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Trade in Services Negotiations: Challenges and Way forward for the EAC

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Services Negotiations: An Introduction

Trade in services was first introduced in the multilateral trade negotiations during the Uruguay round that culminated in the General Agreement on Trade in Services (GATS), which entered into force in 1995 with the establishment of the WTO. The disciplines on services are generally aimed at promoting trade transparently including progressive liberalization through successive rounds of negotiations.

GATS Article XIX mandates the latest round of services negotiations that commenced in 2000. The major areas of negotiation are: Market Access; Domestic regulation; GATS rules on emergency measures, Government procurement and subsidies; and Implementation of Least Developing Countries (LDC) modalities on special treatment as spelt out in Article IV.3 of GATS.

Services Sector in EAC and its Significance

The services sector in the EAC has been continually growing over time and contributes significantly to the Gross Domestic Product (GDP) of the member countries – see table below.

Table 1: Percentage of Services of Gross Domestic Product of EAC Countries

YEAR	2009*	2010**	2011
Burundi	34%	35%	47%
Kenya	54%	55%	65%
Rwanda	49%	50%	52%
Uganda	51%	52%	52%
Tanzania	48%	48%	48%
EAC	51	51%	-

Source: UNCTAD, UNCTADstat 2009-2010, and 2011 estimates, Global Finance

Besides its substantial contribution to the EAC members GDP, the services sector is essential in facilitating development in the region through *inter alia* providing accessible and affordable infrastructural services like water, transportation, energy, and ITC (World Bank, 2003).

Among the reason for the EAC integration process was to accelerate economic growth in the regions and for this to be achieved an efficient services sector becomes very critical, given its centrality to inputs feeding into all other sectors. Ensuring competitiveness of the sector would lead to affordable inputs for the other sectors, hence development. This therefore means that services negotiations at the multilateral level have implications for the region and should hence be strategically undertaken to ensure that the regions potential can be harnessed.

Development of producer services is imperative for economic efficiency, especially infrastructural services such as telecommunications, financial and transport services that are critical for

competitiveness of goods and services export. Services have also got a social dimension in the case of health and education to mention but a few and ultimately contribute significantly to employment creation especially in the developing countries.¹

With the abundant labour resources, popular tourism sites endowed with rare species, large water bodies, and historic sites, the EAC has immense potential in services and therefore the need for a common strategy to effectively harness it and translate to development including through the multilateral trading system. Besides development of the services sector especially through exploiting the regions comparative advantage, offers an alternative means of diversification that would alleviate the regions over dependence on export of primary products.

Liberalisation of the services sector within the EAC has already made strides with the Protocol on the Establishment of the Community 2009 that was later launched into a common market in 2012, guarantees free movement of people, right of residence and establishment, goods and services. In the intra-EAC services liberalisation focus was on the seven core sectors of business, communications, distribution, educational, financial, tourism and travel-related, and transport services². When consolidated, these sectors are a solid basis for the region to then strategically engage in services negotiations as a block at the multilateral level.

Within the region services liberalization has seen the development of Mutual Recognition Agreements (MRAs) in some subsectors that

allows movement of professional services. In Kenya and Rwanda barriers such as work permit requirements for EAC citizens have been abolished. While some efforts towards harmonizing regulatory measures in some services sectors such as tourism, ICT and others are underway. However even then some challenges remain that are affecting the pace of the internal services liberalization within the EAC.

Challenges towards Services Liberalisation in EAC

As earlier alluded to, competitiveness is essential for the services sector to become more efficient and also ensure affordable services that would benefit consumers and expand markets, these then calls for liberalisation of the sectors, including through commitments in the multilateral trading system. In the EAC the main challenge towards such liberalisation is posed by the lack of suitable regulatory and institutional framework to ensure that such liberalisation is beneficial and results in the desired growth. This has resulted in non-competitive service sectors that defeat the purpose of liberalisation, in that most of the formally monopolistic public institutions that were divested have only become private monopolies and continued to over-price their products.³ This then creates a real danger for the emergence of a dual service sector where private markets only serve the affluent to the detriment of the marginalised who are often the majority.⁴

The lack of requisite regulatory and institutional framework in the region is exacerbated by the

¹ Assessment of Trade in Services of Developing Countries: Summary of Findings *Background note by UNCTAD/UNCTAD/ITCD/TSB/7*

² Government of Uganda (2010), Brief on Trade in Services Under the EAC Common Market. Ministry of EAC Affairs, unpublished.

³ Regional Trade Facilitation Program (RPTF 2009)

⁴ Mattoo and Zanini (2007)

absence of effective competition regimes in the region. In addition the consumer protection laws and systems are still quite weak and ineffective rendering less disciplinary regimes that would regulate the private sector and therefore making tying in liberalisation commitments at the ⁵multilateral level quite risky for the region.

An analysis of the regulatory framework in the EAC undertaken by the regional trade facilitation programme of 2009, found that although there are some regulatory frameworks and institutions, most are insufficient or obsolete including in the already liberalised sectors, creating the risk of a less competitive sector that would not benefit the region, and hinder the much needed growth for which the services sector has the potential to spur.

Most of the services sectors in the region are dominated a few large firms originating from developed countries which have resulted in less effective competition. Moreover mergers and acquisitions as well as strategic alliances have worsened the situation. According to UNCTAD's studies on the health, tourism and construction sectors, anti-competitive practices were established using these technics⁶.

According to the above UNCTAD services sectoral analysis of service suppliers in developing countries, there are a multitude of other challenges and barriers that would need to be overcome, including through negotiations at the multilateral level, for the EAC to harness its potential in the services sector, and these include the following:

Foreign markets of interest to the EAC impose prohibitions intended to protect them for domestic suppliers even where they may be less

efficient. This is often imposed through nationality, residency or visa requirements that then affect some modes of service suppliers such as movement of natural persons.⁷

Subsidies are another challenge that often affects the competitiveness of services originating in developing countries including the EAC. These are mostly imposed by developed countries in several of their services sectors such as health, transport, construction, education and others. Other subsidies are in the form of investment incentives that can have a trade-distortive impact on the service exports from developing countries including EAC.⁸

The other challenge in accessing markets of interest is in the form technical standards and licensing requirements imposed, especially in professional business services, for instance accounting and auditing; legal services; medical; and financial to mention but a few.

The lack of transparency in the necessary measures and requirements to access markets also poses a challenge. Legislative and procedural requirements such as immigration for natural persons, business set-up and registration requirement, and others are at times cumbersome and hence a barrier in penetrating markets of interest.

Within the EAC itself progress in the pace of services liberalisation has been hampered by lack of the relevant Common Market Protocol legislative and institutional framework that are yet to be developed and implemented. In addition the Secretariat lacks the capacity to monitor and ensure that commitments already entered into are effected, this is mostly due to resource constraints. There have also been no

⁵ CUTS (2009)

⁶ Op cit 1

⁷ Ibid

⁸ Ibid

further commitments from the member states in the sub-sectors of the agreed seven service sectors that were originally agreed. On the whole, liberalisation of the service sector within the community is affected by the different pace at the members are willing to undertake it.⁹

LDCs Services Waiver an Opportunity

Four of the five EAC member states being Least Developing Countries (LDCs) could potentially benefit from the WTO 8th Ministerial decision of 2011 that authorised WTO members to grant preferences to services and service providers of LDCs.

The waiver offers market access for LDCs as well as the possibility for non-market access subject to authorization by the Council for Trade in Services (CTS).¹⁰ This essentially grants WTO members the right to grant exclusive market access to LDCs in service sectors otherwise closed to non-LDC members. This could take the form of quotas or even exemption from such requirements as the economic needs test.¹¹

In addition the CTC may authorise selective national treatment in favour of LDCs including for instance recognition of LDC professionals experience in lieu of academic certification. This would also extend to easing of licensing procedure for LDC service providers, and issue that would like constrain their capacity to access markets of interest.¹² However operationalizing the waiver may could prove challenging given

the lack of clarity on the desirable preferences for the LDCs. This calls for concerted efforts and pro-activeness in identifying the respective LDCs offensive interests and markets in order to then lobby for such preferences under the waiver.¹³

For the EAC a further challenge in utilising the service waiver could lie in membership of Kenya a non-LDC member of the community; however with clarity on the rules of origin and other conditionalities in place this opportunity could still be harnessed.

Way forward

From the foregoing, for the vast potential of the EAC services sector potential to be effectively leveraged towards accelerated growth and development in the region, the challenges highlighted above would need to be dealt with.

As a starting point, there is need to undertake a thorough analysis of the services sectors in all the EAC member countries, this should be aimed at establishing the policy, regulatory and institutional measures in place, their adequacy in ensuring competitiveness of the sectors and sub-sectors, those that need updating, development, and implementation. In addition the regional services comparative advantages should be clearly identified in order to understand its offensive and defensive interest. This would inform its negotiation stance and also mark-out markets of interest for which can then be pursued.

The need for regional harmonisation of the services sector policies, regulations, and institutions goes without saying. This would ensure that during the liberalisation process in

⁹ Briefing Note: Services Trade and Regional Integration in Sub-Saharan Africa: Ooptions for Continental Collaboration ILEAP 2012

¹⁰ LDC Waiver: Making it Work Hannes Schloemann <http://ictsd.org/i/competitiveness/140321/>

¹¹ ibid

¹² ibid

¹³ ibid

the region all members' interests and concerns are taken into consideration in arriving at commitments including at the multilateral level.

There is also need to pursue and promote innovative policies that would make the regions services sector more competitive internationally. This would for instance entail promoting network affiliations for firms in the EAC with those from developed and fast developing countries, which would ensure that they benefit from the advanced research and development of the more established firms and in turn move towards higher value products, including the possibility of technological transfer.

All in all the services sector in the EAC has a lot of potential that could be leveraged towards accelerated growth, development and eradication of poverty which is prevalent in the region. In addition it also provides an avenue for the much needed diversification and less reliance on the traditional exports from the region, more so from the less natural resource endowed member countries. However for this potential to be effectively tapped the several challenges with which the region is faced would need to be tackled.

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