 2012. Negotiations will commence on six key services sectors (construction, communication, transport, energy-related, tourism and financial services).³⁷ The liberalization process will eventually cover substantially all sectors and modes of supply.

The SADC Protocol on Trade in Services is likely to follow a GATS-like approach. As such, countries will have substantial flexibility to decide on what they are and are not willing to commit to within each sector. Moreover, whereas there may be pressure on countries to list all existing regulations and restrictions in their sector schedules, negotiators are unlikely to demand substantial changes or reforms. As such, this agreement is not expected to take the region much beyond the status quo.

Despite the many limitations inherent in the SADC Trade in Services Protocol, the upcoming negotiations provide the industry and regulators with a valuable opportunity to meet and consult on their respective interests. In the first instance, this is important to ensure that trade negotiators understand the regulatory framework in individual countries; and are able to translate existing laws and regulations correctly into a GATS template. Looking forward, these consultations should serve to kick-start more meaningful discussions on the state of trade and regulation in the sector, and the need and options for deeper regional and domestic reforms.

The case studies reveal varied levels of interaction between private sector representatives, regulators and trade negotiators in the four countries visited. The current and potential role of these different stakeholders is reviewed in more detail below.

The Role of the Private Sector in Trade Negotiations

Road Freight Associations (RFAs) exist in all SADC countries. Some countries even have more than one RFA. In several instances, it was noted that RFAs did not engage directly with trade in services issues *per se*, but that type of engagement was left to the Federation of South and East African Road Freight Associations (FESARTA). This is hardly surprising, given the limited resources available to most RFAs. Moreover, the value of an RFA is more likely to be judged by its track record on resolving issues related to governmental interventions, introducing initiatives which provide information or cost-

³⁷ UNCTAD, *Towards SADC Services Liberalization: Balancing Multiple Imperatives* 2009, UNCTAD/DITC/TNCD/2008/4, 1.

savings to members and in advocating for the industry at the national level. At that level, with the exception of the Botswana association, the other RFAs appear to be fairly active. Namibia and Malawi stand out as having RFAs which are able to represent the views of their stakeholders and present position papers on behalf of the industry which are considered by their respective Governments.

However, with the prospect of SADC negotiations on trade in services on the horizon, the national industries' lack of engagement with the trade in services agenda is likely to be a handicap, especially as FESARTA itself appears to have very limited resources to perform all of the tasks it needs to on behalf of the regional industry. This is an unfortunate situation as FESARTA is acknowledged to be a well-respected player in the region, especially in representing the industry on issues related to the Trade Facilitation agenda. At the national level, the extent of interaction between industry associations and trade negotiators differs significantly by member state.

In the case of Malawi, there seems to be a positive and healthy two way communication between the Road Transport Operators Association (RTOA) and the Ministry of Transport. However, the Ministry of Trade and Industry reported that the level of interaction between the transport operators association and itself on trade in services issues is low. Overall, communication between the three stakeholders – Ministry of Trade and Industry, Ministry of Transport and the RTOA – needs to be enhanced in preparation for SADC regional negotiations.

With respect to Namibia, the level of interaction between the regulators – the Roads Authority and the Road Fund Administration – and the private sector appears to be healthy and oriented towards problem solving. The Namibia Logistics Association (NLA), which represents the transport operators, freight forwarders and other transport related businesses, appears to have a strong consultation mechanism.

The interaction of the Botswana International Haulers' Association with the Ministry of Transport and the regulators must be considered in light of its peculiar circumstances. There appears to be no incentive for the smaller operators to join the Association as it offers no services; there is also little incentive for the bigger transport operators to make the Association work, as they also have commercial presences in South Africa and have membership in the South Africa Road Freight Association which addresses their issues. As such, the mechanism for private sector consultation is highly underdeveloped.

As issues arise within Botswana, the larger players in the industry address their concerns directly to the Department of Road Transport. It is in this context that interactions between the industry and the regulators are more likely to produce solutions which more closely address the issues faced by the main transport operators. They may not necessarily capture the concerns of the single truck companies, which include more than 500 operators. This is particularly striking in an industry where the two largest transport operators are foreign-owned and represent one-third of the total transported volume. The level of interaction between the Ministries of Trade and Transport appears to be limited.

Interaction in Mozambique appears to be less structured. The level of genuine and effective consultation between the regulatory authorities and the private sector appears to be relatively low. Interviews with the private sector reveal situations such as being sent copies of transport agreements for comment only to be told shortly thereafter that these agreements were in fact already signed. In addition, legislation formulated at the municipal level is implemented without prior consultation with the private sector. The private sector itself appears to have more than one specific consultation mechanism for the transport

sector; however, they do not seem to be co-ordinated. Overall, the linkages between the associations and the transport regulator appear to be weak.

The Role of the Regulators in Trade in Services Negotiations

Regulators play an extremely important role in determining whether the country as a whole can capture the benefits from trade liberalization. Service negotiations specifically try to maximize these gains by removing unnecessary barriers to trade. Nevertheless, trade liberalization does not automatically result in increases in welfare and effective regulation is required to ensure that more socially and economically equitable outcomes are achieved. A greater awareness of the trade in services issues on the part of regulators is therefore likely to yield significant returns in the form of better inputs from the regulators into the entire negotiations process and a better grasp of the regulatory changes required in the implementation phase.

As such, road transport regulators should be included in consultations in trade in road freight services from an early stage. In order to do so, they need to become familiar with the scope of trade in services negotiations, the modes through which services are supplied and the main barriers confronting road freight transport services at home and in neighboring countries. There is also a need for intensive consultations among the regulators, the Ministries of Transport and the Ministries of Trade. Such consultations need not be highly formalistic, but should provide timely two way communication on key issues emerging in the sector. In the four countries visited, the level of interaction between the regulators and negotiators was low.

From the foregoing discussion, it is clear that some aspects of regulation, such as standards, are more suited for regional co-operation and harmonization. Moreover, available mechanisms such as the Trans Kalahari Corridor Management Committee (TKCMC) and Maputo Corridor Logistics Initiative (MCLI) have proven to be successful in finding specific solutions on these kinds of problems. Trade in services negotiations take a more holistic approach, and in SADC, this will eventually include discussions on the elimination of all barriers and market access and national treatment, improved transparency, and the use of domestic regulations across all transport sectors. This is likely to require a much higher level of consultation between regulators and negotiators over an extended period of time.

SECTION 4: RECOMMENDATIONS, PROPOSED ASSISTANCE AND DESIRED OUTCOMES

Key Threats and Opportunities

In light of the foregoing discussion, there would seem to be a number of regional opportunities for the road freight transport services industry.

There is a relatively high demand for road transport services within the region and in most SADC countries the road freight industry continues to play a critical role in accessing both regional and international markets. As international interest in the sub-Saharan African market grows, especially from the large emerging economies such as Brazil, Russia, India and China, the potential for road transport operators in SADC to attract increased business appears promising.

This opportunity could be greatly enhanced if SADC negotiations on trade in services are able to reduce barriers to all trade and expand the market in which the road freight industry operates. Further efficiencies are likely to emerge from improvements in the road infrastructure; and as a number of SADC states intensify efforts to deliver results on the trade facilitation front. Together, these developments should serve to reduce the real obstacles arising from missing or inadequate road networks and make it easier and quicker for transport operators to do business across borders.

There are also a number of threats to the industry. These threats can be classified in economic, regulatory and operational terms.

A number of transport operators face high cost environments; especially in the region's many landlocked countries. The high cost of maintenance and spare parts, for example, could undermine the ability of the transport service providers in these countries to lower operating costs and compete on price and quality while still maintaining a reasonable profit margin.

Operational efficiencies are further constrained by information asymmetries – vital information on demand for transport services does not readily flow to providers of these services. Difficulties in securing backhaul opportunities, for example, are indicative of weak coordinating mechanisms in the industry. Here, other countries can learn from the Zambian experience.

With respect to the regulatory environment, domestic and foreign laws and standards can weigh heavily on the ability of transport operators to compete across borders. Specific threats to the integration of the transport services market include the continued application of cabotage restrictions and the third country rule. While these rules preserve the domestic market for domestic suppliers, they generate inefficiencies in the regional market. The industry is also susceptible to the regulatory actions from other branches of government, such as those responsible for the issuance of work permits.

Services negotiations seek to identify all barriers to trade across specific sectors; and where possible, commit countries to the elimination of unnecessary, unfair or costly regulations. Ideally, this should include some degree of regulatory reform to make it easier for foreign firms to enter the market and compete; though usually, countries simply agree not to introduce any additional and more restrictive regulations. The impact of SADC negotiations on trade in freight services will ultimately depend on how far countries are willing to move towards a more open, regional road freight environment.

The previous two sections highlighted some of the main barriers to trade experienced by private road freight operators in four SADC member countries, and some of the key constraints confronting regulators in responding to trade and negotiations in this sector. This section provides some preliminary ideas on how the private sector and regulators should engage with trade in services negotiations, and identifies some ways in which SATH may assist. These recommendations are based on the needs identified during the in-country consultations and SATH's broad objectives of increasing the levels of services trade in the region and improving the regulatory environment for service provision.

Assisting The Private Sector to Identify and Communicate its Interests

In order for trade in services negotiations to have commercially relevant outcomes, private sector actors need to be meaningfully integrated into the process. Ideally, transport operators should be the key *demandeurs* for the removal of barriers to entry into other markets in the region, and should provide critical input into the development of country requests during the negotiations. Countries are therefore advised to establish formal consultative mechanisms between private operators, regulators and the Ministry of Trade around road transport issues.

Once negotiations commence, it will also be important for the private sector to look beyond the current market environment and formulate strategies to take advantage of the enhanced market access that may emerge from these discussions. These strategies could include the creation of shared mechanisms to enhance the competitiveness of domestic operators in foreign markets or to ensure that they are able to compete against new entrants. For example, buying clubs might prove a useful means for smaller operators to purchase spare parts in bulk and therefore reduce operating costs.

Finally, private sector associations should strengthen their capacity to understand the changes that are likely to take place in the domestic, regional and international road freight market and should consider the development or use of information services, such as TransZam, to communicate business opportunities. They can further contribute to the development of such tools by building and maintaining directories of transport operators (possibly through the extension of the TransZam website). Such directories ought to provide not only contact details, but information on the type of specialized transport equipment, fleet size and truck capacity.

From this scoping study, SATH has identified two possible ways in which it can assist private sector associations in promoting trade and regulatory reform.

Firstly, SATH can assist sector associations and governments in SADC member countries with the collection, evaluation and synthesis of private sector requests for the purposes of SADC services negotiations. This could include the provision of dedicated training events on services negotiations, consultations with private sector representatives in member states, and the preparation of country papers to document sector interests and requests.

Secondly, and outside of formal services negotiations, SATH can work with private sector associations to undertake substantive research on some of the key rules and regulations which impact on the efficiency of the sector. This would include the commissioning of cost-benefit studies to assess the economic impact of these rules and the implications of regulatory reform. Some specific rules and regulations that could be considered for this kind of analysis include:

- The Namibian regulation on the transportation of transit cargo, especially as it relates to the transportation of vehicles and other cargo which form a single consignment;
- The South African and Namibian partial relaxation of rules on cabotage;
- The portability of transport operator insurance in SADC;
- The imposition of visa requirements or work permit requirements in South Africa and Namibia; and
- Regulations on standards, such as the prohibition of left hand-drive vehicles.

Assisting Regulators to Undertake Economic Analysis

Generally, the regulators consulted considered the legal regime to provide a reasonably adequate basis for regulating the sector. That said, there are a number of areas where existing legislative frameworks do not appear to address the realities on the ground. This includes the need for legislation to address critical gaps; as well the need to remove or reform inappropriate or out-dated regulations.

Whereas it is understandable that there is a time lag between the legislative framework and the activities/ behavior to be regulated,³⁸ it may be useful to undertake systematic or periodic reviews of current legislation (rather than wait for problems to manifest). The fact that large parts of the legal framework are more than ten years old in all countries visited, would suggest that comprehensive reviews may be needed. It is not clear whether countries have already initiated such exercises or whether they have the capacity to do so. In Namibia and Malawi, for example, officials did indicate a lack of transport focused economic expertise.

In preparation for up-coming SADC negotiations, regulators will need to enhance their knowledge of trade in services issues in the transport sector. Here, the need for regulators to work closely with the Ministry of Trade should be emphasized. Participation by regulators in trade in services negotiations will ensure that future trade rules are responsive to the specific context and needs of their countries. Regulators will also need to provide feedback to negotiators on reasonable timelines for the implementation of new rules and regulations and examine the possible implications of regulatory change on the industry.

One tool which could potentially assist regulatory authorities in preparing for regulatory change (as part of the negotiations, but also more widely), is the Regulatory Impact Assessment (RIA). RIAs provide clear guidance to decision makers as to the likely costs and benefits of the regulatory choices with which they are faced, using basic economic principles. As such, they have become a relatively standard tool for decision-making in several developed countries and a number of developing countries, including South Africa. See Box 8 for a brief description of the conventional RIA process.

³⁸ It should be noted that Botswana is currently in the process of comprehensively reviewing its legislative framework for the road transport sector.

Box 8: Regulatory Impact Assessments (RIAs) at a Glance³⁹

RIAs compare and contrast two or more regulatory scenarios, in order to assess which seems to offer the best outcome. Typically, the proposed regulatory change is assessed against the costs and benefits associated with doing nothing. RIA processes can also be used to generate alternative policy scenarios, in order to refine the policy proposal, in which case the costs and benefits of a number of scenarios will be analyzed. This approach is particularly common when RIA is conducted by a line department during the process of formulating policy and drafting legislation.

Once the scenarios to be evaluated have been set out, the RIA process seeks to quantify as much as possible the costs and benefits associated with each option. This cost-benefit analysis should ideally include the following:

1. A brief discussion of the goals of the proposed piece of regulation, and the market environment
2. Disaggregated estimates of the various sources of costs and benefits, with detail provided on estimation techniques
3. Clear distinctions between once-off costs and ongoing costs associated with the regulatory change
4. Monetization of costs and benefits where possible, and clear qualitative descriptions of non-monetizable costs and benefits
5. An emphasis on first round effects rather than riskier econometric or multiplier-based estimations
6. Recognition of risks to the estimation techniques and sources of uncertainty going forward
7. Clarity on the policy goals against which the regulatory proposal has been evaluated

They may also include recommendations on how the proposed regulatory change should be monitored and evaluated going forward – in other words, on how success should be measured.

SATH has identified two possible ways in which it can assist road freight regulators to evaluate the economic impact of regulations and reform

Firstly, SATH proposes to undertake economic assessments of some of the key regulations which impact on cross-border trade in the road freight transport sector. Two specific rules stand-out:

- The third country rule; and
- Limitations on routes in cross-border permits.

³⁹ Sarah Truen, Background Paper on Regulatory Impact Assessments, USAID Southern Africa Trade Hub: Gaborone, May 2011.

The main purpose of these studies will be to identify and where possible, quantify, the economic costs and benefits of these existing rules, and to assess the likely winners and losers of any potential change.

Ideally, these assessments should be undertaken as an RIA in conjunction with officials within a regulator of Government Department. This would not only serve to entrench economic evaluation techniques within the responsible Government, but could also be used as a pilot and case study for the use of RIA in other SADC member countries. Nevertheless, institutional and time constraints might dictate that these are done as stand-alone economic studies.

Secondly, in order to ensure that there is maximum dissemination and use of the research undertaken, SATH proposes to design and execute a specialized training program on economic principles, regulation and analysis in the transport sector. Any prior work done on cross-border permits and the third party rule could serve as useful inputs and case studies in such a training program. It is proposed that this course be targeted at the senior-decision makers in national regulatory agencies and transport departments.

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