

THE IMPACT OF NON-OPERATIONALISATION OF THE SADC PROTOCOL AND INTERNATIONAL TRANSPORT AGREEMENTS ON CROSS BORDER ROAD TRANSPORT MOVEMENT IN THE SADC REGION

K Monyepao

Cross-Border Road Transport Agency, P.O. Box 560, Menlyn, 0077, PRETORIA
South Africa

Tel: +27 12 348 1357

Official Email: Kaine.Monyepao@cbrta.co.za

Private Email: monarchyjkm@icloud.com

ABSTRACT

The failure by Southern African Development Community (SADC) countries to fully implement the SADC Protocol on Transport, Communications and Meteorology (the Protocol) and bilateral agreements in regard to road transport negatively impacts the seamless movement of cross border road transport and significantly contributes to the challenges faced by the cross border industry as a whole. The full implementation of the Protocol in regard to road transport, and bilateral agreements would lead to efficient cross border transport regulation and transportation and in turn culminate in reduction of challenges facing the sector. This would lead to reduction of transportation costs, improvement in productivity, and accelerated growth in intra-regional trade, regional economic integration and overall SADC socio-economic development. This paper outlines the extent to which the provisions of the Protocol and bilateral agreements have been implemented by SADC countries and the key challenges emanating from the partial operationalisation of the instruments. The paper is based on findings from engagements with key government and private sector stakeholders in the regional transport environment and various research conducted by the C-BRTA between 2011 and 2014. The partial operationalisation of the instruments has resulted in disjointed regulatory frameworks and inability to: holistically address corridor constraints/ non-tariff barriers, facilitate seamless cross border movements, facilitate liberalisation of access to transport markets in the region, harmonise standards and procedures, and facilitate economic growth and trade between SADC countries. It is possible for the SADC region to realise the aspirations set out in the Protocol and bilateral agreements, and this paper outlines some of the solutions.

To begin with, there is need for SADC countries to embrace the need to eradicate the existing self-centric regulatory approach limited to micro-needs and market protectionism. This would need to be underpinned by strong orientation towards the need to achieve macro benefits emanating from a regional perspective in regard to regulating cross border road transport movement. Taking off from this departure point, SADC countries can objectively establish a solid ground towards fully operationalising the Protocol and bilateral agreements. This paper outlines some of

the interventions that can be implemented to ensure SADC countries fully operationalise the provisions of the Protocol on transport and bilateral agreements.

1 INTRODUCTION

This paper endeavours to outline the impact of the non-operationalisation of the SADC Protocol on Transport, Communications and Meteorology (the SADC Protocol) in regard to transport matters, and bilateral road transport agreements on cross border road transport movement in the SADC region. Given the geo-economic landscape of the SADC region, the significance of the SADC Protocol and bilateral road transport agreements towards the overall successful delivery of developmental aspirations of the region need not be over-amplified. Thus, Chibira and Mathetha asserts that “the Protocol recognises the geographical interdependence of transport, telecommunications and meteorology in the region, and that failure to implement regionally integrated transport, telecommunications and meteorology strategies would be detrimental to the SADC region”. Thus, overlooking the need for the complete implementation of the instruments will only serve to retard the region’s potential.

Reality in the SADC cross border road transport environment suggests that countries in the region need to do more in order to reach a point where they effectively facilitate cross border road transport movement, which in itself is measured by the extent to which regulatory authorities enhance corridor performance, improve cross border journey times, reduce transport costs, improve safety levels, enhance prevailing regulatory requirements, reduce non-tariff barriers and constraints, and reduce extent of delays, among others.

The SADC cross border road transport industry faces many challenges ranging from fragmentation in the regulatory and legislative framework to disharmony in policy, institutional architecture and mandate between regional countries. It is further attested by Chibira and Mathetha that “notwithstanding progress being made, the region faces severe transport challenges that range from disjointed planning and policy setting at regional level to inefficient transport regulation, lack of intermodal integration, inefficient transport management and governance systems, insufficient and poorly maintained infrastructure which culminates in poor regional connectivity, network inefficiencies, low transport system productivity and reduced economic integration”.

The consequence of these challenges are manifested by failure by the cross border road transport industry to effectively enable road transport to advance the regional agenda on improving intra-Africa trade, reducing the cost of doing business, facilitating regional integration and regional trade. Furthermore, at an operational level this is manifested by inadequate stakeholder coordination, duplication of processes and procedures, inefficiencies in managing transport externalities, disharmony in standards and operating procedures, and non-implementation of high impact regulatory mechanisms that would facilitate unimpeded flow of traffic by regulatory authorities. In regard to transport operators, this is manifested by heavy corridor delays and congestions, high transport costs, limited network throughput and productivity among many other symptoms.

In 1996, SADC countries ratified the SADC Protocol and some went on to conclude bilateral agreements on road transport. The essence of these instruments is to enable countries to facilitate cooperation and coordination in regard to advancement of the development of the cross border road transport industry, provide a common platform for the regulation and facilitation of cross border movement in the region and at bilateral level.

Each SADC country is expected to fully implement the provisions of the SADC Protocol and bilateral road transport agreements which were ratified with a view to enable the efficient movement of cross border road transport. However, the SADC Protocol acknowledges that it is not realistic for all regional countries to implement the agreements at the same pace but never the less effort should be put towards progressive implementation by all countries.

This paper established that some SADC countries have so far partially implemented both the Protocol and bilateral agreements and this has not done any good to the cross border road transport industry in regard to facilitating seamless cross border movements and addressing the challenges faced by transport operators. The fact that SADC countries have not fully operationalised the SADC Protocol and bilateral agreements significantly contributes to the challenges that are faced by transport operators. It is from this perspective that this paper unpacks the impact of the non-operationalisation of the SADC Protocol and bilateral agreements in the SADC region. In order to achieve this aim the paper outlines the extent to which the provisions of the Protocol and bilateral agreements have been implemented and the major challenges emerging from partial implementation of the same.

In fulfilment of the aim, the paper focuses on the road transport component of the SADC Protocol and bilateral road transport agreements concluded between South Africa and Malawi, Mozambique, Zambia and Zimbabwe.

2 BACKGROUND

2.1 The SADC Protocol and Bilateral road transport agreements

The SADC Protocol was ratified in 1996 by twelve countries (namely Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe) with a view to “establish viable and sustainable transport, communications and meteorology systems” (SADC Protocol: 1: 1996). The Protocol provides a broad framework within which countries in the SADC region cooperate towards enabling and facilitating efficient cross border movement in support of regional trade, regional integration and socio-economic development. The Protocol also provides a framework for countries to conclude bilateral road transport agreements which in essence seek to enable the efficient operation of cross border road transport between the respective countries with a view to promote, facilitate and regulate movement of road freight and passenger transport. In a nutshell the objectives of the SADC Protocol in regard to cross border road transport are to facilitate transport movement between and through territories of fellow SADC countries, reduce constraints that may hinder seamless movement, advance harmonisation of standards and operating procedures, advance self-regulation, facilitate market liberalisation, improve the containment of transport

externalities, reduce non-tariff barriers, enhance productivity, and enabling transport to play its strategic role in support of regional trade, regional integration and socio-economic development of the region.

Bilateral road transport agreements are very much operational instruments that are meant to promote, facilitate and regulate the movement of road freight and passenger transport between countries. They provide for and determine the conditions of carriage of goods and passengers, need for harmonisation, vehicle documentation requirements, compliance to traffic regulations, market access and establishment of relevant structures (namely Joint Route Management Committees and Joint Committees) responsible for resolving mainly non-tariff barriers faced by operators on specific corridors.

Furthermore, bilateral agreements seek to advance equal treatment of operators from the countries as well as providing for reciprocity in handling cross border operator matters. In essence, they exist to enable the countries to cooperate and facilitate sustainable and productive cross border road transport operations. The provisions of both the SADC Protocol in regard to operational road transport scope, and bilateral agreements are operationalised by competent authorities in the respective SADC countries.

Given this brief it is perceived that the full implementation of the Protocol and bilateral agreements would lead to efficient cross border transport movement facilitation and regulation and in turn culminate in reduction of challenges facing the sector. This would lead to reduction of transportation costs, improvement in productivity, and accelerated enhancement of cross border road transport's capability to support intra-regional trade, regional integration and overall socio-economic development of SADC.

2.2 Role of C-BRTA in the implementation of the Protocol and Road Transport Agreements

The Cross-Border Road Transport Agency (C-BRTA) is the competent authority that regulates the movement of cross border road transport between South Africa and SADC counterparts. The Agency's mandate is informed by various legislative instruments that include the SADC Protocol, the Cross-Border Road Transport Act, 4 of 1998, the Transport Deregulation Act 80 of 1988 which gives effect to bilateral agreements. The C-BRTA implements the operational scope articulated in the SADC Protocol and bilateral transport agreements with a view to facilitate efficient and seamless cross border road transport movement. This requires that the Agency in consultation with stakeholders in the SADC region develops programmes, regulatory tools and strategies that enable the effective regulation and facilitation of cross border movement, reduction of constraints and non-tariff barriers, unimpeded flow of traffic, market liberalisation, self-regulation and overall development of the sector.

3 THE STUDY DESIGN

The data used in compiling this paper was gathered from both primary and secondary sources. Literature review was conducted in the main to gather data on the provisions and requirements of the SADC Protocol and bilateral transport

agreements on cross border road transport. Stakeholder engagements were held between the Agency and other transport regulators in neighbouring countries as well as transport operators. Key data in regard to the extent to which countries have implemented the SADC Protocol and bilateral agreements was gathered from Joint Route Management Group and Joint Committee meetings held with respective countries. The C-BRTA also hosts Transport Operators' Forums every month. The Forum is composed of both freight and passenger cross border road transport operators. In these meetings transport operators were provided with a platform to present challenges experienced along regional corridors ranging from tariff to non-tariff barriers, constraints, legislative and unfair treatment.

The author was able to deduct the practices and exercise of regulatory authorities in the region which in essence gives an indication of what has been and has not been implemented. Thus, the data used in compiling this report is reliable for purposes of making deductions on the impact of the non-operationalisation of the Protocol and bilateral agreements on cross border road transport movement.

Furthermore, this paper was informed by findings from previous research conducted by the C-BRTA between 2011 and 2014 namely 'The Business Case for Corridor and Border Management Reform, and 'The impact of overlapping Regional Economic Community membership on cross border regulatory framework and regional integration. Both studies were strongly informed by data gathered through surveys. During the surveys data was gathered through questionnaires and face to face interviews with cross border industry stakeholders including regulatory authorities in the region. Field tours were also conducted to experience the challenges faced by operators on regional transport corridors.

4 FINDINGS AND RESULTS

4.1 Progress in regard to operationalising the SADC Protocol and Bilateral Agreements

The SADC Protocol and bilateral agreements have only been partially implemented in the region. There is no one country that implemented all the provisions of the Protocol and bilateral agreements. Furthermore, countries are at different stages of implementing the agreements.

One of objectives of the SADC Protocol is to liberalise market access in the region. In the status quo access to the cross border transport market is regulated. To date the transport market is still demarcated along national boundaries. Cabotage is only permitted in situations where the domestic operators are not able to provide certain transport services. Thus, in the SADC region the liberalisation of market access objective has not been operationalised.

Implementation of the SADC single permit has not been achieved in the region. Market access to the cross border road transport sector is based on permits issued by individual countries. These permits are mutually recognised in the countries with which each country has bilateral road transport agreements. It is fact that the SADC region has not implemented the single regional permit.

In regard to operationalising harmonisation, there are still variations in regard to documentation, vehicle standards, driver training and competence requirements, law enforcement procedures, permit administration and requirements among others. In the main the regulatory framework in the region has remained fragmented with evidence of variations in regard to the regulations governing the sector between countries.

In regard to the provisions of the agreements in respect to law enforcement, not much has also been operationalised. Examples of the gaps are in regard to definition, classification of penalties, sanctions applicable in case of transport operators committing offences, and training of law enforcement officials. However, some progress has been made in regard to conducting joint law enforcement.

The SADC region is also experiencing deficiencies in regard to the obligations that are required from transport operators in regard to driver competence, driving times and driver health related issues. Operationalisation of these is limited in the region.

The SADC Protocol requires countries to harmonise vehicle standards, dimensions, combinations, vehicle testing, frequency of testing and testing procedures, permissible axle mass limitations, and conditions of abnormal and awkward loads transportation among others. This has not been fully implemented as yet in the region.

The Protocol further requires countries to harmonise third party insurance systems which has not been implemented as yet. While some countries are using the yellow card system, other countries mainly in the SACU region adopted the fuel levy system.

The setting up of Transport Route Management Groups (to facilitate a partnership approach towards management of cross border transport services) has not been fully implemented in the majority of regional corridors serve for the Trans-Kalahari Corridor and Maputo Corridor. Against these limited success in operationalising the agreements some countries have however managed to establish joint route management committees and joint committees as required by bilateral agreements.

In as far as countries are required to introduce self-regulation in cross border road transport, very little has been done. At the moment self-regulation is still a concept to be tried in the region. Self-regulation is beginning to be part of major regional transport structures discussions but on the ground there is not much that has been operationalised.

Market liberalisation has not been operationalised in the region. This has had an impact on the development of the cross border road transport sector in the region.

The need to establish information management systems based on corridors has not been implemented in the region. Where and when this has been attempted the information is in incompatible format and standards.

The agreements also requires that countries implement measures that facilitate free flow of goods and passengers in the region, reduces non-tariff barriers and enable

seamless cross border movements. Evidence on the ground suggests that SADC corridors are still heavily congested and face many challenges including operational constraints. However, countries are attempting various programs and reforms to overcome the limitations. Thus, this requirement has not been operationalised.

According to both the Protocol and bilateral agreements transport should serve as a facilitator to the attainment of regional integration, socio-economic development and improving intra-Africa trade. Currently major corridors are not optimally performing due to inadequate infrastructure and rising traffic volumes. The ability of transport to support regional integration, socio-economic development and trade is a function of how cost effective, efficient, reliable and dependable it is. In this regard cross border road transport in the region has not developed to achieve all of this particularly on busier corridors.

Simplification of administrative procedures in regard to cross border road transport within countries and along corridors has not been operationalised. This culminates in more costs to operators, loss of productive time and under optimisation of resources. This paper established that transport operators are subjected to many administrative requirements in the region and this is worsened by the fact that many regulatory authorities' systems are paper based and not integrated.

4.2 Impact of the non-operationalisation of the Protocol and Bilateral Agreements

The non-operationalisation of the SADC Protocol and bilateral road transport agreements in the region has numerous negative impacts. Some of the notable impacts are:

- Disjointed regulatory frameworks in the region that serves in the main to satisfy domestic road transport policies at the expense of regional transport agenda;
- Limited coordination and cooperation opportunities particularly in regard to development of programmes aimed towards facilitating unimpeded cross border movements;
- Too much red tape and administrative procedures in regional corridors;
- Limited success by regulatory authorities to proactively address transport operators needs and transport externalities;
- The ability by regulatory authorities to enhance cross border road transport to play its strategic role towards trade facilitation, regional integration and economic development is compromised;
- Retardation of progress towards enabling the region to further develop the cross border road transport sector;
- Preclusion of possible solutions to challenges facing the sector due to non-alignment in the environment;
- Network and corridor performance is compromised;
- Too many and long delays in corridors;
- Productivity in the sector is compromised;
- Under optimisation of resources;
- High cost of doing business in the cross border road transport sector; and
- The delivery of mandate by regulatory authorities is compromised.

It was observed that where and when the impacts of the non-operationalisation of the agreements exist, cross border transport systems tend to perform poorly. One major output of this fact that was noted is that cross border road transport in the region may not be able to play its strategic role towards enabling the attainment of regional aspirations. Furthermore, it was also noted that transport agreements may also fail to achieve their objectives should they remain operationalised fully.

5 CONCLUSIONS

Based on the findings from the study the following major conclusions were drawn:

- 14 SADC countries ratified the SADC Protocol in 1996;
- There was no one country that has implemented the SADC Protocol and Bilateral agreements in totality;
- Countries have partially implemented the SADC Protocol and bilateral agreements;
- The non-operationalisation of the agreements has negative impacts on cross border movement in the SADC region;
- The non-operationalisation of the agreements is itself a huge constraint to cross border road transport movement in the region;
- The partial operationalisation of the agreements has resulted in:
 - Disjointed regulatory frameworks;
 - Inability to holistically address corridor constraints and non-tariff barriers
 - Limited ability to facilitate seamless cross border movements;
 - Non-implementation of liberalisation of transport markets;
 - Un-harmonised standards and practices; and
- Non-realisation of the full potential of cross border road transport to facilitate economic growth and regional trade in SADC.

It was concluded that the non-operationalisation of the SADC Protocol and bilateral agreements indeed has negative impacts on cross border road transport movement in the SADC region.

6 RECOMMENDATIONS

It is possible for the SADC region to realise the aspirations set out in the SADC Protocol and bilateral agreements. Some of the solutions lie in the fact that the countries need to fully implement the agreements. Some of the interventions that may be deployed to enable SADC countries to fully implement the agreements are:

- Domesticating the regional agreements into domestic road transport legislation;
- Institutional restructuring at country level with a view to capacitating regulatory authorities with adequate mandate over the agreements;
- Departing from self-centric regulatory models and migrating towards a regional approach with a view to realise the objectives of regional treaties;
- Political will is essential to ensure that regulatory authorities enjoy full support from political heads; and

- Providing adequate resources to cross border related authorities and adequate funding for initiatives and programs.

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