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**Ministério da Indústria e Comércio
Direcção Nacional do Comércio**

Discussion Note

**Trade in services in SADC
A review with particular focus on the proposed
Annex on Trade in Services
and
the next steps for Mozambique**



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Discussion Note

Trade in services in SADC – A review with particular focus on the proposed *Annex on Trade in Services* and the next steps for Mozambique

1. The objective of this Discussion Note

At the last SADC meeting, it was decided that all Member States were to provide concrete proposals for changes to the draft *Annex on Trade in Services* to the SADC Protocol on Trade provided by UNCTAD.

This document aims at defining what trade in services is and the current status of the policy on trade in services in Mozambique and SADC. Thus, this is a discussion paper that defines the process towards establishing a national strategy on trade in services in Mozambique. Based on such a position/strategy, clear and concrete proposal to changes to the draft *Annex on Trade in Services* can be provided. The formulation of a national position/ strategy on trade in services will also be useful in the ongoing GATS negotiations in the WTO.

The document also identifies some preliminary positions on a few issues of importance relating to the UNCTAD draft for an *Annex on Trade in Services*. These preliminary positions can serve as a response to the request from the SADC Secretariat and as a first step towards defining a trade in services position/strategy.

2. Trade in services

2.1 *What is trade in services?*

Trade in services is trade in other products than goods. Examples of services are tourism, financial services and transport. Many services, which have long been considered genuine domestic activities, have increasingly become international and tradable because of technological development.

Agreements on trade in services can address all types of services, however, it is normal to exclude certain types of services from the agreements. The sectors normally excluded are central to secure the proper functioning of the society and the economy. The common name used for these services is “provision of governmental services”. Examples of such services are health and education. In the WTO, the countries have agreed on common definitions of the sectors to avoid confusion on what is meant by a specific sector.

The WTO has also defined the following four modes of supply of services:

1. *Mode 1 - Cross border supply*
Cross border supply is defined to cover service flows from the territory of one country into the territory of another country (ex. international telephone calls).
2. *Mode 2 - Consumption abroad*
Consumption abroad refers to situations where the service consumer moves into another country's territory to obtain a service (ex. tourism).
3. *Mode 3 - Commercial presence*
Commercial presence implies that a services supplier of one country establishes a territorial presence, including through ownership or lease of premises, in another

country's territory to provide a service (ex. a foreign bank or consultancy company setting up operations in a country).

4. *Mode 4 - Presence of natural persons*

Presence of natural persons is that persons of one country enter the territory of another country to supply a service (ex. international consultants).

2.2 *Principles of trade in services*

The main objective of a trade in services agreement is to secure that services produced in a foreign country are treated equally with services produced in the home country, and that the different foreign services' suppliers and services are treated equally. Two principles that are used to assure these objectives are;

1) *National Treatment (NT)*

The principle of National Treatment is that a country cannot treat a foreign service supplier differently from a national service supplier.

2) *Most Favoured Nation (MFN);*

The principle of Most Favoured Nation is that a liberalizing commitment granted to one party to the agreement has to be extended to all parties.

2.3 *Agreements in trade in services*

All agreements on trade in services consist of a legal text defining the agreement and a schedule¹ of commitments. This overall framework, i.e. the legal text and an annex with the countries' specific commitments, is the same as in trade in goods. However, in the case of trade in services, two possible and different approaches exist and, therefore, two generically different types of schedules, compared to only one for trade in goods. For trade in goods, it is obvious that the specific commitments will be in the tariff book that has a specific form. As this is not the case in trade in services, there is a need to define what type of schedule one would like to use, i.e. the schedule will depend on the approach used in the agreement.

Approach

There are two different possible approaches for a trade in services agreement, namely: the positive and the negative list approach.

In the positive list approach, the schedule defines which sectors are included in the agreement and are subject to the legal text. The principle of Most-Favoured Nations and National Treatment apply to all sectors listed in the schedule, and, thus, grants market access in these sectors.

In the negative approach, the schedule contains the sectors exempted from the liberalization defined by the legal text, i.e. which sectors, and specifically what within these sectors, are excluded from the liberalization. The principle of Most-Favoured Nations and National Treatment apply to all sectors not listed in the schedule, and, thus, grants market access in these sectors. When using the negative list approach, everything not listed will automatically be liberalized.

Limitations

When a sector is opened for trade, limitations on market access can be introduced. These can be limitations on *MFN* or *NT*. Examples of limitations on *MFN* are: limitations may be imposed on the number of services suppliers, services operations or employees in the sector;

¹ By schedule is meant a table which lists commitments or exclusions to commitments depending on the approach taken.

the value of transactions; the legal form of the service supplier; or the participation of foreign capital. Limitations on National Treatment would be rules and regulations favouring national services or service suppliers, such as defining a number of employees that have to be national in foreign firms and providing subsidies to only national firms. Depending on the approach chosen, the limitations in the schedules will be noted differently. In the positive list approach, limitations can be formed at two different levels. These are:

- 1) *Horizontal*;
Limitations are applying to all the sectors, and, thus, only need to be noted once.
- 2) *Sector specific*
Limitations are only applying to a specific sector, and thus need to be noted under each sector.

All limitations need to be noted specifically in the list of reservations or schedules to be included in the agreement.

Rules and regulations and agreements on trade in services

Trade in services agreements are basically agreements that give guidelines on what type of national regulations one can use in any sector included in the agreement. Thus, agreements on trade in services affect each sector by establishing rules that the regulations of the sector must adhere to. According to the theory, this does not mean that is not possible to create new regulation. However, once an agreement has entered into force, there are rules on how such new regulations can be formulated.

2.4 Progressive liberalization or trade liberalization

Progressive liberalization or liberalization of trade in services has three different dimensions;

1. *The sector coverage*

The more sectors that are included in the agreement, the more trade in services is liberalized. E.g. if the positive list approach is used, the more sectors included in the schedule, thus subject to the agreement, the more liberalized is trade in services.

2. *Limitations*

In an agreement on trade in services, it is possible to schedule limitations on market access, both on *MFN* and *NT*, within each sector included in the agreement. The more limitation is included, the less liberalized is trade in services.

3. *Modes of supply*

An agreement can cover one or more of the 4 modes of supply. The more modes of supply that are included in the agreement, the more liberalized is trade in services.

3. The SADC process on the development of the Annex on Trade in Services

The long-term aim of SADC is to create a free trade area and to further liberalize the regional trade in goods and services. The SADC Trade Ministers decided to include an *Annex on Trade in Services* to the SADC Trade Protocol at their meeting in Gaborone in 2002 as a follow-up to article 23 of the SADC Trade Protocol. While the decision was taken to include an annex, it neither provides guidelines on how the liberalization is to be achieved nor at which pace it should be established and implemented.

The SADC Committee on Trade in Services (TIS) identified the following 6 core sectors:

1. Tourism – classified as **9. Tourism and Travel related services** in the GATS (General Agreement on Trade in Services)
2. Transport – classified as **11. Transport Services** in the GATS
3. Communications – classified as **2. Communication Services** in the GATS
4. Financial classified as **7. Financial Services** in the GATS
5. Construction classified as **3. Construction and related Engineering Services** in the GATS
6. **Services provided by the energy sector**, which not is a sector in its own right in the GATS, but is instead reflected under transportation of fuel, services incidental to mining, and services incidental to energy distribution (11. Transportation) in the GATS.

At the meeting in Harare in December 2002, it was recommended that further prioritisation would take place, establishing one to two pilot sectors.

Furthermore, it has been agreed that the SADC countries should coordinate the negotiations in trade in services in the WTO (often called SADC-plus position). An active follow-up on this still has to take place. One proposal on how to implement this is for the SADC countries to share the requests they have received in the GATS negotiations, and cooperate on and coordinate their respective offers. However, whether this is the final way ahead is still unknown.

The SADC Secretariat has now presented a new and relatively ambitious work plan to complete the trade in services agreement (see annex 4). This is the second plan on actions for trade in services. As all the actions of the first plan have not yet been completed, it is assumed that this will be a replacement of the previous plan. The aim of the plan is to increase the pace of the process by including more negotiation meetings at the SADC level. Simultaneously, there are several proposals for undertaking national actions such as the organisation of national seminars, to make progress on and finish the work on the existing templates.

4. The Mozambican policy on trade in services

4.1 Mozambique's position

Mozambique supports the development of a free trade area within SADC. Within a free trade area, the inclusion of an *Annex on Trade in Services* seems natural, hence, Mozambique is positive to liberalise trade in services. However, as Mozambique is still in an early phase regarding the development of a general policy on trade in services, the scope of its liberalization policy is still unclear, i.e. how to liberalise, how fast to liberalise and what sectors to prioritise. In other words, in order to be able to take clear stands on the specific parts of a trade in services agreement, Mozambique will need time as well as technical assistance.

Apart from the position to support the development of an *Annex on Trade in Services* in SADC, the SADC-plus position in the WTO² and the WTO-plus position in SADC³,

² The SADC-plus position in the WTO is the agreement between the SADC countries to cooperate in the WTO negotiations.

³ The WTO-plus in SADC position represents the intention that the annex on trade in services to the SADC Trade Protocol should liberalise trade in services further than the negotiations taking place in the WTO.

Mozambique took a position on trade in services for the 4th Ministerial Meeting in the WTO. This position essentially aims at a free flow of services suppliers.

Mozambique is currently in the process of answering the requests received in the ongoing GATS negotiations. As a part of this process, the MIC has established an interministerial working group comprising of the most important Ministries in trade in services and the private sector. This group is for the moment developing the schedules to be offered in the GATS negotiations, taking into account the requests received. Among the working methods are regular meetings, and visiting the other Ministries, giving lectures and support in the development of the schedules. The aim is to comply with the deadline for making initial offers, which is the 31st of March 2003. This process will both feed into the development of a national position on trade in services, particularly in those sectors Mozambique intends to open-up for outside competition as well as be supported by the development of an overall national strategy.

4.2 Mozambique's current commitments in the WTO and its implementation

In 1995, Mozambique committed one sector in the GATS negotiations in the WTO: the financial sector, excluding insurance. This sector is quite open as the only limitations are the following:

1. *Commercial presence (mode 3)*

The limitation on commercial presence is: Any foreign bank or financial institution can operate in Mozambique as long as they abide by the domestic rules and regulations governing investments by and operation of such institutions

2. *Natural persons (mode 4)*

The limitation on natural persons is that a work permit is required.

It is unclear to what degree this commitment is currently reflected in the rules and regulations affecting the financial sector, i.e. whether the commitment is effectively implemented.

4.3 Research

As part of the SADC process, Mozambique has started undertaking some research on the regulations within the six priority sectors, by filling in the UNCTAD templates. The templates aim at describing the current regulations within each of the earlier described 6 priority sectors of SADC. This will provide useful background information for the negotiations within SADC as well as for responding to the requests that were received in the WTO negotiations.

5. Process towards a national position on trade in services

As earlier pointed out, Mozambique is positive towards a liberalisation of trade in services. There is a need, however, to define the concrete content of this liberalisation process both in Mozambique and in the SADC. In SADC, a new programme of work, as presented above, is proposed to strengthen the process in SADC. Several of the proposed activities are national and these activities are taken into account in the proposed work program underneath.

The liberalisation process in Mozambique can be more concretely defined in a general policy on trade in services that is based on a national consensus on this issue. Such a national

position or strategy would be important both for the process ongoing in the SADC as well as in the WTO. In addition, this could also be considered as a part of the development of policies to be included in the revised Trade Policy and Strategy. Furthermore, as trade in services covers many different sectors, supervised by different Ministries and regulated by specific legislation, inter-ministerial cooperation will be crucial for these negotiations on trade in services. Hence, to increase the knowledge about trade in services and, through this process, build a national consensus and common mandate for the negotiations on trade in services, it is proposed that the following actions be undertaken:

1) *Connect the two processes of liberalizing trade in services in the WTO and in SADC*

This is crucial as the same regulations and sectors are affected in both negotiation processes. In addition, the SADC member states have adopted a position regarding cooperation in both processes, the SADC-plus and the WTO-plus. Thus, both from a point of view of harmonisation and implementation at the level of each country as well as at the level of SADC, such linking of both processes would be essential.

National action

The first step of such a linkage would be to consider and treat the questions related to trade in services at the level of the same committee in Mozambique. As a committee already exists to handle the WTO requests, the same group should be used as a technical group for the trade in services negotiations in SADC. This would also be the follow-up of the proposal to establish national service consultative bodies in the SADC Work Plan and also on the proposal to secure the participation of the other Ministries in the SADC process.

SADC action

The second step is to ensure that the committee that treats trade in services in SADC is linked and related to the process in the member countries and as such commands the necessary authority and expertise to handle the negotiations.

2) *Developing a national position/strategy*

As stated above, it is crucial to have a common understanding of what Mozambique wants to achieve in the two different processes. This direction should be reflected in a national consensus position or as part of the Trade Policy and Strategy. Based on the ongoing work and the SADC Work Plan, two separate actions are proposed to assist defining such a position:

1. *The organisation of a series of technical workshops/seminars*
2. *The undertaking of two studies*

Technical workshops/seminars

This is a concrete follow-up of the SADC Work Plan as well as an important part of a national process. The aim of the proposed workshops/seminars, presented in the table below, is to define a national position/ strategy on trade in services and create the necessary national consensus. The intergovernmental committee that handles the trade in services functions should act as a reference/coordination group for this work.

Table 1 Proposed seminars/workshops

Name	Objective
Workshop 1 The overall policy framework for trade in services	To clarify the overall policy framework regarding trade in services including the main concepts. <ul style="list-style-type: none"> ▪ Clarify Mozambican priority sectors including the criteria for selection in both SADC and the WTO ▪ Identify and clarify different basic concepts important for both processes
Workshop 2⁴ The SADC process	To clarify Mozambique's interest in liberalisation of trade in services in SADC. The following issues should be addressed: <ul style="list-style-type: none"> ▪ The schedule of commitments ▪ The approach ▪ Trade liberalisation ▪ Special and differential treatment within SADC based on level of development
Seminar 1 An information seminar	To create awareness about the ongoing negotiations on trade in services for the general public
Workshop 3⁵ On schedules for priority sectors	To develop and confirm the schedules for the SADC process and those for the WTO negotiations and (the latter only if time permits – see footnote).

See annex 1 for a more detailed plan

Studies

a) Study on the templates

As Mozambique is one of the countries that not yet have finished the research on the templates, it is proposed to continue the process with the aim of finishing the revision. This work will be important in the SADC process since it focuses on the core sectors in the SADC process, but will also be important for the schedules in the GATS negotiations.

b) Study on the financial sector

The aim of the study would be to verify that the legislation on the financial sector is in line with the WTO commitment that Mozambique already made. Terms of reference should be developed for a short consultancy to evaluate the current situation of the financial sector. This should include: the degree of implementation of the current commitment; the need to specify the limitation on commercial presence in the current negotiation round (compared to the open sentence included in the last round of negotiations); and to analyse the request that Mozambique received for the ongoing round. While a study in the SADC context was carried out, the consultant did not manage to get data to finish the study on Mozambique. This would therefore need to be corrected in order for the study to be relevant.

⁴ This seminar should be a follow-up to the seminar proposed later on explanation of the draft annex. If this proposal is not accepted by the other SADC Member States, it is proposed that such a seminar should take the place of this.

⁵ As the deadline for the WTO is very close and that the work has progressed a lot, there might not be time nor necessary to arrange this seminar for the WTO-schedules. However, if the WTO deadline should be moved, it will still be a possibility. As the process foreseen in the SADC is quite different, this is very interesting in the SADC process.

6. An analysis of the draft *Annex on Trade in Services*

The draft *Annex on Trade in Services* was presented in June 2002 by UNCTAD, while the background note explaining the proposal was first received in January 2003, though it is dated July 2002. The analysis of the draft annex is done at three levels, firstly at the overall level addressing the process and the background of the draft annex, then at some overall issues of the draft annex that need clarification, and finally an analysis of the major articles of the draft annex is presented. In order to undertake the last part of the analysis, some assumptions are made on certain issues as they are analysed.

In general, there are two crucial questions that remain unclear, namely:

1. What is the basis of the proposed annex?
2. Why does the annex have its current form?

6.1 What is the basis of the proposed annex?

The SADC Trade Protocol defines that liberalisation of trade in services should take place, however, it does not state anything about the form or how this liberalisation should take place. Although the SADC Trade Ministers agreed to the inclusion of an annex to the Protocol, no concrete guidelines on its contents were given. As a result, it is not clear what basic guidelines were used for the preparation of the current draft.

It is assumed that the objective of the inclusion of such an annex is to obtain the economic gains related to liberalising trade. In order to achieve the economic gains related to liberalization, it is necessary to know the current situation, the wanted situation in the future, and how to get there. Several studies or assessments have been undertaken on where trade in services are today, however, there are still many areas where knowledge is missing. This research should have preceded the draft annex, but it can also be done as a parallel process to the negotiations of the annex. Thus, in order to further define where we are today, it is proposed, in line with the SADC Work Plan, to continue the assessment of trade in services in the SADC region. There are many aspects that are important in this context; however, it is proposed to focus on the following two areas:

- Assessment of sectoral trade in services in SADC, and how the an *Annex on Trade in Services* can contribute, together with the SADC sectoral strategies and protocols, to achieve the assumed gains of liberalization;
- the effect of a potential Economic Partnership Agreement (EPA) between the SADC-countries and the EU on trade in services and the role of an *Annex on Trade in Services in this context*.

In order to examine the first concern, the aim would be to assess the current trade in services within the different sectors, analyse how the *Trade in Services* annex needs to be formulated in order to pull in the same direction as the sectoral strategy, and identify the benefits and costs of liberalized trade in services for each sector. The first part should also analyse the different countries competitiveness in each sector and analyse how it will develop with increased foreign competition. The study should also defined concretely the division line between the sectoral protocols and the trade protocols.

Secondly, the effect of an *Annex on Trade in Services* and an eventual EPA between the EU and the SADC countries should be further analysed. Through the Cotonou Partnership Agreement, all the ACP-countries have given the EU full market access in international

maritime transport. In the Agreement on Trade, Development and Co-operation between the EC, its Member states and South Africa, trade in services is not more liberalised than the GATS and the maritime transports provision is in line with the current SADC Trade Protocol. However, if an *Annex on Trade in Services* in SADC were to exist by the time SADC is to negotiate an EPA, services might become an important sector in the EPA negotiations. Therefore it is necessary to analyse how trade in services in the SADC region will be able to compete with the EU. What will be the benefits and what will be the costs? Based on such a study, the negotiators with the EU will have the information necessary to make a position in those negotiations. It might also have implications for the formulation of the annex? Some of these latter issues are currently addressed in articles 2 and 14 of the draft annex, but it is unclear how this would be implemented.

Mozambican proposal

Mozambique proposes that the assessment studies undertaken at the SADC level should include the aspects of the current situation and cooperation within each sector, and its relation to trade in services, as well as the effect of a potential EPA with the European Union on trade in services in the region and the annex on trade in services.

6.2 Why does the annex have its current form?

In general, the presentation of the draft annex has been minimal, taking into consideration the fact that the presentation document was presented half a year later than the draft. The draft annex is to a large extent built on and uses the same definitions as the GATS, if not specified differently. While this is in line with the SADC Trade Protocol, several crucial questions remain unanswered:

- What are the benefits of having an agreement so similar to the GATS?
- What is the rationale for including certain parts of the GATS agreement while excluding other?
- Why is the sequencing of the draft annex different than in the GATS etc?

Without a clear explanation and justification of why these changes were introduced and how this is perceived to benefit the liberalisation process in SADC, the process of negotiating the draft annex may well prove to be considerably slower than anticipated or necessary. This lack of clarity is also reflected in the *TNF (Trade Negotiating Forum)*⁶ as the only clear message from the *TNF* is that there is a need for more technical assistance. In the analysis of the draft annex, many areas where such clarifications are requested or needed are highlighted.

Proposal from Mozambique

To arrange a workshop together with the UNCTAD on the draft annex clarifying the content of the draft by providing answers to the questions raised above as well as addressing the following areas:

- provide overall definitions of the different main concepts related to trade in services
- present a comparative overview of what has been done in other regional settings
- present and consider the advantages and disadvantages of the proposed draft, in particular how they see the process of trade liberalization in the SADC based on the draft and the relation to the GATS text and process
- reflect on the issues raised in the detailed analysis of the draft annex

⁶ The TNF is the negotiation forum in SADC.

The first proposal is that this workshop should replace the negotiation meeting proposed for the 24th of March. However, since this probably is not possible, it can be proposed as a new activity on the SADC Work Plan. If Mozambique does not gain support for this proposal, it is proposed that Mozambique arranges such a workshop in Maputo (Refer to proposed list of seminars/workshops). Such a workshop at the SADC level would function as an engine for the negotiations.

6.3 The process forward

Based on the arguments provided in the previous sections, a more specific definition of the process forward both with regard to the proposed meetings as well as the overall negotiation process on the liberalisation of trade in services, will be essential if progress is to be made in the negotiations. The SADC trade in services Work Plan attempts to achieve the first step, but does not address the second one.

There are two different components of the trade liberalization process, i.e. the procedures for developing the legal text or the annex, and the modalities for developing the schedules. These are also interlinked through article 6 on trade liberalisation. This issue is very important in order to enable the negotiators to address the legal text as such.

The modalities for negotiating the legal text itself are quite simple: the text proposals would and be discussed in plenum. However, as the legal text in article 6 defines the actual process for trade liberalisation, its actual consideration will require decisions on the following:

- The schedule to be used;
- The approach to be used;
- The modalities to be used for the negotiations on the schedules.

The issues related to the schedule and approach are discussed in the next section, while the modalities to be used for the negotiations on the schedules are briefly analysed below.

In general, there are many options for the negotiation of modalities for the schedules. The GATS uses a bilateral request-offer method, i.e. a process between 2 and 2 members. However, it is also possible to use the request-offer method between all members at the same time. This would be very difficult in the GATS context, but is achievable in the SADC process. Other, alternative, modalities might also be considered. In order to move the process forward, it would be important to receive some proposals from the SADC Secretariat on the different alternatives regarding the modalities for the trade liberalisation negotiation process.

Proposal

It is proposed that UNCTAD or the SADC Secretariat provide the Member States with alternative proposals on negotiation methods or modalities for the schedules on trade in services, including an assessment of the advantages/disadvantages of using different modalities.

7. The draft annex and clarifications needed

The draft consists of a legal text in the form of an *Annex on Trade in Services* to be attached to the SADC Trade Protocol. However, neither a proposal on what type of schedule for listing the commitments is provided nor a clear proposal for the approach chosen.

7.1 Schedules (article 6.3)

The proposal from UNCTAD does not provide an example of what type of schedule for commitments is to be used. However, an indirect reference to this issue is made in paragraph 2 where it is stated that all that is not defined here is as in the GATS. Thus, it can be assumed that the schedule is to be equal to the one in the GATS agreement. The word used for this in the draft is "Parties lists".

Parties lists = schedule of specific commitments as in the GATS

Rationale

As the type of schedule as well as the approach used will affect the formulation of the legal text, it is crucial to clarify which schedule is to be used. This, in turn, depends on the approach chosen for the agreement.

Furthermore, the advantages and the disadvantages of using the GATS schedule should be analysed. It should be established if any other regional trade in service agreement uses the same schedule as the GATS one. This should be part of the proposed workshop on the draft annex.

Proposal for Mozambican change or request for clarification

It is assumed that the GATS schedule⁷ is going to be used. The UNCTAD or the SADC Secretariat should be requested to confirm that this is correct.

At the workshop it is proposed that UNCTAD is arranging, the advantages and the disadvantages of using the GATS schedule should be analysed as well as it should be established if any other regional trade in service agreement uses the same schedule as the GATS one.

Mozambican position

Mozambique has not yet decided whether using the same schedule as in the GATS will be beneficial or not. On the one hand this would be resource effective as the same system in both the GATS and in the SADC context would be used. However, this would link the SADC process very closely to the GATS process, making it relatively easy for other WTO members to request the SADC countries to open the same sectors at the same level to all WTO members (refer also to article 6). Given that the analysis does not find anything negative in using the GATS schedule, this will probably be the Mozambican position.

7.2 Positive or negative list approach (article 1)

The draft annex is not clear on which approach is to be used, though it indirectly proposes the positive list approach.

As long as the approach chosen is not clear, it will be difficult to provide concrete comments to the draft annex, because the approach will affect the way the legal text is written. After all, the approach defines whether the legal text applies to everything that is noted in the schedule or to everything not noted in the schedule. Therefore, it is necessary to first define clearly the approach to be used before moving on to more concrete comments to the legal text.

⁷ Schedule means list of commitments.

Proposal for Mozambican position/comment

UNCTAD should clarify what the intention of the draft is. Refer also to the comments on the Mozambican position regarding article 1 in the next section. In the rest of the document and in order to do an analysis, it is proposed that the positive approach is used.

7.3 Analysis of major articles

In this part of the document, the major articles of the draft annex are analysed. The overall analysis is also schematically presented in annex 2, along with concrete suggestions for changes in annex 3 – the draft annex with track changes.

Article 1 - Coverage

This article resembles the GATS rather strongly, however, it excludes some important points. This exclusion makes the annex unclear and creates confusion. This is one of the articles where the changes from the original GATS article should be explained by UNCTAD. In particular the following points:

- Why does it not address the scope?
- Why does it exclude a reference to services supplied in the exercise of governmental authority?

Article 2 - Definitions

Several concrete changes are proposed in the annex, however, the main question is why changes from the GATS were made and what from the GATS is included. This should be clarified by UNCTAD.

Another unclear area is the reference to "a real and continuous link with the economy of a SADC party". What does this mean and how do UNCTAD and the SADC secretariat see this part of the definitions implemented? Clarification on this point is required.

Article 3 - Market Access

The background document does not explain this article in particular and several uncertainties remain regarding the meaning of the schedules or lists of commitments (refer comments to article 6). The a) to e) paragraphs are equal to the GATS, but the sequencing is changed and the reference to article I in the GATS is left out. Article 3 f) is, however, different from the GATS agreement, i.e. the word "restrictive" in article 3 f) of the GATS has been left out.

Proposal for Mozambican position/comment

Reference is made to the request for clarification on the draft annex. Based on the assumption that the analysis supports the preliminary position of Mozambique, Mozambique proposes to retain the word "restrictive" in article 3 f).

Article 4 - Most Favoured Nation Treatment

Mozambique is in favour of the inclusion of this main principle as it is a natural element of such an agreement. However, the article is substantially different from the GATS and focuses on third parties, and includes mutual recognition even though this is a separate article (article 8). Furthermore, it does not include the exemptions as mentioned in the GATS. An explanation on these aspects from UNCTAD would be appreciated. As the article treating third parties will directly affect the EPA, reference is made to the earlier proposal on including the effect of the annex on the negotiation for a potential EPA in the assessment studies proposed in the SADC Work Plan.

In the draft agreement, National Treatment only comprises services suppliers and not services as such. However, this provision should also affect the service and not only the service supplier as this may be different.

Proposal for Mozambican position/comment

Mozambique would like to include services, and not only services suppliers. Reference is made to the request for clarifications by UNCTAD.

Article 5 - National Treatment

Mozambique supports the inclusion of this principle as it is a natural element of such an agreement. However, the draft annex does not make a reference to the schedules to be used as is done in the GATS. As a result, it is unclear what sort of status the schedules have in the draft annex. Finally, this article also drops services and only addresses services suppliers, which might lead to exclusion of some aspects.

Proposal for Mozambican position/comment

Mozambique would like to include services, and not only services suppliers, as is done in the GATS. Mozambique would like an explanation on the status of the schedules in the draft annex, and queries if a reference to these should not be included in this article. Refer also to the comments made under the heading schedule.

Article 6 - Trade liberalisation

This article basically sets the process for the trade liberalisation to take place in SADC. Hence, it is a crucial article. At the moment several issues are unclear as to the trade liberalization to take place. The basic aspects to be addressed include:

- The background document, asymmetry and sectors;
- The different articles

The background document, asymmetry and sectors

The document describes progressive liberalisation within SADC as a process which starts with the establishment of the *Annex on Trade in Services* to the SADC Trade Protocol. Thereafter, successive rounds of negotiations would lead to further or full liberalisation. In the case of SADC, the background document states that progressive liberalisation will be based on the inclusion of more sectors as all types of modes will be included from the start. The document has defined progressive (or trade) liberalisation to be based only on modes of supply and sectors, and not by reduction or elimination of limitations. As the document does not address limitations in this part, it does not state anything on the role that limitations should play in the progressive liberalisation. The definition of progressive liberalisation in this document is therefore quite different from that provided in other contexts where the reduction or elimination of limitations is an essential part of a progressive liberalisation process.

The background document raises three crucial questions or areas for Mozambique:

- (a) *Liberalization by including more sectors;*
- (b) *Liberalisation by reducing the number of limitations;*
- (c) *Liberalisation by including more modes of supply.*

(a) Liberalisation by including more sectors

Does the background document propose that all countries liberalise the same sectors at the same time? In other words, that there will be no asymmetry in the number of sectors committed to the agreement between the most developed and least developed countries?

Rationale

Mozambique supports the general notion of asymmetry based on the level of development as is stated in the preamble and in article 6.6 which refers to “*the special needs and circumstances of the Least Developed Country Member States*”. Mozambique thinks that it would be natural that for example South Africa would open more sectors more rapidly than Mozambique. Thus, it is unclear what the proposal of the 6 priority sectors is in this regard. Does it mean that all should open the 6 sectors, or that the most developed must open more of these 6 sectors than the least developed countries?

Mozambican proposal

Reference is made to the request to UNCTAD to further explain its proposal as well as to the request to UNCTAD or the SADC Secretariat to provide further proposals on how to move the process forward and clarify the role of the 6 core sectors. In particular how they see the process of trade liberalisation in SADC.

(b) Liberalisation by reducing the number of limitations

Given that the proposed liberalisation process basically will be by inclusion of more sectors, is it assumed that all the SADC countries are to have the same limitations? In other words, that there will be no asymmetry in the limitations in each sector committed between the member state? Does this also mean that the relevant legislation is assumed to be equal in all the countries? This is most probably not the case as South Africa has more developed regulations for several of the sectors. Hence, the question remains relevant: should the level of development not have an impact on the type and number of limitations that each country can include in its schedule, the modes of supply and sectors etc.?

Rationale

Given the fact that SADC uses the same schedules as the WTO, this means that for the liberalisation of services within the SADC to be meaningful for the respective WTO members, it will have to go further than the WTO commitments of the member countries (WTO plus position). It is assumed that the schedule of commitments for South Africa would include more sectors and would go further than other WTO members such as Mozambique. Thus, for the agreement to be meaningful at least for the entry into the South African market, it is probably necessary for each member country to include more sectors in addition to the priority ones or to reduce the number of limitations in the priority sectors. If asymmetry is not taken on board, all SADC member countries will have to adopt the South African path to liberalisation in trade in services, which is the economy in Southern Africa that most resembles a develop country. This issue also illustrates that it is not just convenient to use or copy the GATS schedule.

Proposal

Mozambique considers it natural that the number of limitations to be applicable is differentiated on the basis of the level of development of the various SADC Member States. Without such factor, it would be possible for South Africa to provide most limitations, as

their policy and regulatory framework is more developed. Refer also to the request for clarification by UNCTAD on their proposal.

(c) Liberalisation by including more modes of supply

Is it in the interest of Mozambique to include all the modes of supply from day one?

Rationale

There are no reasons to leave out any mode of supply *a priori* as long as the countries can include the number of limitations they feel are necessary. However, particular attention should be paid to the 4th mode of supply, i.e. movement of natural persons. The relation between the proposed free flow of factors and movement of natural persons should be further studied.

Mozambican proposal

Reference is made to the proposal on of including the relation to existing sector strategies such as the protocol in force on mineworkers in the ongoing assessment studies on trade in services as foreseen in the SADC Work Plan.

Article 6.1

The article states that liberalisation is to take place in accordance with article V in the GATS. The general rule for regional trade agreements to comply with WTO rules, is that a substantial part of the trade needs to be covered. This might be questioned if only a few sectors, such as the priority sectors, are included in the SADC annex on trade in services.

Article 6.2

The draft annex does not allow possibilities for the modification of the schedules, which is possible in the GATS. However, later in article 6.4 this appears to be made possible. What is the effect of this? Further clarifications from UNCTAD should be requested.

Article 6.3

This article resembles the GATS article, but is stricter in the sense that it provides a faster pace to a free trade in services. Part a) proposes that the level of liberalisation should be set and should be reached within a timeframe of 10 years. Part b) sets the liberalisation calendar, defines the lists or schedules and states that they are integral part of the annex. However, it does not define what the schedules should look like.

The proposal is to liberalise to a defined level over a ten-year period. This first level is to be established through the current negotiations of the schedules. This is very different from the way that the process is described in the background document. Here, there the process is described as a sequence of successive negotiations in which the establishment of the annex only represents a first step. There is a need for a proposal from UNCTAD or the SADC Secretariat to clarify this issue.

Article 6.4

Article 6.4 defines that paragraphs 3 and 5 shall become applicable in line with the schedules, thus this is limiting the agreement to only cover the sectors listed in the schedules. This appears to imply that the positive list approach is to be used. However, further clarification on this issue is required.

Article 6.5

This article proposes that the CTM can amend the liberalisation calendar, which contradicts article 6.2. Clarification is requested.

Article 6.6

Mozambique supports the use of the principles of asymmetry based on level of development, as is the norm in SADC. The SADC Trade Protocol states in the preamble:

“Mindful of the different levels of economic development of the Member States of the Community and the need to share equitable the benefits of regional economic integration;”

This principle was concretely applied in the negotiations on the trade in goods (differentiated offer), and Mozambique will seek to achieve the same in trade in services (refer earlier proposals on sectors and limitations). The same principle should also be applied for the liberalisation time period.

Article 7 - The right to regulate

This article is very general compared to the one in the GATS. One article is the same, word by word, as the GATS VI.1, except that the GATS article adds the following words “in the sectors where specific commitments are undertaken”. The reason for and the potential effect of this omission is unclear. Does it imply that this will affect all the services sectors and not only the ones included in the schedules? What is the effect of these factors on the liberalisation process and, particularly, on the LDCs? Clarifications on this should be requested from the UNCTAD or the SADC Secretariat.

Article 8 - Mutual recognition

The draft implies that mutual recognition is a component of the services annex. It also includes a provision to adhere to GATS article VII on recognition. This article needs further study, in particular the relation between articles 8.2 and 4.1 Clarifications from UNCTAD on these issues are welcome, in particular on implementation and timeframe issues.

Article 9 - Provision of information

The draft annex seems to be weaker than the GATS as it does not set a timeframe. Therefore, there is no need to address emergency situations, nor provide a timeframe for publication. The aim is to facilitate communications. Further clarifications are needed.

Article 10 - Effective and transparent regulations

This article is different than the matching one in the GATS. The GATS article mainly addresses publication of measures, notification to WTO CTS, and establishment of an enquiry point. The SADC annex addresses advance notice and public comment (but only as best endeavour) through official publication or written/electronic communication: each party shall make available to interested persons requirements relating to supply of services; and right to know status of an application (license/registration or similar procedure). An important aspect here is the potential to implement such an article. Further clarifications are needed.

Article 11 - Promotion of trade and investment in services

The aim of this article is unclear. What exactly are member states to promote? When this is clear, the purpose of b and c may become clear as well. Further clarifications are needed.

Article 12 - Competition policy

This article has some similarities with article IX of the GATS. However, once again there are changes made to the original GATS article. Further clarifications are needed on the reason for such changes.

Article 13 - Transfers

This article needs further analysis and clarification. No comments at this point in time.

Article 14 - Denial of benefits

This article, together with article 2.1 “*definition of SADC juridical persons*”, does not make it possible for 3rd parties to participate in the free trade. This has indirect relations to the EPAs. Is it possible to develop a “rules of origin” approach? Finally, what are the characteristics of a “real and continuous link with the economy” and how is this article supposed to be implemented (See also article 2)? Is there a contradiction with article 11 (d)? Further clarification from UNCTAD is required.

Article 15 - General Exceptions

The draft annex excludes GATS article XIV (d), but adds “or domestic fiscal legislation” to GATS article XIV (e), i.e. it tries to incorporate the taxation directly in e). If this results in the same right for domestic taxation, why is it not done like this in the GATS? What is the effect of this? Refer to the request for clarifications by UNCTAD.

Article 16 - Waiver of obligations

The Commonwealth has proposed to change CMT to ICM and that a timeframe be included. It is not clear whether Mozambique supports the Commonwealth proposal. This article needs further analysis and clarification from UNCTAD.

Article 17 - Labour Market Integration Agreements

This article is very short and only refers to GATS article V bis for coverage. This appears to be an area where the request for further explanation on the relations to the GATS is relevant.

It is also unclear for Mozambique how this relates to mode four, i.e. movement of natural persons. A further explanation of this would be required also on the relations to the sectoral strategies (refer the protocol on mineworkers).

Article 18 - Consultations and dispute settlement

The draft annex only refers to the general provisions of the Trade Protocol. This is an area where Mozambique currently is working towards changes. References to this ongoing work should be made when commenting on the draft annex.

8. Answer to the SADC secretariat

Generally, there is a need for Mozambique to develop a national position on trade in services, as outlined above. However, in order to participate in the current debate in SADC, some preliminary positions are proposed, based on the above analysis. In responding to the SADC Secretariat, Mozambique should first of all define what type of role it would like to play in these negotiations, before providing its comments. Should it play a proactive role, pushing the process forward or should it play a more passive role? The answer to this question will affect how and what comments are to be provided.

In order to be able to take clear stands on the specific parts of a trade in services agreement, Mozambique will require time as well as technical assistance. This should be reflected in its comments on the draft *Annex on Trade in Services* to the SADC Secretariat.

In view of the above, it is proposed that overall comments are firstly provided to the proposed SADC Work Plan and the questions for clarifications such as on the schedules and approach to be used. In addition, one may opt to provide some of the more detailed comments as well, or, alternatively, refer to the comments made by the Commonwealth Secretariat and state that these seem to be relevant for Mozambique's perception.

The overall comments that are proposed as a result of the analysis are summarised below:

8.1 The SADC Work Plan

- a. *Propose a workshop on the draft annex instead of point 1 of the Work Plan*
Arrange a workshop where the UNCTAD explains their draft annex, provide overall definitions of the different main concepts related to trade in services, present a comparative overview of what has been done in other regional setting, and consider the advantages and disadvantages of the proposed draft in particular on how the UNCTAD sees the liberalization process in SADC and the proposed annex relation to the GATS. It should also be a forum where member states can raise their question and get clarifications of the content of the draft.
- b. *The assessment studies and the relation to the annex*
Mozambique proposes that the assessment studies undertaken at the SADC level should include aspects of the current situation and cooperation within each sector (Protocols and strategies), and its relation to trade in services, as well as the effect of a potential EPA with the European Union on trade in services in the region and the annex on trade in services.
- c. *The other points in the SADC Work Plan*
Mozambique does not have any comments to the other points in the plan. Mozambique has already taken the first steps towards the implementation of the proposed plan by starting up with a working group on trade in services, including other Ministries and the private sector and planning to finish the template studies. Even though Mozambique is making this progress, it should be emphasised that Mozambique still is in an early phase of developing a national position on trade in services and will require technical assistance to complete this process and the SADC Work Plan.

8.2 Clarifications of the content and the process forward

- d. *Negotiations modalities*
It is proposed that UNCTAD or the SADC Secretariat provide the Member States with alternative proposals on negotiation methods or modalities for the schedules on trade in services, including an assessment of the advantages/disadvantages of using different modalities.
- e. *Schedule*
It is assumed that the GATS schedule⁸ is going to be used. The UNCTAD or the SADC Secretariat should be requested to confirm that this is correct. However, it is not clear yet that using the GATS schedule represents Mozambique's position.

⁸ Schedule means list of commitments.

- f. *Approach*
The UNCTAD should clarify what the intention of the draft is, i.e. does it propose a positive or a negative approach to the agreement.
- g. *Other areas*
See the general analysis above regarding the need for further clarifications.

8.3 Concrete proposals

- h. *Overview*
For a full overview refer to annex 2 with concrete proposals on changes to the draft annex.
- i. *The draft annex*
The draft annex with track changes proposed by Mozambique is provided as an annex to this document (refer to annex 3)
- j. *Supportive of others comments*
A supporting statement to the clarifications proposed by the Commonwealth could be provided.

8.4 Other issues

It is proposed that a response be provided to the points 1 and 2, while comments to the other points may be provided at a later stage.

9. Conclusions

This document has drawn up a proposal for a process for developing a trade in services strategy/position. Such a position/strategy can be the basis for handling the ongoing negotiations on trade in services, both in SADC and in the WTO (Annex 1).

Furthermore, the document has provided some preliminary comments to the *Annex on Trade in Services* drafted by UNCTAD. It is proposed that the proposals to the SADC Work Plan and the overall comments such as the need for a seminar explaining the draft annex and the comments for clarifications of the draft annex are given to the SADC secretariat as a follow up to the trade in services meeting held in Harare in December 2002. These are presented in the summing up of the analysis. At the same time, it is recommended that the more concrete comments first be presented when answers to the first are received. The detailed comments are presented in annex 2.

10. Annex 1 – Proposed plan for Workshops/Seminars

Name of seminar	Aim	Target group	Expected results	Consultant
Workshop 1 The overall policy framework for trade in services	To clarify the overall policy framework for the trade in services including main concepts. This seminar should address the following questions: <ul style="list-style-type: none"> ▪ Clarify Mozambican priority sectors including the criteria for selection, identifying if they should be the same in the WTO and SADC. ▪ Identifying and clarifying different concepts important for both processes. Examples are: the role of autonomous liberalisation and compensation, special and differentiated treatment etc. 	Basically the intergovernmental committee working on trade in services.	This seminar should establish a list of priority sectors for Mozambique and establish Mozambican positions on the basic concepts in trade in services.	No proposal Financing open
Workshop 2 The SADC process	This seminar will clarify Mozambique's interest in liberalisation of trade in services in SADC. This will be based on the results from the overall workshop. The particular issue treated should be: <ul style="list-style-type: none"> ▪ The schedule of commitments ▪ The approach to be used ▪ Trade liberalisation ▪ Special and differential treatment within SADC, eg. Asymmetry in commitments depending on level of development (SACU versus MMTZ) 	The inter-ministerial group on trade in services, public and private sector participants from the priority sectors.	Formulation of the basic mandate for the SADC negotiations on trade in services, or at least provide basic reference points.	No proposal Financing open
Seminar 1 An information seminar	To create awareness about the ongoing negotiations on trade in services, what trade in services is and how it might influence everyday life. To create interest for the issues in the media.	The private and public sector, media and the population in general.	Increased awareness and information about the ongoing processes among the population in general.	UNCTAD seminar could play this role. Possible financing from Norway (an UNCTAD process on trade in services)
Seminar 1 A series of	The aim of this series of working seminar is to	Public and private sector of the	Draft offers to the SADC	It is proposed to invite Nathans

seminars on the schedules for the priority sectors	develop and confirm the schedules to be used in the SADC process as well as those to be offered in the WTO negotiations (the latter only if time permits and it is found necessary). These schedules should be based on the templates and the requests.	selected priority sectors.	negotiations including the limitations and regulations to be included in the proposal.	Associate to participate/lead a programme of work as they may be able to provide financing.
	This work will follow the structure already established by the working group and it will comprise a series of seminars with the different priority sectors and with a common opening day where the programme of work should be presented. Then a team consisting of the international consultant and key persons from MIC should work together with officers and private sector representatives from related Ministries/sectors in question on the schedule for each sector including what limitations and regulations Mozambique needs to include in its schedule. This should then be repeated for each of the priority sectors as well as for MIC in order to organise the horizontal limitations.		Given that time permits, the seminar could also consolidate the WTO schedule.	The consultants should provide background information on relevant countries' schedules such as Kenya, Costa Rica and Mauritius

11. Annex 2 Concrete proposals to the Annex

SADC Annex	SADC Article	Background	Mozambican proposal	References
General		'Party' is used, however, 'Member States' is used in the SADC Trade Protocol	Use 'Member State' as is used in the SADC Trade Protocol. See change in the draft annex	Commonwealth.
		Services and services suppliers – services should always be included	Include services and services suppliers in all relevant parts; articles 4 and 5. See change in the annex	Nathans
		GATS reference. Fill in the text instead of only references. The document would be easier to use	Not yet decided if Mozambique supports this.	Commonwealth
Coverage	Article 1.1	Equal to the GATS. No comment	None	
	Article 1.2	See text on approach, current proposal on approach is related to article 1.2, article 6 and article 15. Article 1.2 suggests a negative approach while article 6 a positive approach. Commonwealth has a proposal, but this requires improvement.	Supports the positive approach, but does not have a concrete text proposal. Does not support the Commonwealth proposal.	Nathans, Commonwealth
	Article 1.3	This is a mixture of GATS 1.1 and 1.3 without totally reflecting the GATS. GATS seems to be more a definition.	Refer to the request for explanation of the draft and relation to GATS.	Nathans
Definitions	Article 2.1	Differs from GATS definition and does not 'flow'. What is it to have a "real and continuous link with the economy of a SADC party"? How is this to be implemented?	Suggest reversing the order of the article. Refer to the request for explanation of the draft and thus the definition of the concept. See changes in the attachment.	Nathans

	Article 2.2	SADC annex refers to GATS definition for further clarification, if not included in SADC Annex article 2.1 A proposal is to include all the necessary definitions from GATS in the agreement.	Mozambican position not yet clear Refer to request for explanation of draft by UNCTAD.	Commonwealth Nathans
Market Access	Article 3 a)	The numbering should be equal to the rest of the annex. The a) to f) is equal to the GATS, however, the sequencing is changed and the reference to article I is left out.	Change a, b, c to 1, 2, 3 etc.	
	Article 3 b)			
	Article 3 c)			
	Article 3 d)			
	Article 3 e)			
	Article 3 f)	SADC doesn't include the word "restrictive" in article 3 f). All other parts are equal to the GATS. The order of the sub-articles is also changed. See also article 15.1-15.2. Reference is made to the request for clarifications.	Include the word 'restrictive' in 3 f). Request for clarification on article 1 and the schedules.	Commonwealth Nathans

MFN Treatment	Article 4.1	<p>The overall article is substantially different from the GATS. It focuses on third parties and is not included in the GATS. It includes mutual recognition even though this aspect is also treated in a separate article (article 8). Furthermore, it does not include the exemptions as mentioned in the GATS.</p> <p>In the draft annex, National Treatment only comprises services suppliers and not services as such. This provision should also affect the service and not only the service supplier as these can be different.</p>	<p>Mozambique wants to include services, and not only services suppliers, as is done in the GATS.</p> <p>Refer to request to UNCTAD on explanation of the draft in particular on the following issues:</p> <ul style="list-style-type: none"> • Mutual recognition and relation to article 8? • The exclusions in the GATS 	<p>Nathans Commonwealth,</p> <p>Article 8</p>
	Article 4.2	<p>MFN treatment under SADC services annex does not extend to 3rd countries in an FTA with SADC countries</p>	<p>Reference is made to the request to UNCTAD to provide an explanation of the draft and the study of the relation between the annex and a potential EPA</p>	<p>Nathans Commonwealth,</p>
	Article 4.3	<p>Interpreted as if a SADC country negotiates an FTA with a 3rd Country and accords them better MFN, then it should provide adequate opportunity for SADC members to negotiate same (or better) benefits.</p>	<p>Reference is made to request to UNCTAD to provide an explanation of the draft and the study of the relation between the annex and a potential EPA</p>	<p>Nathans Commonwealth,</p>

National Treatment	Article 5.1	<p>In the draft agreement, National Treatment only comprises services suppliers and not services as such. This provision should also affect the service and not only the service supplier as these may be different.</p> <p>The draft annex does not make a reference to the schedules to be used as is done in the GATS, thus it is unclear what sort of status the schedules have in the draft annex.</p>	<p>Include services, and not only services suppliers in all three paragraphs.</p> <p>Reference to the request for clarifications; the schedules. Should reference to them be included in this article?</p>	<p>Nathans</p> <p>See also comments in general text on schedule.</p>
	Article 5.2	SADC annex excludes “services” from coverage, only referring to services suppliers	Include services, and not only services suppliers in all three paragraphs.	
	Article 5.3	SADC annex excludes “services” from coverage, only referring to services suppliers	Include services, and not only services suppliers in all three paragraphs.	
Trade Liberalization	Article 6.1	Article states that liberalization is to take part in accordance with article V in the GATS. The question is if only including the priority sectors would be WTO compatible.	Clarification on the meaning of the priority sectors.	
	Article 6.2	The draft annex does not allow for the modification of the schedules, this is possible in the GATS. Contradicts article 6.5	Refer to request for clarification.	

	Article 6.3	Resembles the GATS article, but is stricter in the sense that it moves faster to free trade in services. Part a) seems to propose that the level of liberalisation should be set and should be reached within a timeframe of 10 years. Part b) sets the liberalisation calendar. Defines the lists or schedules and considers these an integral part of the annex.	Refer to request for clarifications. In particular on: <ul style="list-style-type: none"> • Core sectors in SADC • Asymmetry in timeframe, sectors and limitations. 	
	Article 6.4	Defines that paragraphs 3 and 5 shall become applicable in line with the schedules.	Refer to request for clarification.	
	Article 6.5	The CTM can amend the liberalisation calendar. Contradicts 6.2?	Refer to request for clarification.	
	Article 6.6	Special treatment of LDC is stated.	An important principle for Mozambique.	
Right to regulate	Article 7.1	SADC annex is extremely general compared to the GATS. The question is if this means that it is weak.	Refer to request for clarifications on the draft annex.	Nathans
	Article 7.2	Same as GATS VI. 1 word by word, although GATS states “in the sectors where specific commitments are undertaken”. What is the implication of this?	Request for further clarifications on the draft annex.	
Mutual recognition	Article 8.1	The draft seems to imply that mutual recognition is a component of the services annex. It also includes provision to adhere to GATS article VII on recognition. Implementation and timeframe are important issues in this context.	Refer to request for clarification with particular attention to: <ul style="list-style-type: none"> • Implementation • Timeframe 	Commonwealth Nathans
	8.2	Contradicts article 4.1?	Refer to request for clarification.	Article 4

Provision of information	Article 9.1	SADC doesn't address emergency situations, nor provides a timeframe for publication. However, the emergency exemption may not be necessary since there is no timeframe.	Refer to request for clarification.	
	Article 9.2	Designates a type of contact point to facilitate communications and response to inquiries (similar to some of GATS text contained in Article III)	Refer to request for clarification.	
	Article 9.3	This provision seems weaker than GATS.	Refer to request for clarification.	
Effective and transparent regulation	Article 10.1	GATS mainly addresses publication of measures, notification to WTO CTS, and establishment of an enquiry point. SADC annex addresses advance notice and public comment (but only as best endeavour) through official publication or written/electronic communication: each party shall make available to interested persons requirements relating to supply of services; and right to know status of an application (license/registration or similar procedure)	Refer to request for clarification.	Nathans
	Article 10.2		Refer to request for clarification.	
	Article 10.3		Refer to request for clarification.	
Promotion of trade and investment in	Article 11	What are member states to promote? When this is clarified, the purpose of b and c may become clearer.	Refer to request for clarification.	Commonwealth

Competition policy	Article 12.1	The total article 12 has some similarities with article IX of the GATS. Is the GATS article better?	Reference made to the request for clarification from UNCTAD.	Nathans Commonwealth
	Article 12.1		Refer to request for clarification.	
	Article 12.1		Refer to request for clarification.	
Transfers	Article 13.1		Refer to request for clarification.	
	Article 13.2		Refer to request for clarification.	
	Article 13.3		Refer to request for clarification.	
	Article 13.4		Refer to request for clarification.	
Denial of Benefits	Article 14	Together with article 2.1 definition of SADC juridical persons, this makes it not possible for 3 rd parties to participate in the free trade. Rules of origin approach? How is this article supposed to be implemented? What are the characteristics of “real and continuous link with the economy”? Contradiction of article 11 (d)?	Reference made to the request for clarification from UNCTAD as well as the EPAs. See also article 2. This also links to the definitions SADC juridical person of article 2.	Nathans Commonwealth See also article 2.
General Exceptions	Article 15.1	SADC annex excludes GATS article XIV (d) SADC also adds “or domestic fiscal legislation” to GATS article XIV (E). Article 4 deals with MFN and therefore domestic fiscal legislation cannot be an MFN exception, but a national treatment exception. It is for this reason that GATS Article XIV has separated the two in paragraphs (d) and (e).	Why is GATS article XIV (d) left out? What is the rational behind this decision? Refer to the request for clarifications by UNCTAD.	Nathans Commonwealth

	Article 15.2	Transfer to Article I as a sub paragraph 4 and drafted in such a way that it is clearly an exception to paragraph 3 of article 1. Otherwise it does not make sense considering paragraph 3 article 1.	Refer to the request for clarifications by UNCTAD.	Common-Wealth
	Article 15.3		Refer to request for clarification.	Article 3
Waiver of obligations	Article 16	Change CMT to ICM. Should a timeframe be included.	Refer to request for clarification. Unsure about support to the Commonwealth proposal	Common-Wealth
Labour market and integration agreements	Article 17	SADC annex refers to GATS article V bis for coverage. Reference is made to the request for studies on sectoral strategies. This might highlight this issue	Reference made to the request for studies on sectoral strategies and the one for general relations to GATS	Nathans
Consultations and dispute settlement	Article 18	The draft annex is very generic in its language, makes reference to the articles in the SADC Trade Protocol. It is proposed to include the relevant articles from the SADC Trade Protocol. Mozambique has a process going on changing the dispute settlement procedure in SADC.	Make a reference to the ongoing process on dispute settlement and the Mozambican position there. Debatable if there is a point in making the references to the articles as this is in the same document.	Commonwealth Nathans