

No. 26994

**MALAWI
and
UNITED REPUBLIC OF TANZANIA**

Agreement concerning the Malawi-Tanzania corridor transport system (with protocols). Signed at Lilongwe on 15 August 1987

Authentic text: English.

Registered by Malawi on 29 December 1989.

**MALAWI
et
RÉPUBLIQUE-UNIE DE TANZANIE**

Accord relatif au système de transport du corridor Malawi-Tanzanie (avec protocoles). Signé à Lilongwe le 15 août 1987

Texte authentique : anglais.

Enregistré par le Malawi le 29 décembre 1989.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE REPUBLIC
OF MALAWI AND THE GOVERNMENT OF THE UNITED RE-
PUBLIC OF TANZANIA CONCERNING THE MALAWI-TANZA-
NIA CORRIDOR TRANSPORT SYSTEM

Preamble

The Government of the Republic of Malawi (the Government of Malawi) and the Government of the United Republic of Tanzania (the Government of Tanzania) (hereinafter referred to as the "Contracting Parties");

BEING desirous of further strengthening their economic and commercial relations in the spirit of the Southern African Development and Co-ordination Conference (SADCC Lusaka, 1980);

CONSCIOUS of the need of land-locked countries to have access to sea-ports and maritime transport and also of the importance of adequate transit traffic arrangements for the international trade and economic progress of such land-locked countries;

RECALLING the Third ACP/EEC Convention (Lome, 1984) to which they have subscribed;

TAKING into account the principles enunciated in the Convention and statute of Freedom of Transit (Barcelona 1921),² the Convention on Transit Trade of Land-Locked States (New York 1965),³ the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto 1973),⁴ the International Convention on Mutual Administrative Assistance for the Prevention, Investigation

¹ Came into force on 15 August 1987 by signature, in accordance with article XIX.

² League of Nations, *Treaty Series*, vol. 7, p. 11.

³ United Nations, *Treaty Series*, vol. 597, p. 3.

⁴ *Ibid.*, vol. 950, p. 269.

and Repression of Customs Offences (Nairobi 1977),¹ the Convention on International Multimodal Transport of Goods (Geneva 1980),² the Treaty for the Establishment of the Preferential Trade Area for Eastern and Southern Africa (PTA) (Lusaka 1981) and the Convention on the Law of the Sea (Montego Bay 1982);³

RECOGNIZING that the Republic of Malawi is a land-locked country dependent upon its neighbouring coastal states for access to the sea;

AWARE of the provisions of their bilateral Agreement Concerning International Road Transport (Songwe-Kyela 1984); and

WISHING to ensure the smooth and rapid movement of both goods in bilateral trade between themselves and the imports and exports of Malawi in transit through Tanzania;

HAVE AGREED as follows:

ARTICLE I

Objectives

1. The Contracting Parties agree that the purpose of this Agreement is to promote the use of Malawi-Tanzania Corridor transport System (hereinafter referred to as "the Corridor") for transit of the overseas trade of Malawi through Tanzania, for bilateral trade between them and for regional trade.
2. The Contracting Parties undertake to permit operations of the Corridor within the framework laid down in this agreement and its Protocols and to take all reasonable measures to enhance the efficiency and attractiveness of the Corridor to traders.

¹ United Nations, *Treaty Series*, vol. 1226, p. 143.

² United Nations Conference on Trade and Development Document, TD/MT/CONF/17.

³ United Nations, *Treaty Series*, vol. 1833, No. I-31363.

3. The Contracting Parties shall provide necessary facilities for such movement of goods in accordance with the provisions of this Agreement and its Protocols.

4. The Contracting Parties shall take all necessary measures -

- (a) for the expeditious and secure movement of traffic, the avoidance of unnecessary delays in the movement of goods and the simplification and harmonization of relevant documentation and procedures; and
- (b) to minimize the incidence of customs fraud and customs avoidance.

ARTICLE II

Definitions

In this agreement -

"Corridor" means the Malawi-Tanzania Corridor Transport System;

"right of transit" means the right agreed between the Contracting Parties for the passage of traffic in transit across their territories;

"TAZARA" means "Tanzania-Zambia Railway Authority;

"THA" means Tanzania Harbours Authority;

"traffic in transit" means passage of traffic across the territory of a Contracting Party with or without transshipment, warehousing, breaking bulk, cleaning, repairing, repacking, assembly, disassembly, reassembly of machinery and bulk goods, and change of mode and means of transport when any such operation is undertaken solely for the convenience of transportation, provided that such a passage is only a portion of a complete journey beginning and terminating beyond the frontier of the State across whose territory the traffic passes;

"transit" means passage across the territory of a Contracting Party when such passage is only a portion of a complete journey, beginning and terminating beyond the frontier of the State across whose territory the transit takes place;

"vessel" means any ship, barge, lighter or other water borne craft, whether self propelled or not, suitable for the transport of goods and freight containers.

ARTICLE III

Right of Transit

1. Each Contracting Party hereby grants to the other Contracting Party the right of transit through its territory under the conditions specified in this Agreement and its Protocols, subject and as provided for under paragraph 3 of Article 19 of the Treaty for the Establishment of the Preferential Trade Area for Eastern and Southern Africa (PTA) (Lusaka, 1981).

2. The Contracting Parties shall take all measures necessary for the safety of traffic in transit.

ARTICLE IV

Port Facilities

1. The Government of Tanzania undertakes to provide the necessary maritime port facilities and services for Malawi Cargo.

2. Protocol A to this Agreement contains agreed operating procedures at the port of Dar es Salaam.

ARTICLE V

Provisions relating to Fuel

1. The Contracting Parties agree that in order to facilitate easy delivery of Malawi oil products, the Malawi Railway Holdings Company

may, subject to the rules and regulations governing the storage and transport of petroleum products and taking cognizance of the adequacy of the existing facilities and the national interest and security, establish oil tank farms at a suitable site outside the port area to be granted by the Government of Tanzania and construct a pipeline from Dar es Salaam oil jetty head to the tank farms.

2. The tank farms shall be customs bonded areas and the fuel operator shall make necessary arrangements with the Tanzania Customs Authority.

ARTICLE VI

Condition of Transit Routes

The Contracting Parties shall take all reasonable measures to ensure that transit transport facilities under their control are safe, secure and in good condition, and further undertake to effect any repairs necessary to keep the routes viable for such traffic during all seasons.

ARTICLE VII

Road Transport

The Contracting Parties note that matters pertaining to road transport are dealt with in the Agreement between the Government of Malawi and the Government of the United Republic of Tanzania Concerning International Road Transport and its Protocols (Songwe-Kyela 1984).

ARTICLE VIII

Use of TAZARA

1. The Government of Malawi recognizes that TAZARA is jointly owned by the Governments of Tanzania and Zambia, and that therefore it is not under the exclusive control of the Government of Tanzania.

2. Malawi Railway Holdings Company may enter into an operational agreement with TAZARA for the carriage of goods, and to facilitate smooth operations, TAZARA may maintain an external account in Malawi to receive payment for services rendered to Malawi.

ARTICLE IX

Malawi Cargo Centre

1. The Contracting Parties agree that Malawi Railway Holdings Company shall lease suitable sites at Dar es Salaam and Mbeya and develop transshipment facilities from port to rail and/or road and vice versa, hereinafter called Malawi Cargo Centre Dar es Salaam (MCC Dar) and Malawi Cargo Centre Mbeya (MCC Mbeya) respectively.
2. Subject to relevant laws and regulations of Tanzania, Malawi shall operate its cargo centres referred to in paragraph 1 of this Article through whatever means and in whatever manner it deems to be appropriate.
3. The Government of Tanzania will maintain good road access to the MCCs, and in the event of temporary repairs shall provide an adequate alternative access.
4. In the event of any compulsory purchase order concerning an MCC site through land redevelopment or any other cause, the Government of Tanzania undertakes to provide an equivalent replacement facility with similar road, rail (TAZARA) and port accessibility prior to the time at which the Government of Malawi shall be required to give up the use of the initial facility.
5. Protocol B to this Agreement contains provisions relating to MCC activities.

ARTICLE XOwnership of Assets in Tanzania by Malawi

1. Malawi Railway Holdings Company shall provide movable equipment and spare parts for cargo handling at MCC and various other non-fixed assets such as office equipment and furnishings. The Malawi Railway Holdings Company shall be the legal owner of such non-fixed assets.
2. Malawi Railway Holdings Company may provide rail tank cars and spare parts for movement of liquid cargo between Dar es Salaam and Mbeya, and shall be the legal owner thereof.
3. Malawi Railway Holdings Company may, with prior written consent by TAZARA, provide other rolling stock and spare parts for movement of cargo between Dar es Salaam and Mbeya under the same terms as provided for rail tank cars and spare parts.
4. Cargo handling equipment and rolling stock owned by Malawi Railway Holdings Company may be hired out to natural or legal persons or entities in Tanzania under terms and conditions to be mutually agreed between the parties concerned.
5. The Government of Tanzania undertakes to allow Malawi Railway Holdings Company to import, tax free, materials and equipment that shall be used in the construction of the MCCs and the initial capital goods required for their operations.
6. The Malawi Railway Holdings Company shall be able to re-export without incurring any tax all assets acquired tax-free. If Malawi Railway Holdings Company shall decide to sell or hire out such assets in Tanzania to a legal or natural person or entity not entitled to tax-free privileges

for such assets, then Malawi Railway Holdings Company shall pay the required taxes.

ARTICLE XI

Customs Control

1. The Contracting Parties agree not to subject goods in transit which are destined to or consigned from the territory of the other Contracting Party and which are carried through their territories, to payment of import or export duties and taxes.
2. The Government of Tanzania undertakes not to impose customs requirements for the transit of Malawi Cargo that are more onerous than those applied to any other State whose cargo transit Tanzania and especially the Government of Tanzania shall take necessary steps to apply the provisions of Regulation 100 of the East African Customs Regulations (1970 Rev) as applied by Act No.19 of 1977.
3. The Contracting Parties note that customs provisions concerning road transport and border operations are dealt with in the Agreement between the Government of the Republic of Malawi and the Government of the United Republic of Tanzania concerning International Road Transport and its Protocols (Songwe-Kyela, 1984).
4. The Contracting Parties recognize that transit goods, are goods which are subject to Customs control, and as such, are liable for examination at the discretion of the customs officials. Therefore in accordance with the relevant Customs laws and regulations, the Tanzania Customs Authorities may, where irregularity is suspected, carry out partial or full examination of the transit goods. Such powers of examination shall be used judiciously.

5. The Government of Malawi shall provide suitable accommodation for Tanzanian Customs officials in the MCCs facilities. The Government of Tanzania shall provide Customs officials in accordance with existing administrative regulations.
6. The Contracting Parties shall use their best endeavours to ensure the prompt payment of import duties and taxes due and payable on goods in transit through their territories which shall not be accounted for at the expiry of the period prescribed in their respective regulations.
7. Subject to existing customs regulations, the Contracting Parties shall grant exemption from payment of import duties and taxes normally chargeable when it is established to the satisfaction of the Customs authorities that goods in transit from or to the territory of the other Contracting Party have been destroyed or are irrevocably lost by accident or by force majeure.

ARTICLE XII

Documentation Procedures

1. The Contracting Parties hereby recognize that procedures and documentation represent important cost and time elements affecting the efficiency of transit operations and agree to keep these costs and delays to a minimum.
2. The Contracting Parties undertake -
- (a) to keep documentation and procedures under continuous review in order to simplify and reduce them;
 - (b) to align their documents to the United Nations Layout key for Trade Documents; and

- (c) to harmonize, as far as possible, commodity codes and descriptions with those commonly used in international trade.

3. The Contracting Parties shall give at least 3 months advance notice to the other Contracting Party of any additional requirement or modification in prescribed documentation and procedures to be introduced in regard to traffic in transit and also bilateral trade.

ARTICLE XIII

Rates, Charges and Payment Arrangements

1. The Contracting Parties shall make and enforce reciprocal arrangements, either on a bilateral basis or through the PTA Clearing House, for the payment of all charges related to movement of cargo.
2. The Contracting Parties note that financial arrangements relating to road transport are dealt with in the Agreement between the Government of the Republic of Malawi and the Government of the Republic of Tanzania concerning International Road Transport (Songwe-Kyela, 1984),

ARTICLE XIV

Immigration

1. The Contracting Parties shall, subject to their laws and regulations, grant to persons engaged in bilateral trade and transit traffic between them who are subject to visa requirements multiple entry visas for periods corresponding to their expected duration of employment.
2. Nationals of the Contracting Parties shall not require visas to enter the territory of the other Contracting Party.

3. Subject to the relevant laws and regulations, the Government of Tanzania shall grant work permits and other documents required for Malawians and other foreign nationals that may be employed in managerial and technical positions handling Malawi's transit traffic in Tanzania, provided that the Government of Tanzania shall have the right to refuse the issue or to cancel such work permits and other documents issued to any national on security grounds or in the national interest.

ARTICLE XV

Miscellaneous

1. The Contracting Parties recognise that, for any punishable act or offence committed in the course of a transit operation, the laws and regulations of the Contracting Party on whose territory such act or offence is committed shall apply.

2. Subject to the laws and regulations of Tanzania the Government of Tanzania hereby agrees to allow the installation and use of radio communication facilities by MCC and road transport operators to facilitate control and coordination of traffic movements. Such radio facilities may be cross border into Malawi if required.

3. In case of natural calamities the Contracting Parties agree to make every effort to ensure a speedy and unimpeded flow of relief consignments through their territories.

ARTICLE XVI

Joint Committee and Competent Authorities

1. Competent Authorities of the Contracting Parties are named in Protocol C annexed to this Agreement.

2. The Competent Authorities of the Contracting Parties shall direct all matters concerning the implementation, application and operation of this Agreement and keep in view from time to time the possibility of using other routes such as the Mbamba Bay - Songea - Mtwara corridor. For this purpose they may establish a Joint Committee which shall meet not less than once each year, or within six weeks of a written request by either Contracting Party.

3. Issues which cannot be settled by the Joint Committee shall be referred to the Competent Authorities of the Contracting Parties.

ARTICLE XVII

Settlement of Disputes

1. Any dispute which cannot be settled by consultation between the Contracting Parties shall be settled by arbitration if so requested by either of them. In the event that the dispute is referred to arbitration, the Competent Authorities shall agree upon the appointment of an arbitrator or arbitrators. If agreement cannot be reached on such an appointment then the Competent Authorities shall request the Council of Ministers of SADCC to appoint a single arbitrator who shall not be a national of either of the Contracting Parties and to whom the dispute shall be referred for decision in accordance with the rules of arbitration of the United Nations Commission on International Trade Law.

2. The decision by the arbitrator or arbitrators, appointed under paragraph 1 of this Article concerning the settlement of the dispute and distribution of the costs of arbitration between the Contracting Parties, shall be final and binding on the Contracting Parties.

ARTICLE XVIIIAmendments

1. If either Contracting Party considers it desirable to amend this Agreement and its Protocols it shall request consultations between the Competent Authorities to begin within six weeks of such written request.

2. Any amendment to this Agreement and its Protocols which may be agreed upon between the Competent Authorities shall enter into force on a date to be fixed by an exchange of Diplomatic Notes.

ARTICLE XIXEntry into Force

This Agreement shall enter into force upon signatures, by representatives of the respective Governments duly authorized in that behalf.

ARTICLE XXTermination

This Agreement shall remain in force until terminated by either Contracting Party by giving twelve months notice in writing, provided that the obligations assumed by either Contracting Party prior to the notice of termination shall, to the extent necessary and previously agreed upon, survive.

DONE at Lilongwe on the 15th day of August 1987, in two original texts in the English language, both texts being equally authentic.

[Signed]

D. S. KATOPOLA M.P.
Minister of Transport
and Communications

For and on behalf
of the Government
of Malawi

[Signed]

MUSTAFA S. NYANG'ANYI M.P.
Minister for Communications
and Works

For and on behalf
of the Government
of the United Republic
of Tanzania

P R O T O C O L A

Port Operations with respect to Article IV

Pursuant to the provisions of paragraph 2 of Article IV of this Agreement, the Contracting Parties have agreed as follows:

1. The Government of Tanzania undertakes to make available sheds, warehousing and open storage space suitable for containers and breakbulk cargo and to provide and maintain in good working order all basic facilities and equipment required for access to and effective operation of traffic in transit through the port of Dar-es-Salaam to MCC Dar.
2. The Government of Malawi shall be free to require that its imports and exports pass through MCCs. All Malawi traffic in transit through Dar-es-Salaam or other Tanzania ports shall therefore pass through MCCs unless there are exceptional circumstances under which the relevant MCC management temporarily permits alternative arrangements.
3. Until such time when the UNCTAD documentation or PTA multimodal transit document is adopted, the current documentation system shall apply.
4.
 - (a) THA and MCC Dar shall enter into a mutually agreed operational arrangement for effective use of MCC Dar facilities. Such arrangement shall include Simplified Port Documentation, Delivery Procedures and the Operational Procedures.
 - (b) THA shall allow MCCC Dar to send tractor trailer units or any other suitable means of transport to receive and deliver cargo directly from or to the ships. If direct receipt or delivery is not possible Malawi transit goods, containerised as well as breakbulk will, whenever possible, be segregated into specific loading bays within port sheds or yards.
 - (c) The Bill of lading should show the MCC as the bailee of the cargo on behalf of the owner. Cargo shall therefore be consigned to "MCC Dar final Destination to Malawi."
5. With the approval of THA, MCC Dar may assist operation within the port in the event of difficulties being created by breakdown of port handling equipment or other causes which may adversely affect the smooth and expeditious movement of goods. THA shall pay MCC Dar a fee, mutually agreed upon for such services reflecting the cost of their provision. Other conditions relating to such use such as operation and liabilities may also be agreed between them.
6. Fees and charges assessed upon Malawi traffic for the use of a Tanzanian port shall not exceed those payable by other similar transit traffic obtaining similar port services in Tanzania. Where no handling is performed by THA a mutually

agreed discount shall be granted from standard handling charges to MCC Dar.

7. Such fees and charges shall not be changed without prior notification of at least one month communicated by telex, cables or facsimile to the Competent Authorities of the Government of Malawi and MCC management.

8. The Contracting Parties agree that the administrative and operational responsibility for all Malawi cargo operations taking place within Dar-es-Salaam port limits will rest exclusively with TMA.

9. MCC shall be nominated as a full member of the Dar-es-Salaam Port Advisory Council for the purposes of discussing issues of importance for the smooth transit of traffic through the port.

10. The Contracting Parties agree to continuously explore means of further improving the operation and documentation procedures.

P R O T O C O L B

Malawi Cargo Centres with respect to Article IX

Pursuant to paragraph 5 of Article IX, the Contracting Parties have agreed as follows:

1. The Malawi Cargo Centre - Dar es Salaam
 - (1) The facilities will be erected on a piece of land to be agreed upon by the Government of Malawi and the Government of Tanzania.
 - (2) The whole area will be fenced, power and water connected and properly lighted during the night.
 - (3) The cargo complex will include:
 - (a) container stacking and handling areas;
 - (b) port to port container stuffing/destuffing facilities including a stacking yard for empties;
 - (c) breakbulk facilities (shed plus open yard);
 - (d) fuel storage/loading facilities
 - (e) workshop facilities
 - (f) office space, including permanent office accommodation for customs as well as clearing and forwarding agents;
 - (g) parking space for handling equipment, tractors and trailers;
 - (h) power station;
 - (i) water supply station;
 - (j) entrance or exit gate and check points; and
 - (k) sanitary facilities.
 - (4) Malawi Railway Holdings Company shall have the right to erect buildings, provide equipment and facilities and carry out maintenance within the MCC sites conforming to the construction standards and safety regulations of the Government of Tanzania.
2. For the purpose of this Agreement, Malawi Cargo Centre at Dar es Salaam shall be considered as an inland port.
3. MCC shall require that Malawi Cargo, whether breakbulk or utinised should, as far as possible, be separately stacked on board in - bound vessels to allow sequential discharge.
4. Malawi Railway Holdings Company, in consultation with the Government of Tanzania, shall have the right to authorise any organization or enterprise to lease the MCCs and provide a through service between the port of Dar es Salaam and:
 - (i) MCC Dar;
 - (ii) MCC Mbeya; and
 - (iii) Chilumba in Malawi.

5. Subject to the relevant laws and regulation of Tanzania the organization or enterprises leasing the MCCs from Malawi Railway Holdings Company shall have the right to -
 - (a) sub-contract with TAZARA and road hauliers at its own discretion;
 - (b) sub-contract any other suitable organization or enterprises to perform day to day operation of the MCCs;
 - (c) erect buildings, provide equipment and facilities and carry out maintenance within the MCC sites conforming to the construction standards and safety regulations of Tanzania with the prior approval of Malawi Railway Holdings Company;
 - (d) erect, purchase or lease housing facilities for staff members;
 - (e) establish their own rates for the through services performed; and
 - (f) employ Malawians and/or other foreign nationals for managerial and technical functions within Tanzania.
6. To the extent that any business licence or permit of any kind is required for operating MCC services as outlined above, the Government of Tanzania shall grant such licences to the organization or enterprise concerned in accordance with the relevant laws and regulations of the Government of Tanzania.
7. The MCCs shall be customs bonded areas.
8. The MCCs may also participate in organizing road haulage of bilateral trade between Mbeya and Chilumba.
9. The Contracting Parties agree that the Management and maintenance of MCCs shall be the responsibility of the Malawi Railway Holdings Company and shall remain subject to the laws and regulations of the Government of Tanzania.

P R O T O C O L C
Competent Authorities

Pursuant to paragraph 1 of Article XVI the Contracting Parties have agreed as follows:

1. The Competent Authority for the Government of Malawi shall be the Minister for the time being responsible for Transport and Communications or any other person authorised by him.
 2. The Competent Authority for the Government of Tanzania shall be the Minister for the time being responsible for matters relating to transport or any other person authorised by him.
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