Training Workshop on Trade in Services Negotiations for AU-CFTA Negotiators

Nairobi, Kenya
24-28 August 2015

Introduction to the WTO General Agreement on Trade in Services (GATS) and Services in Doha Round of negotiations

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Outline

- Part I. GATS: Key concepts and provisions
  - Objectives of the GATS
  - Definition of services trade
  - Ways of trading services
  - Scope of the agreement
  - Some specific provisions

- Part II: Assessment of UR commitments
  - Per sector, per depth of commitment
  - The experience of implementing UR commitments

- Ongoing Doha negotiations on services
  - Issues areas and mandates
Part I

GATS:
Key concepts and provisions
Objectives of the GATS:

1. Expanding trade as a means for development

2. Achieving progressively higher levels of liberalization
   - Due respect to national policy objectives
   - Respect for the right to regulate to meet national policy objectives

3. Facilitating the increasing participation of DC in world services trade
Services Sectors (WTO classification list W/120)

1. Business services
2. Communication services
3. Construction services
4. Distribution services
5. Educational services
6. Environmental services
7. Financial services
8. Health-related and social services
9. Tourism and travel-related services
10. Recreational, cultural and sporting services
11. Transport services
Definition of services trade

Modes of Supplying a Service (Article I)

- **Mode 1:** Cross-border Trade
  - From the territory of one Member into the territory of any other Member
    - Example: Software, insurance or tele-diagnosis from country B into A

- **Mode 2:** Consumption Abroad
  - In the territory of one Member to the service consumer of any other Member
    - Example: A’s resident obtains hospital treatment or education in B
Definition of services trade
Modes of Supplying a Service (Article I)

• **Mode 3:** Commercial Presence
  - By a service supplier of one Member, through commercial presence in the territory of any other Member;
    - Example: Bank, telecommunications firm or hospital from B sets up foreign direct investment (FDI) subsidiary in A

• **Mode 4:** Movement of Natural Persons
  - By a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member
    - Example: Engineer or doctor from B provides services in A
Ways of trading services

1. Exporter → «Product» → Consumer

2. Exporter → «Producer» → Consumer → Importer

3. «Producer» - Company → Consumer

4. «Producer» - Professional → Consumer
Scope of the Agreement (Article I)

• All measures affecting trade in services taken by central, regional or local governments and non-governmental bodies

• Services include any service in any sector except services supplied in the exercise of governmental authority

• The spectrum of international service transactions includes investment and labour
GATS contains provisions regarding

**Economic Integration (GATS Article V)**

- Eco integration agreement can be entered into by WTO Members provided that such agreements:
  - have substantial sectoral coverage,
  - provide for the absence or elimination of substantially all discrimination, between or among the parties, and
  - do not raise the overall level of barriers to trade in services, in respect of any Member outside the agreement
GATS contains provisions regarding

**Recognition (Article VII)**

- WTO Members may recognize the education or experience obtained, requirements met, or licenses or certifications granted of other Members.
- Such recognition can be achieved:
  - through harmonization or otherwise,
  - can be based upon an agreement or arrangement with the country concerned or
  - may be accorded autonomously.
- Member that is a party to a recognition agreement must afford adequate opportunity for other interested Members to negotiate their accession to the agreement or to negotiate comparable ones with it.
GATS contains disciplines regarding:

- **Transparency**
  - Notification of measures affecting the operation of the agreement

- **Domestic regulation**
  - Mechanisms to review and provide remedies for administrative decisions affecting trade in services

- **Monopolies and exclusive services suppliers**
  - Ensuring they do not act in a manner that is inconsistent with MFN or restrict trade

- **Payments and transfers**
  - Ensuring capital transactions (payments are transfers) are not restricted

- **Prudential carve-out**

Financial-specific
Part II:

Assessment of UR commitments
Assessment UR commitments (per sector)

• Scope of GATS = 12 sectors / 160 subsectors
  - On average, each country included commitments on 1/3 of subsectors
• Sectors with most commitments:
  - Tourism
  - Financial
  - Business services
  - Telecom
• Sectors with least commitments
  - Transport
  - Audiovisual
  - Health
  - Education
• Accession commitments post-UR included:
  - Infrastructure services
  - Construction services
Assessment UR commitments (per depth of commitment)

- Most commitments on Mode 2 without limitations
- Commitments on Mode 4 very limited
- Full commitment on Mode 1 and 3 are the exception
- Commitments on Mode 3 with limitations
- High proportion of unbound commitments on Mode 1
- Sectoral limitations affect financial services and professional services
- Accessing countries (post UR) assumed full commitments for Modes 1, 2 and 3
Assessment UR commitments (implementation of GATS)

- More flexible structure assuming commitments
  - Less controversial
  - Imprecise commitments
  - Bound existing market opening, hence did not created significant market access
- More opening on mode 3 (dev/ed country interest) in contrast with mode 4 (dev/ing country interest)
- “Weak” rules with respect to domestic regulation
- Link between liberalization and investment attraction
- Lessons learnt with respect to sequencing liberalization and reform
Evolution of trade in services

- The dynamism of trade in services
  - The outsourcing phenomenon
- Technological advances enable cross-border trade of services by electronic means
- Proliferation of regional trade agreements
Part III:

Ongoing Doha negotiations on services
Issues areas and mandates

1. Liberalization
2. New provisions / disciplines
   - Practices having a distorting effect on trade
3. Specific concerns of developing countries and LDCs
1) Liberalization

- Doha mandate: achieve a progressively higher level of liberalization through successive rounds of negotiations

- Objective: reduce barriers to free trade of services
  - Reducing government policy interventions..
  - ..that may be applied after a service has entered a market
Market access - 1

• How do we do this?
  - Request and offer, bilateral, plurilateral and multilateral

• Assessment of what is currently on the table
  - The signaling conference
    • Unsatisfactory quality of offers (in terms of new sectors and improvements)
Market access - 2

• Sectors where offers concentrate:
  - Business services (professional, CRS..), telecom, financial, maritime and tourism
  - MFN exemptions: majority still exists

• Sectors where less attention is given:
  education, distribution, postal and courier, road transport, entertainment, audiovisual and health

• Modes: Mode 3 > Mode 1 and 4
2) New provisions / disciplines

- **Objective:**
  - Clarifying existing rules and improving those that could have a distorting effect on trade

- **Mandates and status of negotiations**
  - Subsidies
  - Domestic regulation
  - ESM
  - Government procurement
3) Specific concerns of developing countries

- Special and Differential Treatment
  - Appropriate flexibility for D/ing country in opening
- Recognition of serious difficulty confronted by LDCs (exempted in Doha)
- Facilitate increased participation of Dev/ing countries and LDCs in international trade in services
  - Access for sectors and modes of interest to D/ing countries
    - Special priority given to LDCs
      - LDC modalities: preference through MFN waiver
  - Technical cooperation and capacity building
Conclusions

- After a 15 year experience of implementing WTO services provisions:
  - The UR bound the regulatory status quo of 1995
  - Mixed results with respect to export interests of dev/ing countries and investment expectations
  - Lesson learnt: taking advantage of liberalization implies sequencing reforms (complexity)
  - Unfinished business with respect to:
    - Subsidies, safeguards, public procurement, domestic regulation
    - Improving market access and practices related scheduling
    - Will have to consider changes that will occur in trading services as a result of technological advancements.
Thank you

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