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AFRICA CONTINENTAL FREE TRADE AREA: LIBERALIZING TRADE IN SERVICES FOR TRADE FACILITATION

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1. INTRODUCTION

The services sector is the world's largest employer, and produces 70% of global gross domestic product (GDP). It plays a major role in socio-economic develop of African countries, contributing about 47% of GDP and 37% on average in 50 and 32 countries respectively. However, services export remains low for many countries, averaging 2.6% of global services export over the last three decades.[1] The poor services trade performance has led to a considerable awareness on the need for competitive services sector for sustainable economic development and the appreciation of the benefits of open market for trade in services, including infrastructural role of sectors like financial services, telecommunications, transportation, and energy. Market liberalization requires considerable care to assess the nature, pace and sequencing of regulatory reform and liberalization undertakings in services markets in order to achieve sustainable economic growth of a country. Despite unilateral liberalization aimed at attracting significant investments (in particular foreign investment) in the services sectors remains a challenge for many African countries like other developing countries, due to existence of systemic trade restrictions.

With regard to the breakdown of trade, services account for roughly two-thirds of global GDP but only one-fifth of global trade, leaving trade in services only about an eighth as intensive as trade in merchandise (*Ghemawat*, 2011). For this reason, trade in services is a relatively unexplored sector compared to trade in goods. However, it is easily illustrated that the channels through which merchandise trade benefits economies extend effectively to trade in services especially since services make up a far greater part of the world economy than goods. Infrastructure, in various shapes and forms but in this case transport by road, railway and ports, is the underpinning enabler for greater integration. The movement of people requires good transport infrastructure, but also spurs the development of connecting roads and railways simply through their movement or “lobbying with their feet”. The potential gains from the free movement of people – and liberalising labour in particular – are large and it contributes significantly to the liberalisation of trade and capital, as well as knowledge sharing. Ghemawat suggests the combined liberalisation of these factors could potentially push the gains past five percent of global GDP.

According to Gernetzky (2012), Africa’s population could reach 2.7 billion people with 1 billion people in the middle class bracket by 2060. This would then triple Africa’s economically active population providing a basis for stable and consistent high levels of economic growth. As such, Africa’s demographic configuration, embodying a young, growing population, represents an important structural factor that has impacted the region’s economic prospects positively in the last decade and that if well managed, promises to shape the economy for the foreseeable future. Along with a youthful population and growing middle class, the prospect of rapid urbanization across the African continent is also spurring demand for modern goods and services while building a more sophisticated skills base, which is all part of the “demographic dividend”. On this front, Africa already represents a substantial consumer population. As more Africans flock to the cities and disposable incomes rise, the demand for modern goods and services, such as telecommunications and banking services, has accelerated. The demographic structure suggests

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[1] Presentation by Ms. Laura Páez of UNECA at a “Regional Meeting On Promoting Services Sector Development And Trade-Led Growth In Africa” held in Addis Ababa, Ethiopia, 12-13 September 2013

that this “dividend” will continue to make a substantial contribution to Africa’s economic progress. Global businesses – whether based in Asia, Europe or the Americas – as well as home-grown African firms, will strive to meet this demand.

Africa’s rising integration – within Africa and between Africa and the rest of the world – is a fundamental part of understanding Africa’s full potential and realising its true economic prospects. Africa may be the least globalised region of all, but the economy has started opening up to the rest of the world. This increased economic openness and integration over the past ten years has contributed toward Africa’s economic rise. To document this, over the past decade Africa has increasingly opened up the spread of exports to international markets. According to Visa Report (2013), export volumes have grown at an average of 8.8 percent per year since 2000, versus the world average of 3.7 percent. This reflects rising global demand for African products and services. Moreover, given that Africa’s export growth exceeded economic growth – albeit modestly – over the period, it follows that exports have become a relatively more important component of the region’s economy since 2000 – indicative of the importance of economic openness as a component of sustained economic growth. Africa’s economic growth and the region’s rising competitiveness is evidenced further by the increased trade diversification and sophistication that has come about following important reforms during the 1990s and early 2000s, and subsequent relations with new trade partners who are also the new drivers of global economic growth.

Recognizing the role of trade in services liberalization, five African Regional Economic Communities (RECs) such as the Common Market for Eastern and Southern Africa (COMESA), East Africa Community (EAC), Economic Community of West African States (ECOWAS), the West Africa Economic and Monetary Union (WAEMU), Economic Community of Central African Countries (ECCAS), and Southern African Development Community (SADC), have in the past decade agreed to undertake services liberalization as part of the regional integration agenda. At the same time, some of the countries are negotiating trade in services liberalization agreements with the European Countries under the Economic Partnership Agreement (EPA). While the level of services integration and liberalization various across these regions and the EPA-Services negotiations are yet to be concluded, the EAC is currently implementing liberalization commitments in seven sectors (i.e. business, communication, distribution, education, finance, tourism and transport services) and 26 countries have agreed to negotiate services liberalization chapter under the COMESA-EAC-SADC Free Trade Agreement scheduled for 2015/16. Yet there is an aspiration among African countries to pursue services liberalization as part of the Continental Free Trade Area (CFTA) aimed at boosting intra-Africa trade.

Consequently, the 18th Ordinary African Union Summit held in January 2012 in Addis Ababa, Ethiopia endorsed an Action Plan and a roadmap for the establishment of a CFTA, to be operationalized by an indicative date of 2017. A project on "Strengthening capacities of African countries in boosting intra-Africa trade” was designed, with UNCTAD being mandated with the implementing of the project. The overall goal of the project is to foster and boost intra-African trade expansion for sustained economic growth and inclusive development through dedicated support to the establishment of the African Continental Free Trade Area (CFTA), and thereby facilitating a process of inclusive structural transformation of African countries.

The project has two main expected results:

i) Enhanced knowledge among African policy-makers, experts and private sector on requisite policies and measures for establishing the CFTA, boosting intra-African trade in goods and services, and related fostering or value addition for regional supply chains in agricultural commodities and processed food products; and

ii) Increased capacity of African policy-makers, experts and private sector to adopt and implement policies and measures to eliminate barriers to trade in services, notably non-tariff barriers and measures, to improve trade facilitation and eliminate road blocks as well as free movement of business persons across Africa and boosting of intra-African trade.

This report therefore focuses on providing policy input in enhancing and ensuring that liberalization of trade in services leads to the facilitation of trade in Africa and thus contribute in boosting intra-African trade in both goods and services. In addition, the report will propose alternative approaches and scheduling modalities for trade in services for the C-FTA.

1.1. The “services economy”

As the world goes global, it is now becoming predominantly a “services economy” both at the domestic and international levels. According to World Bank statistics, the services sector accounts for 72 per cent of GDP in high-income countries, 53 per cent in middle-income countries and 46 per cent in low-income countries. Furthermore, there is evidence showing that a stronger correlation exists between services growth and GDP than is the case for manufacturing growth and GDP and thereby, making services a key driver of growth in most economies. On average, services account for more than 74 per cent of employment in high income countries. Moreover, developing countries are seen to be shifting towards services even at lower levels of per capita income than was the case in the traditional development trajectory. This provides an alternative for development latecomers to accelerate growth using services as an engine instead of the traditional way of first developing a manufacturing sector.

As agriculture became the foundation for the rise of the industrial sector in the 19th century, the 20th century saw manufacturing giving rise to emergence of the modern services economy in which research and development (R&D), marketing, financial activities, education, health, waste management and other services constituted more than two-thirds of all global economic activities. The notion of a distinct tertiary service sector as distinguished in traditional economic theory (agriculture, industrial and services) overlooks the spectacular increase of service functions within the traditional productive sectors where services, technology and human capital are the engines of growth substituting for and supplanting both manufacturing and traditional agriculture. In the 21st century, services are now instrumental in coordinating the dispersed production, especially infrastructure services and logistics services such as telecommunications, internet, express parcel delivery, air cargo, trade-related finance, customs clearance, and so on.

Technology has, in most cases, greatly reduced costs associated with manufacturing while somewhat increasing the cost of services associated with both production and utilization. In the case of manufacturing, which was also dependant on the agricultural and natural resources sector, the service economy depends on the manufacture of products and tools needed for service delivery. There is no service without products any more than there can be products without services. Continuous development of people in terms of higher levels of knowledge and skill

becomes the most essential strategy to support continuous growth of the service economy and upgrading in the value chain.

On-going processes of globalization, extension of market mechanisms in terms of outsourcing and offshoring, foreign direct investment, global marketing, business regulation and international development activities are all enhancing and transforming the services component in virtually all nations around the world. Services of all types and descriptions can thus be found in all places in contemporary economies and societies. Services are crucial in knitting production systems together across economies, and making various modes of intermediation in the economy and society work. Increasingly, services fuels consumption spurs innovation and contributes to growth. Currently, not only have services become pervasive, dynamic and even predominant among economic activities, but also the linkage between technologies and services has spawned what could be called the "new economy" which is trading in tasks. This entails various components of the value chain distributed in different economies and linked together by key services.

The "new economy" implies important changes in the way services like insurance are produced, intermediated and consumed. Services, including various forms of insurance, basic telecommunication services or other traditional stand-alone services which are increasingly becoming functions (banking, energy services) are essential infrastructure for the "new economy" rather than consumed on a discretionary basis. In fact, the core of this change in the conception of services has been the emergence of the internet and changing role of intermediation.

Changes in production and consumption of services serve as an integral part of an increasingly integrated manufacturing processes and as well as an open and wide-ranging financial marketplace. As services supplied and used over the internet-are taking place but changes in the intermediation of services are perhaps the most readily apparent. The intermediating role of the internet in its various forms as e-commerce, e-business, e-government and even e-culture are today the primary manifestations of the "new economy".

1.2. Characteristics of trade in services

Services exports are different from goods exports and thus, require a different approach in terms of their promotion and development. In order to develop an effective strategy for dealing with the services sector, it is important to keep in mind the main characteristics of the services business as indicated in Box 1.

Box 1: Elements of international business in services

1. Situation-based: exporting services involves the performance of solutions to international customer problems, which are dynamic in nature, since building services export capacity is about developing international relationships, a culture of customer focus and client confidence as well as aptitudes to recognise emerging opportunities and respond rapidly with new solutions
2. Clients-oriented: services exporters tend to have clients rather than geographic markets with clients often taking them into different geographic destinations;
3. Relationships: clients often require a long term relationship, lack of tangibility in services means that services exports cannot be examined on the spot for quality and thus, requires mutual trust be built between buyers and sellers of services
4. Project-based: services exporters tend be operate in a project-like environment
5. Innovation-dependent: each export project tends to require a slightly different services offering, which means services firms can rarely find new export markets without

innovating, and must promote their capacity to create new services offerings for new international clients
6. Management of people: each export project is similarly likely to require a slightly different implementing team of talent and ideas that require services firms to often move people around quickly, including across borders
7. Importance of commercial presence: services exporters may need or be required by the client's regulatory environment to set up a commercial presence offshore; this process looks like investment rather than export and rarely receives proper official export promotion assistance.

Source: International Trade Centre (ITC), 2012.

1.3. Barriers to trade in services

Most of the services transactions require a physical proximity between the producer of the service and the consumer of the service. While in some transactions the consumer has to move to the location of the producer (tourism, health services), in others the producer has to move to the location of the consumer (services that require foreign direct investment and movement of persons like financial, telecommunication). There are some services that can be transferred across borders in a similar fashion to trade in goods, for example, transfer of software over the internet.

The proximity between the producers and consumers implies that the production and consumption of services takes place simultaneously and hence, it is not possible to determine when the service crosses the border in some cases. Thus, it is difficult to apply border measures like tariffs. As a result, most countries follow restrictive policies that are designed to limit the access of foreign services and suppliers of services to the domestic markets. The most common measures are to prohibit competition by foreign services suppliers through imposing entry fees or market share restrictions.

The main types of barriers to trade in services are:

- Quotas, local contents and prohibition of foreign access to service markets which are reserved for domestic suppliers such as nationality, residency or visa requirements;
- Price based instruments such as entry and exit taxes and/or visa fees for movement of natural persons, licensing fees, tariffs on goods related to provision of services, price controls;
- Discriminatory access to information channels and distribution networks for example, in telecommunication, air transport, tourism;
- Subsidies granted in developed countries such as is the case for construction, communications, transport, health or education, which have a trade distortive impact on exports from developing countries;
- Lack of access to government procurement orders, for example, in construction services;
- Lack of transparency in government measures, for example, immigration legislation and procedures, and practices of mega firms;
- Technical standards and licensing procedures, for example, in certain professional services, the licensing and standard setting have been used to restrict entry in the industry especially at the global level.

Measuring barriers to services trade is more difficult than goods as the former entails movement of the producers and consumers apart from movement of the service. The WTO provides one avenue for measuring barriers to services trade through commitments made by Member States under the General Agreement on Trade in Services (GATS).

1.4. Policies related to trade in services

Services are now playing a critical role as intermediate processes in the production of goods, contribution to value-addition and the attraction that they provide to foreign direct investment. Therefore, specific policy initiatives are required to improve the efficiency and competitiveness of the services sector. These policies are preconditions for benefiting from liberalization of trade in services. They relate to: (i) human resource and technology capacity building to ensure that professional and quality standards are met; (ii) upgrading of telecommunications infrastructure which would allow the export of labour-intensive services through the cross-border mode of supply; (iii) incentives and financing for service firms to enhance their competitiveness; (iv) pro-competitive policies such as abolishing traditional monopolies or exclusive rights, and adopting measures to discipline anti-competitive behaviour; (v) coherent regulatory framework for goods and services, trade and investment including prudential rules to protect public interests; (vi) progressive external market opening and encouraging foreign direct investment through granting of incentives to confront domestic industries with best international practices, management techniques and high technology; (vii) improving access to market information and presence in major markets; (viii) institutional reforms providing for independent regulatory supervision; (ix) establish service industry associations to ensure members are in touch with potential partners in target markets and to voice the needs of the service industry they represent.

Developing national and regional strategies for raising the profile of services, particularly infrastructural and logistics services, which have been identified as a priority for well-functioning value chains is important so that service exports are seen as vital for economic development. Attention would also need to be given to the use of the knowledge and capacity built up in manufacturing and agricultural sectors to export service-related activities and offer an integrated package of goods and services. In order to diversify markets and take advantage of global trading opportunities, developing country economies would need to strengthen efforts to expand trade and investment opportunities and cooperative arrangements both at the regional and international levels, and take advantage of market opening available in other developing countries.

Taking advantage of opportunities presented in the development of intermediate services tasks will require a higher degree of awareness at businesses and government level of the factors that might impact on local competitiveness and of how to influence them. In addition, there is need to identify tools required to nurture and promote services industries on the international market. Assessing the potential of services industries is complicated by the limited availability and quality of data, including official and other reliable trade statistics. All of this matters because the services sector is basically dominated by small and medium enterprises (SMEs) in most economies, and making them the most likely beneficiaries from more sustained attention to the sector.

Understanding competitiveness in the services sector requires close consideration at the sector and enterprise levels in relation to the evidence available concerning what makes competitiveness in services different from that in goods. This will require a policy that takes into consideration what services firms have in common, how they behave in the domestic and international market, and why these firms require separate or distinct policy or institutional attention.

Box 2 provides a summary of key elements that influence the competitiveness of services in any given economy. These factors suggest that there are many variables relevant to services competitiveness and therefore, businesses and governments can do a lot to enhance the opportunities for broader participation in global and regional services supply chain activities. However, the required policy mix in terms of public policy tools on how to grow a services

industry, train, attract and retain services skill sets, or how to facilitate services innovation, collaboration and customer orientation, is still sketchy. Very little information is available on which enabling infrastructure to provide or which regulatory settings might be considered best practice in ensuring inter-operability across the value chain.

Dealing with some of these factors may require a reinforcement of capacity building programmes on services and productivity issues. This calls for greater coordination between government agencies involved in services trade-related matters, services industry coalitions and business associations, and mechanisms for public or private dialogue on services regulations. Since services activities are usually less capital intensive than manufacturing and require less physical infrastructure, this provides an opportunity for countries with limited physical and financial capital. However, services are more skills-intensive than the other sectors of the economy. To this end, knowledge economy infrastructure and an environment that nurtures talent, skills and ideas are important in attracting investment and work onshore.

Moreover, services export success is dependent on innovation that requires an industry-innovation policy which recognizes the relevance of services for competitiveness. Since services activities tend to be project-based, firms need flexibility to be able to move people and ideas around quickly. Virtual teamwork and cross-border collaboration is also important. These highlight the significance of connectivity across the border, requiring policy and institutional focus on telecommunications, aviation, international standards, openness at the border and technical interoperability for developing the exports of services. As more SMEs in services from developing countries are increasingly engaging in global and regional value chains and business-to-business activities, there is need for innovation as well as new promotional and marketing methods to attract supply chain task onshore. Through negotiations leading to opening up of services markets, SMEs will be able to achieve commercial presence offshore which suggests that some could compete on a fly-in-fly-out basis.

Box 2: Factors that determine international competitiveness in services

1. Endowments, especially human capital - talent, education, skills, ideas, culture of customer focus
2. Investment in intangible assets – corporate intellectual property (IP) such as copyright, business methodologies, brands and patents
3. Enabling digital infrastructure – quality of the telecommunications network and the extent of internet penetration
4. Quality of institutions – costs and benefits associated with relevant regulatory regimes, degree of transparency and corruption or rule of law
5. Efficiency of domestic regulations – constraints imposed by the complexity of the business environment and access to finance, employment laws, human capital costs, burdensomeness of regulatory compliance costs and the flexibility to adjust of rapid change
6. Connectedness with the international market – two-way trade and investment openness, quality of export promotion efforts and tool kits and opportunities to connect with supply chains, mutual recognition and interoperability of standards, and the seamlessness of regulation across markets
7. Effectiveness of services business stakeholder consultations – involvement of services business groups, providing an active public/private stakeholder consultation mechanisms
8. National strategic policy focus – better services statistics, inter-agency coordination, a vision and roadmap for services development

Source: ITC, 2012.

In cross-border trade in services, the objective is usually to attract global work on-shore, preferably higher value-added work. The process of attracting global work on-shore into the domestic market seems different from that of attracting a foreign buyer for supply of goods due to the very different manner of offshore delivery. It tends to require that firms or even networked individuals undertake significant business process innovation in order to enter the relevant global supply chains. Given the way in which services firms engage internationally, services export promotion requires a sustained focus on facilitation of movement of people or skills sets both offshore and onshore, and a new focus not only of attracting FDI but also facilitating commercial presence offshore for local services firms that could be done through joint venture arrangements. This may require public efforts for assisting particularly SMEs in order to ensure cross border connectivity at the technical level so as to enable movement up the value chain and meet challenges of the international market.
Cross border supply chains require seamless operations such that any disconnect between standards across borders generates a chokepoint which impinges on the operational costs of participating firms. This would make service suppliers uncompetitive in the global offshore and onshore market.

1.5. Tracking Intra-Africa Trade in Services Agreements

In 1991, African States agreed to establish the African Economic Community under Article 54 of the Abuja Treaty, to be achieved through a six stage process as illustrated in Figure 1.

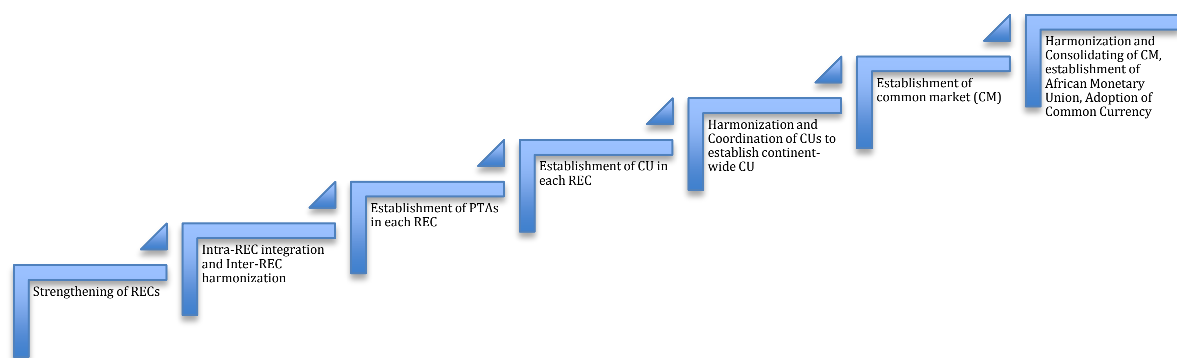

Figure 1: Africa Economic Community Stages

There are eighty regional economic communities (RECs) that are recognized by the Africa Union (Sauvé and Shingal, 2014), all of which have some form of services agreements ranging from cooperation in some sectors to comprehensive trade liberalization. The cooperation agreements tend to focus on harmonization of regulations, technical standards and development issues in specific sectors. Whereas the comprehensive trade in services liberalization agreements (mostly modeled on GATS) focus on trade rules in terms of market access and national treatment aspects covering all services sectors and sector specific liberalization commitments as inscribed in the

schedules of specific commitments. The following is a short description of existing intra-Africa services agreements:

a. **The Community of Sahel-Saharan States** (CEN- SAD) was established in July 2000 made-up of twenty two (22) member states such as Benin, Burkina Faso, Chad, Central Africa Republic, Comoros, Djibouti, Egypt, Eritrea, Gambia, Ghana, Guinea, Ivory Coast, Libya, Mali, Mauritania, Niger, Nigeria, Senegal, Somali, Sudan, Togo and Tunisia. Members agreed to the removal of all restrictions hampering the integration of the member countries through the adoption of necessary measures to ensure among others free movement of persons and services.

b. **The Common Market for Eastern and Southern Africa (COMESA)** was established in December 1981. Member countries are Burundi, Comoros, Djibouti, DR Congo, Eritrea, Egypt, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe. COMESA adopted the regulation providing for progressive liberalization of trade in services. Prior to adoption of the services regulations, COMESA members had cooperation agreement in transport and financial services in support of trade in goods. Currently, member countries are negotiating the schedules of commitments in seven priority sectors such as business, communication, construction, energy-related, finance, tourism and transport services. Liberalization commitments in the remaining services sector will be handled at a later stage. In addition to trade in services liberalization, members have agreed to visa free movement of persons up to 90days in every 365days.

c. **The East African Community (EAC)** was established in 1999 composed of five members such as Burundi, Kenya, Rwanda, Tanzania and Uganda. EAC achieved full customs union in 2010, common market was established at the same year and has since launched a monetary union expected to be fully implemented by 2020. As part the common market, members guarantee free movement of services through progressive liberalization and in principle it does not envisage preservation of any market access or national treatment limitation by the member countries. The schedules of commitments were agreed in seven priority sectors such as business, communication, distribution, education, finance, transport, and tourism services. While there is no date/deadline is set, liberalization commitments in the remaining sectors are foreseen in the near future. Also, it is important to note that EAC has signed mutual recognition agreement in accounting and architectural services and negotiations for similar agreements in the remaining professions are underway. On the other hand, the common market extends to right of establishment, and movement persons (up to 180 days) on gratis visa as well as free movement of capital and workers in line with adopted schedules.

d. **The Economic Community of Western African States (ECOWAS)** was established in 1975 and its object is to promote economic integration in "all fields of economic activity, particularly industry, transport, telecommunications, energy, agriculture, natural resources, commerce, monetary and financial questions, social and cultural matters ....." . Member countries are Benin, Burkina Faso, Cape Verde, Ivory Coast, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leon and Togo.

ECOWAS agreed on free movement of persons and right of establishment in 1976, which has evolved to allow *visa free movement (up to 90days)* to the use *ECOWAS Passport and Residence Card/Permit* parallel with harmonization of regulations in services sectors i.e. telecommunication and transport in particular. In addition, the sub-regional West African Economic and Monetary Union (WAEMU/UEMOA) comprising of eight members of ECOWAS have agreed to further liberalize trade in services in the context of a common market.

e. **Economic Community of Central African States (ECCSA)** established in 1983 and the member countries are Angola, Burundi, Cameroon, Central Africa Republic, Chad, Congo, Congo DR, Equatorial Guinea, Gabon and Sao Tome & Principle. ECCSA has a cooperation agreement in communication; transport; energy; education and training; and tourism sectors. The Economic and Monetary Community of Central Africa (CEMAC) a sub-group of ECCSA countries, has undertaken deeper liberalization in air transport and telecommunication services. Also, the ECCSA treaty provides for free movement of persons and right of establishment in accordance to Annex VII. However, there is no agreement in the context of trade in services liberalization.

f. **Inter-Governmental Authority on Development (IGAD)** founded in March 1996 comprised of member countries such as Djibouti, Ethiopia, Kenya, Mauritius, Somalia, Sudan and Uganda. One of the objectives of IGAD is to harmonize policies with regard to trade, customs, transport, communications, agriculture, and natural resources, and promote free, movement of goods, services, and people and the establishment of residence. Currently IGAD members are developing a draft protocol on movement of persons as a stepping stone in regional integration process.

g. **The Southern African Development Community (SADC)** was founded in 1992 and the current member countries are Angola, Botswana, DR Congo, Lesotho, Malawi, Madagascar, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. In August 2012, SADC member states signed a Protocol on Trade in Services, which is largely modeled on GATS, providing for progressive liberalization of trade in services. Currently, member countries are negotiating liberalization commitments in six priority sectors namely: communication, construction, energy-related, finance, transport, and tourism services. Negotiations in the five remaining sectors as well as MRAs will be addressed in subsequently round(s) of negotiation planned to start with 3years of concluding the current round. Further to this Protocol, members have signed several Protocols on: transport, communication and meteorology; education and training; health; information, sports and culture, tourism development; and the facilitation of movement of persons[2]. While the sectorial protocols provides for regulatory and standards harmonization; the protocol on facilitation of movement of persons provides for gradually liberalization of immigration to allow visa free movement (up to 90days), temporary and permanent residence.

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[2] Not yet in force due to insufficient number of countries that have ratified

h. **The Southern Africa Customs Union (SACU)** was founded in 1889 and the current member countries are: Botswana, Lesotho, Namibia, Swaziland and South Africa, hence considered as SADC sub-region in the context of CFTA. SACU being a customs union do not have an agreement on trade in services, however in April 2013, the 4th Summit of the SACU Heads of State and Government endorsed trade in services as one of her priority areas to underpin her new work programme. Preparations are underway to define the scope and the legal nature of the services work programme. Also, a common SACU travel document is used to allow intra-regional movement of persons in the region.

i. **L'Union du Maghreb Arabe (UMA**) founded in 1989 by five member countries such as Algeria, Egypt, Libya, Morocco and Tunisia. The objectives of UMA include working toward gradual free movement of persons, services, goods and capital.

2. GLOBAL VALUE CHAIN AND SERVICES TRADE

A value chain is considered to be a full range of activities that firms and workers do to bring a product from its conception to its end use and beyond. This includes the design, production, distribution and consumer support. Therefore, a supply chain can be considered as a series of linked markets that are interdependent such that when one market is affected, it causes a ripple effect on all the markets in the whole supply chain. This has led to the creation of global and regional supply chains. Each phase or task is organized to create and optimize a specific aspect of the global supply chain. As shown in figure 1, a value chain is made up of both the demand and supply side, each being a combination of two interlinked business models. Hence, a supply chain contains a number of business functions and firms specialized in different productive tasks. Furthermore, companies have to be well integrated and connected to ensure that the entire industrial chain functions efficiently.

While a global value chain (GVC) refers to the geographic and specialized fragmentation of production networks in a coordinated and organized manner by linking goods and services produced locally and globally into value-adding tasks. This complementarity involves markets of goods and services, goods and goods as well as services to services markets. Furthermore, policies affecting goods, services, investment, intellectual property and competition in one market will affect all the other markets in the supply chain as the goods or services cross the frontiers. Economic growth in East Asia can be attributed to the strong expansion of exports into open markets in key economies, where the industrialization model was closely linked to the benefits of free trade and comparative advantage.

The 21st century has seen the fragmentation of the manufacturing sector with firms in developed countries offshoring their labour intensive segments of their supply chain to developing countries. The prerequisites for developing countries receiving the offshored stages of the supply chain are: i) reliable workers, ii) a well-functioning business environment, and iii) proximity to developed countries that wish to offshore parts of their supply chain to facilitate onsite inspections at the manufacturing sites. Geographical location seems to be an important aspect of decision making for such firms in situating parts of the supply chain as technicians and managers need to travel among production facilities.

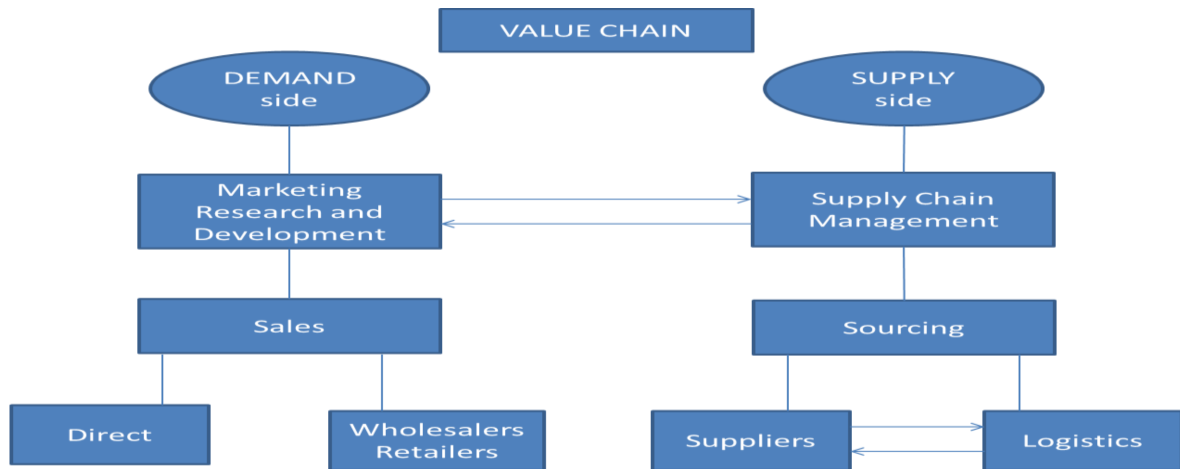

Figure 2: Value chain processes. Source: WTO, 2011.

Developments in ICT has played a key role in revolutionizing supply chains with the lowering of costs brought about by complex coordination activities required in the fragmentation of a supply chain. This has made the geographic dispersion of supply chains feasible and profitable and thereby, allowing firms from developed countries the option of offshoring segments of their value chain to the territories of developing countries. These firms also employ their firm-specific technology in the foreign factory and thus creating an environment where the technology from industrialized nations is factored with the low wage labour from developing nations. Instead of "transfer of technology" which was a 20th century issue embedded in the import substitution industrial policies, this has led to "technology lending" which changes the output of developing nation's industry instantly.

The World Trade Organization (WTO) highlights the important role GVCs play in fostering the parallel development of trade and foreign direct investment (FDI). The supply chains determine the creation of industrial clusters such that they develop around specific tasks and business functions, and as the process cumulates, it changes the production system of an economy over time. As companies are increasingly offshoring parts of their business functions such as accounting, a trend has emerged where FDI is shifting from manufacturing and construction to the services sector.

2.1. The Role of FDI in the global value chains

The structural and geographical diversification of multinational enterprises is affected by FDI. GVC mainly employ two types of FDI, namely "efficiency-seeking" and "market-seeking". Efficiency-seeking FDI aims at slicing up the production process and seizing the comparative advantages specific to each participant in the supply chain creating vertical specialization. Market-seeking FDI, on the other hand, aims at fragmenting the supply chain so as to gain access to foreign markets and sell directly to clients.

FDI has significantly contributed to the shift to global production networks (GPN). Although the impact of FDI on international trade flows is still not completely clear, studies have shown that economies that experienced the largest FDI inflows have also seen the largest expansion in merchandise exports such that depending on areas of investment, some will boost trade particularly in intermediate goods, while others reduce trade especially when dealing with the "build-where-you-sell" industrialization approach. The behaviour of domestic investors is also important in determining FDI because foreign investors view the behaviour of domestic investors as an indicator of confidence in the domestic market.

2.2. Vertical specialization in a GVC

The key idea behind fragmentation of the production network is to link countries sequentially to produce goods and services. In the case of goods, imported intermediate goods are used by a country to make goods or goods-in-process which are themselves exported to another country. This highlights the multiple-border-crossing, back and forth aspect of trade that has arose from 21st century trade. Hummels et al. (2001) state that vertical specialization is considered to occur when a good produced in two or more sequential stages, two or more countries provide value-addition during the production of the good. At least one country must use imported inputs in its stage of the production process, and some of the resulting output must be exported. Vertical specialization indicator allows for an assessment of the foreign content included in exports and hence, the trade occurring within global production chains.

In Figure 2, an illustration of a three country vertical specialization chain is illustrated. Country 1 produces an intermediate good and exports to a Country 2 who combines the imported intermediary goods with domestically produced intermediary goods coupled with labour and capital to produce a final good. Country 2 sells some of the final product domestically and exports some to Country 3.

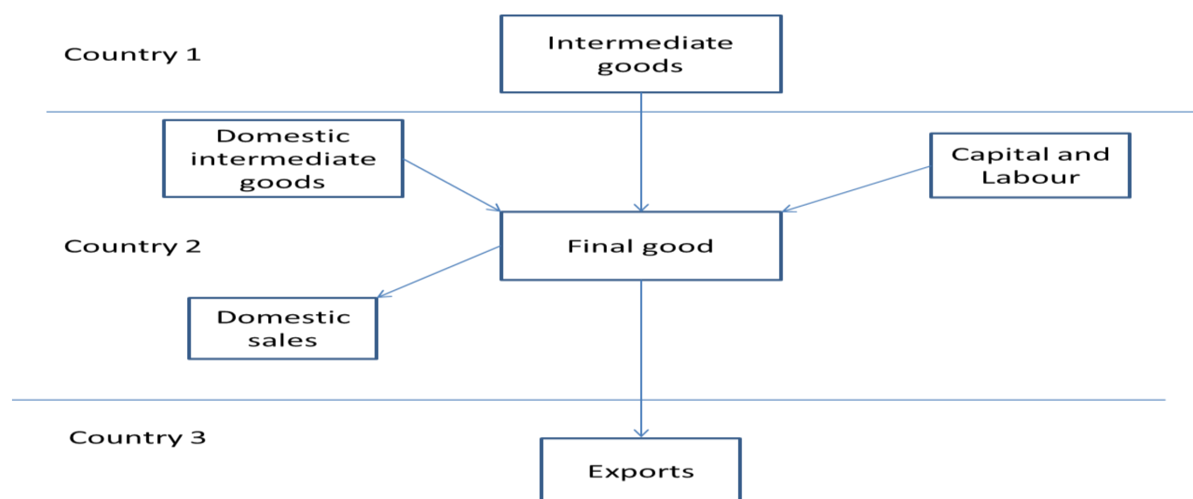

Figure 3: An example of vertical specialization. Source: Journal of international Economics 54, 2001.

Trade in parts, components and accessories encourages the specialization of different economies, leading to a "trade in tasks" that adds value along the production chain. Specialization is no longer

based on the overall balance of comparative advantage of countries in producing a final good, but on the comparative advantage of "tasks" that these countries complete at a specific step along the global value chain.

2.3. Key elements of a value chain

The key elements for a value chain are:

- Geographic proximity to international supply chains.
- Established export processing zones as incentives for outsourcing and offshoring.
- Well-functioning infrastructure, business and logistics services necessary for the smooth operation of the value chain. Logistics services support the functioning of supply chains and the delivery of final goods to wholesale or retail sectors.
- Lowering of applied tariffs in industrial goods and international transaction costs to facilitate trade within the supply chains. The key to knowing which tariffs to lower is undertaking a mapping of intermediate goods in supply chains.
- Effective foreign direct investments both in the expansion of trade in intermediate goods and the tertiary sector for the development of services that support and complement global value chains.
- Structural diversity and complementarity of regional production systems is crucial for deepening economic interdependency and fosters specialization in trade in tasks.
- Industrial interconnectedness allows for clustering of supply chains.

These elements ensure that the value chain operates in a seamless manner as goods or services are crossing borders.

Figure 4: Global value chains and world trade. Source: WTO, 2011.

As shown in Figure 3, the inputs for a GVC in world trade comprises an international market, the development of infrastructure and trade policy, industrial or export processing zones and offshoring or outsourcing strategies, and FDI. On the other hand, global value chains have led to an increase of trade in intermediate goods, the need for new statistical measures of international trade which takes into consideration the value addition in each country, and an assessment of domestic or territorial impact of global value chains.

2.4. The relationship between trade in services and global value chains

The conception of services has been derived from classical economic theory which has tended to see them as invisible and often intangible inputs to other material products, supplied and used frequently on a stand-alone basis rather than horizontally in an integrated fashion. Until recently, the general perception shared by economists has been that services are generally not tradable. However, in our modern global economy, services have become ubiquitous, they are everywhere. For example, communication services have brought about extraordinary connection to others and the world, transportation services now allow unprecedented mobility, the financial services now assist to manage daily lives and futures, access to social, health and educational services, and a wide variety of services jobs at which the majority of people now work each day. To this end, box 3 provides an illustration of Africa's development in mobile technology.

Box 3: Mobile technology innovations in Africa

In Africa, the usage and innovations associated with mobile technology are leapfrogging other regions of the world. In the space of just 10 years – from the mid-1990s to 2005 – mobile phone subscribers increased from zero to 88 million. By 2010 there were a remarkable 360 million subscribers in Africa – representing half of the African population. There will be an estimated 900 million mobile phones in Africa by 2015, representing an 85 percent penetration from a mere three percent penetration in 2001. This has been one of the most dramatic leaps of communication connectedness by any measure in world history. Internet connectivity will follow a similar trend on the back of mobile phones over the next few years. Already in countries like Kenya, which has pioneered the mobile technology revolution with four times the penetration of neighbouring Ethiopia, mobile technology has added at least one percent a year to Kenya's GDP growth and one in two Kenyans uses the internet. Mobile phones and internet access are two sides of the same coin in Africa, and are also part of crucial services related to banking and insurance. As with the surge of mobile phones in Kenya, the number of bank account holders has increased from one million to twenty million in ten years, and over one-third of Kenya's GDP now flows through mobile banking solutions.9 Still much remains to be done to improve Africa's connectivity.

Source: Visa sub-Saharan Africa (2013), Realising potential: connecting Africa

Services are different from agricultural goods, manufactured products or intellectual property, and the production, consumption and intermediation of services of all types are now considered to be the predominant activities within both developed and developing countries as well as a substantially important feature of international trade and investment. Services, currently, can be said to be the engine driving national economies as well as the present day global economy

consisting of global value or supply chains. The present globalized, knowledge-based, service economies and financial systems are constantly making it possible to conduct business and commerce more efficiently, and to create and sustain wealth-creating and welfare-supporting activities. As mentioned earlier, this makes services key to the development and seamless operation of any global value or supply chain.

2.5. Global supply chain and policy considerations

In the 21st century, policy makers are being faced by different challenges than those of the 19th and 20th century. In the latter, trade and industrialization policies were geared towards gaining market access and therefore, having an industrial base was the main requirement for ensuring that a country could export. Trade policy makers in the 21st century have to now make decisions around which value chain to join, stage of the value chain in which the country is able to compete, the prerequisites to be considered for this to occur, developing policy-mix that would be instrumental in ensuring that the country is part of the value chain and so on. However, as noted by Baldwin (2011) a formal model for joining value chains is not guiding nations but different elements are guiding their efforts.

Trade in the 21st century has moved from the 20th century trade where goods manufactured in one country were sold to customers in another country (where trade was all about demand and selling of goods), to a more complex and sophisticated trading system where we have the trade-investment-services nexus. The nexus reflects the intertwining of i) trade in parts and components, ii) International movement of investment in production facilities, personnel training, technology, and long-term business relationships; iii) services to coordinate the dispersed production, especially infrastructure services such as telecommunications, internet, express parcel delivery, air cargo, trade-related finance, customs clearance, basically logistics services (Baldwin, 2011).

Ultimately, geographical location seems to be an important element in considering where to offshore. Therefore, this calls for a difference in policies regarding joining supply chains depending on proximity to an existing supply chain or a faraway one. However, in the 21st century, it seems there is a distinction between economies that are considered as headquarter economies and those that are factory economies, with factory economies having many industries and export of manufactured goods that is rapidly growing.

As more trade is organized via off shore outsourcing, integration into global production networks and “upgrading”, that is, moving from low value-added to high value-added activities within and across global production networks becomes crucial for employment in developing countries. Box 4 provides an example of the main components of an offshore services value chain. However, the location of high value-added activities and inclusion in GVCs is largely determined by lead companies that govern the chain. GVCs are increasingly demand-driven and lead firms tend to be buyers at the downstream end of the chain. Retail concentration has strengthened the role of global buyers in global production networks. Depending on which products are to be supplied and how, when and where they will be produced, quality standards can work as a potential barrier that pushes out suppliers in developing country who are unable to comply or they can be a springboard to help them upgrade.

Box 4: Offshore services value chain

The three main components of the offshore services value chain are Information Technology Outsourcing (ITO), Business Process Outsourcing (BPO), and Knowledge Process Outsourcing (KPO). Many of the lower-value BPO services can potentially be ‘captured’ by African firms, including activities such as network management, application integration, payroll, call centres, accounting, document management, logistics, supply chain management, and human resource management. Some of the higher value-added activities within the ITO component, namely services to support IT infrastructure and software as well as IT consulting and software research and development, should also be within range of certain firms. The objective of African firms, once inserted into a GVC, is to upgrade its activity, as firms attempt to ‘climb’ the value chain for offshore services, much in the same way as they do for global manufacturing value chains. Some African countries have been making strides in capturing activities that are part of the ITO/BPO offshore services value chains. These include Tunisia, Ghana, Senegal, Kenya, and Mauritius, where some of these activities are now being provided as part of the operation of larger firms in other locations. These five countries share some common characteristics, namely a large component of qualified workers, a growing penetration of internet use and broadband availability, stable political regimes, and an attractive business environment. These countries have also encouraged demand-supply side linkages.

Source: Stephenson, Sherry (2012), Global value chains and services: Implications for African countries - BRIDGES AFRICA Trade and Sustainable Development News and Analysis on Africa Volume 1, Issue 4.

Supermarkets and retailers are seen to play a key role as lead firms in agro food chains but their power is significantly moderated in mobile telecommunication by the presence of brand manufacturers. However, even in the same sector, lead firms may organize global networks differently. An example in the telecommunications sector is Apple Inc. and Nokia. Apple Inc. outsourced its entire smart phone production to China whereas Nokia keeps a significant portion of its production in-house and in its home country of Finland. Therefore, it is clear that different market niches and geographical markets have distinctive global production networks structures with varying patterns of value creation (Lee et al, 2011). The rise of demand in emerging markets and the resulting shift of the end market from developed countries to emerging markets can offer developing country suppliers distinctive upgrading opportunities in local and regional chains, although dealing with multiple chains and standards can be challenging for them.

It is Important to note that while developing countries may succeed in moving up to higher value-added activities, it is not automatic that this will lead to social upgrading such as improvement in workers’ rights and entitlements, and enhancement of the quality of their employment. As a result of upgrading, some workers in the global production network might benefit from higher wages and strong labour standards. However, this might not trickle down the chain and in particular, women. If shifting demand to the South could help suppliers develop higher value added activities like product design, it may generate higher skilled employment.

The key generic competitive factors affecting access of firms to value chains are listed in Table 1 including the associated capacity levers. Consideration of these factors provides for the

development of clusters of potentially exporting firms in services sectors being identified as a priority so as to determine local shortcomings and make concerted efforts to improve performance. The table can also be useful in providing an analysis to assist in launching domestic services exporters into global goods and services supply chains.

In developing a national or regional strategy on value chains, there is need to consider the different policies so as to have a policy mix that maximises the opportunities available to all firms in the country and allowing them to participate in global or regional value chains. A number of elements that affect both goods and service have to be taken into account when developing a comprehensive strategy. A snapshot of competitive factors and capacity levers instrumental in determining the available local capacities is shown in Figure 2.

As FDI inflows increase due to value-chain activities, competition issues will also increase caused by the close linkages between competition and investment issues as more foreign firms acquire, merge or there are new entrants into the domestic market. These new entrants will change the market structure and have an impact on the nature and intensity of competition. This will require the establishment of an institution to deal with competition issues in general that ensures and enhances coherency in the regulatory framework at the national level especially as some sector specific regulations such as those in the communication, IP, financial and others sectors already deal with competition issues (Hartzenberg, 2013).

2.6. Policy options for enhancing Africa's participation in GVCs

The emergence of global and regional value chains and the possibility of activities being separated into tradable tasks offer new opportunities for African countries to specialize in individual tasks for which it is best suited and thereby, facilitate entry into the value chain without the necessity of "capturing" the entire set of value chain operations. This will require an analysis and mapping of the bilateral, regional and global trade agreements that each Africa country is signatory, and identify potential for development of supply chains or joining existing value chains. In addition, each African country will need to enhance and implement its existing legislation on competition and investment to support economic development and ensure coherency in the regulatory environment. African governments will also need to develop a national and regional services strategy that is instrumental in the functioning of a seamless value chain.

In order to assist the private sector in joining supply chains, African governments have to prioritize the improvement of the business environment by accelerating institutional transformation, facilitating growth through greater trade expansion and diversification, improving productivity of enterprises, supporting entrepreneurs, and development of SMEs.

African governments need to develop a horizontal industrial policy approach that is economy-wide and takes into account the issues of connectivity, enhancing the ease of doing business, trade facilitation, financial access, focus on innovation, ensuring a stable macro-economic environment and multilateral cooperation. Supporting policies geared towards SMEs should also be considered to improve their participation in GVCs. In addition, these policies should be flexibility enough in order to adjust accordingly within set timeframes for implementation together with adequate governance.

In a number of African countries, the services sector constitutes the main economic activity. However, its potential for overall economic development remains untapped. Therefore, African countries should develop a services export strategy which takes into consideration the needs of service suppliers so as to take advantage of available offshoring and on shoring opportunities. The strategy should aim at producing and improving access to and the use of reliable and user-friendly services-related trade intelligence, building awareness around the importance of services as a potential export driver, building and strengthening the capacity of trade support institutions to enable an effective policy framework, benchmarking regulatory practices, and promoting services exports, enhancing the export readiness of services suppliers in response to market opportunities particularly those in global and regional value chains, achieving a higher level of sustainable and inclusive participation in the regional and international services economy, and also addressing skills mismatches and shortages.

In addition, there is also need for intra-agency services coordination at the government agency level, and facilitation of emergence of local services industry champions and organized business groupings for more effective consultations and evidence-based advocacy with government. This is important in promoting public-private dialogue to improve the business environment for services exporters, including the enhancement of transparency and efficiency at the regulatory level. Encouraging the private sector to invest in parts of GVCs is crucial to give the right signal to foreign investors of the viability of the African market for promoting FDI injections.

Building regional South-South partnerships in GPNs is important for future upgrading of African firms. GPNs led by firms from within Africa, Asia and Latin America, and combined with expanding South-South trade are changing the world trade context by providing avenues for establishing regional value chains. This is important in addressing non-tariff barriers that are experienced at the global level in higher value markets in the chain, and thus providing room for collaboration with buyers, industry leaders, and relevant standard setting organizations.

There is need for African governments to accelerate inclusive growth and development, by fostering a development approach which is based on building dynamic, comparative advantage in the region with an increasing focus on processing industries of natural resources including agro-processing. In this regard, there is need to transform agricultural enterprises from production of primary raw materials to that of value added products, which in some cases, are ready for consumption at the domestic and regional markets. This approach would create more opportunities for enhanced growth, employment and income generation along the entire value chains in agriculture, industry and services. This supply chain approach is crucial in increasing value and improving competitiveness.

Furthermore, a balance between flexibility and employment should be taken into account by developing clear laws and implementation for outsourcing; updating regulation on social security, home-workers, and contract workers and so on; balancing workers' right and chain competitiveness; and effective dialogue platform between business, government and workers' representatives. There is need to match skills demand and supply and this will require collaboration between industry, education and training institutions. This process calls for work placement and the review of curriculum and investment in education, skills and training, including vocational training.

<table>
<tr><th>Primary Resources</th><th colspan="8">AN INTEGRATED REGIONAL GOODS SUPPLY CHAIN
The Pathway to Market</th><th>Markets and consumers</th></tr>
<tr><td>Land
Water
Oceans
Minerals
Forests etc</td><td>Discovery and innovation</td><td>Primary production</td><td>Primary processing</td><td>Secondary processing</td><td>Finished product manufacture</td><td>Storage and handling</td><td>Freight and logistics</td><td>Marketing and distribution</td><td>Automotive
Chemicals
Electronics
Pharmaceutical
Food etc</td></tr>
<tr><th colspan="10">SUPPORTED BY REGIONAL VALUE CHAIN COMPONENTS</th></tr>
<tr><td colspan="10">Quality assurance frameworks and regimes (e.g. food standards, SPS, mutual recognition of qualifications)</td></tr>
<tr><td colspan="10">Innovation development frameworks (e.g. science, R&D, commercialization, multidisciplinary collaboration)</td></tr>
<tr><td colspan="10">Business and capability development frameworks (e.g. education, human resource development, knowledge infrastructure)</td></tr>
<tr><td colspan="10">Human resources (e.g. availability, mobility, standards, immigration, social security)</td></tr>
<tr><td colspan="10">“Border” flows (e.g. customs, tax, profit repatriation, biosecurity, visas, licenses and their scope of business)</td></tr>
<tr><td colspan="10">Funding and investment (e.g. venture/private/merchant/public/sovereign)</td></tr>
<tr><td colspan="10">Market access (e.g. WTO, regional and bilateral trade and investment agreements, commercial presence, IP)</td></tr>
<tr><td colspan="10">Overarching frameworks (e.g. regulatory coherence, transparency and efficiency, cross-border interoperability, recognition)</td></tr>
<tr><th>Primary services</th><th colspan="8">AN INTEGRATED REGIONAL SERVICES SUPPLY CHAIN/NETWORK
The “Pathway” to Market</th><th>Markets and customers</th></tr>
<tr><td>Legal
Financial
Engineering
Architecture
Accounting
etc.</td><td>Diagnostics
Imagination</td><td>Planning
Design</td><td>Evaluation
Selection</td><td>Sourcing people movement</td><td>Contracting outsourcing</td><td>Quality control</td><td>Re-engineering</td><td>Execution
After sales service</td><td>Financial
Professional, technical, telecoms, IT, audio-visual
Transport/ logistics
Business services, tourism, health, education, etc.</td></tr>
</table>

Figure 5: integrated framework for goods and services value chains. Source: Asia Pacific Economic Community (APEC) Business Advisory Council, 2011

Overall, African governments need to adopt policies that will facilitate cross border trade and be instrumental in joining global or regional supply chains such as in logistics services from transport and freight forwarding through to distribution and retail. Figure 4 provides a good framework for identifying chokepoints in the supply chain and finding solutions to have a seamless value chain.

These are vital to enabling the economy-wide efficient operation of both the traded goods and services sector and facilitation of African countries into cross-border supply chains.

Furthermore, the 21st century services trade requires the development of information technology-enabled business services that are necessary as intermediary services to the provision of other services. This is crucial for offshoring and on-shoring business services activities, providing the required connectivity with other economies and in determining African countries' participation in global and regional value chains. In addition, developing language skills, customer focus, time zones and telecommunications links would be instrumental in achieving competitiveness and offering new opportunities to African firms in "upgrading" from primary to tertiary industries.

3. NEGOTIATION MODALITIES AND APPROACHES

General there has been varied approaches to trade in services negotiations across the different regional economic integration mostly determined by the objective and the complexities involved in both the negotiations and membership. These approaches can be clustered into four groups such as request-offer, formula, sectoral and hybrid i.e. "eclectic" approach. Figure 1 below provides an overview of the various approaches.

The choice of appropriate modalities to is key to effective and successful negotiations. It is important for decision makers to understand the various modalities in determining the appropriate approach for the CFTA.

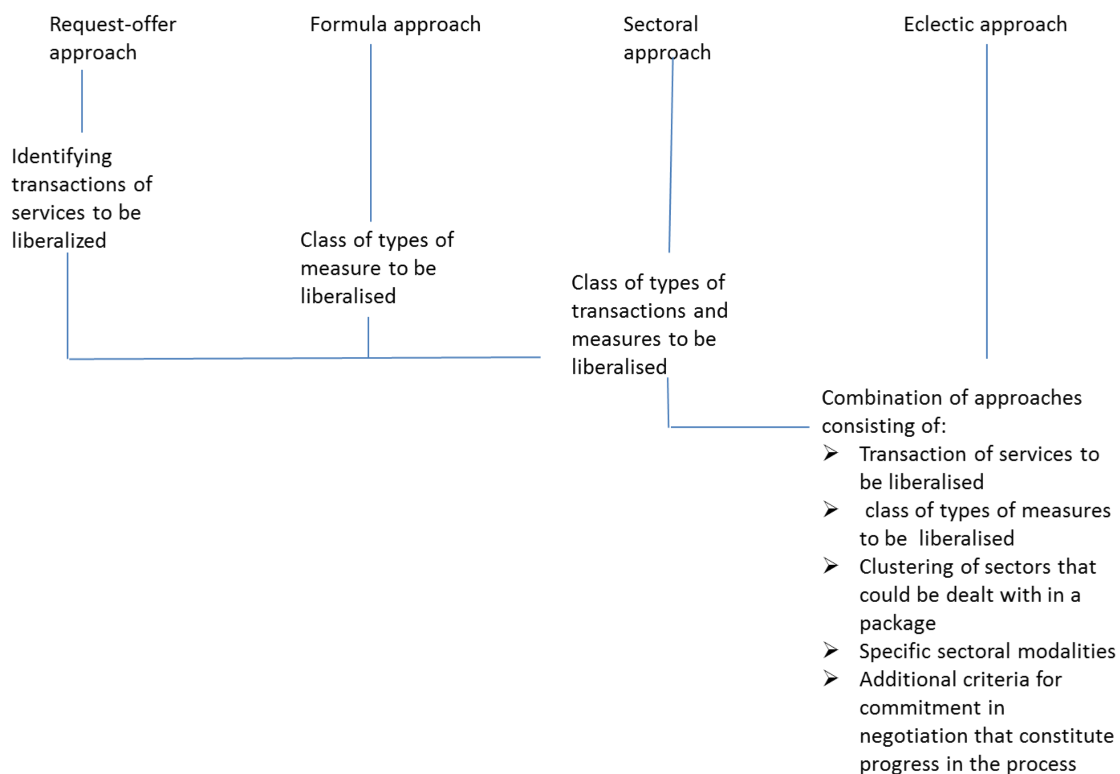

Figure 6: Approaches to Services Negotiations. Source: Reforming Trade in Services Negotiations under AFAS by Kartadjoemena

3.1. Types of Negotiating Modalities

3.1.1. Request-offer approach

The request-offer approach involves one country (usually with exporting interest) requesting her trading partner(s) to open-up or liberalizes (sub) sector(s). The request could be general or target specific measure(s), type of measures or transactions to be liberalized. The requested partner responds to the request(s) through an offer indicating the intended level of liberalization. Once the offer is exchanged, parties will engage each other in bilateral negotiations after which the offer is revised until both parties agree. The final offer constitutes the schedule for implementation of liberalization commitments that will apply to all services and suppliers of the parties.

The request-offer approach is a step process that allows for flexibilities in terms of the depth of liberalization across sub-sectors and/or sectors i.e. countries can choose what and what not to request and or offer in the different sectors. It is suitable where members have diverse import and export interest, varied economic structures and levels of development. It is used in WTO both for GATT and GATS negotiations, where the membership is large and is virtually complicate to bring together representatives of the entire WTO member in a room/forum to negotiate with one country's offer. Although not commonly used in FTA agreements on trade in services, SADC member states are using it while COMESA agreed on the same but so far has abandoned it in their on-going services negotiations.

3.1.2. Formula Approach

The formula approach involves an agreed formula for liberalization and the objective is to ensure equitable effects in tariff reductions thus higher cuts for higher tariff and low reductions in case of low tariff. With a formula approach parties would agree in advance on the tariff cut levels as well as the equitable effects. This approach is used in GATT negotiations and the latest applicable formula is that proposed by Switzerland famously known as the "Swiss formula". It is important to note that there are exceptions to this approach, allowing no or varied tariff reductions for sensitive products in particular. For trade in services, a formula approach implies deeper liberalization levels in case of highly protective/trade restrictive measures and vice versa. This means that parties would have to agree in advance. However, it has been observed that formula approach in services liberalization is technical and must be policy-driven with necessary political support.

Formula approach in case of services liberalization could target modes of supply or measures (sectorial or horizontal). Targeting mode of supply would include commitments of measures applicable in the respective modes of supply that are subject of liberalization. These could be centered on elimination of limitations listed under GATS market access limitations as they apply to the various modes of supply. Some exceptions may be necessary for some sector for example to take care of non-discriminatory prudential measures in financial and health services. Annex 1 of the COMESA Regulations on Trade in Services contains clear-cut commitments on progressive removal of mode 4 limitations (i.e. quantitative restrictions and economic needs tests) with timeframes.

Some examples of formula approach targeting sectoral measures used under the WTO/GATS include a) model schedules on maritime transport (2) reference paper telecommunication[3], and c) the "understanding" on financial services. A similar approach targeting sectoral measure features in the ongoing and the concluded EPA negotiations by incorporating some aspects of sectorial regulatory commitments in the framework agreement. The same approach has been adopted in the on-going SADC trade in services negotiations.

The targeted sectoral measures in the telecommunication reference paper comprise of common commitments on domestic regulatory issues such as competitive safeguards, access to facilities/services (i.e. interconnection, universal services and allocation of scarce resources), transparency (i.e. licensing) and independence of regulators. The "understanding" on financial services contains some commitments on market access (prudential measures, recognition and dispute settlement), public procurement, the treatment of new financial services, and a standstill clause. On the other hand, the mode schedule on maritime transport encourages greater clarity and use of standard classification in scheduling commitments. It also identifies areas for: common commitments, where varied liberalization commitments are possible and those that are excluded i.e. cabotage.

As mentioned above, formula approach could be used to target trade distortive horizontal/cross-cutting measures. More often, these are measure in domestic public policies, which may limit freedom of entry of foreign service-providers. A formula approach in this regard would mean a commitment to remove (may be progressive) all limitations on say number of services suppliers, foreign capital participation and all discriminatory measures. This approach would result in most cases, to major policy shift and relinquish of national economic sovereignty thus very political sensitive and may stall negotiations. It is suitable in a context for a common market agreement where there are less divergent economic interests among parties. EAC common market agreement seem to have followed this approach, in the absence of an article on market access it does not allow explicitly and does provide flexibilities for parties to maintain any limitations in any sectors. Article 16(5) of the EAC Common Market Protocol provide *"…the Partner States shall progressively remove existing restrictions and shall not introduce any new restrictions on the provision of services in the Partner States, by nationals of other Partner States except as otherwise provided in this Protocol*"

3.1.3. Sector Specific Approach

Alternative approach to request-offer and the formula approaches involve an agreement on various measures that should be reduced or eliminated in specific sectors. The advantage of sector-specific approach is that it allows coverage of sectoral peculiarities but the risk could be an attempt by some countries to opt-out of negotiations in a sector of no or less interest to them. To optimize on the benefits and risks of this approach WTO/GATS negotiations include a general commitment on the scope and coverage i.e. include all services sectors and allowed sectoral

[3] Similar reference papers were proposed (were not adopted) for postal & courier services and tourism services during Doha round (see WTO Documents TN/S/W/26; S/CSS/W/107 and S/C/W/147).

agreements in a form of annexes to take care of sectoral peculiarities. GATS annex are on financial, telecommunications, maritime and air transport as well as on movement of natural persons.

3.1.4. Eclectic Approach

Eclectic approach as the name suggests it is a combination of the various approaches consisting of some aspects the request-offer, formula and sector-specific approaches as appropriate. It will include a different approach for example in negotiating the framework agreement on general trade principles/rules and different approach in negotiating the liberalization commitments as well as the mutual recognition agreements if any.

3.1.5. Selection of Negotiating Modalities

Generally, each of the negotiating modalities has pros and cons therefore the most important issues are the political environment and liberalization ambition will dictate the appropriate approach. However, any selection of one approach over the other involve trade-offs across the negotiator must understand the complexity of achieving optimal level of liberalization and this will include a complex analysis as depicted in figure 7 below.

3.2. Liberalizing Trade in Services

3.2.1. Schedules of commitments

Liberalization commitments consist of the general undertakings and sector commitments. In a trade in services agreements, member commits to fully or partially liberalize the services sector by substantially eliminated or reducing trade restrictions on a non-discriminatory basis. The specific commitments are usually listed in form of schedule similar to tariff schedule in trade in goods, stating the market access and national treatments conditions/terms which applies in liberalized sectors and subsectors. The schedules of specific commitment consist of four columns such as: a) sector and subsector, b) market access limitations c) national treatment limitations and d) additional commitments.

Market Access is the conditions for allowing the supply of services from a member country into another member territory. When a Member undertakes a commitment in a sector or subsector it must indicate for each mode of supply what limitations, if any, it maintains on market access. The market access limitations comprise of conditions that modifies the terms of competition among services and services suppliers. The targeted market conditions in case of GATS are those related to restrictions on foreign capital participation, type of legal entity or quantitative (i.e. number of services suppliers, number of services operations, number of natural persons and total value of services transactions or assets).

On the other hand, **national treatments limitations** are those conditions that favor national services or services supplier over the foreign services. A measure would be considered less-favorable if it modifies the terms of competition in favor of a foreign services or services supply. Generally, a member is obligated to accord to the services and service suppliers of any other Member treatment no less favorable than is accorded to domestic services and service suppliers. In case a member wish to maintain a measure that will be less-favorable for foreign services and

services supplier, then it must indicate as such under the national treatment limitations column. Typical national treatment limitations includes such measures on nationality and residence requirement, discriminatory and other fiscal measures, discriminatory licensing/registration and qualification/training requirements, technology transfer requirements, prohibitions on foreign land/property ownership and local content requirements.

Additional commitments includes measure other than those on market access and national treatment such as qualitative (minimum) and procedural requirements - regulatory autonomy of Members subject to rules aimed at minimizing trade restrictive effects. This is optional for a member wishing to undertake positive additional commitments, not the listing of additional limitations or restrictions. These are measure in the domestic regulations which supports implementation of the liberalization commitments. More often, where there are members are divergence on the level of regulatory commitments, they could negotiate the key principles in the sector e.g. GATS Reference Paper on Basic Telecommunication and individual members may wish to undertake additional commitments in line with the negotiated principles.

3.2.2. Scheduling approaches

There are two approaches for scheduling the liberalization commitments a) "positive list" or "Bottom-up" approach, and b) "negative list" or "top-down" approach. The two approaches elaborated and their pros and cons are discussed for the purpose of understanding.

Positive list approach involve listing of sectors and subsectors that are subject to liberalization and for each of subsector a member lists the market access and national treatment imitations applicable to the four modes of supply. A shorthand description of the positive list approach is "only the listed sectors are liberalized and everything else is not" and for sectors where liberalization commitments are not made, the MFN principle will apply. This approach was adopted in the context of GATS schedules and some FTAs including COMESA, EAC and SADC.

Box 3: Example of a Positive list Approach

Sector Subsector	Market access limitations	National Treatment limitations	Additional commitments
Positive Element: selection of sectors in which Market Access and National Treatment is granted	1) …. 2) …… 3) …. 4) ……	1) …… 2) ….. 3) ……	Regulatory (Negotiated) commitments which other than the market access and national treatment
	1) …. 2) …… 3) …. 4) ……	2) …… 3) …. 4) ……	

Inscribe only the negative conditions on market access and national treatments

The advantages of positive list are: allows for application of special and differential treatment to less developed members and it easy to monitor the negotiating process. It gives comfort to member as they are clear to what they are exactly committing to liberalize by positively define the subsectors, allows for a precise policy space "only include the sector would like to liberalize, thus

somehow cautious liberalization. This approach is normally supplemented by a standstill" clause In order to ensure members would not introduce new limitations. A prototype example of positive list approach is given in figure 7.

Negative approach involves listing of sector where a member has some reservations i.e. a member lists those measures in the describe services sector will not be liberalized. It obliges members to liberalize all forms of discriminatory treatment in all sectors except for sectors or measure included in the list of reservations (usually attached to the agreement). Generally all the non-conforming measures are bound on entry into force of the agreement and further liberalization rests on progressive elimination of reservations. This approach encourages deeper liberalization commitments and minimizes the policy space, and may create uncertainties as to what exactly is liberalized. The approach is idea where membership is not divergent economic and development interests as it does not allow balanced concessions. It has been mostly used in FTA agreements such as NAFTA. EU has been pushing for these in the ACP-EPA. A prototype example of Negative approach is shown in figure 7 below.

Box 2: Example of a Negative List Approach

Sector Subsector	Description of reservations
Production of electricity: Distribution and transmission of electricity on own account	Investors from countries which are energy suppliers may be prohibited from obtaining control of the activity. Unbound for direct branching (incorporation is required).

Regardless of whichever negotiating modality and the scheduling approach is adopted, formulating liberalization commitments involves a complex and lengthy process, as many stakeholders are involved and requires some political and socio-economic decisions. Figure 4 below depicts the analytical work and process require in formulation of liberalization commitments.

3.2.3. Services Liberalization Commitments by African Countries

The six-stage process to Africa CFTA envisages building on the existing levels of liberalization already achieved intra and inter-regional levels. The ideal case for trade in services liberalization would be somewhat an improvement to the liberalization commitments in the RECs. Also, it would be meaningful for CFTA states to ensure coherence in the liberalization process and offer each other better concessions than those offered to third parties. It is thus important to assess the existing liberalization commitments by Africa states and to the extent possible the implementation.

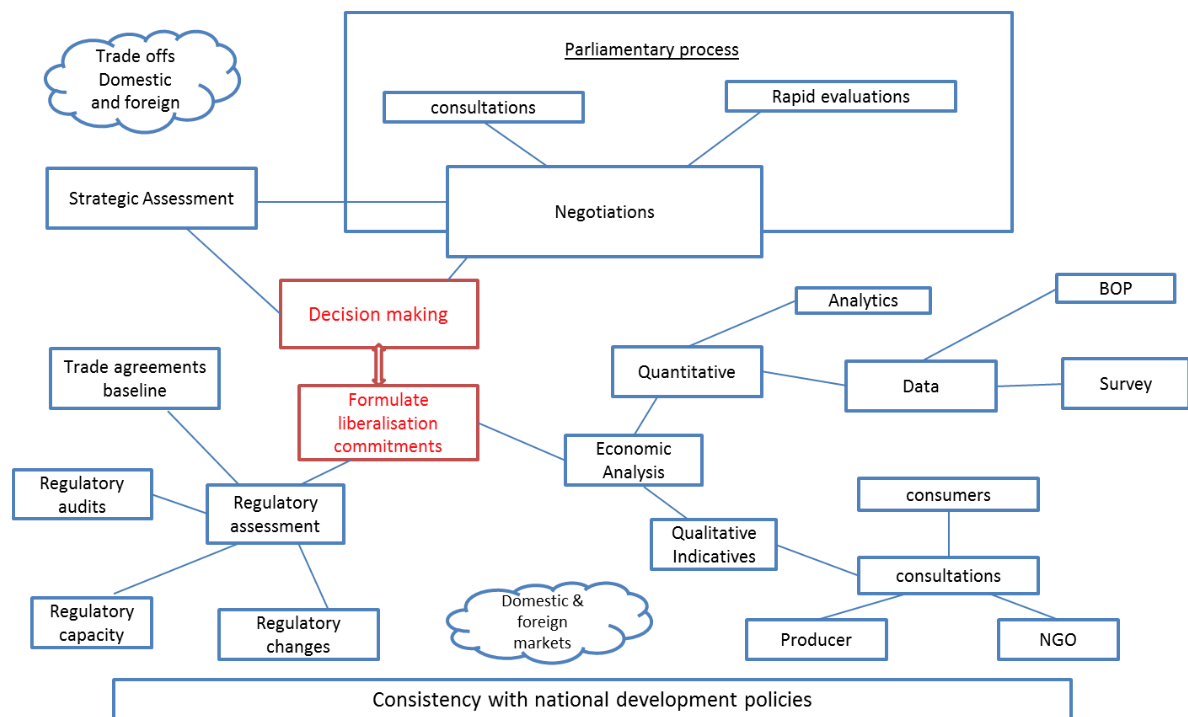

Figure 7: Complexity in Services Sector Analysis. Source: Author's adaption

a. EAC

The EAC countries agreed to progressively remove existing and not to introduce any new restriction on provision of services by nationals of states parties, on a non-discriminatory basis, in the context of common market. The liberalization commitments were made in the seven priority sectors such as business, communication, distribution, finance, education, transport, and tourism services; at the timing of signing the Protocol in 2010. Liberalization commitments in the remaining sectors will be negotiated in due course.

It is important to note that although the Protocol does not provide market access limitations but the schedules have a column on market access and national treatment limitations by modes of supply with elimination date. Literal translation of the commitments would imply that had listed the existing market access and national treatment limitations of which should be eliminated on the respective dates inscribed in the schedules. Although individual state party positively enumerated market access and national treatment limitations for each mode of supply, the target date for elimination of all listed limitations is 2015. In other words, it is hoped that by 2015 EAC will achieve full liberalization in the services sub-sectors listed in their schedules of commitments. A literal count of sub-sectors in the seven priority sectors covered by each state party indicates a varying sectoral coverage with most by Rwanda (104), Uganda (96), Burundi (76), Kenya and Tanzania (61) each. Table 1 below provides a list of subsectors in the seven-priority sector covered in the liberalization commitments at EAC Common Market and GATS commitment. In addition, the Annex on Mutual Recognition of Academic (MRA) and Professional Qualifications was adopted in 2011 and three MRAs on professional services in legal, accounting and auditing, and architects and quantity surveyors have since been concluded.

Table 1: EAC Liberalization Commitments Vis-à-vis GATS (1994) commitment- Sectoral Coverage

Countries/ Sectors	Burundi	Kenya	Rwanda	Tanzania	Uganda	Number Sub-sectors in W/120
Business	31	15	32	7	32	46
Communication	6	16	21	18	20	24
Distribution	3	3	4	2	4	5
Education	4	4	5	4	5	5
Financial	9	12	16	17	12	17
Tourism	4	3	4	4	4	4
Transport	16	8	22	9	22	35
Total	**73**	**61**	**104**	**61**	**99**	**136**

It is expected that as a first step of implementation countries would undertake necessary regulatory reforms to domestication of the agreements. A review by EAC and World Bank (2014), of more than 500 key sectoral laws and regulations of the EAC Partner States identified at least 63 measures inconsistent to commitments to liberalize services trade within the EAC. The review focused on professional services (legal, accounting, architectural, and engineering), road transport, distribution (retail and wholesale), and telecommunications legislation. The measures are most common in Tanzania (17) and Kenya (16), followed by Rwanda (11), Uganda (10), and Burundi (9)[4]. Worth note, the existing mode 4 commitments by all the state in the seven are linked to schedules of commitment on free movement of workers. The linking has brought some implementation challenges and state parties are yet to resolve the controversies.

b. COMESA

The COMESA Regulations on trade in services adopted in 2009, provides for progressive liberalization of trade in services starting with seven priority sectors such as business, communication, construction, energy, finance, tourism and transport services. To date only 15 of 19 countries have exchange offers in communication, finance, transport, and tourism services. The offers are yet to be adopted and subsequently implemented.

The only existing liberalization commitments in COMESA so far, is the ambitious mode 4 commitments (see annex Cx) providing for elimination of quantities restrictions and ENT requirements in categories such as independent and contractual service suppliers by 2015. However, none of the exchanged offers comply with the agreed mode 4 targets.

c. SADC

The SADC Trade in Services Protocol provides for progressive liberalization of trade in services in different round of negotiations with the 1st round covering six priority sectors (communication, construction, finance, energy, tourism and transport); the negotiations are scheduled for conclusion in March 2015. However, to date only eleven countries have submitted offers most of which covers communication, finance, tourism and transport services.

[4] Burundi's strong performance on the scorecard is partly due to the fact that some of its sectors are not yet regulated through sectoral legislation.

Although, the Protocol provide some flexibilities for states parties to maintain defined market access and national treatment limitation in the sectors but the SADC Scheduling and Negotiating Guideline provides that starting point for liberalization commitments is the existing GATS commitments. Therefore, logically it implies that the SADC liberalization commitment will be somehow better/more liberal that the SADC member states' existing GATS commitment. Also, it is worth noting that the SADC Protocol on Transport, Communication and Meteorology, explicitly provides for liberalization of cross border road transport services through bilateral agreements among state parties.

d. ECOWAS

ECOWAS agreed to trade in services liberalization through various protocols to the ECOWAS treaty providing for free movement of persons without visa adoption of ECOWAS passport and residence card/permit. There are no schedule liberalization commitments but sectoral agreements within the region promotes trade liberalization including a) UEMOA Directives harmonising regulations in telecoms; maritime, road, and air transport services; b) ECOWAS Supplementary Act harmonizing telecom regulations; c) Intra-UEMOA liberalisation (modes 3 & 4) for dental, medical, accounting, legal and architectural services, and d) ECOWA new regulatory framework to reduce historical monopolies.

Implementation of these commitments has been ineffective in all services areas due to challenges related to limited political and financing support; policy incoherence, legislative and language heterogeneity among member countries. Also, some regulations like the UEMOA directive is yet to be ratified while the non-domestication of regional agreements e.g. The ECOWAS telecom regulation has burred the implementation of related commitments.

e. Other RECs

There is little progress in terms of services liberalization in the other RECs such as IGAD, ECCSA, CEN-SAD and UMA despite the ambition to conclude intra-regional agreement. However, CEMAC (ECCSA sub-region) has a cooperation agreement on transport as well as telecommunication. CEMAC has made some progress in liberalization of air transport, implementing a project on Transport-Transit Facilitation and another project on regional undersea fiber optic cables.

f. COMESA-EAC-SADC Tripartite FTA

The establishment of the COMESA-EAC-SADC (tripartite) FTA in 2009, is considered as major milestone toward the CFTA. The negotiations of the tripartite FTA agreement started with goods chapter in the first phase (due for completion in 2014/2015) and the second phase will cover trade related issues such trade in services, intellectual property rights and investment; and the negotiations are expected to commence in 2015.

The tripartite programme includes work on thematic areas such as free movement of Business Persons, liberalization of air transport and trade facilitation as related to road transport. Negotiations on movement of Business Persons are ongoing, while a Joint Competition Committee

has been established to oversee the full implementation of the Yamoussoukro Declaration on air transport liberalization.

g. Agreements with Africa and 3rd Parties

All WTO-African countries undertook GATS commitments including those that are currently negotiating their accession to WTO Agreement. Henceforth, a couple countries have signed and/or are negotiating trade agreements, which include services liberalization at bilateral level including among others the US Trade and Investment Agreement and the Economic Partnership Agreement with EU under the ACP-EU Contonou Agreement. Apart from the EU-South Africa Trade Development and Cooperation Agreement (TDCA), all the concluded/initialed EU-EPAs with the African countries are yet to include services chapter hence no specific liberalization commitments.

Box 4: Agreements by Africa States with 3rd Parties

EU-TDCA

The EU and South Africa signed the Trade, Development and Co-operation Agreement (TDCA) in Pretoria on 11 October 1999. The Agreement covers five areas of co-operation: political dialogue, development co-operation, co-operation in trade and trade related areas, economic co-operation and co-operation in other areas. The TDCA establishes preferential trade arrangements between the EU and South Africa, along with the progressive introduction of a free trade area. The TDCA's trade-related articles were provisionally applied since January 2000. The Agreement fully entered into force on 1 May 2004 after ratification by all signatory parties.

EAC-EU-EPA

All EAC countries are participating in the EPA negotiations on the comprehensive EPA and Trade in services is covered under the rendezvous clause and will be negotiated at later stage.

ECOWAS

The regional agreement covers goods and development-cooperation and includes rendezvous clauses providing for further negotiations on services and rules chapters.

ESA-EPA

Last round of negotiations of the comprehensive regional EPA took place in Mauritius in November 2011 on the basis of a joint draft text. Further progress in the negotiations is linked to presentation of the market access offers for both goods and services by the ESA states (i.e. Comoros, Madagascar, Mauritius, Seychelles, Zambia and Zimbabwe).

Central Africa

Regional negotiations are focusing on market access, rules of origin, services and investment, cultural cooperation, accompanying measures (development cooperation) and fiscal impact.

SADC-EPA

Botswana, Lesotho, Mozambique and Swaziland are currently negotiating the SADC-EPA trade in services chapter.

EU bilateral agreement with UMA countries

a) Egypt: bilateral negotiations on the liberalization of trade in services and establishment are under way.
b) Morocco –EU: Bilateral negotiations on the liberalization of trade in services and establishment continue. Further negotiations to deepen the current Association Agreement on Agreements in trade-related regulatory areas will be launched as soon as there is substantial progress in the above negotiations.
c) Tunisia-EU: Bilateral negotiations on agriculture and on the liberalization of trade in services and establishment are under way
d) Libya: The EU has decided to suspend negotiations on the Libya-EU framework agreement on 23 February 2011

Countries that have signed the **US-TIFA** are Angola, Ghana, Liberia, Libya, Mauritius, Mozambique, Nigeria, South Africa, and Rwanda, COMESA, EAC and WAEMU

Source: Overview of EPA negotiations by European Commission (October, 2014) and USTR

4. CONCLUSIONS AND RECOMMENDATIONS

For African countries, the economic gains from further liberalising merchandise trade are still potentially large. However, gains from liberalising cross-border labour flows are even larger, and those from boosting services trade and information flows have multiplier effects that are potentially significant. Also, it is important to remember that the gains that flow from openness are not only economic in nature, cross-border exchanges also offer, amongst other things, cultural and political benefits, not to mention confidence building among nations and economic actors. Africa stands to gain from a sustained structural benefit brought about by the opening up of African economies to each other and to the world at large.

Africa's poor trade performance is less about policy and preferential access to key markets than about facilitation. It is still significantly more expensive to trade with Africa than with other regions around the world. This is because of poor – or absent – infrastructure, inefficiencies and weaknesses in other enablers that facilitate trade and overall economic integration. While Africa has undoubtedly become far more integrated with the rest of the world in recent years – and especially since 2010, following the global financial crisis – the continent is still the least globalised region in the world.

Therefore, Africa needs to trade and become more integrated in global value chains if it is to harness its natural potential and stimulate wealth and prosperity. This also means growing integration within Africa – to build economies of scale and competitiveness in global markets.

Trade negotiations and trade rules that are developed under the Continental Free Trade Area will need to take into account the changes that are taking place in the world market in the 21st century. This should also be reflected in individual African countries' policies and governance structures to ensure that they take advantage of GVCs both in goods and services which have altered the way in which firms do business and trade is conducted.

The important role played by services as a link in GVCs in creating services value chains of their own means that more needs to be considered in the consideration of modes of supply to ensure that African RTAs are modal neutral and that countries make liberalizing commitments that enhance the development or provides a conducive environment for joining GVCs.

The negotiating approach that is adopted needs to take into account the work that has already been undertaken in the different African RTAs. However, it does not necessarily mean that the C-FTA should adopt a similar approach as these RTAs. An approach that will facilitate trade and ensure that African countries develop regional value chains and also join GVCs should be considered. In this regard consideration should be given to the use of the "eclectic approach" which combines various approaches. This will be key in ensuring that the challenges and needs of individual countries and regions are taken into account. The liberalizing approach also will need to take cognizance of the fact that African countries are already negotiating in different configurations and it might not be possible to have different schedules of commitments for each grouping. Therefore a hybrid approach may need to be considered or a situation where at the C-FTA level, there might not be necessary to have a schedule of specific commitments.

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