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# The Preferential Liberalization of Trade in Services: African Perspectives And Challenges

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## Abstract

This chapter takes stock of the state of play of preferential trade negotiations in services in Africa. It explores the factors that lie behind the reluctance of African governments to bind service sector policy under international treaties. The chapter chronicles several ongoing initiatives aimed at deepening intra-regional trade and investment among the eight regional economic cooperation areas found on the continent. It also describes external liberalization efforts engaging Africa with the rest of the world in services trade, devoting particular attention to negotiations underway with the European Community (EC) with a view to concluding WTO-compatible Economic Partnership Agreements (EPAs). The chapter draws attention to several novel features of the EC-CARIFORUM EPA in the services field and discusses its possible implications for Africa's ongoing processes of integration in services markets at both the intra- and extra-regional levels. The chapter concludes with a broader discussion of a range of policy challenges confronting African governments in designing development-enhancing strategies of engagement in services trade negotiations.

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**THE PREFERENTIAL LIBERALIZATION OF TRADE IN SERVICES:  
AFRICAN PERSPECTIVES AND CHALLENGES**

**Pierre Sauv  and Natasha Ward<sup>1</sup>**

**I. Introduction**

The world had witnessed a fevered push towards the preferential liberalization of trade and investment over the past two decades. Since the advent in 1994 of the WTO's General Agreement on Trade in Services (and in a few instances before it), the above push typically extends to trade in services.<sup>2</sup> The focus on services has come in light of increasing recognition both of their rising salience in world trade and investment and, most importantly, of the central influence that an efficient service infrastructure can exert on economy-wide performance.

If there was one region of the developing world where a focus on services as a means to lower punitively high trade costs, enhance the efficiency of resource use in upstream and downstream sectors, from extractive industries to agriculture, fisheries, manufacturing and other service sectors, and exploit new sources of comparative

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<sup>2</sup> See the chapters by Roy and by Sauv  and Shingal in this volume for a discussion of recent trends in service sector PTAs.

advantage, especially in labor-intensive services, it should be Africa. Yet the continent, North and South of the Sahara, has to date (and with few exceptions) largely eschewed *negotiated* market opening and rule-making in services trade and investment.

The African continent is indeed a reluctant latecomer to negotiations aimed at the progressive liberalization of trade and investment in services, a trend that sets it apart from most other regions of the developing world that have long chosen to anchor domestic reform efforts in legally binding commitments under international trade agreements. They have typically done so with a view to afford greater predictability to ongoing reforms and buttress investment climates.

This chapter takes stock of the state of play of preferential services trade and investment negotiations in Africa. The chapter is structured as follows. Part II explores the factors that lie behind the reluctance of African governments to bind service sector policy under international treaties. Part III chronicles several ongoing initiatives aimed at deepening intra-regional trade and investment among the eight regional economic cooperation areas (RECs) found on the continent. The analysis on offer reveals a starkly uneven pace of negotiating advances and policy implementation. Much, indeed, remains to be done to ensure that the ambitious blueprints for deepened integration across goods, services, investment and labor markets mutate from lofty political intent to concrete implementation. Part IV shifts the focus to external liberalization efforts engaging Africa with the rest of the world in services trade. By far the most important ongoing initiative is the series of negotiations underway with the European Community (EC) with a view to concluding WTO-compatible Economic Partnership Agreements (EPAs) featuring comprehensive (and potentially WTO+) disciplines on services trade and investment. Part V devotes particular attention to the EC-CARIFORUM EPA, the

only negotiation between EC and ACP member states to have produced disciplines on services trade and investment to date. The chapter draws attention to several novel features of the latter agreement and discusses the possible implications of such a precedent for Africa's ongoing processes of integration in services markets at both the intra- and extra-regional levels. Part VI offers a broader discussion of a range of policy challenges confronting African governments in designing development-enhancing strategies of engagement in services trade negotiations. In particular, the section suggests a number of options worthy of consideration in pursuing more comprehensive negotiating agendas, notably in light of the EC-CARIFORUM precedent and the likely need for adaptation flowing from a number of contextual, on the ground, considerations specific to the African continent. The section also draws attention to the need for African governments to pay special attention to the timing and sequencing of their market opening strategies in services and to be clear on how best to articulate and leverage the interplay between internal and external liberalization processes in services markets. Part VII offers a few concluding remarks.

## **II. A marked reluctance to commit to negotiated market opening**

Until very recently, African countries have shown a marked reluctance to incorporate provisions that liberalize or create disciplines for trade and investment in services in their regional integration arrangements. The vast majority of preferential compacts to which countries in the region are Parties do not contain provisions on trade in services . However, recent developments suggest that there has been some evolution of thought on the value of negotiating services pacts, at least within the intra-regional context.

While there has been progress in liberalizing some elements of services trade in the intra-regional context, for the most part, such market-opening continues to be driven primarily by autonomous decisions at the national level. Resistance to incorporating comprehensive services commitments and rules into PTAs has been most evident in agreements negotiated with developed countries. This is most vividly the case of ongoing negotiations between the EC and its African ACP partner countries, none of whom have to date reached agreement on a comprehensive economic partnership agreement extending to services trade and investment.

The reluctance depicted above reflects a number of defensive concerns common to countries beyond the African theatre but which have gained important policy traction throughout the continent. These include a fear that services trade liberalization may deprive African governments of needed policy space to incubate nascent service industries and the required freedom to regulate services markets in the public interest; recurring (and legitimate) concerns over the inadequacy of existing regulatory frameworks in implementing entry- and competition-promoting liberalization commitments; as well as a more general sense that the preconditions for facilitating increased trade in services have in many African economies yet to be put in place (Hoekman and Mattoo 2011).

Moreover, where services provisions do exist in preferential trade agreements (PTAs), the dominant pattern is for Parties to go no further than to reaffirm the level of commitments made under the GATS, with little or no additional disciplines or rules elaborated at the PTA level (see Table 1). With the notable exception of the Morocco-United States Free Trade Agreement of 2004 (which entered into force on 1 January 2006) featuring comprehensive, NAFTA-type, chapters on cross-border trade and

investment in services<sup>3</sup>, the above pattern has obtained regardless of whether or not the PTAs in question involve sub-Saharan or Northern African countries.

**Table 1. Main Features of Services Liberalization and Disciplines in African PTAs**

Reaffirmation of GATS Commitments	Commitment to Future Liberalization	Provisions on Right of Residence and Right Establishment	Liberalization Commitments and New Disciplines
SADC*	EC – Central African Interim EPA	ECOWAS	US – Morocco
SACU – EFTA	EC – EAC Interim EPA	EAC	EAC
Morocco – Turkey	EC – ESA Interim EPA		
Morocco – EC	EC – SADC Interim EPA		
Egypt – EFTA	SADC-EAC-COMESA Tripartite FTA		
Egypt – Turkey			
South Africa – EC*			
COMESA *			
Tunisia – EFTA			

\* Also commits to future liberalization.

Among other reasons fuelling Africa’s high level of policy precaution towards services trade - once again not unique to the continent but especially salient given the limited range of offensive export interests that characterize many countries in the region – is the fact that the key motivation of reciprocal access that pervades trade in goods negotiations appears less compelling for trade in services. Though there is a wealth of

<sup>3</sup> See <http://www.ustr.gov/trade-agreements/free-trade-agreements/morocco-fta>.

literature suggesting why governments may actively seek trade negotiations to improve their terms of trade, implement reforms that are opposed by strong domestic interests, and use international commitments to lock-in recent or foreseen policy reforms, in practice such rationales all seem to be less persuasive for services.<sup>4</sup>

The very structure of many African economies, largely attuned to agricultural and industrial activities and with generally weaker, more informal, tertiary activities, may prompt governments to believe that there is little to gain from making concessions in services. This may be particularly the case where domestic service suppliers are small and/or weakly competitive. In a number of sub-regions of the continent, there may be the added political dimension that only a narrow subset of larger regional PTA partners might be in a position to take advantage of a services pact. For example, within the Southern Africa development Community (SADC), South Africa is widely seen as the country with the most to gain from regional services liberalization. The same logic extends to Nigeria within the Economic Community of Western African States (ECOWAS) or to Kenya within the East African Community (EAC). Concerns over the ability of the domestic service providing firms to compete regionally, let alone globally, typically underlie such fears.

The relatively smaller share of the tertiary sector in many African economies tends as well to result in services being assigned a lower priority than goods in trade policy formulation. Continued high dependence on agriculture and various extractive industries means that services do not feature prominently in many African countries'

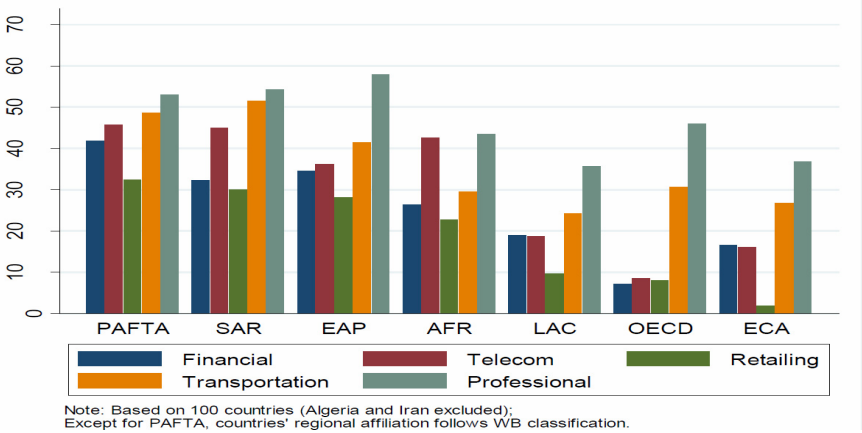
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<sup>4</sup> For a fuller discussion of the limits of reciprocal bargaining in services trade, see Hoekman and Messerlin (2000).

export, trade or industrial policies. Such a policy bias tends to be largely replicated at the regional level.

The above should not read as intimating that African policymakers are oblivious to the benefits of service sector reforms. The fact that unilateralism has been (and remains) the policy option of choice in many African countries services markets supports the above claim. Moreover, as Figure 1 shows, Sub-Saharan Africa (AFR) is not on the whole the region of the world that maintains the highest overall level of restrictions to services trade. Key service sectors are less contestable in much of the Middle East and North-Africa (PAFTA), South Asia (SAR), and East Asia and the Pacific (EAP).

**Figure 1. Services trade restrictiveness by region**



Source: Borchert, Gootiiz and Mattoo (2010).

Still, one is left with a sense, epitomized in the current EPA imbroglio with the EC, that engagement in services negotiations is not widely considered as a priority means of anchoring domestic reforms in services markets. Autonomous reforms are preferred as



they are seen as reducing the need for reciprocity-driven negotiations. Engaging in deeper regulatory co-operation is another avenue that is being explored by African policy-makers. Promoting regulatory convergence and, where feasible, policy harmonization, has notably been explored through the establishment of various land transport corridors given the sector's central impact on trade facilitation and its strong links to agriculture, mining and manufacturing. However, neither of the above approaches – unilateralism and non-binding regulatory convergence - is devoid of pitfalls. Autonomous reforms may help address issues facing established service providers (both domestic and foreign), but will do little in expanding markets or tackling impediments abroad. For their part, gains from closer regulatory co-operation will typically depend heavily on the willingness (and capacity) of partners to implement promised reforms. The gains from services liberalization typically need to rest on concurrent investments in strengthening regulatory regimes and institutions so as to ensure that the market generates outcomes which support competition, tackle market failures in an economically efficient manner while also addressing non-trade objectives such as social equity. Concerns over the adequacy of many African countries' regulatory regimes and the ability to regulate contestable services markets clearly constrain effective participation in services negotiations (Brenton *et al.* 2010). Indeed, the appetite for services liberalization faces acute human resource, technical, institutional and financial constraints in many parts of the Continent, particularly so in least-developed countries.

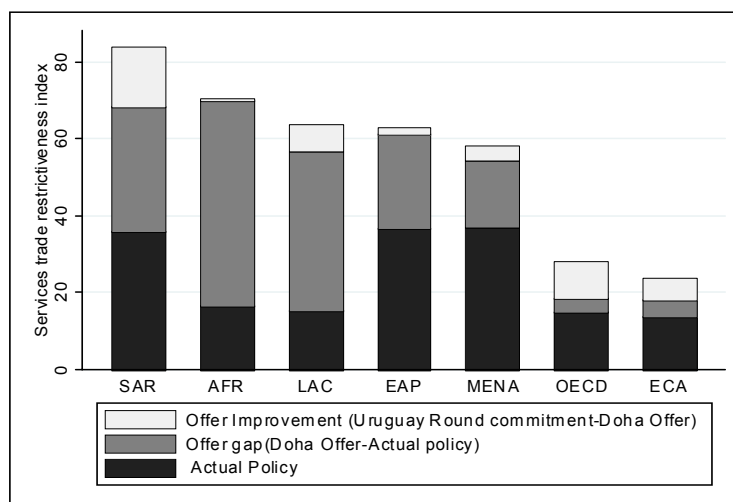
The fact that Africa accounts for only 2.3% of world commercial service exports<sup>5</sup> and, more significant still, that 33 of the world's 48 least developed countries (LDCs) are found on the continent, clearly goes some way in explaining the generally low level of

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<sup>5</sup> A year end 2010 figure as reported by the WTO (2011).

appetite for – and defensive posture towards - services negotiations. To some degree, such policy precaution reflects the limited pressure that many African governments have faced at the negotiating table. This is particularly the case at the multilateral level, where notions of a “round for free” or the working assumption that LDCs need not make new or improved commitments in services under the WTO’s Doha Development Agenda, explains – indeed almost justifies - why Africa stands out as the region with the greatest revealed preference for maintaining a large wedge between domestically decreed (i.e. applied regulations) and internationally bound policies in services trade and for refusing to improve on its Uruguay Round commitments in the DDA (see Figure 2).

**Figure 2. Offers on Trade in Services in the WTO Doha Development Agenda**

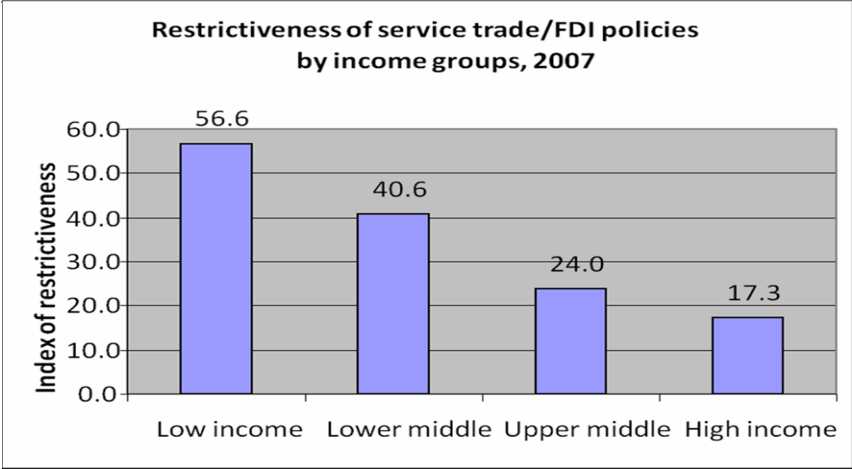


Source: Gootiiz and Mattoo (2009).

The above (arguably perverse) negotiating incentives, and the putative development assumptions on which they rest, require greater critical scrutiny, all the more so when one considers that the development prospects of low-income countries, a majority of

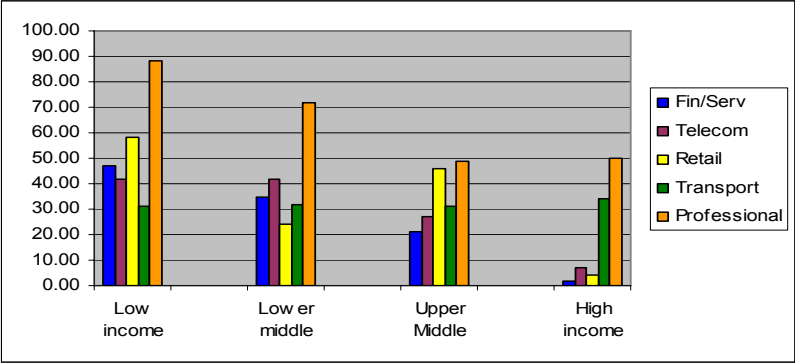
which are found on the African continent, can hardly be best served by maintaining the highest aggregate and sector-specific levels of trade and investment restrictiveness in key service sectors, as Figures 3 and 4 below reveal.

**Figure 3**



Source: Gootiiz and Mattoo (2009).

**Figure 4. Services trade restrictiveness by sector and income groups**



Source: Gootiiz and Mattoo (2009).

A final factor at play may be the low(er) level of engagement of the African business community. To some extent, this mirrors the unbalanced economic structure of many African economies depicted above. If services negotiations and their regulatory intricacies remains relatively novel for African policy-makers, it is even more so for the continent's business community. While there is generally adequate awareness within business support organizations, most service supplying firms lack knowledge on how trade negotiations can serve as a tool to secure enhanced access to foreign markets, address discriminatory practices therein and promote tangible improvements in (pro-competitive) regulatory frameworks in the domestic market. Durable improvements in countries' trade policy formulation processes require that greater efforts be directed towards reaching out to private sector stakeholders in the service sector and in making stakeholder dialogues more inclusive.

Moreover, by their very nature services form a highly heterogeneous sector. As such, some service industries have developed powerful lobbies, notably in banking and the regulated professions, while others have considerably less voice in shaping trade policy, particularly those sectors whose regulatory burden may be lighter. While a few national coalitions of services industries (CSIs) have been established to attempt to remedy the above deficit, in most countries of the continent no single voice addresses services issues in a coherent manner at the national or regional level. As is the case in most parts of the world, this results in a silo approach to the design of service sector policy, with industries liaising directly with their respective sectoral (regulating) ministries or agencies. Such a configuration heightens the scope for vertical protectionist or regulatory capture. It can also inhibit the emergence of whole-of-government

approaches focused on lifting sector-specific constraints negatively affecting economy-wide performance.

### III. Trends in intra-regional integration in services

A significant share of the trade and market integration that has taken place in Africa has been driven by the 1991 Treaty of Abuja, through which the 54 members of the African Union established the African Economic Community. The Treaty envisages a six stage integration process culminating in the creation of an African Common Market which is to be strengthened and consolidated through provisions governing the free movement of people, goods, capital and services as well as the rights of residency and establishment (see Table 2). The African Union recognizes eight regional economic communities (RECs)<sup>6</sup> as the building blocks of the African Economic Community.<sup>7</sup> To get a better sense of the progress registered in liberalizing services trade in the intra-regional context, developments within the RECs need to be scrutinized more closely.

**Table 2. Main Stages of Trade and Market Integration under the Abuja Treaty**

Stage	Activity
1	Strengthening of RECs
2	Intra-REC integration Inter-REC harmonization

<sup>6</sup> According to the United Nations Economic Commission for Africa, RECs have much broader agendas and objectives than conventional PTAs. As such, the strategic and political rationales which underpin the existence of the RECs may at times take precedence over economic integration aims. See United Nations Economic Commission for Africa (2010), p. 404.

<sup>7</sup> These eight RECs are: the Economic Community of West African States (ECOWAS); the Economic Community of Central African States (ECCAS); the Common Market for Eastern and Southern Africa (COMESA); the South African Development Community (SADC); and the East African Community (EAC); the Community of Sahel-Saharan States (CEN-SAD); the Arab Maghreb Union (UMA) and Intergovernmental Authority on Development (IGAD).

3	Establishment of PTAs in each REC Establishment of Customs Unions in each REC
4	Harmonization and Co-ordination of Customs Unions to establish a continent-wide Customs Union
5	Establishment of a Common Market
6	Strengthening and Consolidation of the Common Market Establishment of an African Monetary Union Adoption of a Common Currency

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### III.1 ECOWAS

The Economic Community of West African States (ECOWAS) ranks among the most advanced African regional grouping in services liberalization. The ECOWAS Treaty requires the Community to ensure the removal of obstacles to the free movement of persons, goods, services and capital, and to guarantee the right of residence and establishment. To date, ECOWAS has signed three supplementary Protocols on the free movement of persons, residence and establishment. The first Protocol provides for the free entry of Community citizens for a period of 90 days without a visa.<sup>8</sup> The second Protocol allows Community residents to reside in, seek and carry out income-earning employment in any member State.<sup>9</sup> The Protocol specifically refers to migrant workers, which are defined as nationals of Community member states who seek or propose to hold, are holding or have held employment. Special provisions are made for three categories of migrant workers - itinerant workers, seasonal workers and border

<sup>8</sup> Protocol A/P.1/5/79 relating to free movement of persons, residence and establishment, 1979.

<sup>9</sup> Supplementary Protocol A/SP.1/7/86 on the second phase (right of residence) of the protocol on free movement of persons, the right of residence and establishment, 1986.

workers. The third Protocol provides for the right of establishment and access for enterprises.<sup>10</sup> As is allowed under GATS Article V:6, the Protocol adopts a fairly restrictive rule of origin (denial of benefits clause) for investment limiting ECOWAS privileges to Community enterprises that are: (i) incorporated in accordance with the laws and regulations of the member states; (ii) have their headquarters, central seat of establishment or principal establishment within the Community; and (iii) conduct substantial business operations within any member state. The third Protocol also commits member states to offer non-discriminatory treatment to nationals and companies of other member states in matters related to establishment and provision of services. Provision is further made for the protection and promotion of capital for investment or for capital already invested in the establishment of an enterprise. Finally, the Protocol incorporates rules governing the movement of capital.

### **III.2 West African Economic and Monetary Union (WAEMU)<sup>11</sup>**

The Treaty establishing WAEMU, which is a smaller subset of the ECOWAS member states, confers the right of free movement of people, the right to provide services, the right of establishment and the right of residence to natural and juridical persons of its eight member states.<sup>12</sup> It further provides for non-discrimination in respect of the right to seek and engage in employment.

### **III.3 East African Community (EAC)<sup>13</sup>**

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<sup>10</sup> Supplementary Protocol A/SP.2/5/90 on the implementation of the third phase (right of establishment) of the protocol on free movement of persons, right of residence and establishment, 1990.

<sup>11</sup> See <http://www.uemoa.int/Pages/Home.aspx>

<sup>12</sup> Treaty Establishing the West African Economic and Monetary Union, 1996, Articles 91- 93.

<sup>13</sup> See <http://www.eac.int/>

The five EAC Member states have taken a progressive approach to liberalization, committing to the four freedoms - of goods, services, people and capital – plus the right of residence and establishment.<sup>14</sup> The EAC Protocol additionally sets forth the rules governing trade in services and member states have made GATS-styled commitments with phase-in periods commencing from 2010 to 2015. The initial round of intra-EAC services liberalization focused on seven core sectors: business, communications, distribution, educational, financial, tourism and travel-related, and transport services.<sup>15</sup> Member states have pledged to make additional commitments on the elimination of restrictions beyond these initial seven sectors after the entry into force of the Protocol.

### **III.4 Other regional initiatives**

Other intra-Sub-Saharan African PTAs have pledged to embark on the liberalization of services in the future. This is the case, notably, of the Common Market of Eastern and Southern Africa (COMESA) Agreement, which features provisions calling on Parties to negotiate a protocol on services and the right of establishment.<sup>16</sup> The Southern African Development Community's (SADC) Protocol on Trade also affirms the intention of the Member States to liberalize their services trade.<sup>17</sup>

#### **III.4.1 Common Market for Eastern and Southern Africa (COMESA)**

For some years, the 19 member states of COMESA<sup>18</sup> have been working on a GATS-type agreement on services to be coupled with separate disciplines on investment. This work

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<sup>14</sup> Protocol on the Establishment of the East African Community Market, 2009, Part C, D, G and E.

<sup>15</sup> Government of Uganda (2010), p. 8.

<sup>16</sup> COMESA Treaty, 1993, 164 (2)

<sup>17</sup> Protocol on Trade in the Southern African Development Community, 1996, Article 23.

<sup>18</sup> See <http://www.comesa.int/>



culminated in June 2009 with the adoption by the COMESA Council of Regulations on Trade in Services.<sup>19</sup> Novel aspects of the COMESA Regulations include the decision to liberalize air transport services, a trend found in few PTAs elsewhere on the continent and beyond; the improvement of procedures relating to the establishment of enquiry points to address service suppliers as opposed to governments and a “best endeavors” clause to process licensing and other services-related applications electronically.<sup>20</sup> In addition, the categories of natural persons covered by Mode 4 services trade have been defined clearly.

COMESA’s achievements to date include the adoption of guidelines for the negotiation of trade in services which would guide countries in the preparation of schedules of specific commitments and a negotiating roadmap. In addition, negotiations are set to commence on seven priority sectors in which member states will forego the right to maintain any restrictions beyond agreed transition periods. The priority sectors owe to their central infrastructural functions and their role in strengthening the competitiveness of economies. They are: financial, communication, business, transport, tourism, energy and construction and related engineering services. Efforts are currently being directed towards the preparation of negotiating offers.

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<sup>19</sup> The COMESA Council decided in June 2009 to: (i) prepare negotiating guidelines that could include possible priority sectors, modalities for negotiations and any existing commitments; (ii) submit the guidelines to member states who should give their inputs within two weeks of receiving the guidelines; (iii) write a letter to member states advising that the region had adopted a positive list approach to services liberalisation and upon adoption of the Framework. Member states shall submit their requests and offers to the Secretariat; (iv) consider the possibility of drawing a matrix of specific commitments on trade in services made by member states including at the WTO and other regional organisations; (v) consider the possibility of convening a meeting for negotiations after receiving the request and offers; and (vi) arrange capacity building activities for preparing schedules of specific commitment for interested member states. The Council further decided that: (i) the liberalization process shall be concluded by the Committee on Trade in Services and according to negotiating modalities to be established by member states taking into account the different levels of development among the member states and Special and Differential Treatment may be granted based on the level of commitments that will be submitted at a later stage of negotiations and (ii) the Liberalisation process under paragraph 1, shall be conducted with the aim of promoting the economic growth and development of the member states, in conformity with the principle of asymmetry. Special flexibility to such member states may *inter alia* take the form of: (a) a transition period for liberalization; and (b) opening fewer sectors or types of transactions.

<sup>20</sup> Markus Jelitto, Presentation at the USAID/ GIZ/ Southern Africa Institute of International Affairs Services Roundtable, Johannesburg, July 13, 2011.

### **III.4.2 Southern African Development Community (SADC)**

The 14 Member states of SADC<sup>21</sup> have reaffirmed their GATS commitments and committed to deepening service sector liberalization within the region. SADC member states are slated to commence the negotiation of WTO+ commitments upon the signature of a Protocol on Trade in Services by Heads of State/Government. The Protocol sets out the framework for the liberalization of services trade and serves as a basis for negotiations. Negotiations are scheduled to focus on six priority sectors: construction, communication, transport, tourism, financial and energy-related services.

### **III.4.3 Tripartite Agreement**

The member states of COMESA, the EAC and SADC have embarked on the ambitious path of establishing a PTA among the three RECs.<sup>22</sup> This PTA represents one of the three pillars of the so-called Tripartite Agreement, with the other two being joint investments in infrastructure development with a view to enhancing trade connectivity and reducing the cost of doing business as well as industrial development initiatives to address productive (i.e. supply-side) capacity constraints.<sup>23</sup>

The impetus driving the creation such a continent-wide PTA is the realization that the regional integration processes of the three RECs share a great number of similarities (in some cases identical priority sectors for instance) and that overlapping/multiple membership in the RECs required increased co-operation in policy development and

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<sup>21</sup> See <http://www.sadc.int/index/browse/page/52>

<sup>22</sup> COMESA, EAC and SADC Heads of State/ Government formally launched negotiations on the Tripartite FTA on June 12, 2011.

<sup>23</sup> Tripartite FTA Secretariat (2011), p. 4.

implementation. Clearly the intention is to promote economies of scale and scope in regional integration efforts, achieve a higher level of co-ordination in the creation of regional rule-making architectures while also supplying a host of regional public goods in the form of trade-facilitating transport and infrastructural projects such as the improvement of the operations of trade corridors.

There is little doubt that linking three incipient integration processes, none of which is individually much advanced, is likely to prove challenging given the differing levels of liberalization within each REC (see Box 1). This may perhaps account for the decision to delay the onset of services discussions until the second phase of Tripartite negotiations. However, it bears noting that services-related issues have not been completely sidelined. Some thematic areas such as the movement of business persons have been prioritized for negotiation in the first phase. Work is also proceeding on the liberalization of air transport services and the Tripartite has established a Joint Competition Authority to oversee the full implementation of the Yamoussoukro Decision on the Liberalization of Air Transport Services.<sup>24</sup> Moreover, through a broad ongoing initiative on trade facilitation, a host of barriers to road transport services are being addressed such as the harmonization of commercial truck driver immigration requirements and regulations. The latter two areas fall squarely within the remit of the infrastructure development pillar but in a manner that can yield clearly positive trade- and investment facilitating dividends.

**Box 1. A bridge too far? A proposed Tripartite agreement on services**

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<sup>24</sup> The Yamoussoukro Decision of 2000 is a multilateral agreement among most of the 54 African states which provides for the gradual liberalisation of scheduled and non-scheduled intra-African air transport services. See Schlumberger, Charles (2010), pp. 6-11.

The negotiation of a services agreement within the Tripartite Arrangement seems to be particularly ambitious in terms of its geographic scope. An important lesson emerging from the intra-African PTA experience is that it appears to be easier for a small number of states such as the five EAC member states to negotiate a services agreement. Moreover, this success was further buttressed by strong political will within that REC.

By contrast, opening the services markets of twenty-six member states is bound to be fraught with significant difficulty. Even the circumstances surrounding the creation of the services component of the Tripartite Arrangement are different as the RECs manifest varying levels of ambition with the EAC being the most ambitious and SADC appearing to be the least so. This is further compounded by the slow pace of progress in the RECs, with the exception of the EAC. Hence, it is anticipated that the extension of the Tripartite PTA to include services is likely to provide a strong challenge to member states. This is especially so as the outcomes and impact of services negotiations on the member states at the level of the RECs are at the moment unclear in the case of the EAC or simply unknown in the case of both COMESA and SADC (Kruger 2011). For this reason, the Tripartite services negotiations can only realistically commence after the completion (or significant advancement) of the integration process within the three RECs it aims to federate as the wider liberalization initiative needs to build on existing regional efforts and architectures.

There is likely to be an element of duplication involved in following this route. In addition, just as regulatory co-operation and coherence is key to reaping the benefits of services liberalization at the level of the REC, it will be even more so at the Tripartite level where the potential for ill-conceived or trade- and investment-restrictive regulations to detract from the economic benefits of increased competition may be higher with more member states being involved. Moreover, the risk of getting key elements of an integrated framework wrong could impose non-negligible (and difficult to reverse) costs on service providers. Achieving regulatory co-operation and coherence in the Tripartite context is likely to represent an uphill task for regulatory authorities as the human, technical and financial resources required to support such an ambitious undertaking will be considerable. The latter challenge represents a prime area where targeted donor support could provide much needed technical assistance. The experience of Kenya provides insights into difficulties at the national level of complying with a services PTA. While Kenya has reportedly made significant progress in implementing the EAC services provisions, it is struggling to establish the legislative and regulatory framework to support the EAC Protocol due to resource constraints (Ndegwa 2011),

Another important element in this scenario is the approach to the Tripartite services negotiations. It is not clear whether the Tripartite will see the RECs extending the preferences of each REC to other Parties to the Agreement or whether the RECs will be trying to secure a deeper level of commitments from each other (Kruger 2010) It will also be of interest to see how the unique elements of each REC's services agreements are incorporated into the Tripartite framework. Certainly, these critical elements ought to be subject to careful consideration well in advance of the negotiations to ensure that the services provisions in the Tripartite FTA go

beyond those in the RECs' FTAs. In the absence of such enhanced commitments, the added value of the Tripartite FTA's services pact (other than having expanded the geographic coverage of the concessions) might be questionable.

Overall, while the creation of a services pact in the Tripartite context is laudable and there are likely to be significant gains as a more competitive services sector supports economic activity throughout the enlarged region, the question remains whether there is sufficient political will to bring a services pact of such magnitude into being and whether member states will be able to mobilize sufficient resources to support the heavy institutional demands created by such an integrated market. The key challenge will be to devise a formula for the Tripartite negotiations which would be sufficiently ambitious so as to add value beyond the services agreements at the level of the RECs while at the same time still providing comfort to more reluctant member states.

As regards other RECs, there has generally been very little progress on services liberalization. Political instability and resource constraints (including trade-related human capital) have held back or postponed the implementation of agreed Protocols designed to facilitate the movement of goods and services in the Economic Community of Central African States (ECCAS).<sup>25</sup> Similarly the Inter-Governmental Authority on Development (IGAD) has not made much headway: this REC is currently planning a provision on a free movement of persons, services, goods and capital to be implemented through a Protocol. While the Treaty establishing the Community of Sahel-Saharan States (CEN-SAD) has as one of its main objectives the free movement of people and services, the CEN-SAD has yet to move beyond the process of drafting a Protocol on the free movement of people.

#### **IV. Trends in extra-regional integration in services**

In PTAs concluded between African countries and other *developing* countries outside the region, the Parties to the agreement tend to merely reaffirm their GATS commitments.

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<sup>25</sup> See United Nations Economic Commission for Africa, (2010), pp. 14 – 19.

Examples include the Egypt–Turkey FTA and the Morocco–Turkey FTA. In line with most of the African bilateral trade agreements which cover services, the Agadir Agreement among Jordan, Tunisia, Egypt and Morocco also reflects the GATS *status quo*. It is doubtful that such agreements has generated much by way of tangible new market access opportunities, nor do they appear to have generated much trade-facilitation traction through various regulatory cooperation initiatives.

Meanwhile, with few exceptions, the vast majority of PTAs concluded with *developed* countries outside of the African region feature little by way of WTO+ advances. In fact, a recurring thread running through the services chapters of the latter category of PTAs is the reaffirmation of the Parties' GATS obligations. As noted earlier, the only PTA representing a clear break with the above pattern is the US–Morocco FTA of 2004. This should perhaps not come as a surprise given the predominance of the NAFTA model championed by the United States, Canada and a number of South and Central American countries in their PTAs. The US–Morocco FTA is as encompassing as any of the latest generation of US FTAs, featuring all of the traditional panoply of provisions found in agreements commonly found in the Western Hemisphere: most favored nation (MFN) treatment, national treatment and market access obligations on cross-border trade in services and investment, a negative list approach to reserving non-conforming measures affecting both cross-border services and investment, disciplines on domestic regulation, separate chapters on telecommunications, financial services and electronic commerce, a denial of benefits clause with a liberal, substantial business operations, requirement as mandated by Article V.6 of GATS), prohibition of local presence requirements and a ratchet clause.<sup>26</sup> One notable exception is the lack of a chapter governing the temporary entry of business people. This reflects the fact that, since 2004,

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<sup>26</sup> For a description of US private sector views of the Morocco-US FTA, see <http://www.uscsi.org/publications/papers/06-15-04.htm>

the US Congress no longer directs the United States Trade Representative to address Mode 4 issues in the country's PTAs.

Neither the member states of the EC nor those of the European Free Trade Association (EFTA) have been able so far to achieve a similar outcome in their PTAs with African countries. This can be seen in the Southern African Customs Union (SACU)–EFTA PTA, which merely codify the GATS *status quo* and contain no new disciplines or expanded sectoral coverage in the services realm. A similar pattern is discernable in the EC-South Africa Trade, Development and Cooperation Agreement (TDA)<sup>27</sup>, , the EC-Morocco, Egypt-EFTA and Tunisia–EFTA free trade agreements.

An important development for the region was the December 2007 expiry of the WTO waiver granted to the EC for its preferential treatment of ACP partners. While the WTO decision related solely to trade in goods between the EC and its ACP partners, it nonetheless led to the launch of talks towards WTO-compatible comprehensive Economic Partnership Agreements (EPAs) whose stated aim is to extend the scope of EC-ACP ties in services trade and investment. To date, among all ACP partners, only the member states of CARIFORUM have agreed to a services compact as part of an EPA. None of the African member countries and sub-regions has so far agreed to such an anchoring.

Unlike the CARIFORUM group of the ACP, which considered an EPA with the EC as a unique opportunity to gain commercially relevant market access for services exports in line with the economic structure of the bulk of the region's economies, the four African

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<sup>27</sup> The 1999 EC-South Africa TDA called for future negotiations on services between the two partners. To date, no such negotiations have taken place.

ACP sub-regions have professed strong reluctance to making services commitments in their EPAs with the EC. Rather, SADC, the Eastern and Southern Africa (ESA), the EAC and the Central African sub-regions have all concluded interim EPAs dealing solely with trade in goods and signaled a commitment to *future* negotiations on services. Moreover, of the four African sub-regions, only the Central African states have to date reached agreement on a specific timeframe for concluding this element of the EPA negotiations - January 1, 2009. This deadline has since lapsed and negotiations have continued as with all other sub-regions but in the absence of a clear negotiating timetable. It bears noting that in those instances where individual African states have concluded an interim EPA with the EC due to the overall lack of consensus among the sub-regional grouping to which they belong, the commitment to negotiate on services is often weaker still. For instance, in the interim EPAs concluded by both Ghana and Côte d'Ivoire, there is little more than a commitment to facilitate measures leading to the conclusion of a global EPA including provisions on services trade.

Nevertheless, negotiations on disciplines and commitments on services and investment are currently underway in all regions. However, not all members of all sub-regions are involved in such negotiations. For example, only Botswana, Lesotho, Swaziland and Mozambique are engaged in the EC-SADC services discussions. Moreover, to add to the hemispheric confusion, a number of SADC member states are currently negotiating on services and investment with partners in the other sub-regions. For instance, Malawi is engaged in the EC-ESA negotiations. However, other member states such as Angola, South Africa and Namibia are not actively participating in this area of negotiations, but merely serving as observers.



The section that follows explores what a comprehensive EPA conducted along the lines of the recently concluded EPA between the EC and the member states of CARIFORUM could portend for the African ACP sub-regions.

## **V. The EC-CARIFORUM Economic Partnership Agreement: Possible impacts on African integration processes<sup>28</sup>**

The expiry of the World Trade Organization (WTO) waiver on December 31, 2007, which provided legal cover for the EC's preferential trade regime for goods originating from the ACP countries, coupled with the improbable likelihood of securing the waiver's renewal, signaled the end of non-reciprocal EC-ACP trade relations. Such a change in ACP countries' trading environment has so far spawned vastly different responses within the six ACP negotiating regions. These run the gamut from the CARIFORUM<sup>29</sup> group's decision to enter into a comprehensive EPA with the EC to the Interim EPAs signed by some members of the Pacific Region, SADC, West Africa, ESA and EAC, all of which as noted above apply solely to goods trade, leaving open the possibility of concluding more comprehensive EPAs in future.

The lack of consensus within the latter regions was vividly illustrated by the decision of some non-LDCs to opt-out of the interim EPAs, foregoing their preferential access to EC markets. Meanwhile, a number of least developed ACP members (LDCs) saw limited value-added in entering onto EPAs, preferring instead to continue to export under the

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<sup>28</sup> This section draws on Sauvé and Ward (2009).

<sup>29</sup> CARIFORUM stands for the Caribbean Group of the African, Caribbean and Pacific Forum. It refers to the fourteen member states of CARICOM (Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago) plus the Dominican Republic and for the purposes of the EPA negotiations excluded Cuba.

EC's Everything But Arms (EBA) initiative affording them non-reciprocal duty-free access to the EC market (but in goods trade only).

The signature on December 16<sup>th</sup>, 2007 of the EC-CARIFORUM Economic Partnership Agreement (EPA) drew a curtain on thirty years of preferential access to European markets enjoyed by Caribbean producers. Failure to negotiate a WTO-consistent trade regime was a luxury the CARIFORUM region could ill afford since the application of Europe's Generalized System of Preferences (GSP) would have disrupted trade as the majority of the region's exports to Europe would need to contend with higher levels of GSP import duties. The challenge for the region was thus to negotiate "a development friendly, asymmetrical, reciprocal agreement whose net welfare benefit... would be greater than that under the best available GSP" (Gonzales2008, 2).

In several regards, the CARIFORUM EPA exceeded the thresholds laid down under GATT Article 24 and GATS Article V to determine WTO-compatibility. The EPA also features many WTO-plus (i.e. improvements on existing rules and/or commitments) and GATS-X (i.e. new rules, sectors or commitments not covered by the GATS) provisions. The CARIFORUM EPA represents a significant departure from earlier trade arrangements between the EC and the CARIFORUM region by moving beyond goods trade and incorporating areas such as trade in services, investment, government procurement, competition policy and trade-related intellectual property matters.

Indeed, even while allowing for inevitable differences in the design and substantive content of EPAs to be concluded with the African and Pacific regions owing to

differences in economic structures, development levels and collective preferences, the argument can be made that the EC-CARIFORUM EPA has arguably set the bar for all subsequent EPA negotiations and perhaps indeed for future preferential trade agreements entered into by the EC.

Given the precedent-setting value of the EC-CARIFORUM EPA, some of the questions that are bound to be uppermost in the minds of trade officials of sub-Saharan African countries are: (i) what lessons can sub-Saharan African countries draw from the GATS+ and GATS-X provisions found in the EC-CARIFORUM EPA?; and (ii) which WTO+ or GATS-X elements found in the EC-CARIFORUM EPA elements hold the potential, if replicated in African EPAs, to stimulate development in these countries?

## **V.1 Precedence and innovation in services rule-design**

The EC-CARIFORUM EPA represents an important, precedent-setting, evolution in preferential trade agreements. The Parties essentially worked within the construct of a PTA to bring about a development dimension to their international trading arrangements. The Agreement underscores the fact that PTAs pitting highly unequal partners can nonetheless generate outcomes that offer tangible benefits to the weaker side. Such an approach may heighten the interest of lesser developed ACP partners to conclude EPAs and to potentially improve the terms on which they become increasingly integrated into regional and/or global production networks.

In several respects, the EPA can be considered a WTO+ agreement as it goes beyond the commitments and rules governing services trade in the WTO and creates a detailed (if far from comprehensive or fully coherent) framework of rules on investment.<sup>30</sup> The EPA also marks important advances, with novel forms of variable geometry, in addressing the issues of competition policy, government procurement, and in featuring an innovative set of cooperation activities for cultural industries, all areas that have encountered repeated and, in some cases, protracted, difficulties at the multilateral level.

The GATS+ character of liberalization is evident in CARIFORUM member states' commitments on a wider range of service and investment activities, particularly in key infrastructural sectors. EPA progress is significantly more limited however as regards the depth of commitments scheduled in areas where the Parties had already made GATS commitments. The GATS+ nature of EPA advances is also illustrated by improvements in access to the EC market for commercial presence and, especially, in regard to the temporary entry of natural persons and the treatment of cultural industries, even as the latter do not *per se* involve the granting of new market access commitments. The EC-CARIFORUM EPA has also broken important new ground in the tourism sector, an area of critical importance to CARIFORUM members (and most developing countries). The Agreement features a chapter dedicated to the sector in which a novel set of disciplines targeting the potentially anti-competitive conduct of large tourism intermediaries have been adopted. The latter disciplines complement the

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<sup>30</sup> Reflecting as it did at the time the still incomplete nature of Community competence over investment policy matters (such competence was shared with EC member states), the EC-CARIFORUM EPA does not cover issues relating to investment protection nor does it provide recourse to investor-state dispute settlement procedures. The latter continue to be covered by the dense network of bilateral investment treaties entered into and implemented by EC member states. The entry into force of the Lisbon Treaty in 2010 has extended full Community competence to the EC in the investment field, such that the texture and substantive remit of future EPA (and all other EC PTA) rules on investment may likely diverge significantly from the more limited architecture of investment rules embedded in the CARIFORUM EPA.

EPA's market access and national treatment commitments in the sector. Such disciplines have led to calls for the adoption of a GATS sectoral annex for the tourism sector, highlighting how PTAs can incubate best practices liable to migrate to the WTO level.

The EC-CARIFORUM EPA can be described as a successful attempt to give operational meaning to the principles and objectives of GATS Article IV (Increasing Participation of Developing Countries). This is so inasmuch as the EC has made evident efforts to respond to demands to open sectors and modes of supply of relevance to CARIFORUM states. This can also be seen in the EPA's concrete mechanisms to support the strengthening of domestic services capacity in a number of sectors and the improvement of CARIFORUM's access to distribution channels and information networks in the EC.

The biggest challenge facing CARIFORUM states lies in implementing the terms of the EPA. On the financial side, the funds and technical assistance made available through the European Development Fund (EDF) should help to ease the adjustment burden flowing from the agreement and help CARIFORUM service suppliers and investors to take advantage of newly opened market opportunities in EC markets. If the CARIFORUM region applies a similar level of commitment to the implementation process as it did to the EPA's negotiating process, the adjustment challenges arising from the Agreement should prove surmountable. Three years after the EPA's entry into force, this indeed seems to be the case. In entering into the EPA, CARIFORUM states at the highest level appeared convinced that there simply was no turning back and that survival in the global economy required a strategic repositioning of the region based in

part on some of the tangible advantages that the EPA could confer, notably in the services sector. Such pragmatism on the part of a small player eager to confront its vulnerabilities and diversify its economic tissue while also affording its ample supply of qualified workers, professionals and artists greater mobility and opportunities in world markets explains why CARIFORUM states ultimately opted for a comprehensive EPA. Whether a similar political resolve or innate export potential holds throughout the African region and its several RECs remains an open question.

## **VI. Possible lessons for African EPAs in services trade**

For the African members of the ACP grouping, it has long been clear that the EC considers EPAs as the best available option for structuring its trade, regulatory and development cooperation relationship with ACP partners. The African regional groupings thus need to evaluate what trading arrangements are best suited to satisfying their development goals based on a comprehensive strategy for sustainable development and poverty alleviation.

Countries in Sub-Saharan Africa are confronted with a range of options in deciding the basis upon which to pursue their trading relations with the EC. These include agreeing to a comprehensive, (asymmetrically) reciprocal EPA that delves beyond trade in goods into areas such as investment, services, government procurement, competition policy as well as cooperation in cultural matters, together with the attendant development assistance and technical cooperation provisions attached to the above.

Another option involves continued reliance on the EC's GSP scheme or, for the least developed ACP countries, continued benefits under the EC's Everything But Arms (EBA) initiative, the latter two forms of preferential treatment however being confined to goods trade only and not being permanent (i.e. they are not politically reversible) in character.

As regards more specifically the services and investment chapters of prospective EPAs, two main question facing African ACP members are: (i) whether they can use such instruments and their likely development finance and technical assistance attributes as useful developmental tools in addressing areas of priority export interest or in tackling key growth-impeding infrastructure bottlenecks; and (ii) how best to articulate and make cohere greater engagement with the EC, which for most African remains a predominant trade and investment partner, with the multiplicity of ongoing intra-African integration initiatives .

While there is no legal obligation stemming from WTO law compelling African countries to negotiate chapters on services, investment and other behind the border issues in an EPA context, there is little doubt that the EC expects that their EPAs with ACP partners to be comprehensive in scope and thus extend to trade and investment in services.

Given the marked differences in the economic make-up between the African groupings and the CARIFORUM, the services and investment chapters of EPAs concluded with African partners need not (and probably cannot) be as extensive as those found in the

EC-CARIFORUM agreement, and the various formulas of variable geometry that the latter agreement has generated could be further adjusted to relax the reciprocal nature of the EPA's rules and market access commitments while nonetheless satisfying the requirements of GATS Article V.

Embedding such chapters in a flexible manner in African EPAs could prove useful in enhancing domestic and regional investment climates and in promoting greater competition through new entry in service sectors of crucial importance to economy-wide performance, including in agriculture, fisheries, mining and manufacturing and in helping promote needed economic diversification.

An EPA compact on services and investment cannot be viewed merely as a stand-alone element. It must, rather, be seen as part of any determined effort at enhancing the infrastructure for trade and lowering the overall cost of producing goods and other services and bringing them to markets at home and abroad. The aid for trade components embedded into the EC-CARIFORUM EPA, including those specific to services and investment, are likely to be replicated in an African context. This would help ensure that efforts at progressively opening up key services markets are coupled with needed investments in capacity strengthening in service sectors, both in regulatory terms and in terms of private sector supply capacities.

In pondering whether to engage into EPA negotiations with the EC in these areas, African countries must determine the likelihood that the WTO process might yield equally tangible forms of needed capacity building benefits. They must also weigh such



benefits against the possible costs (and benefits) stemming from the deeper liberalization of services trade and investment likely to emerge from EPA negotiations (and needed to satisfy the substantial sectoral coverage and liberalization requirements of GATS Article V) relative to the WTO, where African members, especially LDCs, face considerably weaker pressure to make market opening commitments.

In solving the above equation, a number of important elements ought to be considered. First is the need to ensure that both the wider EPA and its services and investment chapters provide for development co-operation benefits that adequately support the implementation of any commitments made. A balance must indeed be found between the agreed rules and the commitments scheduled in services and investment chapters while also maintaining conditions of asymmetrical reciprocity.

Second, African EPA partners must get the timing and sequencing of their liberalization right. This is critically important both in the intra-regional and the EPA contexts. More so than the CARIFORUM states, most African economies will need more time to allow for the building up of regulatory and productive (i.e. private sector supply) capacities in services. Perhaps a first step would be to work within the EPA at building up such capacities and to backlog liberalization commitments on the part of African ACP members until such reasonable time that such capacity building efforts have generated visible institutional traction. Such a process could entail the gradual opening of those sectors in which the two elements noted above already exist – i.e. a readiness to open up progressively and the needed funding to ensure that regulatory, implementation and supply capacities are properly buttressed. Such a policy course is certainly in

consonance with the advice of that market access negotiations ought to be complemented by parallel processes that not only focus on improving services regulations and enforcement, but also on putting into place the regulatory cooperation that may be need to allow greater trade to occur.<sup>31</sup>

Third, the services and investment provisions in the EC- CARIFORUM EPA represent one of a range of possibilities for structuring relations in trade in services and investment policy. If, as seems likely, more flexibility is required, African EPA partners should pay particular attention to formulating their own proposals on the nature of required flexibilities.

The experience of the CARIFORUM countries offers several useful insights which can assist their African counterparts in the negotiations. For starters, the EC-CARIFORUM experience has shown that an EPA can be development friendly; however, there is nothing automatic in securing such an outcome and it requires vigilance at the negotiating table. African countries must be clear about their development strategy, place themselves in a position to articulate such a strategy and allow it to inform the development thrust contained in an EPA's services and investment chapters. Consequently, African countries need to engage in the necessary technical work to clearly identify their offensive and defensive interests and be clear on how they would want to see such interests crystallized in the context of an EPA's services and investment chapters.

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<sup>31</sup> See Hoekman and Mattoo (2011), *op. cit.*

Fears that the conclusion of an EPA will necessarily give rise to a more demanding or sovereignty-threatening framework of general trade and investment disciplines may be assuaged by two observations. On the one hand, the likelihood of the inclusion of investment and services rules in an EPA that are more fully developed or more constraining of domestic policy space than those found at the multilateral level appears low. In the EC-CARIFORUM EPA, there has been minimal progress on the bulk of the unfinished rule-making agenda of GATS, be it in the area of subsidy disciplines, emergency safeguards or domestic regulation/necessity.

On the other hand, the conclusion of a services and investment pact within the context of an EPA may be an effective means of redressing perceived imbalances in existing regulatory frameworks that might otherwise disadvantage African ACP member states. For instance, the perception that bilateral investment treaties (BITs) provide more rights than obligations to investors led CARIFORUM countries to use the EPA to embed greater rights for host countries.<sup>32</sup>

The CARIFORUM-EC EPA also illustrates that asymmetrical commitments and variable geometry in rule-making offer useful tools to structure services trade and investment relations between unequal trading partners. Significantly, such tools may be tweaked to encourage deeper and faster integration among developing countries before embarking on a later stage of integration between developing country partners and the EC. Such a process may arguably result in increased predictability and transparency in the intra-regional services and investment environment and confer first-mover

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<sup>32</sup> EC-CARIFORUM EPA, Article 72.

advantages to intra-regional suppliers (within the services and investment protocols of ongoing RECs) before external liberalization with the EC (or other developed countries) proceeds. The CARIFORUM experience is a case in point: thanks to earlier progress secured within the CARICOM Single Market Initiative), deeper levels of (prior) intra-regional integration arguably made the conclusion of an EPA with the EC significantly easier and less politically contentious. Hence an EPA can serve as an impetus to the more expeditious creation of more commercially meaningful intra-regional services and investment ties and strengthened regional regulatory frameworks tailored to the specific needs of Africa's various sub-regional country groupings.

Finally, a key lesson emerging from the EC-CARIFORUM service and investment compact is that EPAs may be a platform for the internationalization of the regulation of key service industries on a sector by sector basis. Actively strengthening regulatory frameworks can bring two benefits. First, developing country partners can, in an EPA context, push to ensure that their interests are taken on board in the tailoring of agreed regulatory frameworks. Second, they can ensure that fledgling regulatory frameworks governing key service markets are strengthened through targeted technical assistance funding and capacity building activities.

By insisting on the need to work towards sounder regulatory frameworks in sectors in which they have offensive interests, such as tourism, creative industries or labor mobility, African countries can better ensure that any future EPA disciplines on services and investment are not unduly skewed towards developed country objectives and interests. Given that the negotiation and implementation capacity of African countries is in most instances severely constrained, one priority issue area should be the provision of needed development co-operation assistance to ensure the fulfillment of

commitments in this regard. Many African countries have consistently identified weak regulatory capacity as a particular area which has hindered tangible progress and fuller engagement on the services front. A comprehensive EPA may represent a useful opportunity to push ahead in this specific area as the combination of binding commitments on the part of the African countries coupled with the provision of development assistance and financing from the EC holds potential for stimulating economic diversification into services.

While CARIFORUM states and African countries may share a number of common characteristics and negotiating interests, the negotiation contexts for these two groups of countries nonetheless reveal significant differences. One can point to several instances where similarities in legislation and regulatory frameworks between the EC and CARICOM likely facilitated the attainment of GATS+ and GATS-X outcomes in the EPA context. The level of regional integration achieved within CARICOM prior to entering into the EPA ensured that the region had either already put in place its own institutional arrangements on some of the GATS+/GATS-X issues at play in the negotiations (e.g. competition policy, a single market for services, intra-regional labor mobility and mutual recognition of professional qualifications, etc.) or was working on doing so (e.g. government procurement). Taking the next step of concluding a comprehensive EPA with the EC was thus hardly revolutionary.

The above combination of circumstances and the extent of regulatory convergence between regions characterized by sophisticated internal processes of integration and the attendant institutional machinery are less likely to obtain within African negotiating

sub-groups. As a consequence, certain elements of the EC-CARIFORUM EPA, such as disciplines on competition policy, transparency in public procurement or regulatory frameworks in certain sectors (such as e-commerce/digital trade), may not always be ripe for inclusion in an EC-African EPA. Accordingly, the range of behind the border issues to be tackled under such agreements may need to be narrowed.

## **VII. Concluding Remarks**

With few exceptions, the *negotiated* opening of services markets has not progressed much to date on the African continent, both North and South of the Sahara. This is notably the case at the level of intra-regional trade, where services tend to remain the weakest element of a large number of fledgling integration schemes. It is perhaps even more characteristic of Africa's relations with the outside world, most notably in the context of the stalled EPA negotiations with the EC, which have been marked by significant reluctance to anchor ongoing domestic reforms in legally binding treaty provisions.

African governments continue on the whole to profess considerable policy precaution in the field of services trade and investment, preferring to experiment with reversible autonomous policy change. Such revealed policy preferences are in many ways rational. They are, after all, to be expected of countries (e.g. LDCs) who have been told repeatedly at the WTO that they could sit back and enjoy a "round for free". Policy precaution also correlates with many salient characteristics of the continent's economic DNA, where heavy (excessive) reliance on agriculture and extractive industries,

punishing trade costs, particularly in landlocked countries, weakly competitive domestic service industries, a continued lack of negotiating capacity and, more important still, weak or incomplete regulatory regimes and equally deficient regulatory enforcement capacities, all impart a cautious bias to service sector policy.

Still, it is hard to see how governments in the region will meaningfully take up the imperative of economic diversification, support the insertion of African producers into regional and global supply chains in manufacturing, take advantage of a new international division of labour in remotely supplied services, meaningfully improve the transparency and efficiency of domestic and regional regulatory regimes and live up to the lofty aims embedded in the numerous integration schemes under negotiation without a serious commitment to the progressive liberalization of services trade and investment throughout the continent.

Continued reliance on autonomous reforms may well go some way towards securing the above objectives. At the same time, to reap the regional and global public goods likely to emanate from collective action on issues of regulatory cooperation and trade facilitation – the core of today’s services trade and investment agenda – African economies can ill afford to stay forever on the policy sidelines. While greater engagement in negotiated market opening and rule-making in services carries inevitable downside risks and needs to be sequenced properly so as to promote orderly adjustment, the progressive liberalization of services trade and investment affords African policy-makers with a centrally important *quid pro quo* with which to address trade policy priorities in more traditional sectors of export interest, address the many

obstacles that lie in the way of service sector export growth (which autonomous virtue cannot affect), while also committing the region to a path of deepened regulatory cooperation in sectors likely to exert far-reaching effects on allocative efficiency and economy-wide performance.

Greater engagement in services trade negotiations, both intra- and extra-regionally, including at the multilateral level, is also most likely to involve the supply of targeted forms of trade-related technical assistance and capacity strengthening without which durable improvements in service sector performance may not quickly materialize.



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