

Trade in Services – The ECOWAS Experience



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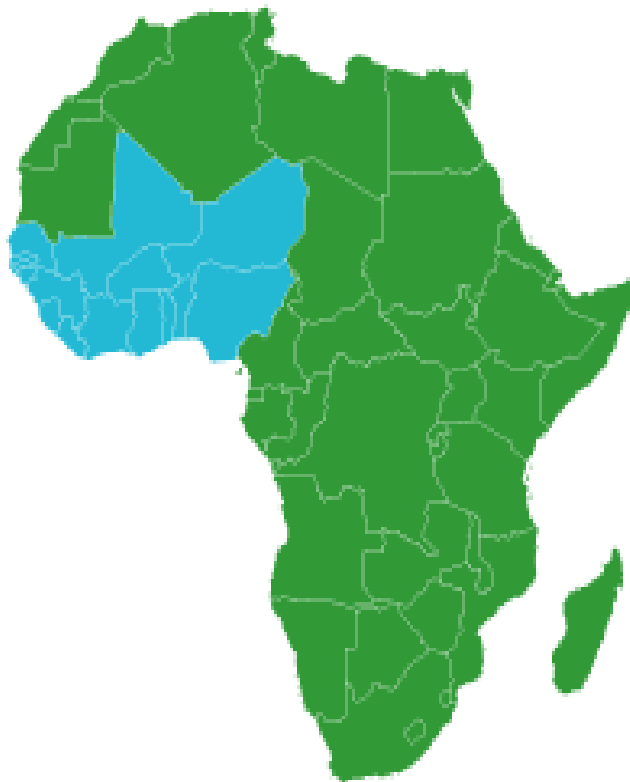
Training Workshop on Trade in Services Negotiations for AU-CFTA Negotiators,
Nairobi – Kenya, 24 – 28 August, 2015

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Introduction...

Background - ECOWAS



Introduction...

Background - ECOWAS

- ECOWAS is the regional intergovernmental organisation of 15 Member States
 - Benin; Burkina Faso; Cape Verde; Cote d'Ivoire; Gambia; Ghana; Guinea; Guinea Bissau; Liberia; Mali; Niger; Nigeria; Senegal; Sierra Leone; and Togo
 - All Members of the WTO with the exception of Liberia
 - Overriding objective of ECOWAS is to promote cooperation and integration, leading to the establishment of an Economic Union in West Africa
 - Article 3 of the Revised Treaty establishes the aims and objectives to be the formation and subsequent evolution of a free trade area, a customs union, a common market, a monetary union and finally an economic union, under the overarching aim of economic stability and equitable development among the Member States
 - Movement from an "ECOWAS of States to an ECOWAS of People"

Mandate and Reference Documents...

...At the ECOWAS Level

- The principal source of ECOWAS law is the 1993 ECOWAS Revised Treaty
 - Protocols and Supplementary Protocols
 - Decisions of the Authority of Heads of State and Government
 - Decisions of the Council of Ministers
 - Case laws
- Trade in Services is an essential component
 - Paragraph 2(d)(iii) of Article 3 of the 1993 ECOWAS Revised Treaty:
 - “...the establishment of a common market through: the removal between Member States, of obstacles to the free movement of persons, goods, services and capital, and to the right of residence and establishment.”
 - Other Relevant Articles include: Article 32 on Transport and Communications; Article 33 on Posts and Telecommunications; Article 34 on Tourism; and Article 51 – 55 on Financial Services:

Mandate and Reference Documents...

...At the UEMOA Level

- At the UEMOA level, reference can be made to the following:
 - Article 4c of the UEMOA Treaty (similar to paragraph 2(d)(iii) of the 1993 ECOWAS Revised Treaty
 - Create between Member States a Common Market based on the free movement of persons, goods, services, capital and the right of establishment of People...
 - Article 4d of the UEMOA Treaty
 - Coordination of national sectoral policies in services as well as joint actions in those areas
 - Other Relevant Articles include:
 - Article 91 through 96 on the right of residence and establishment
 - Article 97 on Movement of Capital

Mandate & Reference Documents...

...*Protocols and Supplementary Acts*

- Right of Entry, Residence and Establishment
 - 1979 Protocol A/P.1/5/79 relating to Free Movement of Persons, Residence and Establishment
 - Sets out right of Community citizens to enter, reside and establish in territory of member states (Art. 2(1))
 - Establishes three-phased approach over 15 years to implementation of (I) right of entry and abolition of visas, (II) residence and (III) establishment (Article 2).
 - Reserves right of member states to refuse admission into territory of Community citizens deemed inadmissible under domestic law (Article 4)
 - Establishes some requirements for expulsion (Article 11)
 - Confirms that Protocol does not operate to detriment of more favourable provisions in other agreements concluded by member states (Article 12)
 - Conditions entitlement to enter territory of member state on possession of valid travel document and international health certificate (Article 3(1))

Mandate & Reference Documents...

...*Protocols and Supplementary Acts*

- Right of Entry, Residence and Establishment
 - 1985 Supplementary Protocol A/SP.1/7/85 on the Code of Conduct for the implementation of the Protocol on Free Movement of Persons, the Right of Residence and Establishment
 - Obliges member states to provide valid travel documents to their citizens (Article 2(1))
 - Establishes additional (to Article 11 of Protocol) requirements for treatment of persons being expelled (Article 4)
 - Enumerates protections for illegal immigrants (Articles 5 and 7)

Mandate & Reference Documents...

...*Protocols and Supplementary Protocols*

- Right of Entry, Residence and Establishment
 - 1986 Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence)
 - Requires states to grant to Community citizens who are nationals of other member states “the right of residence in its territory for the purpose of seeking and carrying out income earning employment” (Article 2)
 - Conditions entitlement to residence (and thus seeking and carrying out of income earning employment) on possession of an ECOWAS
 - Residence Card or Permit (Article 5) and harmonization by member states of rules appertaining to the issuance of such cards/permits (Article 9)
 - Prohibits expulsion en masse (Article 13) and limits grounds for individual expulsion to national security, public order or morality, public health, non-fulfillment of essential condition of residence (Article 14)

Mandate & Reference Documents...

...*Protocols and Supplementary Protocols*

- 1989 Supplementary Protocol A/SP.1/6/89 amending and complementing the provisions of Article 7 of the Protocol on Free Movement, Right of Residence and Establishment
 - Amends provisions of Article 7 of Protocol to confirm obligation on signatories to resolve amicably disputes regarding the interpretation and application of the Protocol (Article 2)
- 1990 Supplementary Protocol A/SP.2/5/90 on the Implementation of the Third Phase (Right to Establishment)
 - Defines the right of establishment emphasizing non-discriminatory treatment of nationals and companies of other member states except as justified by exigencies of public order, security or health (Articles 2-4)
 - Forbids the confiscation or expropriation of assets or capital on a discriminatory basis and requires fair and equitable compensation where such confiscation or expropriation (Article 7)

Mandate & Reference Documents...

...*Protocols and Supplementary Protocols*

- 2003 ECOWAS Energy Protocol A/P4/1/03
 - Established a legal framework to promote long-term co-operation in the energy field, based on complementarities and mutual benefits, with a view to achieving investment in the energy sector, and increased energy trade in the West African region
 - Article 31(n) of Energy Protocol provides for establishment of regulatory bodies for energy systems, programmes and projects within the framework of implementation of the protocol
 - West African Gas Pipeline Authority (WAGPA) was established in 2004 to regulate the trans border gas pipeline project between Nigeria, Benin, Togo and Ghana
 - ECOWAS Regional Electricity Regulatory Authority (ERERA) was established in 2008 to regulate cross-border electricity interconnections among all ECOWAS Member States

Mandate & Reference Documents...

...*Protocols and Supplementary Protocols*

- Other Trade in Services Protocols and Supplementary Acts include the following:
 - Supplementary Act A/SA 1/01/07 on the harmonisation of the policies and regulatory framework of the Information and Communication Technology Sector
 - Supplementary Act A/SA.2/01/07 Access and Interconnection in Respect of ICT Sector
 - Supplementary Act A/SA.1/01/10 on Personal Data Protection within ECOWAS
 - Supplementary Act A/SA.2/01/10 on Electronic Transaction within ECOWAS
 - Supplementary Act A/SA.3/01/07 on the legal regime applicable to network operators and service providers
 - Supplementary Act A/SA.4/01/07 on numbering plan management

Mandate & Reference Documents...

...*Protocols and Supplementary Protocols*

- Other Trade in Services Protocols and Supplementary Acts include the following:
 - Supplementary Act A/SA.5/01/07 on the management of the radio-frequency spectrum
 - Supplementary Act A/SA.6/01/07 on universal access/service
 - Convention 2003 A/C.1/1/03 on recognition of equivalence of diplomas, certificates and other qualifications in Education within ECOWAS
 - Protocol A/P.1/7/87 on Cultural Framework Agreement for ECOWAS
 - Convention A/P4/82 regulating Inter-State Road Transportation between ECOWAS Member States
 - Supplementary Act/SP. 17/02/12 on harmonization of Axle Load control Standards, procedures, etc in Member States
 - Among many others...

Services Liberalisation...

Nature and Forms

- Trade in services liberalisation has taken different forms in the region
 - Unilaterally in favour of adjustment programmes
 - Bilaterally in the context of regional integration processes (movement of persons within ECOWAS and UEMOA)
 - Multilaterally within the framework of the GATS negotiations (commitments in tourism and other areas)

Services Liberalisation...

Unilaterally – at the National Level

- Undertaken by a number of Member States as part of economic reforms generally
 - Guided by the need to develop a competitive economy
 - Means of developing the sector
 - Input into the development of a competitive economy
 - Favourable impact on the development of the sector
 - Increased private sector participation and investment in services
 - Generated competition and growth in the levels and quality of services provision

Service Liberalisation...

Multilateral – at the WTO Level

- ECOWAS not a Member of the WTO
 - ETLS (FTA) notified to the WTO (Essentially a Goods Agreement)
 - Trade in Services Protocols have not been notified at the WTO neither has a waiver in that respect been sort
- Trade in services liberalisation undertaken at the level of Member States
 - With the exception of Liberia, all Member States are members of the WTO
 - Commitments have been made in the different sectors
 - ECOWAS and UEMOA have chosen to adopt the Negative List Approach (implicitly)

Service Liberalisation...

Multilateral – at the WTO Level

Sectors	Member States with Commitments in Sector	No. of Member States with Commitment in Sector
Business Services	BE, CI, GA, GU, SE, SL	6
Communication Services	CI, GA, GH, NIG, SE, SL	6
Construction Services	CI, GA, GH, SL, TO	5
Distribution Services	SE	1
Educational Services	GA, GH, MA, SL	4
Environmental Services	GU, SL	2
Financial Services	BE, CI, GA, GH, NIG, SE, SL	7
Health Services	GA, GU, SL	3
Tourism Services	BE, BF, CI, GA, GH, GU, GB, MA, NI, NIG, SE, SL, TO	13
Cultural Services	GA, GB, SE, SL, TO	5
Transport Services	BE, CI, GA, GH, GU, NI, NIG, SE, SL	9

Services Liberalisation...

Bilaterally – at the ECOWAS Level

- The liberalisation approach
 - ECOWAS and UEMOA have chosen to adopt a Negative List Approach (implicitly)
- Main Areas
 - National Treatment
 - Applies to all service activities covered by the Agreement
 - Obligation depends on consideration of similarity between foreign services and services specific to the importing country
 - Market Access
 - ECOWAS and UEMOA Agreements do not set up areas of Market Access for quantitative restrictions that are non-discriminatory in nature
 - MFN Treatment
 - There are no rules for MFN treatment concerning the right of establishment and the movement of natural persons in ECOWAS and UEMOA

Services Liberalisation...

Bilaterally – at the ECOWAS Level

- The Movement of Natural Persons
 - UEMOA: No specification of the category of natural persons
 - ECOWAS: Only identifies these categories:
 - Seasonal Workers
 - Migrant Workers
 - Occupational Travellers
 - Frontier Workers
 - In order to work, professionals must:
 - Either have the required local qualifications or have their foreign qualifications recognised
 - Highly-skilled professions
 - Article 5 of ECOWAS Protocol of Establishment states, among others, that “to facilitate access to non-salaried activities and the exercise of such activities, the Commission shall recommend to the Council, which shall propose to the Authority that decisions be taken for the mutual recognition, at Community level, of diplomas, certificates, and other qualifications.”

Services Liberalisation...

Bilaterally – at the ECOWAS Level

- Rules of Origin

- No specific rule of origin is defined for services
- ECOWAS and UEMOA have somewhat liberal rule of origin for legal persons
- Benefits are extended to legal people who are constituted or otherwise organised under the law of that other member, and are engaged in substantive business operations (or have their main business address) in the territory of that member or any other member, regardless of the national identity of those who hold or control these persons
- For naturalised persons, the advantages are limited to community nationals and not extended to permanent residents

Services Liberalisation...

The EPA Trade in Services Chapter

- 13 Member States signed the WA-EU EPA in December 2014, committing them to further negotiations on a comprehensive EPA, to include trade in services
 - The proposed Services Chapter will be made up of two major components
 - The main Agreement, including the scope and coverage; movement of natural persons; and the extension of market access, national treatment and most-favoured-nation treatment to commercial presence and the cross-border supply of services
 - A set of annexes and tables in which each country is expected to list all limitations to market access and national treatment by sector (and subsector) and by mode
 - Reactivation of the Technical Working Group on Services
 - Working to adopt a Common position towards the negotiations

Challenges...

Are there challenges?

- Absence of clearly defined road map, weak negotiating, regulatory and implementation capacities. There is no clear strategy for the services sector in the national development plan of some Member States
- Absence of Coalition of Service Industries (CSIs)
- There is no holistic strategy for the services sector negotiations as most governments look at services sector in a piecemeal, segmented manner which reflects more the particular characteristics of individual sectors than their role in the overall economy
- Inter-institutional Committees on Trade Negotiations in States lack legal backing
 - No budget and funding from government
 - Findings and recommendations are no binding
 - The different sector Ministries (agencies) narrow their focus on their sectors only
- Weaknesses of Member states can be addressed through a regional approach and can be better coordinated both at the preparatory stage as well as during the negotiations. ECOWAS and the WAMZ should coordinate the process of negotiations.

Conclusion...

Summing Up

- Although ECOWAS service industries are large and increasingly important, they are also uncompetitive and inefficient when compared with their peers
 - A major shake-up is clearly needed to raise competition and improve levels of service delivery within these sectors
 - ECOWAS Member States lack the capacity to implement and oversee complex regulatory reforms
- Regional/International agreements can provide an external stimulus and some incentive for ECOWAS Member States to engage in services liberalisation
 - Platform to source additional expertise and resources to support domestic regulation and reform
 - Direct liberalisation of sectors as opposed to overall strategy approach?



Thank you!!!

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