



Issues to Consider and Elements of Modalities for the CFTA Services Negotiations

ECOWAS/UNCTAD/GIZ Stakeholder Consultations on the Development of a
Regional Strategy for the CFTA Negotiations

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Outline

- Context
 - CFTA Mandate for services negotiations
 - Services economies in Africa
 - Liberalization of services in Africa
- Expected Outcome
- What exactly are we Negotiating?
- Preliminary considerations of a few options for:
 - the legal framework
 - the negotiating modalities
 - the preparatory work required
- Conclusions



CFTA Mandate for Services Negotiations

- The AU summit in Johannesburg reaffirmed the date of 2017 as indicative that year for the completion of negotiations
- The ambitious schedule to the CFTA negotiations is linked to the implementation of the Abuja Treaty , which provides the legal basis for negotiations
- The strategic choice to use FTAs RECs as building blocks of the CFTA makes it dependent on the first
- The preparatory work that could ensure negotiating positions based on sound analysis and conducive to generating positive outcomes for African economies and societies require some time



Services Economies in Africa

- Across Africa, the share of agriculture in GDP has declined, that of manufacturing has stagnated, while that of services has increased
- The growing importance of services in GDP, employment and value-addition in Africa is not reflected in the region's place in the MTS
- Some countries in Africa have joined other DCs in exporting services regionally and further abroad
- E.g. Kenya, Mauritius, Senegal and South Africa are exporting services regionally and to the European markets
- But most African countries show an uneven performance in services EX (e.g. Egypt performs well in exports of transport, communication and construction but not in the other sectors, Tunisia is strong in trade and distribution services)
- Even those countries which remains strong exporters of agricultural or manufactured products will benefit from the development of services (e.g. services account for 83% of the final price of Ethiopian roses sold in the Netherlands)



Liberalization of services in Africa



- All **African WTO Members** have taken services liberalization commitments under the General Agreement on Trade in Services (GATS)
- The scope and coverage of these commitments display a high degree of variability
- The sector most frequently inscribed is tourism and travel services followed by business services and communication services
- The sector least frequently inscribed is other services not included elsewhere, followed by distribution services and health-related and social services

Liberalization of services in Africa



ECOWAS

- The oldest African REC, launched in 1975
- Seeks to remove obstacles to the "four freedoms" of goods, services, capital and labour among Members
- Revised treaty of 1992 reaffirms right of citizens to entry, residence and settlement in other Members

The ECOWAS region will also negotiate liberalization of services in the EPA negotiations with the EU



Liberalization of services in Africa

EAC



- The Treaty establishing the East African Community (EAC) entered into force in July 2000
- It provides for the establishment of an export oriented economy for the Partner States in which there shall be free movement of services
- Article 76 of the Treaty further clarifies that there shall be established a Common Market among the Partner States
- The EAC Common Market Protocol (CMP) which entered into force in July 2010 reaffirms includes a dedicated section (Part F) on the Free Movement of Services and Annexes on the Free Movement of Persons and the Free Movement of Workers

Liberalization of services in Africa



COMESA

- The Treaty which established COMESA came into force in 1982
- Article 4 of the COMESA Treaty provides for the removal of obstacles to the free movement of services
- Cooperation in various services sectors is provided for in the COMESA Treaty
- In 2009 COMESA adopted dedicated Regulations on Trade in Services which aim to eliminate barriers to trade in services, especially those faced by small and medium scale enterprises (SMEs) exporters, so as to deepen integration for attainment of a common market with a view to enhancing universal access to services.

Liberalization of services in Africa

SADC



- The Protocol on Trade of the Southern African Development Community of 1996 already included in its objectives the liberalization of intra-regional trade in services, complemented by Protocols in other areas
- Article 23 further specified that MS would adopt policies and implement measures in accordance with their GATS obligations with a view to liberalizing their services sector within the Community
- The SADC Protocol on Trade in Services signed in 2012 promotes the progressive liberalization of intra-regional trade in services with a view to creating a single market for trade in services

Expected Outcomes?

- The real challenge lies in reaching agreement on what might be considered a satisfactory outcome and the process to achieve it

GATS Article V (*Regional Integration*) requires that a FTA:

- has substantial sectoral coverage
- provides for the absence or elimination of substantially all discrimination (in relation to national treatment) between or among the parties through:
 - elimination of existing discriminatory measures, and/or
 - prohibition of new or more discriminatory measures
- either at the entry into force of that agreement or on the basis of a reasonable time-frame

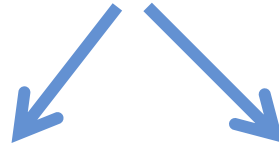
Flexibility is provided for DCs in fulfilling these conditions



Why Should we Negotiate Further Services Liberalization in Africa?

- Increased regional competition has the potential to promote technology diffusion
- Competitive pressure may reduce prices and/or raise quality of services
- Services are essential to growth and sustainable development
- African economies (across sectors) will be penalized if they have insufficient access to producer services
- Services liberalization can contribute to lowering business costs, thereby boosting competitiveness
- Services support entry into regional and global supply chains

What exactly are we Negotiating?



The legal framework:

- Scope
- Content
- Basic disciplines (MFN , MA, NT, etc.) and their relation to each other

Negotiating modalities:

- Processes to achieve the agreement's objectives
- Normally tailored to a specific phase of the negotiations
- E.g. scheduling technique

What the negotiations seek to achieve, i.e. both reduction of trade barriers and adequate policy, regulatory and institutional frameworks

How to get there

Options for the Legal Framework

CFTA negotiators will have to decide on the following:

- The liberalization “philosophy” behind the services negotiations (overall ambition)
- How this ambition will be translated in the key liberalization principles
- How the different modes of supply will be covered by the CFTA agreements?
- How different services sectors will be covered by the services agreement?
- Whether the adoption of the legal framework will be considered a stand-alone objective or will it be accompanied by liberalization commitments (for the 2017 deadline)?



Options for the Legal Framework

What will the continent adopt as liberalization “philosophy” behind the services negotiations (overall ambition)?

- Progressive liberalization through successive rounds
- Unfettered liberalization across all sectors and modes of supply subject to some reservations/exclusions for sensitive sectors

How will this ambition will be translated in the key liberalization principles?

- Ambition can be translated through the way key principles such as market access, national treatment and most-favored nation are applied
- Phase-in commitments, a standstill clause (locking in applied regimes at the time the agreement enters into force) and ratchet clause (automatic binding of on-going liberalization initiatives after the entry into force of a commitment) can also reflect the extent of liberalization pursued



Options for the Legal Framework

How will the different modes of supply be covered by the CFTA agreements?

- Will the CFTA services agreement cover the 4 modes of supply as the GATS or will it cover cross-border supply and movement of services suppliers while a the investment agreement to be negotiated in the second phase of CFTA negotiations cover investment in goods and services?

How will different services sectors be covered by the services agreement?

- The focus can be on universal sectoral coverage or on sectoral agreements with regard to key sector (e.g. transportation, telecommunications, financial services) or a mix of the two
- N.B. crosscutting negotiations with comprehensive sectoral coverage may be more successful because interests in other sectors that stand to gain from liberalization offset the opposition of vested interests in any one sector

Options for the Legal Framework

Will the adoption of the legal framework be considered a stand-alone objective or will it be accompanied by liberalization commitments (for the 2017 deadline)?

- Adlung and Mamdouh (2013) suggest that the structural innovations in developing the GATS framework absorbed a lot of negotiating energy. Little time and resources were left in the Uruguay Round to achieve actual liberalization...
- Preparatory work to take informed liberalization commitments (irrespective of the liberalization model that is chosen) will require substantial resources from countries
- The achievements in the RECs and the Tripartite are to be the building blocks of the CFTA services but the services negotiations are lagging behind
- Recent understanding reached in Addis Ababa on what is a realistic target for 2017



Options for the Legal Framework

- Preferential trade agreements adopted by different groupings vary greatly in the approach and modalities
- But some key features can be found across services PTAs:
 - In addition to a main chapter on trade in services, PTAs often include additional chapters on investment, movement of natural persons, financial services, telecom services
 - They often do not go beyond GATS in developing the rules governing trade in services (e.g. subsidies, ESM, obligations on domestic regulations)
 - They have produced some innovations (hybrid approaches) to scheduling modalities and approaches



Trade Preferences Created by Services PTAs

Type of Commitments	Nature of Preferences	Degree of discrimination
PTA reproduces GATS commitments	Parties can invoke DS mechanisms of PTA to enforce trade commitments	None
PTA commitments go beyond GATS commitments but do not imply actual liberalization	Reduced risk of policy reversal for services suppliers from parties	None
PTA commitments imply actual liberalization, implemented in a non-discriminatory way	Reduced risk of policy reversal for services suppliers from parties	None
PTA commitments imply actual liberalization, ROO are liberal	Service suppliers from parties benefit from improved MA, set of eligible service suppliers is wide	Weak, though it depends
PTA commitments imply actual liberalization, ROO are restrictive	Service suppliers from parties benefit from improved MA, set of eligible service suppliers is narrow	Strong



Considering a Few Options... The GATS

Main features

- 4 modes of supply, incl. commercial presence
- Progressive liberalization

Key general obligations:

- MFN
- Transparency
- SDT
- Domestic Regulation
- Recognition
- Exceptions

Specific obligations:

- Market Access
- National Treatment
- Additional commitments

Mandate for future work:

- ESM
- Government Procurement
- Subsidies

Scheduling technique:

- Positive/hybrid listing

Considering a Few Options... The GATS

- Countries/negotiators are familiar with the GATS approach, which would allow them to focus on the results in terms of commitments rather than on the drafting of new provisions
- The GATS approach allows for progressive liberalization which may still be in line with the needs of the continent
- COMESA, EAC and SADC have all built on the GATS approach
- The legal framework can be complemented with regulatory chapters aimed at ensuring enabling regulation is in place
- BUT risks of lengthy process and GATS-minus outcome
- The legal framework may need to be associated with different modalities than those which are perceived to have not worked (e.g. request-offer can be replaced by formulas, positive listing is not mandatory, etc.)

Considering a Few Options... NAFTA

- This approach and the negative listing would be a departure for African countries
- “List-it or lose it” does not reflect the overall development objective of the CFTA services liberalization and the need to preserve policy space (liberalization *per se* is not the objective)
- It is at first view not compatible with the CFTA mandate to negotiate trade in services in the 1st phase and investment in the 2nd phase
- Mode 3 could end up covered by controversial provisions such as ISDS mechanisms
- The negative listing implies a burdensome preparatory process but possibly leads to a more ambitious outcome

Learning from Other Regions: CARICOM

- The CSME aims to integrate all CARICOM member states into a single economic entity allowing for the free movement of people, capital, goods, and services, and to eventually provide for a single economic and trade policy for all CARICOM states
- The consolidation of the CSME required the adoption of national programmes for the removal of intra-CARICOM restrictions
- Members committed to eliminate all legislative and administrative restrictions on the provision of services by 31 December 2005
- From that date service providers from one member will be entitled to full market access and national treatment in the receiving member state



Learning from Other Regions: CARICOM

- Approach based on the establishment of inventories of policies and regulations affecting trade in services
- Once regulations were mapped this provided the starting point (standstill) for the elimination of trade-restrictive regulations over a given period
- This approach has the benefit of not requiring identification of specific offensive/defensive interests to be negotiated bilaterally or in group but it does not allow to tailor the liberalization objectives to domestic needs in specific sectors
- The CARICOM approach clearly prioritizes deep liberalization within the CSME over liberalization with third states



Learning from Other Regions: AFAS

Objectives

- Enhance cooperation in services
- Expand depth and scope of GATS liberalization

Key general obligations:

- Progressive liberalization + Standstill
- Denial of benefits
- Recognition
- ASEAN minus for further liberalization among a sub-group of countries

Scheduling technique:

- Positive listing

Modalities for negotiations

- Negotiations in successive rounds with packages including various services sectors
- In addition to liberalization package initially undertaken by Economic Ministers, Finance and Transport Ministers involved in negotiating packages

Learning from Other Regions: AFAS

- The AFAS process has but strong emphasis on both the promotion of trade in services as well as the promotion of flows of skilled labor through the establishment of MRAs for professional services
- Can be considered a lengthy process (so far 9 negotiating rounds with 9 packages of commitments between 1996 and 2015)
- Equivalence can sometimes be easier target than full harmonization or recognition
- Has at times led to “negative preferences” (i.e. GATS minus outcomes)
- 2015 report by ASEAN Secretariat and WB concludes to AFAS having produced moderate liberalization. The 2 exceptions are in areas that are not on the multilateral negotiating agenda: in air transport steps taken toward creating regional open skies; and in professional services, a few MRAs have been negotiated.



Learning from the Other African RECs - MA

EAC	PS agree to remove measures that restrict movement of services and service suppliers, harmonise standards to ensure acceptability of services traded.
COMESA	Each MS shall accord to service suppliers of other MS treatment no less favourable than that provided for in the specific commitments contained in the schedule of commitments. The following measures shall not be adopted or maintained unless specified in the schedule: limitations on number of service suppliers, total value of transactions or assets, total number of service operations or total quantity of output, the participation of foreign capital, total number of natural persons that may be employed and measures which restrict or require specific types of establishment.
SADC	In those sectors and modes of supply where specific commitments are undertaken, <i>in line with individual countries' levels of development</i> , and subject to any conditions and limitations stipulated in the SP' lists of commitments, no SP shall adopt or maintain limitations on: the number of service; on the total value of service transactions or assets; on the total number of service operations or on the total quantity of service output; on the total number of natural persons that may be employed in a particular service sector; and on the participation of foreign capital and measures which restrict or require specific types of legal entity or joint venture.

Learning from the Other African RECs - NT

EAC	Each PS shall accord to services and service suppliers of other PS, treatment not less favourable than that accorded to similar services and service suppliers of the PS
COMESA	In the sectors inscribed in its schedule, and subject to any conditions and qualifications set out therein, with respect to all measures affecting the supply of services, each MS shall accord to services and services suppliers of any other MS treatment no less favourable than that it accords to its own like services and service suppliers.
SADC	In those sectors and modes of supply which shall be liberalised pursuant to Article 16, <i>in line with individual countries' levels of development</i> , and subject to any conditions and limitations stipulated in the State Parties' lists of commitments, each SP shall grant to services and service suppliers of another SP, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.



Learning from the Other African RECs - MFN

EAC	Each PS shall accord services and service suppliers of the other PS, treatment no less favourable than that it accords to like services and service suppliers of other PS or any third party or a customs territory.
COMESA	MS to accord services and service suppliers of any other MS treatment no less favourable than it accords to like services and service suppliers of any other country. Exceptions provided for: i) two or more MS to conduct negotiations and agree to liberalize services among themselves, ii) MS to enter PTAs with third countries iii) MS to maintain any PTA entered into prior to the coming into force of these Regulations, iv) measures listed in an MFN exemptions list.
SADC	Each SP shall accord to services and service suppliers of any other SP treatment no less favourable than it accords to like services and service suppliers of any other SP or Third Country. Exceptions provided for: i) 2 or more SP to conduct negotiations for specific sectors or sub-sectors, ii) a SP from entering into new preferential agreements with third countries, iii) a State Party from maintaining any preferential agreement entered into with a third party, prior to the adoption of the Protocol, and iv) measures included in a MFN exemption list.



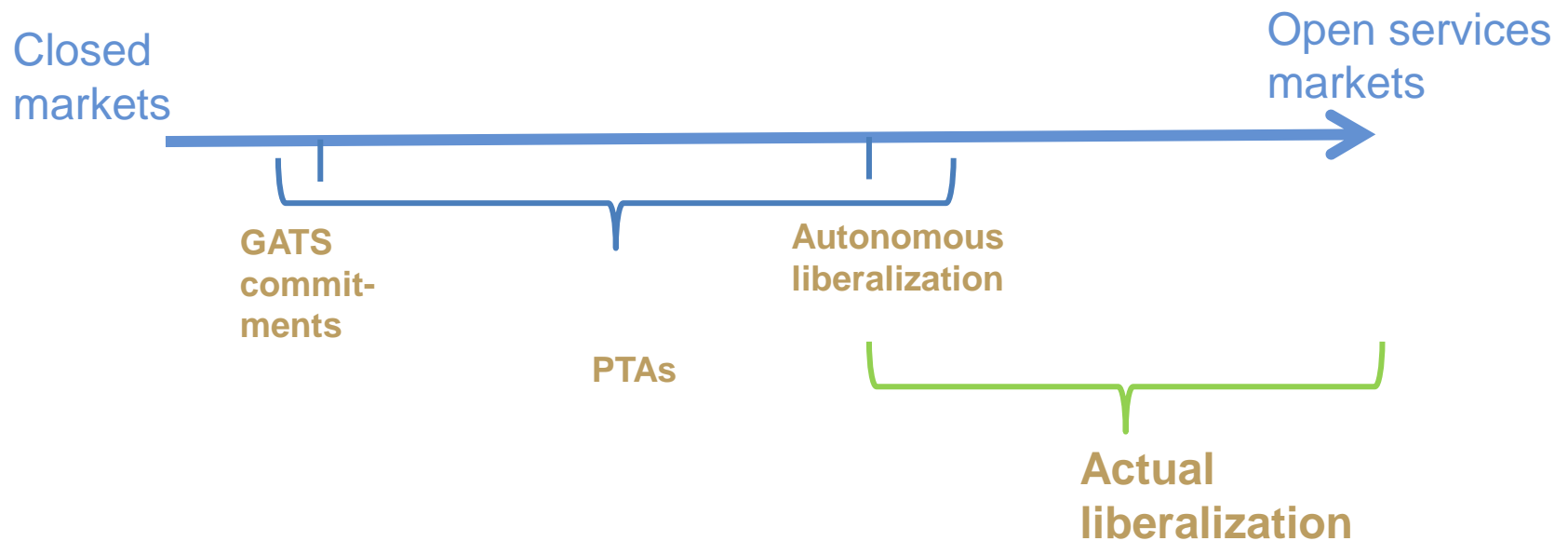
What Should the Negotiating Modalities Include?

1. The objectives of the CFTA services agreement
2. The specific objectives for the current round of CFTA negotiations
3. The linkages and the sequence between market access and other areas of the negotiations (rule making)
4. The procedures for the negotiations
 - Starting point for the liberalization commitments
 - Method of negotiation
 - Scheduling technique
5. The institutional arrangements
 - Mechanisms to ensure negotiations are transparent and open to all
 - Responsibilities of the Members, the AUC, and the RECs



Options for the Negotiating Modalities

Starting point for the negotiations?



The starting point will also depend on the ambition set for the CFTA negotiations. Will the continent seek REC-minus, extension of REC commitments to the rest of Africa or REC-plus liberalization?



Options for the Negotiating Modalities

A number of decisions on the exact procedures can be left to a later stage (after ambition, objectives and key principles are determined):

- Positive list or negative list
- Bilateral vs group requests
- Request-offers vs. discussions on the basis of offers tabled
- Formula approaches (minimum number of sectors to be included)
- Priority list of services for liberalization for all of parties (services that facilitate investment (e.g. business , financial services , ICT , etc.) or that reduce trade costs (transport, logistics, electronic commerce, etc.) to ensure rapid gains for African economies
- Liberalization targets: sectoral coverage (number of sectors covered, level of access being provided (full commitments, full discretion, partial commitments)



Preparatory Work - Identifying National Interests

- Does a cross-sectoral, multi-issue steering committee already exist which can develop a clear strategy for the CFTA services negotiations?
- Which entity (e.g. specific ministry, secretariat, agency) will carry out a coordinating function in the development of the strategy?
- Has a clear mandate been given from the highest levels of government (e.g., the office of the presidency or the prime minister) for the development of the country's services strategy for the CFTA?

Once the above is in place, the steering committee should identify its trade and investment objectives for the CFTA negotiations in pursuit of growth and sustainable development objectives, taking into account the interests of both producers and consumers.

Preparatory Work – Assessing the Needs

- Have the capacity-building needs of negotiators, ministries, and regulatory agencies been identified?
- These needs would cover not only knowledge of key principles and technique of international services trade agreements but also:
 - analytical tools to determine a country's readiness to liberalize
 - capacity develop government-wide negotiating strategies
 - capacity to master the government's positions across forums and negotiating settings
- What needs can be met at national level, which ones could be addressed in a regional setting?
- What capacity-building support could benefit from the assistance of development partners?



Preparatory Work – Taking stock of Achievements to Date

- Has an inventory of relevant measures been undertaken to ensure that there is an adequate understanding of the regulatory regime and its possible shortcomings (i.e. trade-related regulatory audits)
- Have dedicated working groups been created or designated in the ministry of trade to coordinate trade negotiations?
- Are multi-stakeholder consultations between government entities, private sector and civil society underway?
- Has support to development of services coalitions and consumer advocacy organizations?
- Is the media involved in awareness raising?



Preparatory Work – Going Forward

Negotiations involving 54 countries and eight RECs will require considerable resources to :

- ensure a common minimum level of technical knowledge to all stakeholders (not only government but also the private sector, academia, civil society) involved in the negotiations
- organize multi-party consultations at national and regional levels
- undertake studies and other preparatory work
 - i. an overall status of services in a country's economy;
 - ii. a regulatory preparedness assessment;
 - iii. a capacity to supply assessment.

UNCTAD can assist the RECs and individual countries with all the above



What are SPRs?

A systematic review of the economic, regulatory and institutional frameworks characterizing the domestic services sectors towards aimed at i) promoting coherent and comprehensive national sectoral development plans & strategies; and ii) identifying trade policy options that advance development objectives.

SPR Activities

Launch of the review process

Desk-based assessment

1st multi-stakeholder consultation

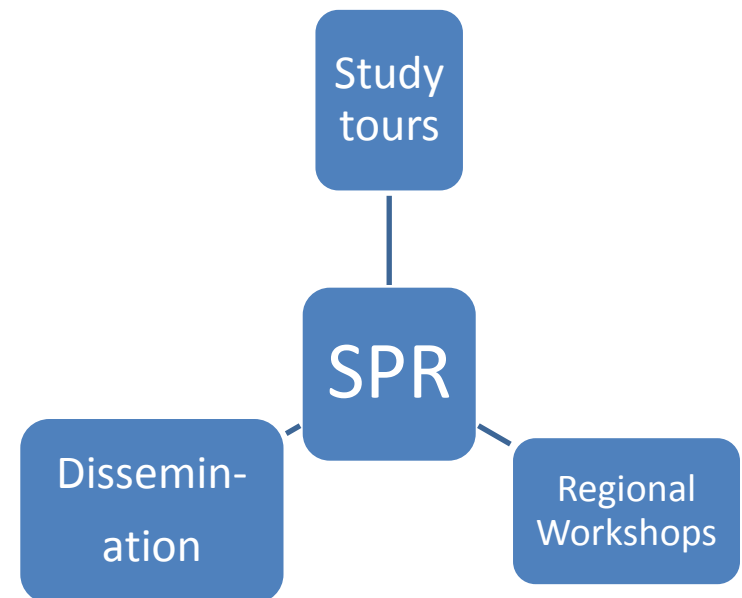
Field research and follow-up investigations

2nd multi-stakeholder consultation for validation

Dissemination

Implementation & follow-up

Related activities



SPR Objectives

1. Strengthen policy, regulatory and institutional frameworks to harness benefits from the services sector
2. Strengthen coherence and inter-linkages among sectors in the national economy
3. Manage a successful services reform process, including through multi-stakeholder engagement
4. Recognise the special role of infrastructure services (ISS) and knowledge-based services for structural transformation
5. Improve negotiating capacities and evidence-based approaches for services trade
6. Monitor results achieved through reforms and adjust related policies over time



SPR Methodology

1 - Launch of the review process:

- Official request, identification of the main focal point, terms of reference and identification of sectoral coverage
- Designation of a national expert team, who will conduct field-based research. This team is multi-disciplinary, combining economic, legal and policy skills, for instance from researchers, academics, and government representatives

2 - Desk-based assessment:

- UNCTAD undertakes a desk-based research to provide a comprehensive overview of the services economy and an in-depth analysis of the existing policy, regulatory and institutional frameworks in the selected sectors
- Provides the basis for the field research

3 - 1st multi-stakeholder consultation:

- A first round of national workshops is organised as a basis for a national multi-stakeholder consultation to seek inputs and guidance from key stakeholders, based on findings from the desk study and surveys, to feed field research



SPR Methodology

4 - Field research and follow-up investigations:

- Building on the desk study, UNCTAD works together with the national expert team to conduct field research and follow-up investigations and draft the report
- Analysis is deepened with updated quantitative and qualitative information
- Quality control by inputs from continuous interactions for review and comments with national stakeholders and peer review team (internal and external experts)

5 - 2nd multi-stakeholder consultation for validation:

- The report is reviewed by national stakeholders in another multi-stakeholder consultative workshop, aiming policy relevance and adoption;
- Findings, recommendations and proposed action plan are critically examined towards a validated outcome to submit to the government for consideration;

6 - In-country and cross-country dissemination:

- SPRs are published for wider dissemination, to enrich the knowledge base, promote exchange of experiences and lessons learned, and to stimulate further participatory policymaking processes regarding services;
- Dissemination is also undertaken in dedicated interregional consultative processes, and ministerial and technical intergovernmental deliberative processes (e.g. UNCTAD Global Services Forum, Trade and Development Commission, Multi-year Expert Meetings).

7 - Implementation and follow-up



SPR Methodology

1. Study tours aim to:

- Allow the beneficiaries to learn from other countries' experience in implementing policy, regulatory and institutional frameworks supportive of services sector development and increased, sustainable trade
- Promote institutional cooperation between counterpart organizations
- Assist beneficiaries with implementation of findings and recommendations

2. Regional workshops aim to:

- Bring together officials of several countries from a region, including those with completed SPRs, national and regional research institutes, and international organizations to reflect on opportunities and challenges relating to services and services trade.

3. Intergovernmental processes (UNCTAD Global Services Forum, Trade and Development Commission, Multi-year Expert Meetings) allow for:

- Inter-regional comparisons
- Interactions and cross-fertilization with other international organizations



Services Reviews Undertaken to Date

Africa

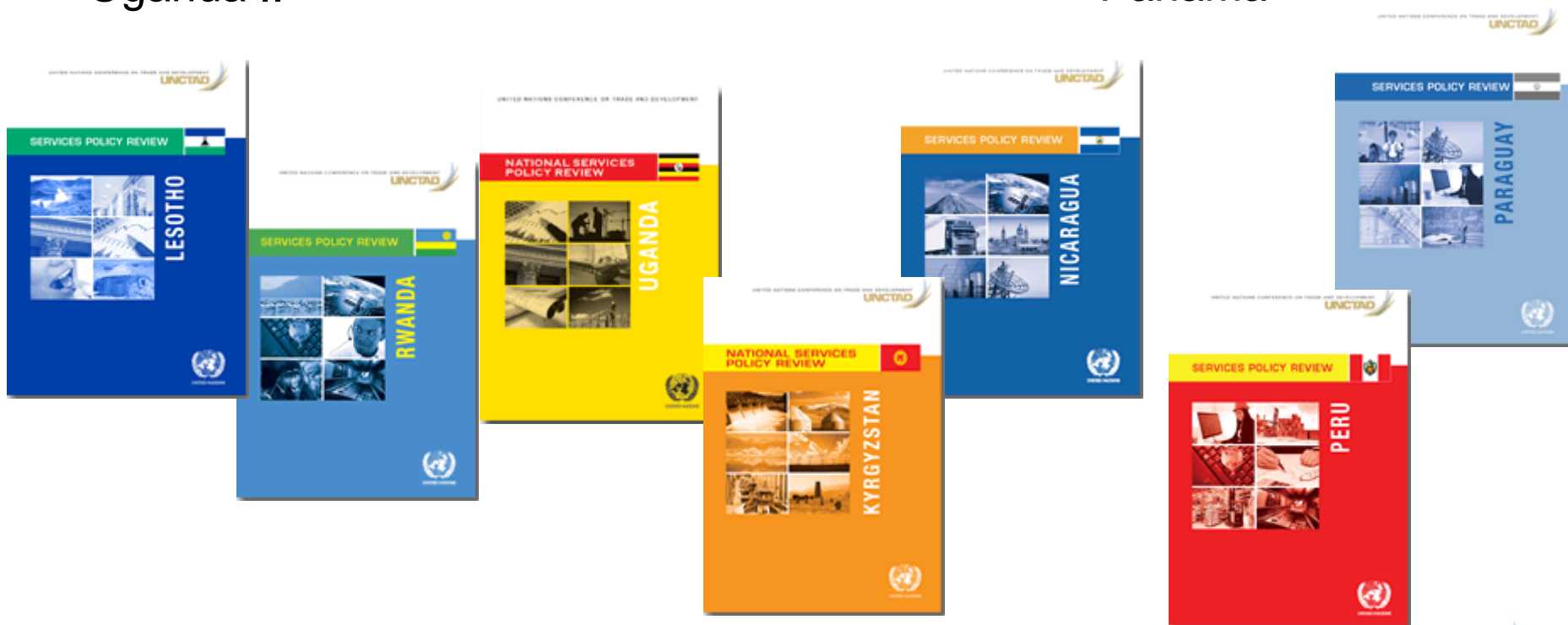
- Lesotho
- Rwanda
- Uganda I
- Uganda II

Asia

- Bangladesh
- Kyrgyzstan
- Nepal

Latin America

- Nicaragua
- Paraguay
- Peru
- Panama



Services Reviews undertaken for African Countries

Country	Sectors covered
Lesotho	<ul style="list-style-type: none">• Financial Services• Professional Health Services• Tourism Services
Rwanda	<ul style="list-style-type: none">• IT and IT-enabled Services• Tourism Services
Uganda (phase I)	<ul style="list-style-type: none">• Insurance Services• Legal Services• Accounting Services• Construction Services• Engineering Services
Uganda (phase II)	<ul style="list-style-type: none">• Distribution Services• IT and IT-enabled Services• Services auxiliary to all modes of transport



Conclusions

- The first challenge in reaching meaningful results will be in mobilizing the political resolve needed and agreeing on the ambition for the CFTA services negotiations
- The second challenge will be in articulating how we want to achieve this ambition through the legal framework and modalities
- A novel approach such as the Hubs and Spokes approach which has been outlined by AUC could be a good starting point for the discussions – further research can be undertaken to draw on the lessons learned from other regions

Once the above is in place, the steering committee should identify its trade and investment objectives for the CFTA negotiations in pursuit of growth and sustainable development objectives, taking into account the interests of both producers and consumers.



Thank you for your attention

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<http://unctad.org/en/Pages/DITC/Trade-in-Services.aspx>