



# RESEARCH REPORT 1

Development Through Trade Programme

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## **Transport Services in SACU:**

Accelerating Harmonisation and Liberalisation

Tsidiso Disenyana and Nkululeko Khumalo

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This process takes place through publications; events, including roundtables, workshops and conferences; interaction with the media and governments; a growing network of regional and international partners; and participation in Business Unity South Africa's trade committee.

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## ABBREVIATIONS AND ACRONYMS

ASANRA	Association of Southern African National Road Agencies
Comesa	Common Market of Eastern and Southern Africa
COSCAP	Cooperative Development of Operational Safety and Continuing Airworthiness Project
CTCT	Cape Town container terminal
CTO	Central Transport Organisation
CVG	commercial vehicle guarantee
EPA	economic partnership agreement
EU	European Union
FESARTA	Federation of East and Southern African Road Transport Association
FTA	free-trade area
GATS	General Agreement on Trade in Services
GDP	gross domestic product
ICAO	International Civil Aviation Organisation
ICT	information and communication technology
IMO	International Maritime Organisation
MFN	most-favoured nation
MPT	multipurpose terminal
PECT	Port Elizabeth container terminal
RTMC	Road Traffic Management Corporation
SAA	South African Airways
SACU	Southern African Customs Union
SADC	Southern African Development Community
SARA	Southern African Railway Association
SATCC	Southern African Transport and Communications Commission
SATCC-TU	Southern African Transport and Communications Commission Technical Unit
TEU	Twenty-foot equivalent unit
UNCTAD	United Nations Conference on Trade and Development
US	United States
YD	Yamoussoukro Decision concerning the Liberalisation of Access to Air Transport Markets in Africa
WTO	World Trade Organisation

## CHAPTER 1

### BACKGROUND

Services are without doubt a key driver of economic growth and fundamentally influence (or determine) the trade capacity of countries. Like many other World Trade Organisation (WTO) member states, Southern African Customs Union (SACU) countries recognise the importance of a more liberal services trade regime in enhancing the availability and quality of key services like communications, transport, energy, construction and financial services that are vital to economic growth and trade competitiveness.

Although the SACU Agreement does not cover the liberalisation of trade in services, SACU member states have engaged in services trade liberalising activities primarily through unilateral policy measures, whether bound in the WTO's General Agreement on Trade in Services (GATS) or not, and through implementation of a range of Southern African Development Community (SADC) protocols.

Article 23 of the SADC Trade Protocol 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 liberalising their services sectors within the region.<sup>1</sup> 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 and was expected to be adopted and signed in 2008. The draft protocol sets out the framework for the liberalisation of trade in services among SADC members and will serve as a basis for negotiations. Starting with six key services sectors (construction, communications, transport, energy, tourism and financial services), the envisaged liberalisation 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 terms of this plan, substantial liberalisation of intraregional trade in services is to be achieved no later than 2015.

Furthermore, the lack of common policies or positions on such issues as services has increasingly come under the spotlight in SACU's trade negotiations with external trade partners such as the United States (US). It has been argued that as long as SACU countries are not harmonised among themselves, agreements with external parties covering trade in services may remain elusive. This poses the challenge of ascertaining to what extent services markets in SACU may be integrated in practice, the regulatory environment that is providing this integration, and how harmonisation or regional trade agreements can enhance this integration. The scope of the present study is restricted to transportation services.

Transportation services cover services in the maritime, rail, road and air transport subsectors.

Efficient transport infrastructure and services are a prerequisite for SACU's development and integration. Interregional and international trade-related transport facilitates the expansion of trade, because trade is only possible if people and goods can reach the production and consumption areas physically (using transport). In the 21<sup>st</sup> century,

which is characterised by globalisation and competition, sound transport infrastructure networks and services will considerably facilitate the region's full participation in the current profound transformation under way at the worldwide level.

The present study was undertaken based purely on desk research, utilising past experience in the region, existing information, known sources, etc. to identify, gather and then summarise available information.

The study is organised as follows: chapter 2 briefly looks at global trends in trade and transport over the last two to three decades. The strategic importance of, and trade in, transport services in the region is discussed in chapter 3, while chapter 4 comprehensively covers an analysis of transport services for each mode in the region. A brief synopsis of the transport policy and regulatory environment is provided in chapter 5. Chapter 6 reaffirms a case for further harmonisation and liberalisation, and we also look at reforms pertaining to harmonisation and liberalisation undertaken by SACU member states over the past years. Lastly, chapter 7 concludes and makes recommendations on the way forward for SACU member states.

## CHAPTER 2

### GLOBAL TRENDS IN TRADE AND TRANSPORT

The last few decades have seen innovative trade and transport management methods significantly change the way in which global trade transactions and related transport operations are conducted. These methods include the use of new information and communication technologies (ICT) to monitor international trade transactions and operations. According to the United Nations Conference on Trade and Development (UNCTAD), these arrangements have contributed to an environment in which competitors share information, just as partners and governments share common strategic goals and visions with the private sector.<sup>2</sup> The emergence of containers, integrated production processes and logistics have fundamentally contributed to this development. These are briefly discussed below.

#### INFORMATION AND COMMUNICATION TECHNOLOGIES

The emergence of electronic commerce (e-commerce) in the past decade has allowed exporters and importers to place orders on the Internet from virtually anywhere in the world, and the rapid conclusion of trade transactions anticipates door-to-door delivery. This has compelled transport service providers to adapt their operations and strategies.

Furthermore, ICT has allowed major container carriers, for example, to share valuable information regarding sailing schedules and tariffs with shippers from around the world. Shippers can also simultaneously monitor the movement of their consignments. This has improved the service efficiency of carriers and shippers substantially. ICT tools such as UNCTAD's Advance Cargo Information System has enabled Asian and African railway operators to save on their operating costs and increase the capacity of their facilities.<sup>3</sup>

#### CONTAINERS

Since the advent of containers in the mid-1960s, UNCTAD reports that containerised freight has increased from virtually zero in 1965 to slightly over 300 million twenty-foot equivalent units (TEU) in 2003. It is projected that this figure will reach approximately 500 million TEUs by 2010.<sup>4</sup>

This is attributed to, among other things, containers' ease of handling and storage, the protection they offer against damage and theft, and the relative ease with which they can be swapped among various modes of transport. The latter feature has subsequently contributed to the multimodal transport systems phenomenon.

Furthermore, containerisation has brought about greater efficiency in cargo handling in ports and inland freight stations through the use of specialised equipment, which has contributed to changing transport patterns and practices.<sup>5</sup>

## EVOLVING GLOBAL PRODUCTION PROCESSES

The latest global production processes integrate the process through which a final product is manufactured by bringing together raw materials, parts and other inputs from various parts of the world. According to UNCTAD, trade in parts and other inputs accounts for approximately 30% of global trade in manufactured goods. Providing further stimulus to this trade is intracompany trade, which accounts for one third of total trade.<sup>6</sup>

These production processes require the implementation of effective and efficient supply chain management techniques and concepts like just-in-time production. To this end, manufacturers have outsourced these functions to specialised third-party logistics providers such as DHL and XPS to ensure the timely receipt of inputs and delivery of finished goods, with the concomitant reduction in on-site inventory levels brought about by more efficient supply to the production line capabilities.

In order to be competitive, SACU countries must meet the demands of these complex production and distribution networks that value speed, reliability and efficiency. At the core of this process is the matching of supply and demand in a real-time or near real-time scenario. Trade support services such as packaging, labelling, insurance, banking, customs procedures and multimodal transport management must be fully accurate, responsive and integrated to provide the flexibility, reliability and precision necessary to prevent the missteps that can be so costly in a just-in-time world.

The problem of distance for landlocked countries such as Botswana, Lesotho and Swaziland is compounded by the multiple regulatory environments through which cargo travelling by road must move. Added to the increased complexity of goods crossing national borders is the crossing of the drivers and their vehicles. Immigration services and vehicle inspection stations often do not allow for predictable and timely border crossings. For example, requirements for drivers to leave their vehicles and process customs papers slow down border crossing significantly. Just within the confines of airports and seaports, from terminal gates to loading docks, the myriad of customs procedures, administrative requirements and cargo handling activities can cause wide variation in clearance times.

It is also important to note that not all regional customs administrations have adopted the Single Administrative Document universally, nor use the same procedures, leading to variances in application and administration, thereby further compounding the problems for traders. In addition, although most administrations can facilitate electronic customs submissions, the various Asycuda systems are themselves not totally compatible, further frustrating the ability to introduce efficiencies through single window submissions to all customs administrations (in respect of goods movements).

## LOGISTICS

Trade logistics comprise aspects related to, among other things, arrangements for transport, packaging, storage and distribution. These aspects, according to UNCTAD, have altered the approach to production, trade and transportation, and have subsequently influenced carriers, shippers and other transport service suppliers.<sup>7</sup>

The related logistics costs play a key role in the competitive ability of companies and countries. The lower these are, the more competitive the company's and/or country's export and import prices.

These costs are more important for developing countries, where they have been estimated to be the highest in the world. Mpata *et al.* estimate these costs to range between 15% and 40% of the value of total trade in the Southern Africa region.<sup>8</sup>

**Table 1: Ease of doing business in SACU, 2008**

Country	Average time to ship a 20ft container from port to final destination (days)		Average cost to ship a 20ft container from port to final destination (\$)	
	Import	Export	Import	Export
Botswana	43	33	2,595	2,328
Lesotho	49	44	1,210	1,188
Namibia	24	29	1,550	1,539
South Africa	35	30	1,195	1,087
Swaziland	34	21	1,820	1,798

Source: World Bank, *World Bank Doing Business 2008*. Washington, DC: World Bank.

For example, in Namibia, the cost of all trade-related transactions for a 20-foot full container load, including inland transport from the port to the final destination, is slightly over \$3,000, while in Germany and Sweden, these costs amount to only \$813 and a little more than \$500, respectively.<sup>9</sup> These costs are even higher for landlocked developing countries, given the additional constraints caused by their geographical situation, which lead to higher transport costs and longer delivery times — Botswana, Lesotho (though the latter's costs are lower than that of Namibia) and Swaziland being cases in point. 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.

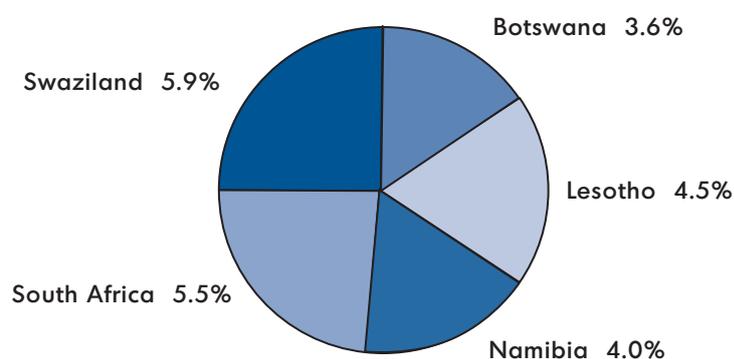
## CHAPTER 3

### THE ROLE OF TRANSPORT SERVICES SECTOR IN SACU

#### STRATEGIC IMPORTANCE

In South Africa, the transport services sector is increasingly becoming one of the best engines for economic growth and social development. Figure 1 shows that the sector contributed 5.5% to the South African economy in 2007. Furthermore, nearly 7% of South Africa's gross domestic product (GDP) is spent on transport.<sup>10</sup> Transport services contributed approximately 3.6% and 4.0% to Botswana's and Namibia's GDP, respectively and 4.5% to Lesotho's economy in 2006. Transport infrastructure development accounts for 36–43% of the government budget in Swaziland, and the sector contributes approximately 5.9% to the GDP.

**Figure 1: Contribution of transport services to GDP, 2007**



Sources: SARB (South African Reserve Bank), *Annual Economic Report 2007*, <[http://www.reservebank.co.za/internet/Publication.nsf/LADV/0D4A989F8AC9AD014225735B003217BF/\\$File/AER2007.pdf](http://www.reservebank.co.za/internet/Publication.nsf/LADV/0D4A989F8AC9AD014225735B003217BF/$File/AER2007.pdf)>; Central Statistics Office (Botswana), *Value Added by Type of Economic Activity at Current Prices*. Gaborone: Central Statistics Office, 2007; IPPR (Institute for Public Policy), (Namibia), *Gross Domestic Product by Activity*. Windhoek: IPPR, n.d.; Lesotho Bureau of Statistics, *Gross Domestic Product by Kind of Economic Activity*. Maseru: Lesotho Bureau of Statistics, n.d.; Central Bank of Swaziland, Central Statistical Office, *The Domestic Economy: Sectoral Review*. Manzini: Central Bank of Swaziland, 2006/07.

The economic importance of transportation services in SACU member countries' economies has grown considerably with the proliferation of trade agreements in the region. SACU has a free-trade area (FTA) with the European Free Trade Area members;

it is currently implementing a SADC-wide FTA; some of its member states have initialled an Interim Economic Partnership with the European Union (EU), and South Africa has a bilateral Trade Development Co-operation Agreement with the EU. The region is also contemplating FTAs with Mercosur (*Mercado Común del Sur* or Southern Common Market), India and China.

If these current and possible agreements are to be beneficial for the region, it is essential that international and intraregional trade is able to move without hindrance. To achieve this, goods must be able to be physically moved from one country to another and individuals must be able to travel on business from one country to another as efficiently as possible, and the evidence is that this is currently not the case. It is therefore important that transportation infrastructure in the region is efficient in order to ensure successful participation of businesses in international production networks and to boost regional integration. According to Naudè & Matthee, SACU will need to adopt a regional approach to co-ordinating cross-border transport infrastructure investment, maintenance, management and use (transport corridors are an example).<sup>11</sup>

## INTERNATIONAL TRADE

The economies of SACU member states are characterised by a high degree of ‘openness’ (defined as exports plus imports of goods as a percentage of GDP) Based on 2006 data from the World Bank’s development indicators, the degree of openness in Botswana was 67.6%; Lesotho, 137.7%; Namibia, 54.4%; South Africa, 57.4%; and Swaziland, 118%.<sup>12</sup> This means that these countries are highly integrated into international trade. The overseas trade of member states is carried overwhelmingly by sea, with only a small proportion consisting of airfreight. Intra-SACU trade among the mainland member states is conveyed largely overland by road and rail, although there is considerable coastal shipping between member states, and airfreight is also becoming more important.

As Table 2 indicates, SACU is a net importer of transport services. South Africa is the largest exporter and importer within SACU, followed by Botswana, Namibia, Lesotho and Swaziland. Botswana has experienced an average export growth of 12.3% over 2000–05, followed by Swaziland at 8.0% (albeit off a lower base). South Africa and Lesotho recorded average growth rates of 6.2% and 4.6%, respectively.

In terms of imports, South Africa experienced the highest average growth (20.1%) within SACU, followed by Lesotho (14.9%), Botswana (9.7%) and Swaziland (3.0%).

Practically all of Lesotho’s regional and international trade passes through the Maseru border post with South Africa. For example, almost all consumer goods are imported from South Africa by road. Cement and maize are imported mainly by rail. The textile sector is the principal player of Lesotho’s manufacturing sector and trade flows constitute imports from the Far East through Port Elizabeth and exports mainly to the US via Durban.

According to Horne, 80% of all freight in South Africa is carried by road. Rail handles approximately 14–16% of the freight, and the balance is transported by other means. Furthermore, rail carries South Africa’s bulk exports of coal and iron ore whereas, road transport carries manufactured and agricultural freight.<sup>13</sup> The direction of South Africa’s trade is largely with the EU and the US.

**Table 2: SACU exports and imports of transport services (\$ millions)**

	2000	2001	2002	2003	2004	2005	Average growth 2000-5
<b>Botswana</b>							
Exports	51.88	52.68	55.43	69.06	83.04	85.02	12.3%
Imports	225.85	205.87	213.34	248.15	291.15	340.13	9.7%
<b>Lesotho</b>							
Exports	0.55	0.42	0.40	0.52	0.56	0.59	4.6%
Imports	31.52	28.64	30.82	43.50	55.51	52.28	14.9%
<b>Namibia</b>							
Exports	37.51	36.96	46.56	59.76	32.63	-	-
Imports	90.77	82.36	73.12	61.11	135.51	-	-
<b>South Africa</b>							
Exports	1,182.66	1,163.1	1,021.86	1,261.16	1,417.25	1,533.39	6.2%
Imports	2,441.12	2,117.28	2,293.15	3,174.29	4,400.51	5,328.06	20.1%
<b>Swaziland</b>							
Exports	17.71	13.00	12.32	21.00	12.43	28.08	8.0%
Imports	105.61	41.89	33.57	51.21	69.72	87.76	3.0%
<b>TOTAL</b>							
Exports	1,290.31	1,266.16	1,136.57	1,411.50	1,545.92	1,647.09	6.0%
Imports	2,894.88	2,476.03	2,644.00	3,578.27	4,952.41	5,808.24	18.2%
Balance	-1,604.57	-1,209.87	-1,507.43	-2,166.77	-3,406.49	-4,161.15	

Sources: UNCTAD (UN Conference on Trade and Development), *UNCTAD Handbook of Statistics 2006–2007*. Geneva: UNCTAD, 2007; authors' own calculations.

Most of Swaziland's trade is transported by road and rail, and comprises sugar, unbleached kraft pulp, coal and timber. The bulk of its foreign trade is with South Africa (80%) and the rest of world, notably US, Asia and Europe.<sup>14</sup>

South Africa is a transit country for exports and imports of both Namibia and Botswana. Botswana's exports include beef and leather products, diamonds, and other mineral products, whereas Namibia exports beef and primary products such as ore and minerals. The principal markets for both countries are the EU and the US.

## CHAPTER 4

## TRANSPORT SERVICES IN SACU

The main modes of transport in SACU are road, rail, air, maritime and pipelines (see Table 3). Three of the five members are landlocked (Botswana, Lesotho and Swaziland) and depend to an overwhelming extent on South Africa's transportation system and ports for exports and imports of goods.

**Table 3: Transportation network in SACU, 2005**

Country	Road network (km)	Rail lines (km)	Airports	Ports	Pipelines (km)
Botswana	24 355	888	85	0	0
Lesotho	5 940	0	28	0	0
Namibia	42 237	2 382	137	2	0
South Africa	362 099	20 872	728	6	3 648
Swaziland	3 594	301	18	0	0
Total	438 225	24 443	996	8	3 648

Sources: CIA (Central Intelligence Agency), *CIA World Factbook*, Washington, DC: CIA, 2008; South Africa's National Ports Authority.

## ROAD TRANSPORT SERVICES

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

In the last 30–40, years roads have usurped rail as the main inland service transport mode for general goods traffic in the region. Railways today carry mainly bulk commodities and containers over long distances. In illustration of this shift, the Development Bank of Southern Africa asserts that finished goods moving over a distance of 775km in 1991 were approximately 15% more expensive when moved by road rather than by rail. However, six years later, when the same goods were moved over the same distance, rail transport was 15% more expensive than road transport.<sup>15</sup>

The main trunk roads for cross-border traffic are those linking (i) the ports with their hinterlands and (ii) major inland centres in different countries. The most important routes in the first category in the region at present are: Maputo–South Africa; Maputo–Swaziland;

Durban–Lesotho; Durban–Johannesburg and on to Botswana, Zimbabwe, Zambia, Malawi and the Democratic Republic of the Congo; East London, Port Elizabeth and Cape Town to Johannesburg and on to Botswana, Zimbabwe, Zambia and Malawi; Cape Town–Windhoek; Walvis Bay–Botswana (Trans-Kalahari); and Walvis Bay–Zambia (Trans-Caprivi). Traffic from Walvis Bay to Botswana and Zambia often is intermodal, using Trans-Namib Rail between the port and Windhoek or the northern terminus at Grootfontein, and then the Trans-Kalahari or Trans-Caprivi highways.<sup>16</sup>

Important cross-border flows also occur between the main cities of neighbouring countries. Johannesburg is the main hub in this respect, with connections to Botswana, Lesotho, Namibia and Swaziland. Other main roads in this category are Windhoek–Angola.

There is a clear difference in the standard of the road network among SACU members. The highest standards are in South Africa, which has most of the region's freeways and toll roads. Road surface deterioration is assuming significant proportions throughout the region, and even South Africa is experiencing this problem at an increasing rate. Many trunk roads require extensive rehabilitation, if not reconstruction. A major cause of the decay of the trunk road system is that overloading of heavy vehicles is a widespread practice and that controls are extremely weak, except on some South African highways. Another problem is that the maximum permissible level of gross vehicle mass as accepted by SACU on cross-border roads is very high when compared with those on interstate highways in the US or in Europe. Overloading and the increased size of heavy vehicle combinations have exacerbated the diversion of traffic from rail to road.<sup>17</sup> In addition, the massive shift from rail to road in less than a decade has resulted in a situation where infrastructure that would normally have lasted 7–10 years before requiring maintenance is experiencing heavier levels of wear from the increased commercial traffic, thereby reducing the maintenance period now to 3–5 years as a general rule.

Cross-border road transport services are generally run by the private sector, and there are many small and medium-sized operators. Road passenger transport services are highly competitive for both taxi and bus services and have grown rapidly in recent years. For example, in South Africa, minibus taxis account for over two thirds of the 2.5 billion annual passenger trips undertaken, as well as a high percentage of rural and intercity transport.<sup>18</sup>

Most important are the road freight (trucking) services, which are a key provider of transport in the region. Recently, owner-driver operators have become a common feature in the industry, and also the consolidation of medium-sized companies. Key service providers include Imperial, Super Group, Bidvest, Trans Africa Logistics, Trans Freight Logistics, Unitrans, Barloworld Logistics, Cargo Carriers and Freight Dynamics, among others. Transport service standards vary among the major trunk routes, but on the whole are able to meet the demand.<sup>19</sup>

There are no accurate statistics relating to the volume, value or commodity composition of cross-border freight conveyed by road in the region. The only available statistics are those from ad hoc surveys at border posts or from estimates from the freight industry. Table 4 gives estimated figures regarding distance and transit times for cross-border trunk roads.

**Table 4: Estimated cross-border distances and transit times, 2007**

Origin	Inland destination	Distance (km)	Transit time (hours)
Maputo	Johannesburg, South Africa	599	20
	Swaziland	200	5
Durban	Botswana	979	-
	Swaziland	540	12
	Lesotho	570	12
Port Elizabeth	Lesotho	930	24
Cape Town	Lesotho	1 150	24
Walvis Bay	Johannesburg, South Africa	1 780	48
	Botswana	1 450	-

Sources: Mpata B, *et al.*, *op. cit.*; Consilium Legis Pty Ltd, *Transport and Trade Facilitation: East and Southern Africa – Review of Present Problems and Reform Initiatives*, 1. Pretoria: Consilium Legis 2003.

Two trunk roads predominate and capture 80% of the road freight market: Durban–Lusaka via Beit Bridge and Maputo–Johannesburg,<sup>20</sup> although the more recent evidence suggests that there has been a significant shift to Groblersbridge and the Kazangulu ferry into Zambia via Livingstone as a result of the deteriorating economic conditions in Zimbabwe, coupled to fuel shortages and various punitive taxes on truckers. The South African Revenue Service had to upgrade the facilities at Groblersbridge as a result of an increase in Zambian commercial traffic. Between 50 and 80 additional vehicles a day go through this border in one direction that would normally have gone through Beit Bridge. From around 500 vehicles a day a few years ago, Beit Bridge is currently on between 180–240 vehicles a day, one way.<sup>21</sup>

This suggests that these vehicles are using alternative corridors, and mainly Zimbabwean transporters are now going through Beit Bridge. A report by Pierides also addresses this issue, where south-bound traffic through Kopfontein increased by over 100% from 2004 to 2006, suggesting a traffic pattern shift away from the overload control taking place at Groblersbridge.<sup>22</sup>

The quality and efficiency of these corridors, when compared to transport corridors around the world, has revealed poor levels of efficiency, poor turnaround and hence high costs of transportation, resulting in poor competitiveness of exports from the region in global markets, as well as high landing costs of imported products in the region.<sup>23</sup>

The major constraint on road performance is generally found at the interconnections. These include border crossings and major nodes along the corridor. The former is where transport units and their cargo are normally cleared. It is at these points that most of the unnecessary delays and informal payments occur. For example, a study by Mthembu-Salter shows that it takes approximately 60 hours (i.e. 2.5 days) for a heavy-duty commercial vehicle travelling from Durban to Lusaka to clear through Beit Bridge border

post. However, there has been a significant streamlining of operations on both the South African and Zimbabwean sides of the border crossing since, reducing the transit time 'considerably'.<sup>24</sup>

## RAILWAY TRANSPORT SERVICES

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

As mentioned in section 4.1, above, the railway subsector has lost traffic to road over the years and has thus become relatively less important in the region. The main reason for the loss of traffic is that the regional railways have failed to provide a seamless, efficient, cost-competitive and predictable service responsive to market needs. Moreover, existing transport policies favour road over rail in so far as the user-cost recovery principle is not applied to roads, while railways, by contrast, are responsible for providing and maintaining their own infrastructure.<sup>25</sup> However, in South Africa's case, Transnet (the state-owned enterprise) has been sponsored by taxpayers' money over the years and the state is competing against the private sector in this regard.

The major cross-border rail corridors are Maputo–South Africa, Maputo–Swaziland, Durban–Johannesburg and onward to other destinations, and Cape Town–Botswana. The East London and Port Elizabeth lines do not convey large volumes of traffic for the landlocked countries. Johannesburg is the inland hub for rail traffic to and from neighbouring countries.

There are no accurate statistics relating to the volume, value or commodity composition of cross-border freight conveyed by rail in the region. Table 5 gives estimated figures for distance and transit times for cross-border rail.

**Table 5: Estimated cross-border rail distances and transit times, 2007**

Origin	Inland destination	Distance (km)	Transit time (hours)
Maputo	Johannesburg, South Africa	616	72
	Matsapha	200	24
Durban	Botswana	979	-
	Lesotho	750	48
	Swaziland	550	48–96
Port Elizabeth	Lesotho	950	72
Cape Town	Lesotho	1 150	72
Walvis Bay	Johannesburg, South Africa	2 600	96
	Botswana	2 200	-

Sources: Mpata B, *et al.*, *op. cit.*; Consilium Legis, *op. cit.*

## MARITIME TRANSPORT SERVICES

Maritime transport services include sea passenger and freight transport, rental of vessels with crew, auxiliary services (such as maritime cargo handling services, storage and warehousing services, customs clearing services, container station depot services, maritime agency services and maritime freight forwarding services) and port services (such as pilotage; towing and tug assistance; navigation aids; shore-based operational services; emergency repair facilities; and anchorage, berth and berthing services).

There are nine ports within the SACU region, centred mainly in South Africa, with two ports in Namibia. These are Richards Bay, Durban, East London, Port Elizabeth, Cape Town, Saldanha Bay, Luderitz, Mossel Bay and Walvis Bay. The cargo capacity varies from one port to another as depicted in Table 6 below.

**Table 6: Summary of cargo handled at South African and Namibian ports, 2005 & 2007**

Port	Bulk cargo (metric tons)	Break-bulk (metric tons)	Containers (TEU)
Richards Bay	80.0	4.40	4 000
Durban	34.2	7.70	2 479 000
East London	1.3	0.50	42 000
Port Elizabeth	4.4	1.10	422 000
Mossel Bay	1.7	0.09	–
Cape Town	3.6	0.50	764 000
Saldanha	42.7	1.00	–
Luderitz	0.3*	0.32*	6 000*
Walvis Bay	2.5*	0.53*	71 000*

Source: South African National Ports Authority.

\* denotes figures for 2005.

From Table 6, Richards Bay is the largest port in the region in terms of cargo handled. However, this is overwhelmingly dry bulk cargo, especially coal. If such cargo is excluded, Durban is the largest general cargo port in the region, handling 51.0% of all cargo excluding dry bulk in 2007 at SACU ports.

Durban, in fact is the largest general cargo port in Africa, and is the regional hub port for container traffic (handling over 30 million tons of cargo per year). Nearly 50% of South Africa's break-bulk cargo and 67% of all containerised cargo flows through the Port of Durban. The port is connected to Lesotho, Botswana and Swaziland by both rail and road, and is currently SACU's main port for exports and imports, serving trade links to the Far East, Middle East, Australasia, South America, North America and Europe. The terminal also serves as a trans-shipment hub for East Africa and the Indian Ocean islands.

The Port Elizabeth multipurpose terminal (MPT) manages the port's break-bulk, bulk and motor vehicle cargoes. These commodities include all types of unitised,<sup>26</sup> free-flowing (i.e. wheat and maize) and motor vehicle commodities. The port also handles stern and quarter ramp roll on-roll off vessels and forms part of the car terminal operation. Total break-bulk and bulk cargo handled at Port Elizabeth MPT in 2007 was 5.5 metric tons.

On the other side Port Elizabeth container terminal (PECT) is one of three specialised container-handling terminals along the South African coastline and serves the immediate hinterland of the Eastern Cape. This includes a large automotive manufacturing region, in which motor components arrive as containerised cargo for assembly at several vehicle assembly plants near the city. Assembled and manufactured vehicles are exported in containers to Europe, Australia and Asia. The terminal also handles an increasing volume of trans-shipped cargo for the other South African ports. In 2007 PECT handled over 400 000 TEUs. PECT also caters for substantial agricultural products that are exported in containers, including refrigerated fruit. The terminal has direct rail and road access to and from Lesotho.

A new development is the new port of Ngqura, situated about 25km north of the existing port of Port Elizabeth, and initially planned to serve the new Coega industrial development zone. The port development was pushed ahead with great speed, and the construction phase is now complete, awaiting tenants and customers. It is understood that the intention is to incorporate a large container terminal to relieve congestion at Durban harbour and serve the Gauteng industrial area. It would also function as a container hub for the southern hemisphere, whereby large Post-Panamax size vessels (80 000 tons deadweight) — defined as those with a maximum width of 32.2m and carrying coal, grain and, to a lesser extent, minor bulks, including steel products, forest products and fertilisers — would trans-ship containers to smaller vessels for regional feeder distribution. The intention is to break bulk to smaller vessels in much the same way as the Australians use trains between major hub depots, where the loads are broken up for smaller deliveries to major centres.

Cape Town container terminal (CTCT) is South Africa's second largest container terminal, with a ground capacity of 5 250 slots and 1 500 reefer points. This terminal is also the country's premier fruit export terminal, handling containerised refrigerated cargo and other containerised cargo. It has become a large trans-shipment hub for West Africa, South America and other regions. In 2007 the terminal handled well over 700 000 TEUs. With a dramatic increase in throughput, efforts are being made to increase capacity at CTCT, including increasing the stack height of containers and a possible increase in the terminal area, although this is subject to environmental approval. A programme of replacing and upgrading terminal infrastructure (gantry cranes and straddle carriers) is under way.

Cape Town serves as Lesotho's emergency export port: when the dispatch of exports is delayed, and they cannot reach the container stack closing times at Durban and Port Elizabeth, the containers are sent express to Cape Town by road (only during emergencies) to reach the vessel on time. The port is the last point of sail for vessels sailing to Europe and the Americas.

The port of Saldanha was originally constructed to facilitate the export of iron ore and bulk crude oil. The port currently also serves base-metal mines, an adjacent heavy minerals smelter as well as the crude storage facility near the port. Break-bulk terminals were subsequently added to the facilities in the port.

The port of Walvis Bay is one of Africa's best-equipped trade points, with the capacity to handle more than eight million tons of cargo with about 250 000 TEUs, annually.<sup>27</sup> The port is linked to Namibia's air, rail and road network, making it well situated to service the landlocked countries of Southern Africa — especially through the main arteries of the Walvis Bay Corridor, which is made up of both the Trans-Caprivi and Trans-Kalahari highways.

## AIR TRANSPORT SERVICES

Air transport services comprise passenger and freight transport, aircraft repair and maintenance services, computer reservation services, and the selling and marketing of air transport services.

All SACU member states have at least one international airport, but some of them handle only regional and not international flights (for example, those in Lesotho and Swaziland). The airports vary enormously in terms of size and facilities.

As in the case of international shipping, the international airline industry has also become organised around the concept of hubs. The regional hub airport for SACU is OR Tambo International Airport in Johannesburg, South Africa, and it is also the busiest airport in the region.

Though the number of foreign airlines serving the Johannesburg route has declined, the terminal building at OR Tambo has undergone considerable expansion to accommodate the increase in passenger volumes, and there are plans for further expansion. The runways, navigational aids and so on are maintained at international standards.

At other international airports in the region there are inadequacies of one sort or another, whether it be congestion at terminal buildings, short approaches, or lack of navigational aids and communications. In most cases, there are plans to overcome these defects, and in some instances improvements have already been made. On the whole, air transport infrastructure is reasonable, but most airports lack sufficient air cargo storage capacity. With regard to the latter, the relatively small size of the air cargo industry in the region has relegated air cargo to a largely small role within the whole aviation sector. In part this can be attributed to the cost of using air.

The restructuring of the air transport industry (comprising airlines, airports and air traffic services) is proceeding slowly. In all countries the government still wholly own the airline, the exceptions being public-private and privately owned airlines in South Africa.

Most carriers in the region face serious profitability problems, and there have been a number of losses both among state-owned and private airlines. The majority of SACU airlines are stated to be reluctant to provide financial and traffic data on their operations, but it is known that the majority of intra-SACU passenger movements are in and out Johannesburg.

## CHAPTER 5

### POLICY AND REGULATORY ENVIRONMENT

The efficient functioning of international trade and transport substantially depends on the existence of a legal framework that responds adequately to the challenges posed by technological and commercial developments and succeeds in creating certainty and predictability. A fragmented and complex legal framework creates uncertainty, which in turn increases transaction costs, as it gives rise to legal and evidentiary inquiries, costly litigation and an increased need for insurance. Thus, international legal instruments pertaining to international trade and transport primarily aim at creating a consistent, transparent and predictable legal environment to facilitate trade. They provide governments and the trading community with the necessary tools and standards to improve international trade through the harmonisation of applicable laws and regulations, as well as the simplification of formalities and procedures.

The regulatory environment from which the SACU region has shifted in the last 10–15 years typically consisted of the following.

#### ROAD SECTOR

Infrastructure is financed and owned by the government, constructed by either the public works department or the private sector on tender, maintained by the government; road haulage operates under permit, often with a strong state-owned enterprise enjoying some protection from private cartage contractors; while traffic management activities are performed by the state.

Among others, salient country features are as follows.

**Botswana:** Government – except for its own fleet of vehicles – does not hold any equity stake in the transport sector. The maintenance of government vehicles is undertaken by the Central Transport Organisation (CTO); and of late, some maintenance work of CTO is contracted out to the private sector as part of the privatisation of government business.

**Namibia:** Operators must be registered with the Namibian Traffic Information System. Commercial road carriers no longer require permits to carry certain goods. Permits are needed for cross-border transport (as they are in all countries in the region).

**South Africa:** In terms of the National Roads Act (Act No. 7 of 1998), government is responsible for overall policy, while road building and maintenance are the responsibility of the South African National Roads Agency Limited. The Cross Border Road Transport Agency, on the other hand, regulates cross-border transport with the sole purpose of supporting the South African economy and the region, and administers, in terms of its Act, cross-border permits and assists also with law enforcement, having about 80 officers enforcing the permit requirements and addressing domestic deliveries by foreign carriers, a practice known as cabotage.

## RAIL SECTOR

The sector is characterised by state-owned railway monopolies with limited competition from the private sector.

For example, TransNamib Ltd is the national rail transport service provider in Namibia. Policy restrictions exist on new entry into this subsector applicable to passenger transportation, freight transportation, and pushing and towing services. These restrictions apply to both domestic and foreign firms, but do not apply to the maintenance and repair of rail transport equipment and support services for rail transport.

In South Africa, Transnet virtually controls the rail mode of transport service for freight (through Transnet Freight Rail), while passenger services are under the custodianship of the South African Rail Commuter Corporation — Metrorail. There is not much competition in the rail mode. This is because of the large initial capital outlays required and hence small undertakings are seldom encountered. The modern trend within the rail sector is to amalgamate into relatively large organisations, although, according to the Road Rail Association, there has been a healthy development of light-density regional or feeder 'short lines' in recent years.

## MARITIME SECTOR

The sector is characterised by state-owned ports with limited private sector competition, and many port services are performed by the state.

For example, in Namibia, the policy restriction to new entry in this subsector applies only to firms with foreign participation. Only Namport can provide pilotage and towing services. Private ownership of such services is prohibited. Although maximum private ownership through commercial establishment for all other maritime services is permitted, in the case of foreign ownership it is only permitted for international shipping services. Infrastructure at the ports is owned and managed by the port authority. Private firms are only allowed to rent port assets in order to provide maritime services. Licences issued to commercially based operators providing maritime services, cannot be sold. Safety certificates are required by foreign suppliers applying for a licence for cross-border service provision.

## AVIATION SECTOR

The sector is characterised by state-owned national flag carriers enjoying domestic monopoly with minimum private sector competition; international routes under bilateral agreements; state-owned airports, airport services and civil aviation services.

In South Africa inland air services, both passenger and freight are operated by the state-owned South African Airways (SAA) and by an increasing number of private competitors. SAA and many foreign carriers fly between South Africa and all neighbouring countries; international service extends worldwide. Budget airlines such as Kulula, and 1time have lately been gaining market share since the market was liberalised in 2000 challenging the long-held dominance of the national carrier SAA and other local state-owned regional

operators. Other dynamic carriers such as Virgin Atlantic have also entered the market, adding to the level of competition. No-frills budget airlines have been able to increase their market share and the number of available flights at extremely competitive prices and through savvy and aggressive marketing campaigns.

## CHAPTER 6

### TOWARDS HARMONISATION

The lack of coherence on several issues in SACU has been identified as a hindrance to the prospects for meaningful regional economic co-operation. Lack of harmonisation, for instance, of services regimes has been blamed for the unwillingness and/or inability of SACU — especially South Africa — to engage third parties, such as the EU on the Economic Partnership Agreement negotiations. Harmonisation can therefore be used as a tool to consolidate SACU's negotiating powers in its dealings with other economic groupings and in helping it reduce the prospects for its marginalisation from the global economy.

The lack of convergence on transport policy has also restricted complementarities in economic development in the region. The acute polarisation of economies of scale in the region and the dominance of South Africa, as the largest and most competitive economy in Africa, skews foreign investment in its favour and makes competitiveness of the BLNS countries (Botswana, Lesotho, Namibia and Swaziland) almost impossible.

It is precisely for that reason that harmonisation must be undertaken by spreading capital efficiently across the entire region, in order to avoid 'a race to the bottom' as countries compete with one another to attract investments and to promote economic development in the region. Harmonisation will eliminate national weaknesses and help overcome the small size of the BLNS countries' national economies, as consideration for investment location will be at the regional level. This will in the long run stabilise and strengthen national economies. However, care must be taken to ensure that harmonisation when it is formulated is not according to the lowest common denominator, as there is no merit in harmonisation if it results in the adoption of legal concepts of the least progressive member(s) in SACU or small countries are locked into large country regulatory standards. This issue is linked to the question of which is the best 'law' or regime in SACU to follow. As there is no country in SACU that can authoritatively dictate the best law SACU should adopt, the question is whether SACU should engender a new corpus of standards or aim to adopt international standards.

As such, harmonisation is crucial to strengthening regional activities and deepening regional integration. Such an exercise undertaken with the needs of the region in mind can be tailor made to compel SACU countries to conform to a set of common operating conditions working towards a common objective, which can, for instance, be the promotion of a particular economic agenda in SACU or a regime tailored to help meet its objectives. Furthermore, the loss or shrinkage of policy space for the member states should be guarded against. Any development of harmonised policies would be carried out in common, causing member states to lose their right to independent reforms, while failure to harmonise would create new disparities that would obstruct all common efforts. The unwillingness of individual member states to give up sovereignty for a future common good has been the central challenge to regional integration efforts the world over. The key reason for this is that most member states do not see any concrete benefits from economic integration, measured against the substantial cost of surrendering sovereignty.

When SACU member states acceded to the SADC Treaty, as amended in 1992, they signified their willingness to observe certain regionally agreed principles, objectives and strategies on co-operation and integration.

It is in this regard that SACU's vision relating to transport infrastructure development is premised on the implementation of the SADC Protocol on Transport, Communications and Meteorology (hereinafter SADC Transport Protocol). The Protocol (which came into force in 1998) commits SADC states to the development of a harmonised regional transport infrastructure policy. Features of the policy are:

- establishing accountable national roads authorities that represent the public and private sectors;
- introducing commercial roads management practices;
- developing and implementing cohesive road funding policies;
- securing dedicated funding sources and applying the user pays principle progressively to recover full costs;
- promoting harmonised national and cross-border road user charging systems;
- applying the principle of non-discrimination between national and foreign users in regard to user charging;
- introducing efficiencies and cost savings through contracting out; and
- defining and co-ordinating the development of the SADC Regional Trunk Road Network.

All SACU members have ratified the Protocol and, by so doing, have committed themselves to harmonising their transport policies. The Protocol consists of 14 chapters, of which chapters 3–9 deal with transport.

In order to facilitate the implementation of the transport-related parts of the Protocol, SADC has prepared model legislation that member states are encouraged to adapt and incorporate into their national legislation. Model legislation for the transport sector prepared by SADC to date consists of the following:

- Investment in Transport Act
- Provision of Air Services Act
- Airports and Air Traffic and Navigation Services Act
- Civil Aviation Regulatory and Safety Authority Act
- Ports Act
- Maritime Authority Act
- Railway Act
- Roads Act
- Model Railway Passenger Service Concession
- Model Freight Concession Contract
- Model Legislative Provisions: Road Network Financing and Management
- Border Post Legal Reform.

## HARMONISATION AND LIBERALISATION

Harmonisation and market liberalisation are the principal aim of the Protocol, which sets out the policies and strategies that are necessary in order to improve the operational environment. Harmonisation and liberalisation reforms consist of policy, legislative and institutional aspects, usually in that sequence. In essence, the reforms aim at harmonising the regulatory frameworks of the various countries, and also serve to widen the role of the private sector in investment in infrastructure and in operations, while confining the role of the public sector to that of planning, regulation and enabling.

Some degree of harmonisation and liberalisation of the transport sector in terms of Protocol implementation has already been achieved. This has not been carried out at a uniform rate among member states. It is not an easy process: liberalisation and harmonisation require political will (to confront vested interests, lobby groups and systemic inertia), to undertake organisational restructuring, to attract investment in physical infrastructure, to advance investment in human resource development (especially in the management, administrative and technical spheres), and to attract new skills and investment from the local and foreign private sectors. Nevertheless, some SACU member states have adopted and implemented reforms in the transport sector that are at the cutting edge of innovation in this field.

The sections below will attempt to provide a picture in summary form of the present state of harmonisation and liberalisation.

### Road transport

Chapters 4 (road infrastructure), 5 (road transport) and 6 (road traffic) of the SADC Transport Protocol provide a framework for achieving the harmonisation of regional road traffic and transport systems.

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 whom they report on progress regarding implementation of the Protocol in their areas of responsibilities.

Some of the regional associations in place and already taking part in the implementation of the Protocol include the following:

- Federation of East and Southern African Road Transport Association (FESARTA); and
- Association of Southern African National Road Agencies (ASANRA).

ASANRA, which was formed in March 2001, aims to enhance regional policy co-ordination and enhance the management of the region's road infrastructure.

In addition to building the necessary implementation framework, significant progress has been made to give effect to the abovementioned chapters of the Protocol. Such achievements include the following.

### SADC drivers licence

In 1999 SADC adopted the SADC drivers licence as an annex to the SADC Transport

Protocol. The licence 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 Licence', Angola, Botswana, Lesotho, Malawi, Mauritius, Namibia, South Africa, Swaziland and Zambia now issue the SADC drivers licence.<sup>28</sup>

Corridor infrastructure development: 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 Trans-Kalahari Trans-Caprivi, North-South and Maputo corridors and preparation of measures for corridor performance improvement has been concluded. The first step in unifying the common customs form known as the Single Administrative Document or SAD 500 by Namibia, Botswana and South Africa took place on the Trans-Kalahari Corridor in the period August 2003–August 04 and lifted utilisation rates on the corridor from 15% to over 65% in 12 months. And all this was facilitated by the memorandum of understanding (MOU) signed in Windhoek by the respective ministers of transport for the governments of the three countries, which committed their respective customs administrations to trade facilitation in terms of the MOU.

### **Provision of rural roads**

In order to raise awareness of the recent developments and current knowledge in the provision of rural roads, a study was commissioned to develop a document known as *Guidelines for Low-Volume Sealed Roads in the SADC Region*. The final version of this document was completed in 2004 and distributed to each of the SADC member states in early 2005.<sup>29</sup> 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 under way to improve cross-border traffic facilitation. These include regional projects on the following:

#### ***Transit/road user charges***

Transit charges constitute an additional burden for transport operators in the region. At present there are divergences in transit costs among member states, resulting in lack of transparency and high road user charges.

In 1995 the Committee of Ministers of Transport agreed on the principles for introducing harmonised road user charges in SADC (denominated in US\$ per 100km). The principles and methods were elaborated upon in the document *Proposed System of Harmonised Road Transport Charges for the SADC Region*, which was finalised in 1997.<sup>30</sup> As with most initiatives of this nature, much exists on paper, but little has been actioned in practice.

After the harmonisation study, efforts were made to implement the harmonised regimes. However, the expected results were not realised, as member states lacked implementation guidelines and were also unable to fully implement the required institutional changes. As

a result, the region has different sources of road financing arrangements in place including road or bridge tolls (Mozambique, South Africa and Zimbabwe), fuel levies (all states), fixed charges per unit of distance (SADC states that are also members of the Common Market of Eastern and Southern Africa — Comesa) and other taxes, such as the carbon tax in Zimbabwe. Namibia would appear to be the only state with a regime that is closest to the regional proposals.<sup>31</sup> The differences continue to impact negatively on the smooth flow of traffic across borders within the region. The Southern African Transport and Communications Commission (SATCC) Committee of Ministers of Transport previously directed the then SATCC Training Unit (SATCC-TU) to revise the charges proposed in the harmonisation study before they could be implemented by the member states. After experiencing difficulties in obtaining appropriate data from the member states, the Secretariat secured funding from the Regional Integration Capacity Building Programme to use the services of a consultant to update the charges and to develop state-specific recommendations for harmonisation.

The study commenced in February 2006 and was completed in April 2007. In order to ease collection of road user charges, the study recommended that:

- a simple system be implemented whereby charges are based on distance to destinations as stated on the waybills and of vehicle operator for heavy goods vehicles and passenger vehicles respectively; and
- governments give consideration to contracting the management and administration of collecting revenues for transit charges to the private sector, as is in the case of Namibia.

These recommendations have yet to be adopted.

Once again, in practice, the various countries have diametrically opposed views on the subject. South Africa has implemented toll roads on widely, which impacts to the extent of nearly two thirds of non-tariff barriers costs on the Durban–Gaborone route alone.<sup>32</sup> But all users pay the same fees.

Botswana has a massively punitive user charge fee on foreign hauliers, and Namibia has a mix of user charges and toll fees. In such an environment, regardless of what agreements may or may not exist, the physical facts on the ground are that there is no implementation uniformity, with each country doing its own thing, and this is likely to continue into the foreseeable future.

### **Overload control**

The extent of overloading control varies among SACU countries, and controls are mainly grossly inadequate. Vehicle overloading reduces the economic life of road infrastructure and increases the cost of transport. While there are several ongoing initiatives to counter the problem of overloading, much more needs to be done, particularly on a regional basis. One of the initiatives that has gained currency is the linking of weighbridge certificates to the customs clearing processes. However, this approach is still only implemented at one border post, Groblersbridge. In addition, there are other initiatives on equipment, procedures and enforcement that have been tested in individual countries.

A consultancy study was commissioned to come up with guidelines for harmonising the procurement, installation and operation of weighbridges, including the training of personnel. Subsequently, a panel of experts was to be selected to finalise the guidelines.

The study was expected to be completed in December 2007, but it is not known if it was completed or not.

Legislation pertaining to vehicle configuration and axle loads also varies among countries, which negatively affects the smooth flow of commercial vehicles across the region. News from FESARTA is that there is agreement on single, tandem and tridem axles, 10-ton single, 18-ton dual and 24-ton triaxles with 56 ton gross vehicle mass. What is not clear is when the collective of countries will adopt the agreed numbers.

### **Vehicle equipment and dimensions**

The harmonisation of road traffic regulations and standards is an important element of the drive towards a regional road transport market. Specifically, the SADC Transport Protocol, in Articles 6.4, 6.5 and 6.6, requires member states to adopt harmonised standards with respect to vehicle safety and equipment. Differences in such standards compromise the efficiency of cross-border operations, as operators are forced to use different configurations for different markets.

In order to address the above challenge, a group of regional experts from the member states, under the auspices of the Technical Committee on Road Infrastructure, Road Transport and Traffic has identified several technical standards that should be standardised or harmonised. It has been working on various standards on vehicle equipment and dimensions and has so far drafted three proposals, namely, 'Specification for Bus/Trailer Combination', 'Harmonization of Vehicle Regulations and Standards: Loads on Vehicles' and 'Harmonization of Vehicle Regulations and Standards: Equipment and Dimensions of Vehicles'.<sup>33</sup>

The proposal on 'Specification for Bus/Trailer Combinations' defines the limits, in terms of mass and dimensions, that should not be exceeded with respect to buses drawing trailers and with respect to drawn trailers. The limits are defined to enhance the safety of operations.

The proposal on 'Harmonization of Vehicle Regulations and Standards: Loads on Vehicles', among other things, defines the permissible maximum axle load limits, distribution of axle mass load, information plates on vehicles and the manner in which goods are carried on vehicles. The subject of axle load limits remains one of the major challenges to enhancing road transport vehicle operations in the region. Previous studies have made recommendations on the limits that should be adopted, but these have not been adopted by all member states. The proposed regulations and standards are intended to lead to standardisation across the region. However, the proposals need wide and thorough consultations, as they may require significant changes to the limits in some member states.

The proposal on 'Harmonization of Vehicle Regulations and Standards: Equipment and Dimensions of Vehicles', among other issues, defines the various pieces and types of equipment for road vehicles, how the equipment is fitted, safety devices and the dimensions of vehicles. It is intended that adoption of the standards will lead to the realisation of other Protocol objectives, especially with respect to vehicle testing and road traffic control and enforcement. These are critical areas, as all SADC member states have high accident rates.

Furthermore, custom administrations have a massive role to play in the region through the adoption of:

- the SAD 500 by all countries, off a common platform and agreement (i.e. same training, same procedures, same understanding of fields and information supplied by the traders, etc.) to reduce transit times through borders by the facilitation of documentation;
- a common electronic platform to facilitate single-window submission of declarations to all customs administrations simultaneously;
- a common bond; and
- a common accreditation scheme for compliant clients (these clients are to get green-line treatment akin to the US–Canadian FAST (Free and Secure Trade) treatment).

Evidence gathered in the Trans-Kalahari Corridor pilot project suggests that transit times can be dramatically impacted on from several hours at borders to just a few minutes and corridor utilisation rates dramatically improved on by adopting a common strategy.

### **Liberalisation of markets**

The SADC Regional Indicative Strategic Development Plan contains a target of 2008 for SADC to have liberalised regional transport markets as well as harmonise transport rules, standards and policies. In pursuit of these goals, there are three variables in the development of road transport in support of regional integration, firstly, liberalisation of market access in respect of carriage of international road freight; secondly, introduction of international regulatory mechanisms (see above); and lastly, regional harmonisation of road traffic legislation. The liberalisation of road transport markets and the establishment of regulatory mechanisms are measures that are closely related. Road transport agreements are the most important means of implementing liberalisation of market access for international transport.

The subject of enhancing the efficiency of the road transport industry has been discussed for some time, and a strategic path based on the above key variables has been mapped. The process towards liberalisation and regulation is to be done progressively through different stages as follows: abolition of restrictions, harmonisation, commercialisation and privatisation. According to the SADC Transport Protocol, the strategy would be pursued step-by-step as follows:

- 1 the removal of restrictions on carriers of two member states to carry freight on a defined route between such states or in transit across the territory of another member state en route to a third member state or non-member state. The states would conclude standardised bilateral agreements to facilitate international road transport on all key corridors;
- 2 the removal of restrictions on carriers of one member state to carry freight on defined routes 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; and
- 3 the abolition of restrictions on carriers of one member state to carry freight between another member state and a third member state or non-member state. Extensive domestic policy changes are to be introduced leading to free market access for haulers for reward in all member states and increasing liberalisation of passenger transport. Formalising and conversion of the system of bilateral agreements into a multilateral agreement covering the whole region is to follow. This is subject to extensive

harmonisation of road user charges, other charges and various other conditions like regulations on driving and resting hours to secure competition on equal terms. The thorny issue of cabotage and competitive distortions remains, where some countries import second-hand vehicles at a fraction of the price of what South African operators are able to source legally; pay cheaper prices for fuel, sourced from South Africa and subsidised by South African taxpayers; buy cheaper parts from South Africa (paid for by South African taxpayers via the export incentive schemes); pay lower labour rates to drivers, etc., which together mean that these operators are at least 38% cheaper than their South African competitors.

Border post operations are regarded as a barrier in the region. According to Pierides, border posts contribute 16% of overall non-tariff barrier costs, with toll roads contributing nearly two thirds of these costs.<sup>34</sup> Congestion is also a problem, and some border posts need to be redesigned, with increased space being allocated to parking for heavy vehicles.<sup>35</sup> Since 2003 a number of border posts have indeed been upgraded, e.g. Groblers Bridge.

Another constraint facing road hauliers is the commercial vehicle guarantee (CVG) system (in other words, a third-party insurance system). For example, any haulier transiting Zimbabwe has to purchase a CVG that is valid for three months or a year. A South African CVG is valid for a single entry only, and may be purchased from a clearing agent for each trip. The solution would be to have a SADC-wide certificate to allow registered transporters in member countries to move through the region.

Table 7 on page 32 shows the status of reforms in the road sector in member states. As mentioned above, the pace of reform varies from one member state to another. The major focus, in summary, has been on the following:

- the establishment of a dedicated Road Fund run by an autonomous Road Board tasked to manage the road user charging system;
- road maintenance, including the phasing out of the construction and maintenance units in the relevant ministry and contracting out to the private sector;
- road traffic, including a review of legislation and an increased role for the private sector;
- road haulage, including deregulation, state-owned enterprises being phased out and the liberalisation of entry for private hauliers; and
- road management, including the establishment of an Independent Road Authority.

**Table 7: Status of reform in road transport**

Country	Status
Botswana	<p>No roads agency or road fund; fuel levies and permit fees go into the fiscus.</p> <p>User charges are also serving as a revenue raising exercise, not necessarily linked to a fiscus to refurbish roads.</p> <p>Road maintenance: maintenance funded by the government.</p> <p>Road Traffic Act: being assessed to ensure compliance with SADC Protocol.</p> <p>Axle loads: considering raising to SACU limit of 9 tons.</p>
Lesotho	<p>Road Fund established 1998.</p> <p>Road management: study on establishment of autonomous National Roads Authority.</p> <p>Road Traffic Act: being reviewed to give effect to SADC Protocol requirements.</p> <p>Vehicle standards/overloading control: draft bill on harmonisation to Parliament, 2000.</p>
Namibia	<p>User charges: establishment of the Road Fund Administrator tasked to manage the road user charging system; applies a flat cross-border fee.</p> <p>Toll road fees also serve as a revenue raising exercise.</p> <p>Road maintenance: Road Contractor Company and Road Authority established as a direct result of the White Paper of Transport Policy 1995, with sole responsibility of contracting out maintenance works. Has a shortage of around 25% for maintenance.</p>
South Africa	<p>Road management: National Roads Agency established in terms of Companies Act to manage national road network, self-financing (fuel levy and road toll fees).</p> <p>Cross-border transport: Cross-Border Road Transport Agency established, self-financing principle.</p> <p>Road traffic: Road Traffic Management Corporation (RTMC) to be established by legislation; RTMC to receive delegated responsibility for law enforcement from provinces and to re-delegate to private sector; introduces administrative adjudication for minor offences, decriminalising offences; funds collected accrue to RTMC, therefore self-financing.</p> <p>Road maintenance and construction: National Roads Agency administers through competitive tendering; in case of provincial roads, force account units still operate.</p>
Swaziland	<p>Has no roads agency or road fund; bill before Parliament to reform the process; toll road legislation to go through Parliament.</p> <p>Road traffic: legislation being amended; engagement of private sector being considered.</p> <p>Road transport: legislation being reviewed, will liberalise entry into market, allow for more effective control of heavy-vehicle overloading.</p>

Sources: DBSA, *op. cit.*; South African Department of Transport; FESARTA; *Botswana Transport & Communication Report 2005*; TransNamib Holdings Ltd; UNCTAD, *Towards SADC Services Liberalisation: Balancing Multiple Imperatives*, Geneva: UNCTAD, forthcoming 2008.

## Rail transport

Chapter 7 of the SADC Transport Protocol lays out a comprehensive framework for regional co-operation 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’. To this end, the provisions of chapter 7 include: a harmonised regional railway policy that incorporates a phased and co-ordinated economic and institutional restructuring of railways; monitoring the adequacy of rail infrastructure required to meet the region’s developmental needs; co-operation on operational matters; the development and implementation of compatible technical standards in respect of infrastructure and operational equipment; and human resource development.

SACU countries realise the importance of reform in this sector, and there have so far been commendable efforts through SATCC, including the establishment of the Southern African Railway Association (SARA) with the objective of increasing rail efficiency. Since most challenges faced by this subsector emanate from lack of investment and maintenance, current reform measures seek to attract private sector participation through, among other things, concessioning of railways, encouragement of public–private sector partnerships, and the general improvement of the regulatory environment.

SADC’s model Investment in Transport Act covers reforms in the railway sector. The Act provides for national regulators for the rail sector, but not for a regional regulator. The SATCC-TU believes that a rail regulator may not necessarily be preferable to having a single transport regulator for all sectors on a regional basis.

Some attempts have been made to obtain private sector interest in operations and management. Swaziland and Namibia have just initiated plans to concession; in Namibia’s case, however, it is not for railway administration, but for a dry port in Windhoek and transshipment terminals at railheads in order to increase multimodal operations. In South Africa, some domestic lines have been concessioned, but not cross-border lines. Trans Africa Railway Corporation has developed a successful private container service between Johannesburg and Kampala using the various national railway tracks.

Table 8 on page 34 shows the status of reform in the rail sector. In general, there is a willingness to consider the restructuring of state-owned railways and some progress has been made in this regard, as well as in the financing of new lines.

A number of railway infrastructure projects that are currently being implemented (including proposed ones) are as follows:

- Ongoing construction of the new railway line from Tsumeb to Oshikango in Namibia is in progress.
- A pre-feasibility study was completed on a proposed new railway link between Maseru and Durban. There are two main route options, one 617km and the other 629km. Preparations are under way to undertake a full feasibility study and it is envisaged that the project will be promoted through the New Partnership for Africa’s Development.

Since the sector is currently dominated by state-owned railway operators, efforts to increase private sector involvement should be stepped up. And co-operation and the liberalisation of these services at a regional level would help speed up the realisation of efficiency targets.

**Table 8: Status of reform in rail transport**

Country	Status
Botswana	Botswana Railways five-year Corporate Plan applied between 2003 and 2008, to enable it to compete effectively in the transport market in Southern Africa.
Namibia	TransNamib reformed, operates the railway system as agent for the government. Transshipment terminals at railheads: private sector involvement being promoted.
South Africa	Holding company, Transnet, became company 1990; Spoornet a division of Transnet. Over 75 private railway operations serving mining, industrial and agricultural interests. Two Transnet Freight Rail branch lines have been concessioned to private operators in recent years. Passenger services: state ownership to be retained.
Swaziland	Government committed to some form of private sector involvement.

Sources: DBSA, *op. cit.*; South African Department of Transport; *Botswana Transport & Communication Report 2005*; TransNamib Holdings Ltd; UNCTAD, forthcoming 2008, *op. cit.*

### Maritime transport

Chapter 8 of the SADC Transport Protocol provides a comprehensive framework for regional co-operation in the areas of maritime and inland waterways transport. Its objectives are, among other things, to maximise regional and international trade and exchange, to provide appropriate frameworks for economic and concomitant institutional restructuring, to establish a customer-sensitive and demand-driven approach and to promote the establishment of an integrated transport system.

The substantive provisions contained in chapter 8 include the development of harmonised maritime and inland waterway transport policies, a call for member states to undertake appropriate institutional restructuring to improve port operations, the application of international standards and human resource development.

Individual SADC member states have moved at a different pace with regard to liberalisation in the maritime transport sector. Namibia has started with some privatisation at Walvis Bay. South Africa has a separate port authority structure that allows increased private sector operation.

Coastal sea transport in the region has tended to lose traffic to road hauliers. However, a point that is usually ignored in transport reports, but which is valid, is that in sea transport the way is free, unlike in road transport, where it has to be built. Thus, maritime countries should seriously consider developing their coastal shipping industries wherever possible as a matter of policy. On economic grounds, there would appear to be a valid argument for at least some member states to protect their cabotage trade and support their domestic shipping industries. Liberalisation of the cabotage market could be a disaster for local

operators, as the major international lines could take the bulk of business between the major ports, leaving the smaller ports with no service, because it would be uneconomic to operate a service for them only.

Table 9 shows the status of reforms in the maritime sector in the coastal member states.

**Table 9: Status of reform in maritime transport**

Country	Status
Namibia	New legislation on regulation and operation of maritime transport to be promulgated.  Port management: Namibian Ports Authority established.
South Africa	Shipping is fully competitive market.  Port management: Portnet established as separate division of Transnet 1989; consists of port operations and port authority, both to be converted into companies; landlord function to be separated from operations function.  Port operations concessioned to private interests.

Sources: DBSA, *op. cit.*; South African Department of Transport; TransNamib Holdings Ltd; Namibian Ports Authority.

As far as inland waterways are concerned, 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 some bilateral agreements between some SADC countries on utilisation of inland waterways and some developments in the international arena. For example, 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 agreement would deal with, it was agreed that these regulations should be revised first before proceeding with a regional model.

**Air transport**

Chapter 9 of the SADC Transport Protocol creates a framework for co-operation in civil aviation. The main objective is to ensure the provision of safe, reliable and efficient services in support of socioeconomic 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. The Protocol seeks to encourage the involvement of the private sector and underlines the need for the restructuring of state-owned enterprises and the integration of regional systems through compatible policies and legislation.

Airlines in the region have traditionally been parastatals, while airports have been run by the civil aviation authorities. For example, South Africa has an autonomous civil aviation authority (which is state owned) and airport companies. The problem is how to ensure sufficient operational independence in order to enable them to compete internationally.

Projects that are currently being implemented (including proposed ones) in the civil aviation area embrace the following:

### **Liberalisation of air transport markets**

In Article 9.2 of the Protocol, SADC states agree to, among other things, ‘the gradual liberalisation of intra-regional air transport markets for the SADC airlines’ and promote and sustain competition between air service providers. To that end, SADC decided to base its activities on the Yamoussoukro Declaration of 1988, which was elaborated upon in November 1999 when the Yamoussoukro Decision (YD) concerning the Liberalisation of Access to Air Transport Markets in Africa was adopted. The YD was subsequently endorsed by the Assembly of Heads of State and Government of the African Economic Community in July 2000 in terms of Article 10 of the Abuja Treaty. It then came into force on 12 August 2000 among those African countries that have ratified the Abuja Treaty, and by end of 2002 full liberalisation was expected to be completed. SACU members are also part of the YD.

The general aim of the YD is to promote co-operation among African member states through their air transport policies. By deregulating the industry within Africa, competition on routes, fares and traffic will also encourage competition among airlines. One of its policy objectives is to reduce aviation fragmentation and aim to have only four or five strong regional airlines (excluding specialised niche airlines), which would have economies of scale and critical mass, and be capable of competing effectively with large carriers. The regional groupings identified include SADC, the Economic Community of West African States, Comesa and the East African Community.

The implementation of the YD is intended to gradually eliminate all non-physical barriers and restrictions to:

- the granting of fifth freedom traffic rights (see below);
- African airlines’ aircraft capacity;
- tariff regulation;
- reducing government involvement in air operational arrangement; and
- the operation of cargo flights.

Since its adoption, the YD has had a slow implementation by African governments, including SACU member states. So far, a Code of Fair Competition Practices, meant to ensure that common rules apply throughout Africa, has been developed and harmonisation of subregional initiatives is under way. The SADC Council approved the regulations flowing from this process in August 2004 in Mauritius. The regulations are to be implemented under the principle of variable geometry.

The slow pace of implementation is attributed to lack of active tools and funds for monitoring the implementation of the decision, independent responsibilities assigned to regional economic communities and monitoring mechanism established without any clearly defined powers of prescribing rules.

Ongoing and planned implementation issues include, among others:

- the completion of the legal and institutional framework;
- the harmonisation of competition rules;
- the establishment of a dispute resolution mechanism; and
- the establishment of the executing agency;<sup>36</sup>
- a common position on external air transport policy;
- the preparation of interim guidelines; and
- the implementation of the Libreville Resolution on Aviation Safety with a view to bringing down air accidents to the world average by 2008. Progress on this is has not yet been announced.

According to the African Union, African ministers responsible for air transport reaffirmed the urgency of putting in place the Executing Agency and renewed their commitment to have an African common air transport policy at their 2007 meeting in Addis Ababa.<sup>37</sup> The ministers further adopted a Declaration on Civil Aviation Security in Africa aimed at enhancing the control system of acts of unlawful interference in Africa (e.g. terrorism).

#### **SADC COSCAP Project**

The proposed SADC Cooperative Development of Operational Safety and Continuing Airworthiness Project (COSCAP) is designed to assist states in overcoming deficiencies in their systems for ensuring safety in air transport. The project was approved subject to the SADC Secretariat and International Civil Aviation Organisation (ICAO) mobilising resources for its implementation.

This project is inspired by the audits by the ICAO, which found that all SADC states, to varying degrees, to have deficiencies in their safety oversight capacities. The project will address deficiencies in the aviation legislation and regulations relating to the issues of personnel licensing, airworthiness, certification, surveillance and harmonisation of regulations.

#### **Upper Airspace Control Centre Project**

The SADC civil aviation authorities decided to explore the implementation of this component of air traffic management with the objective of integrating SADC air traffic services under one SADC upper airspace control centre. Such an arrangement would allow the provision of air traffic management services in the whole SADC area. Two main studies to explore the feasibility of such a centre have already been completed.

#### **Very Small Aperture Terminal Project**

SADC launched the Communications, Navigation and Surveillance Project for the SADC air space to facilitate communication, navigation and surveillance of aircraft in the region. To this end, a first-generation Very Small Aperture Terminal network was developed. The project is facilitated as a public-private sector initiative, co-ordinated by Air Traffic navigation Services of South Africa.

On the regulatory side, prescribed standards and procedures are being dealt with at the ICAO level. SADC member states generally do not have sufficient funds to implement these procedures. Although many airports are autonomous and are operating along

commercial lines, the market remains small. Some airports have concessioned services such as duty-free shops, and catering and cleaning.

GATS matters are being handled by ICAO. SADC has an office at ICAO to ensure that its position is put to GATS, for example, with regard to the movement of employees.

Table 10 shows the status of reform in the aviation sector.

**Table 10: Status of reform in the aviation sector**

Country	Status
Botswana	Sector being reformed, new policy emphasises competition. Air Botswana privatisation still not complete (but British Airways has agreed to administer and manage the Air Botswana fleet).  Civil Aviation Authority: independent body being proposed.
Lesotho	Airlines: national carrier liquidated 1998; service provided by South African Airlines.
Namibia	Namibian Airports Company established 1999, state-owned, owns and manages airports promoting concession approach for air cargo facilities and smaller airports.  Civil Aviation Authority: establishment approved; national airline, Air Namibia, to be privatised.
South Africa	Domestic market: deregulated since 1990. International market – more liberal policy 1992.  Airlines: SAA established as company 1991, now part privatised Today more than 70 international airlines fly into the country.  Airports: Airports Company of South Africa established, 20% owned by Public Investment Corporation (a government parastatal).  Air navigation services: taken over by a private company in 1993.  Civil Aviation Authority: established as corporate body on self-financing principles; regulates quality control.  Ground handling services: privatised.
Swaziland	Regulatory matters: Civil Aviation Authority to replace Directorate of Civil Aviation.  Airports and air navigation services: airports authority to manage these; feasibility study being done.  National airline: defunct 1998; joint venture airline 60% Swaziland government and 40% South African company.

Sources: DBSA, *op. cit.*; South African Department of Transport; *Botswana Transport & Communication Report 2005*; TransNamib Holdings Ltd; UNCTAD, forthcoming 2008, *op. cit.*

Mills and Membreno argue that lessons from countries such as Singapore and Dubai show that the creation of an air hub is a way to go.<sup>38</sup> However, this should be supported by a liberal open skies policy by allowing other carriers unfettered access. Liberalisation would

include, for example so-called ‘fifth freedom’ (the ability to pick up passengers for onward connections in other countries) and ‘sixth freedom’ (the right to carry passengers or cargo from a second country to a third country by stopping in one’s own country) traffic rights. They further argue that such liberalisation should not be tied to reciprocity. Among other aspects, strategic location, integration of the exports value chain and the tourism market, and the development of local business within and around the hub are essential to ensure the success of the hub. Mills and Membreno point out that revenue from businesses operating within the hub is vital to attract other airlines and to keep landing fees low.<sup>39</sup>

## GATS COMMITMENTS

Only two SACU member states (Lesotho and South Africa) have made offers in the transport sector under the GATS. Both have been in the field of road transportation, and both offers cover passenger transportation, freight transportation, and the maintenance and repair of road transport equipment. As far as market access is concerned, national transport policies of member states are linked to the SADC Transport Protocol. The offers by Lesotho and South Africa are described below.

Lesotho’s horizontal commitments impose no limitations on national treatment, while limitations on market access apply only to commercial presence and presence of natural persons. As far as commercial presence is concerned, there are two stipulations. Foreign-owned enterprises, including joint venture enterprises with Lesotho, must satisfy minimum capital outlay and foreign equity requirements as follows:

- Wholly foreign-owned companies require a minimum equity capital outlay of \$200,000.
- Joint venture companies should have a minimum foreign equity capital outlay of \$50,000 in cash or in kind.
- Agency establishments must have authority to negotiate and conclude contracts on behalf of foreign parent companies.

These are prudential requirements that are allowed under GATS.

With regard to the presence of natural persons, automatic entry and work permits are granted for up to four expatriate senior executives and specialised skilled personnel in accordance with relevant provisions in the laws of Lesotho. Approval is required for any additional expatriate workers beyond the automatic level. Enterprises must also provide for training in higher skills for locals to enable them to assume specialised roles.

South Africa’s horizontal commitments impose limitations both on market access and national treatment. Limitations on market access apply only to the presence of natural persons. The offer is unbound (i.e. South Africa has made no commitment and therefore retains full freedom to act as it may desire), except for the temporary presence for a period of up to three years, unless otherwise specified, without requiring compliance with an economic needs test, of three categories of natural persons providing services. These are services salespersons, intracorporate transferees (executives, managers, specialists and professionals), and personnel engaged in establishment. All categories are defined in the offer.

Limitations on national treatment apply to commercial presence and the presence of natural persons. In the case of commercial presence, local borrowing by South African-registered companies with a non-resident shareholding of 25% or more is limited. The commitment in respect of the presence of natural persons is unbound except for measures concerning the categories of natural persons referred to in the market access column.

In addition, South Africa's offer includes most-favoured-nation (MFN) exemptions. These are set out in Table 11.

**Table 11: South Africa's GATS commitment in road transportation: MFN exemptions**

<b>Description of measure indicating its inconsistency with Article II</b>	Regional bilateral and plurilateral road transport agreements providing for transport rights to carry goods and passengers to or from South Africa and between third countries concerned, to be reserved for the road transport operators for contracting parties to existing and future agreements.  Cabotage restricted to South African registered vehicles and operators.
<b>Country to which the measure applies</b>	Botswana; Lesotho; Swaziland; Malawi; Zimbabwe; and Other sub-Saharan Africa countries
<b>Intended duration</b>	Indefinite
<b>Conditions creating the need for the exemption</b>	To enhance the development of an integrated road transport system to underpin the economic development of the region and to ensure the availability of an efficient distribution network for relief supplies in case of natural disasters such as frequently occurring droughts in the region.

Source: WTO (World Trade Organisation), 'List of Article II MFN exemptions', WTO Services Database output. Geneva: WTO, n.d.

It is unclear why Namibia, as a SACU member in an economic integration arrangement with South Africa, was not specifically mentioned in the exemptions. In order to comply with Article V of GATS, the category 'other sub-Saharan Africa countries' presumably refers to non-SACU SADC member states, i.e. those that have concluded a cross-border transport agreement with South Africa.

It is expected that door-to-door transport performed by multimodal transport and logistics services providers will continue to grow with extensive use of ICT, changes in business practices and growth in international trade. In this context, commercially meaningful liberalisation through binding commitments can be expected to benefit SACU countries.

SACU member states would benefit from addressing transport and logistics services liberalisation within a broader context, preferably in conjunction with trade facilitation

negotiations. Member states may wish to consider exploring the linkages that prevail between these two areas of negotiations. In this regard, SACU countries make reference to the WTO's Logistics Services Checklist, since some of the elements it highlights coincide with some trade facilitation objectives.

### **GATS negotiating strategy and modalities**

The SADC Transport Protocol encompasses liberalisation policies and is therefore in line with GATS liberalisation, although it still needs to be ascertained just how close the fit is. The preparation required for the GATS negotiations appears to be substantial. A three-tier approach is outlined below.

#### **National level**

Member states in general do not have the skills and capacity for effective participation in wide-ranging GATS negotiations across the services sectors. Research assistance is required to determine in what sectors offers should be made, and what the costs and benefits involved would be. The problem is one of human and technical capacity, as well as legislation.

Each member state should:

- undertake an inventory of its transport reforms and liberalisation to date, assessing their impact on the sector;
- review its transport policies with regard to intermodal competition;
- undertake a thorough examination of its transport policy and legislation;
- consider how this relates to SADC model legislation and the SADC Transport Protocol;
- establish priority modes and issues for SACU-level preferences; and
- formulate its possible GATS commitments, ensuring compatibility with national transport legislation.

Whatever is committed at the GATS level must be reflected in national legislation. The liberalisation and reform processes within transport modes should be gradual and mutually supportive, allowing service capacity to be built. This is important in order to promote eventual competition, and also for social reasons. The human resource capacity in transport and trade ministries should be assessed, and the funding requirements established.

SACU member states would also require assistance to determine the likely impact of policy changes underlying further liberalisation of transport services. It is important in preparing offers to GATS that governments consult private sector experts in the transport industry. This does not imply that they should pander to the views of these interests, some of which might be represented by powerful lobby groups. However, there are some issues that might be important for specific member states.

- 1 Access to cabotage traffic by foreign operators generally seems to be excluded from the transport liberalisation measures in member states. Liberalisation of this traffic may not be in the interests of any particular member state, and careful consideration should be given to any such steps in order to ensure that the quality of service is not jeopardised

- by ‘cherry picking’ on the part of foreign operators, and that the achievement of a socially desirable intermodal balance of traffic is not prejudiced.
- 2 The fundamental question of intermodal competition needs to be seriously addressed in SACU. Member states that have relatively poor trunk road systems appear to be justified in arguing that current axle load, gross vehicle mass and vehicle dimension limits are too high, and the levels prevailing for cross-border routes in SACU should be compared to those in developed countries, e.g. on US interstate highways, in order to reach a more appropriate figure. The reasons for this are articulated comprehensively in Road Transport on page 26.

The important point is that, without the political willingness to review these policy issues, SACU member states will be making their offers to GATS on the basis of what might be seriously flawed transport policies from the point of view of the economically optimal allocation of traffic among the modes.

All stakeholders should be involved during these processes. In this regard, the model adopted by Mauritius is regarded as being worthy of emulation. Mauritius regards interaction with all major stakeholders as a key factor. It has established a national council and a subcommittee dealing with WTO matters, and public and private stakeholders in the transport sector were involved in the consultations. It is suggested that all member states adopt such a framework. The discussions should consider possible further liberalisation, the identification of SACU preferences and the GATS offer.

While the SACU regional position on GATS is being discussed, member states should refrain from introducing any new measures that limit trade in transport services. In other words, they should accept a standstill provision.

### **Regional level**

After the member state-level process has been completed, SACU’s Trade Negotiating Forum or the SATCC-TU should co-ordinate member state commitments to ensure that there is a regional consensus and that regional preferences are protected. Section 3.2 of the SADC Transport Protocol should be the basis for these preferences, while bilateral agreements should also be taken into account. The Trade Negotiating Forum should then develop the offers to GATS. We suggest that the decision should be taken on the basis of which modes countries regard as priorities: it is important to accept the reality that priorities in transport differ from one member state to another. Perhaps the starting point should be to focus on the transport modes in which most member states are interested. For example, it might be possible to liberalise in road and rail transport in the first instance and leave maritime and air transport mainly to a later round. At the SACU level, the intermodal competitive issue should be reviewed, taking into account individual country assessment at member state level. Common ground should be established and a common approach to GATS agreed upon.

The lack of homogeneity in the SACU region could affect the nature of GATS negotiations. South Africa is regarded as dominant in the transport sector, and other member states should protect their transport interests against South Africa, especially in the road transport sector — only if this makes economic development sense. Currently, it does not make any economic sense. However, the principle of ‘variable geometry’ — allowing individual member states to liberalise at different speeds — should be considered.

**Multilateral level**

In preparing for the GATS offer, it would be important both at the member state level and the SACU level to confer closely with member state representatives to the WTO in Geneva. The decisions taken at the SACU level would then form the basis for negotiations at the GATS.

Defining the most appropriate forum to liberalise services is not an easy task. Deciding what the optimal level to carry out services liberalisation within a regional grouping with different levels of economic development is a critical issue. For some transport modes, the regional level may well be the most appropriate and realistic level of liberalisation and the one that makes sense in terms of negotiating effort. Table 12 provides an indicative liberalisation strategy for each transport mode.

**Table 12: Negotiating strategy by transportation mode**

Transport Mode	Strategy
Road	<p>Requires large amounts of capital to operate and large economies of scale to produce.</p> <p>The optimum level for liberalisation of such services is therefore the largest market possible, in order to attract and accommodate investment from the most efficient service operators. Liberalisation restricted at the SACU level would limit the ability of a country to draw upon the most efficient suppliers and thus maintain higher cost services.</p> <p>A mixture between <b>GATS, economic partnership agreement (EPA) and regional preference</b> is the most economical and beneficial forum for liberalisation. There should be conscious multilateral liberalisation until the regional capacity has been built in the sector. One way of doing this is to open up on the presence of natural persons with limited access to highly skilled persons only and tying this to training of local personnel. Lesotho and South Africa took this strategy at GATS. The crucial strategies would be to attract investment and technical assistance for management and regulatory capacity.</p>
Rail	<p>Requires large amounts of capital to operate and large economies of scale to produce.</p> <p>The optimum level for liberalisation of such services is therefore the largest market possible, in order to attract and accommodate investment from the most efficient service operators. Liberalisation restricted at the SACU level would limit the ability of a country to draw upon the most efficient suppliers and thus maintain higher cost services.</p> <p>A mixture between <b>GATS, EPAs and regional preference</b> is the most economical and beneficial forum for liberalisation. Regional-level liberalisation should take precedence before making commitments at WTO and in EPAs. The effort should focus on increasing the participation of the private sector and improving on the regulatory structures so that investment and technical assistance can help improve the capacity of the sector.</p>
Maritime	<p>Requires large amounts of capital to operate and large economies of scale to produce.</p> <p>Liberalisation should be restricted at the <b>regional level</b>, especially for specific ports services such as cabotage.</p>

Transport Mode	Strategy
Aviation	<p>Requires large amounts of capital, technological and skill requirements to operate and large economies of scale to produce. The limitations placed on public expenditure hamper the necessary investments needed for infrastructure development and for the various national carriers.</p> <p>The optimum level for liberalisation of such services is therefore the largest market possible, in order to attract and accommodate investment from the most efficient service operators. Liberalisation restricted at the SACU level would limit the ability of a country to draw upon the most efficient suppliers and thus maintain higher cost services.</p> <p>The <b>GATS and SACU regional levels</b> are the most economical and beneficial forum for liberalisation. At the regional level, there are a number of advantages, including the development of co-operation among participants, competition within the region, the development of services to subregions, the consolidation and restructuring of airlines and greater efficiency within the region. All of this can increase the region's market access to and from developed countries, not least by increasing the bargaining power of the region when it negotiates as a bloc. This would be a move that could result in increased air traffic to and within the region, which is fundamentally the most important limiting factor in the regional aviation industry.</p>

### Suggested procedure for GATS offers

We suggest that, in the first instance, SACU member states participate in GATS negotiations on the rail and maritime modes as observers. With regard to road transport, the Lesotho–South Africa offers could be guidelines to follow. In air transport, there is limited coverage under GATS, and it does not appear as though there would be any major obstacles to member states making commitments while attempting to preserve preferences in the regional (and domestic) markets.

### Road

It is suggested that the rather limited commitments of Lesotho and South Africa could be used as a guide in the early GATS round.

### Rail

There are bilateral agreements between SARA members that broadly provide the following, among other things:

- haulage of one another's railway wagons over the owner's railway lines to the intended destinations;
- maintenance and repair of the foreign railway's wagons, if necessary;
- haulage to be undertaken by local drivers with locomotives belonging to the owner railways; and

- to facilitate appropriate interchange of rolling stock, limited access of locomotives and personnel from foreign railways is allowed up to certain designated points on the owner railway lines.

In addition, railway matters are discussed within SARA, which was established in terms of the SADC Transport Protocol to govern interrailway interests and enhance the competitive ability of railways vis-à-vis road hauliers. Mention has been made above of the problems of road-rail competition. It is suggested that a thorough independent review of this issue in the SACU region be completed, with the issue of high transport costs in the region also being examined, in order to establish more economically rational policies. It is only after the present flaws have been corrected (e.g. there is a vicious cycle within the rail environment of declining cash flows, which lead to underinvestment; and a reduction in demand, which reduces asset utilisation and increases the unit cost of moving ever-declining freight tonnages) that SACU member states would be in a position to make rational commitments on rail transport at GATS.

It appears that, during the course of the GATS negotiations, any member state can elect not to make an offer in a particular mode, or to participate fully in the modal negotiations, or to participate in the modal negotiations as an observer. It is suggested that SACU member states follow the third option, i.e. to participate as observers.

### **Ports**

Port authorities in the SACU maritime member states are not involved in international shipping which is the preserve largely of the private sector abroad. The question for each maritime country should be: what barriers exist in (i) the provision of its maritime services, and (ii) access to and use of its ports, based on the three principles of market access, national treatment and MFN treatment? It appears that there are no measures that discriminate between foreign and national vessels in respect of access to, and use of, SACU port facilities; that no preferential treatment is granted to some countries with respect to access to, and use of, SACU port facilities; and that services are made available on non-discriminatory terms and conditions.

It is suggested that SACU member states ensure that they have formulated a national ports policy and strategy, and that this is harmonised at the SACU level. It is only after this has been done that they would be in a position to make a rational commitment to GATS. It is suggested, therefore, that they participate in the negotiations on maritime transport services as observers.

## CHAPTER 7

### CONCLUSIONS AND RECOMMENDATIONS

Transportation policies, regulations, standards and practices cross modes and government jurisdiction. Their integration and harmonisation are critical to enhancing SACU members' competitiveness, safety improvement, efficiency increase, and trade and tourism promotion. Harmonisation should be consistent with the public interest and should strive for consistency: across modes and among SACU member states.

The problem in SACU is that regulation, planning and management of the different elements of trade-supporting transport infrastructure are highly disjointed and without effective co-ordination. Better co-ordination among the various stakeholders at the national and regional levels offers the chance of considerable improvements to make better use of transport capacity.

While a great deal would be accomplished in terms of harmonisation of transport services standards and policies, regulatory unification must not be ignored. If anything, the differences in the regulatory frameworks in SACU will have more serious implications for the region than disparities in services standards. The enhancement of SACU's competitiveness through the increase of intraregional trade and investments should act as an incentive towards progress in achieving reducing the regulatory bottlenecks that hinder the smooth movement of goods and people.

In response to the need for just-in-time door-to-door deliveries, SACU member states should know that efficient intermodal networks require connectivity among road, rail, maritime and air transport carriers. Poor intermodal integration, logistics management systems and bottlenecks at transfer points can accrue costs and cause delays that can easily negate the benefits of this increasingly important phenomenon. In considering intermodal integration, SACU member states will have answer the following questions, among others: Do intermodal linkages exist? What is the relationship between agents of different transport modes? Are the automated systems to manage intermodal logistics? Are there a regulatory framework governing intermodal transport, liability provisions and standardised documentation? Do special customs clearance procedures exist for intermodal cargo? Where are the congestion bottlenecks?

Only two member states have made offers to GATS, and these are limited to road transportation. It appears that most governments have not devoted a great deal of attention to trade in services, and that there is a general shortage of skills, resources, experience and understanding in dealing with the issue (part of the problem, perhaps, is that the GATS documentation is not particularly user friendly, and there is scope for producing more simplified guidelines). Most ministries concerned with trade in transport services also appear to be uncertain of the impact of existing liberalisation on either the transport sector or the economy as a whole. Thus, there seems to be considerable support for the notion that the SACU Secretariat and the SATCC-TU should play a major role in the GATS negotiating process.

Because of the capacity problems in individual government departments responsible for co-ordinating trade in services, a lead role for the SACU Secretariat is recommended.

The starting point would be to ensure that the goals of SACU and the SADC Transport Protocol are compatible.

Relevant member states should be provided with technical assistance to undertake a thorough review of their transport sector by mode, examining developmental objectives, the extent of harmonisation and liberalisation to date, the effects (costs and benefits) of this harmonisation and liberalisation, the potential for developing exports of transport services, the extent of barriers to trade in transport services, and preparation of a negotiating position in order to liaise with the SATCC-TU and SACU Trade Negotiating Forum. During this review, each member state should bear its SACU customs union commitments in mind in deciding whether it wants to maintain the status quo or whether there is room for harmonising and liberalising regulations, opening up to foreign competition, and improving the potential for the export of transport services. These issues should be thoroughly discussed with users of the transport system.

The SATCC-TU and Trade Negotiating Forum should examine the practicability of co-ordinating the position of individual member states in order to develop a SACU-wide position wherever possible, and to assist in formulating country offers. The aim should be to find common ground on policies and the content of country offers to GATS, and to ascertain to what extent it is possible for SACU to negotiate on behalf of member states and to what extent each individual member state should negotiate for itself.

The heterogeneity within the SACU national transport sectors should be recognised, and a strategic plan for liberalisation of the sector should be drawn up on the basis on variable geometry. Closer liaison should be maintained between SACU and SADC, since there is merit in the approach of both organisations.

Finally, the GATS negotiations are bound to be both complex and lengthy. This affords SACU and its member states time to evolve their commitments through the three-tier modality suggested above. It is particularly important to 'get policies right' before making commitments.

Database development: Statistics on transportation services are very limited in SACU. The organisation should therefore consider the implementation of the collection of transport data and publication thereof on a timely basis. This will allow availability of data for improved transport planning by member states and transport operators, and will also provide a system for monitoring the performance of the transport sector, especially of the intraregional and international trade routes/corridors. This will greatly assist to proactively identify bottlenecks and expedite their resolution.

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