

PART ONE
DEFINITIONS, OBJECTIVES AND SCOPE

ARTICLE 1
Definitions

1. In this Protocol, unless the context otherwise requires:

"CMT" means the Committee of Ministers responsible for trade matters;

"Commercial presence"

means:

- (i) In respect of nationals, setting up, acquiring and managing undertakings, which they effectively control in the territory of a State Party for the purpose of supplying a service;
- (ii) In respect of SADC juridical persons, taking up, acquiring and pursuing the economic activities covered by this Protocol, including by means of the setting up and managing of subsidiaries, branches or any other form of secondary establishment in the territory of a State Party for the purpose of supplying a service;

"Member State"

means a Member State of SADC;

"National"

means a natural person who is a national of one of the State Parties in accordance with their respective legislations. National includes a permanent resident treated as a national in accordance with the legislation of such State Party;

"Region"

means the geographical area of the Member States of SADC;

"SADC

juridical person"

means a legal entity set up in accordance with the laws of a State Party, and engaged in "substantial business operations" in the territory of that State Party or any other State Party;

"Substantial business operations" means, inter alia, operations carried out by an entity incorporated in and licensed by a State Party to provide services, and shall be further developed through negotiations after adoption of this Protocol. The results of such negotiations shall be annexed to this Protocol."

"Service supplier"	means any natural or juridical person of a State Party that supplies a service;
"State Party"	means a Member State that has ratified or acceded to this Protocol;
"Subsidiary"	means a juridical person that is effectively controlled by another juridical person;
"Territory"	means the geographical area of a State Party;
"Third Country"	means a country other than a State Party;
"TNF-Services"	means Trade Negotiating Forum for Services;
"Treaty"	refers to the Treaty of the Southern African Development Community.

2. All other terms relating to any matter directly regulated by this Protocol not defined herewith are deemed to have the same meaning as in the WTO General Agreement on Trade in Services (GATS).

ARTICLE 2

Objectives

The objectives of this Protocol are to:

1. progressively liberalise intra-regional trade in services on the basis of equity, balance and mutual benefit with the objective of achieving the elimination of substantially all discrimination between State Parties and a liberal trading framework for trade in services with a view to creating a single market for trade in services;
2. promote sustainable economic growth and development, thereby raising the standard and quality of life of the people of Southern Africa, supporting the socially disadvantaged and alleviating poverty through regional integration in the area of services;
3. enhance economic development, diversification, local, regional and foreign investment in the services economies of the Region;
4. ensure consistency between liberalisation of trade in services and the various Protocols in specific services sectors;
5. pursue services trade liberalisation, while fully preserving the right to regulate and to introduce new regulations; and

6. enhance the capacity and competitiveness of the services sectors of State Parties.

ARTICLE 3

Scope and Coverage

1. This Protocol shall apply to all measures by State Parties affecting trade in services.
2. For the purposes of this Protocol, trade in services means the supply of a service:
 - (a) from the territory of a State Party into the territory of any other State Party;
 - (b) in the territory of a State Party to the service consumer of any other State Party;
 - (c) by a service supplier of a State Party, through commercial presence in the territory of any other State Party;
 - (d) by a service supplier of a State Party, through presence of natural persons in the territory of any other State Party.
3.
 - (a) The Protocol shall not apply to the following measures affecting air transport:
 - (i) traffic rights, however granted; or
 - (ii) services directly related to the exercise of traffic rights.
 - (b) This Protocol shall apply to measures affecting:
 - (i) aircraft repair and maintenance services;
 - (ii) the selling and marketing of air transport services;
 - (iii) computer reservation system (CRS) services.
4. This Protocol shall apply to measures affecting trade in services taken by central, regional or local governments and authorities as well as by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities. In fulfilling its obligations and commitments under this Protocol each State Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory.
5.
 - (a) "Services" includes any service in any sector except services supplied in the exercise of governmental authority.

- (b) A "service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.
6. Nothing in this Protocol shall be construed to prevent a State Party from adopting and implementing measures aimed at ensuring universal access to essential services.

PART TWO GENERAL OBLIGATIONS

ARTICLE 4 Most Favoured Nation Treatment

1. Upon entry into force of this Protocol, with respect to any measure covered by the protocol, each State Party shall accord immediately and unconditionally to services and service suppliers of any other State Party treatment no less favourable than it accords to like services and service suppliers of any other State Party or Third Country.
2. Notwithstanding paragraph 1, two or more State Parties may conduct negotiations and agree to liberalise trade in services for specific sectors or sub-sectors in accordance with the objectives in this Protocol. Other State Parties shall be afforded reasonable opportunity to negotiate the preferences granted therein on a reciprocal basis.
3. Nothing in this Protocol shall prevent a State Party from entering into new preferential agreements with third countries in accordance with Article V of GATS provided such agreements do not impede or frustrate the objectives of this Protocol. Prior to negotiating such an agreement, a State Party shall duly inform the other State Parties of its intention to do so and shall afford reasonable opportunity to the other State Parties to negotiate the preferences granted therein on a reciprocal basis.
4. Nothing in this Protocol shall prevent a State Party from maintaining any preferential agreement entered into with a third party, prior to the adoption of this Protocol. A State Party shall afford reasonable opportunity to the other State Parties to negotiate the preferences granted therein on a reciprocal basis.
5. A State Party may maintain a measure which is inconsistent with paragraph 1, provided it is listed in the Most Favoured Nation (MFN) exemption list. The agreed list of MFN exemptions shall be annexed to this Protocol. The TNF Services shall regularly review MFN exemptions, with a view to determining which MFN exemptions can be eliminated.