

# Train for Trade II

EU-UNCTAD joint Programme for Angola



**Diplomacia  
comercial**



## TRAINING MODULE FOR **TRADE IN SERVICES FOR DEVELOPMENT**



UNITED NATIONS  
UNCTAD

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EU-UNCTAD joint Programme for Angola

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# INTRODUCTION

Under the EU-UNCTAD Joint Programme for Angola: Train for Trade II in the Commercial Diplomacy Component, UNCTAD assists the Ministry of Industry and Commerce of Angola in building capacities in trade policy formulation and trade negotiations in multilateral, inter-regional and regional contexts.

Angola is currently involved in trade in services negotiations with SADC and AfCFTA partners. Moreover, Angola will soon start negotiations with the EU for Angola's accession to the SADC-EU Economic Partnership Agreement (EPA) to liberalize trade in goods (and potentially services) on a reciprocal but asymmetrical basis. The EPA will replace unilateral trade preferences that have characterized Angola-EU trade relationship over the past 50 years. Therefore, these negotiations present a particular challenge for Angola, notably with regard to the potential inclusion of services in the process.

This training module aims to prepare Angolan officials for possible future negotiations on trade in services, thereby contributing to Angola's formulation of an appropriate negotiation stance and strategy to handle such negotiations in its best interests. After the Training, participants will have understood key concepts in trade in services and negotiations in trade in services, and gained knowledge of options that may be pursued in the different initiatives.

The training is divided into five modules, each of which corresponds to one chapter in this training module:

- **Module 1** addresses "Trade in services for economic transformation and diversification". It presents the concepts of "services" and "trade in services", and it describes the four modes of supply of services across countries. It explains how trade in services can contribute to economic transformation and diversification. It discusses selected challenges to diversifying through trade in services. The objective of Module 1 is to introduce key concepts and present benefits that trade in services may generate.
- **Module 2** presents an "Overview of the international legal framework on trade in services". It describes the scope, structure and core provisions of the WTO General Agreement on Trade in Services (GATS), which most regional initiatives on trade in services take as a model – including the SADC and the AfCFTA negotiations in which Angola has been involved. The objective of Module 2 is to provide an overview of the technical elements of the GATS as a background for taking part in services negotiations.
- **Module 3** discusses selected "Policies to improve national supply capacity in services". These include domestic enabling initiatives such as adopting a sound regulatory framework, investing in skills development and establishing a sound domestic data ecosystem. Other policy options, which are equally important, include participation in international cooperation initiatives, such as mutual recognition agreements, services trade liberalization, harmonization and integration, which have the potential to reduce barriers to trade in services horizontally or in particular sectors and facilitate investments and trade. The objective of Module 3 is to both point to policy options to develop services supply capacity and demonstrate that policy coordination is key to successful outcomes.

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- **Module 4** presents negotiation options and scheduling approaches concerning trade in services. The presentation follows a stylized life-cycle of the negotiating process. The objective of Module 4 is for participants to familiarize themselves with the cycle of a negotiation on trade in services from preparation to implementation, including through questions that they can raise and examples of measures that they may apply in each stage of the negotiations.
- **Module 5** addresses “Trade in services negotiations involving Angola”. It provides an overview of the different international initiatives that Angola has been involved in, notably within the framework of the WTO, SADC and AfCFTA. It also illustrates a hypothetical life-cycle of the negotiation of commitments in the transport sector from strategy to implementation.

Drawing on UNCTAD’s Manual for Trade Negotiations on Services (UNCTAD/DITC/TNCD/MISC/2020/2), this training module seeks to extend and contextualize the discussion further and contextualize it with examples that may contribute to preparing Angolan officials to negotiate trade in services as a means to promote Angola’s economic transformation and diversification.

# CHAPTER 1: TRADE IN SERVICES FOR ECONOMIC TRANSFORMATION AND DIVERSIFICATION

This chapter presents an introduction to “trade in services” and discusses its importance for economic transformation and diversification. It advocates that access to imported services and increased services exports can both have positive effects on domestic economies. This chapter also describes four orders of challenges for developing countries to promote diversification through services: (i) data, (ii) changing the role of the government, (iii) promoting sound regulation and (iv) a paradox whereby resource-rich countries can face more difficulties to upgrade their economies.

## Learning objectives

After reading this chapter, you will, at an introductory level:

- Understand the notion of service, and the concepts of trade in services and the four modes of supply of services across countries.
- Understand how trade in services can contribute to economic diversification.
- Recognize selected challenges to economic diversification through trade in services.

## Key takeaways

Key takeaways from this chapter are:

- Services have distinct characteristics compared to goods. Hence, trade in services requires distinct policy options. These can prove challenging but are potentially rewarding.
- A “whole-of-government” approach to services is required. Trade in services necessarily implicates domestic regulation, which should be guided by a clear policy vision for the different government agencies to implement in a coordinated fashion.
- Access to foreign services can contribute to economic development, including by providing better quality and competitively priced inputs to the agricultural and manufacturing sectors, and through the association between Mode 3 of supply and Foreign Direct Investment.
- Increased access to services markets in other countries can contribute to economic development, including by reducing exposure to commodity-volatility and building domestic resilience, increasing access to revenues in foreign currency and generating jobs.



## 1. The notion of “service”

Services consist of activities or experiences offered for sale that normally do not result in traditional ownership. Take tourism as an example. Although the tourist (consumer of the service) can enjoy the experience in her destination, she does not physically own that experience. As another illustration, accountancy is a form of professional service that generates a benefit to the consumer of the service in the form of advice. However, the accountancy itself is not incorporated into the properties of the beneficiary of the advice.

Services are often defined by contrast to “goods” or “merchandises”. Both goods and merchandises evoke tangible things or products that can be easily separated from producers and consumers.<sup>1</sup> You can touch your mobile phone, which is of course a good. But, when you touch the screen of your smartphone to place a call, send a message or post a picture online, you enter the realm of services. You can also leave your phone on your desk and take a walk outside. But you probably cannot separate the telephone and/or internet service that allow you to make that call, send that message or post that picture from the supplier of the service (and the related infrastructure). Neither can you separate yourself as the consumer of the service and the activity of calling, messaging or posting. If you did that, there would not be a service in the first place.

The inseparability of services from suppliers and consumers has important policy implications. In many cases, an “imported” service would actually be produced locally, employing local personnel and utilizing domestic resources.<sup>2</sup> A foreign service supplier such as a telephone and/or internet company from abroad will need to come to the local market with capital (Foreign Direct Investment – FDI) and technology, and establish an infrastructure to operate. This will contribute to the development of the domestic service capacity and efficiency which, in turn, feeds into other sectors of the economy (UNCTAD 2020a, p. 4). Accordingly, sound regulation and reliable institutions become essential to attract and retain investment to foster the services environment and enable services to contribute to economic development.

### 1.1. Services sectors and sub-sectors

For analytical, statistical and negotiation purposes, services can be classified into sectors and sub-sectors. To that effect, the United Nations (UN) Central Product Classification (CPC) offers a classification structure for goods and services based on a set of conventions. In order to facilitate GATS negotiations, the World Trade Organization (WTO) Secretariat compiled a “Services Sectoral Classification List” (MTN.GNS/W/120). The WTO List is based on the CPC. It is normally used as a basis for organizing requests and offers in trade in services negotiations and the scheduling of services commitments by WTO members. The WTO Services Sectoral Classification List lists 12 broad services sectors that Figure 1 illustrates.

The 12 listed sectors are subdivided into a total of some 160 subsectors. For each sub-sector, the WTO Services Sectoral Classification List states the corresponding CPC number at issue as a reference. Figure 2 provides a snapshot of the WTO Sectoral Classification List. The figure depicts “Tourism and travel” and “Recreational, Cultural and Sporting Services (other than audiovisual services)”, two of the sectors with the fewest subdivisions on the WTO List.

**Figure 1. WTO Services Sectoral Classification List (W/120): selected sectors and sub-sectors**

1. Business;
2. Communication;
3. Construction and engineering;
4. Distribution;
5. Education;
6. Environment;
7. Financial;
8. Health;
9. Tourism and travel;
10. Recreation, cultural and sporting;
11. Transport;
12. "Other"

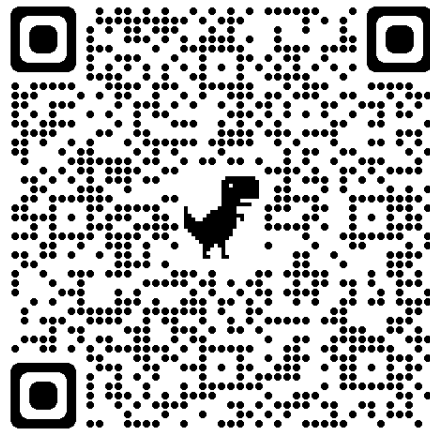
**Figure 2. WTO Services Sectoral Classification List (W/120): selected sectors and sub-sectors**

SERVICES SECTORAL CLASSIFICATION LIST	
SECTORS AND SUB-SECTORS	CORRESPONDING CPC
...	
9. TOURISM AND TRAVEL RELATED SERVICES	641-643
A. Hotels and restaurants (incl. catering)	7471
B. Travel agencies and tour operators services	7472
C. Tourist guides services	
D. Other	
10 RECREATIONAL, CULTURAL AND SPORTING SERVICES (other than audiovisual services)	
A. Entertainment services (including theatre, live band and circus services)	9619
B. News agency services	962
C. Libraries, archives, museums and other cultural services	963
D. Sporting and other recreational services	964
E. Other	

### 1.2. The importance of services

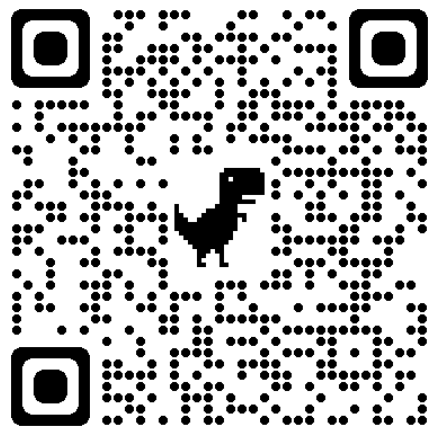
Services currently represent more than 60% of the aggregate global Gross Domestic Product (GDP). The participation of services in the GDP of most countries is very significant, but it can vary markedly. Figure 3 below is a QR Code directed to an interactive World Map with information compiled by the World Bank regarding the ratio of services value-added as a percentage of GDP. Participants may use the QR Code to grasp the importance of services for their economy of choice.

**Figure 3. QR Code for World Bank’s Interactive Map on services jobs as a percentage of jobs**



Services employ more than 50% of the global workforce. Moreover, the share of services in total employment has grown steadily in the past decades, from about 40% in 2002 to more than 50% in 2018. In fact, the most significant employment expansion in recent decades has taken place in services sectors. This applies to all subsets of countries based on income groupings – including low income and lower-middle income countries (OECD/WTO, 2019, p. 140; ILO, 2019). Figure 4 below is a QR Code directed to an interactive World Map with information compiled by the International Labour Organization (ILO) regarding the ratio of services in total employment. Participants may use the QR Code to grasp the importance of services in total employment for their country of choice.

**Figure 4. QR Code for World Bank’s Interactive Map on services jobs as a percentange of jobs**



## 2. The definition of “trade in services”

The definition of “trade in services” resulted from the Uruguay Round negotiations on services that led to the General Agreement on Trade in Services (GATS). Before, the term “international trade” had traditionally been used as a reference to a good, produced in one economy and crossing the border into another. Payment for that good crossed the border in return. In the case of services trade, however, cross-border factor mobility becomes a necessity. Due to the intangible nature of services, often the supply of a service requires the physical proximity between suppliers and consumers and even, in some cases, the simultaneity of supply and consumption. It is therefore necessary for a definition of international trade in services to cover the cross-border mobility of capital and natural persons when such mobility is related to the supply of a service. The definition must also cover the cross-border movement of consumers of services as a means of facilitating supplier/consumer proximity (UNCTAD, 2020a, pp. 3-4).

The GATS defines trade in services as the “supply of a service” through any of four “modes of supply”. The supply of a service includes “the production, distribution, marketing, sale and delivery of a service” (GATS, Article XXVIII). The four modes of supply are structured in terms of territorial presence of the supplier and the consumer at the time of the transaction. They depict the supply of a service:

1. from the territory of one country into the territory of another (Mode 1 – Cross-border supply);
2. in the territory of one country to the service consumer from another (Mode 2 – Consumption abroad);
3. by a service supplier of one country, through commercial presence, in the territory of another country (Mode 3 – Commercial presence); and
4. by a service supplier of one country, through the presence of natural persons of a country in the territory of another country (Mode 4 – Presence of natural persons) (GATS, Article I.2, see also UNCTAD 2020a, p. 9)

Table 1 compares and illustrates the four modes of supply.

**Table 1. Trade in services: The four modes of supply**

Mode of trade	Supplier location	Customer location	Do supplier and/or customer travel?	Examples (UNCTAD, 2020a, p. 10)
<b>Mode 1</b> Cross-border supply	Home-based (Country A)	Home-based (Country B)	No. The supplier and the consumer remain in their own countries.	Consultancy or market research reports, back-office services, tele-medical advice, distance training, or architectural drawings delivered electronically or by post.
<b>Mode 2</b> Consumption abroad	Home-based (Country A)	Abroad (Country A)	The customer travels abroad.	Nationals of country B travel abroad (to country A) as tourists, students, or patients to consume the respective services.
<b>Mode 3</b> Commercial presence	Abroad (Country B)	Home-based (Country B)	The supplier (an enterprise) is established abroad.	FDI from Country A to Country B. Locally-established affiliates, subsidiaries and branches of foreign-owned companies (bank, hotel group, construction company, etc).
<b>Mode 4</b> Presence of natural persons	Abroad (Country B)	Home-based (Country B)	The supplier (an individual) travels abroad.	Independent consultants, health workers or employees of foreign service firms (consultancy, hospital, construction company, etc) travel from Country A to Country B to deliver the services to consumers in Country B.

### 3. How trade in services can benefit the economy

Trade in services can provide access to critical enabling factors (capital, technology, access to networks and information, etc.) for countries to further develop their domestic services capacity (UNCTAD, 2020a, p. 10). This is particularly important for developing countries.

A services market in which competitive conditions prevail entails welfare gains to the entire economy. Households, farmers, industrial users and other service providers all benefit from the creation and maintenance of competitive conditions in a services market through:

- Higher quality, lower prices and a wider variety of services enhancing productivity and competitiveness;
- Innovation;
- Investment promotion by providing market access to foreign service suppliers in a sound manner. This is particularly important for infrastructure services in acute need in most developing countries as well as for sectors of high potential in creating job opportunities, such as tourism on which many developing countries rely; and
- Social welfare by promoting the efficiency of sectors such as healthcare, education, financial services, transport, distribution and others where most developing countries intend to improve (UNCTAD, 2020a, p. 4).

### 4. Trade in services and economic transformation and diversification

Services can be a key driver of economic transformation and diversification by providing direct and indirect benefits to all sectors of the economy. Direct benefits are those that trade in services produces, including revenue generation and more jobs. Indirect benefits are those that trade in services generates as a result of the linkages (backward and forward) between services, other services sectors, and other sectors of the economy. More competitive services therefore feed the services sector and other sectors of the economy.

In 2021, direct services exports amounted to 6.1 trillion US dollars and 6.3% of the world's GDP (still almost 1% less than before COVID-19) or around 20% of total global exports (but this does not include services trade under Mode 3). Developing economies' services exports had recovered 22% from 2020 (UNCTAD, 2022a). Although the absolute total amount of services exports is several trillions, the share of services trade in total direct trade (about 20%) is relatively low compared to the major importance of services in GDP (more than 60%).

However, statistics that cover direct trade do not capture the contribution of services to trade in value-added. Direct trade statistics attribute the full-value of an exported good only to that good. No value is attributed to the services that have been supplied as part of the production of that good. When that contribution is taken into consideration, services emerge as the most dynamic element of international trade. Services account for about 50% of the world's trade in value-added terms and two-thirds of FDI (WTO, 2020, p. 1). Accordingly, services are significantly more important to international trade than direct trade measures imply.

#### 4.1. The notion of structural transformation

Economic development across countries has been historically documented by a shift of production factors such as land, labour and capital from activities and sectors with low productivity and value added to those with higher productivity and value added. Structural transformation has involved the move of economies away from activities characterized by low wages and diminishing returns – usually associated with agriculture – towards those involving higher wages and increasing returns, such as manufacturing. Historically, structural transformation has led to increased employment and wages, creating the conditions for more equitable income distribution (UNCTAD, 2019, p. 2).

## 4.2. The notion of economic diversification

Economic diversification represents a move towards a more diverse production and trade structure with a view to increasing productivity, creating jobs and providing a base for sustained poverty-reducing growth. It can take place across sectors (as the traditional notion of structural transformation) and within sectors (from lower to higher productivity activities).

- Domestic production diversification results from the creation of new activities and output across sectors, industries and firms.
- Trade diversification occurs when new goods or services are imported or exported, when existing export products enter new markets, and through quality upgrading of exported or imported products (OECD/WTO, 2019, p. 141).
- Production diversification and trade diversification are inextricably linked.

## 4.3. The importance of economic diversification

Economic diversification is essential for economic development. Lack of economic diversification is associated with vulnerability, including through exposure to external shocks and nature-related shocks. Conversely, economic diversification reduces dependence on particular commodities and destination markets or firms, therefore enhancing the capacity to manage market volatility and providing stability for equitable growth and development. Economic diversification also leads to job creation and more qualified jobs as the pool of activities increase. In the case of developing countries with a younger population at the base, diversification can also help alleviating demographic challenges and reaping demographic dividends (OECD/WTO, 2019).

In the case of Angola, for example, diversification is considered one of the most strategic approaches to avoid the risk of dependence on diamonds and oil-based products and ensure a sustainable national economy. While the agricultural sector – including fisheries and forestry – represents less than one per cent of the Angolan export revenue, it employs a significant part of the economically active population. A strategy to diversify production and exports of products from the agricultural sector would therefore have a high potential to be a driver of socioeconomic transformation (UNCTAD, 2018, p. 19). Such a strategy should carefully consider the services required to enable further diversification, including financial, distribution, transport and logistics services.

## 4.4. How trade in services can contribute to economic diversification

Trade is an important element of an economic diversification strategy. Export diversification reduces vulnerability, stabilizes export revenues, and contributes to domestic production diversification. Import diversification increases the offer of competitive goods and services and thereby creates conditions for additional and more diverse exports, and for broadening and upgrading domestic production (OECD/WTO, 2019, p. 142).

Trade is particularly important for the transformation and diversification of developing countries' economies. First, in many of these countries, the size of the domestic market may be insufficient to spur diversification. As a result, diversification efforts should incorporate trade-elements as a means to increase the size of the market. Second, domestic markets may not be competitive enough, which is a condition for the provision of efficient and cost-effective inputs. Trade is a means for injecting competition into markets.

Services are an essential element of an economic diversification strategy. In the past, services may have been considered secondary to a country's industrial strength. In fact, they are a key driver of structural transformation and economic diversification. (UNCTAD, 2017; OECD/WTO, 2019, p. 140; Hallward Driemeir and Nayar, 2017). More recently, services have been widely recognized as determinants of productivity, competitiveness and living standards (WTO, 2020, p. 14).

Competitive services facilitate exports and entry into new markets, and lead to performance and productivity gains for the economy as a whole. For example, access to more competitive services inputs (including imported inputs) and infrastructure services (e.g., transport, logistics, distribution, financial, payment services) are enablers of goods exports. Services provided from abroad through Mode 1 can provide expertise that is not available competitively in the territory of the country importing the service, and Mode 3 trade can be particularly relevant for capital-scarce economies in need of investments to improve the provision of basic services (e.g., water, sanitation), energy, construction, and others. Mode 4 measures can provide skilled labour in countries and sectors where there is a deficit of professional experts.

The splitting of value chains implies that countries can look for opportunities to supply intermediate inputs (including services) and not exclusively final goods. This allows for targeted measures by developing countries in selected services sectors to diversify trade. Targeted measures could be significantly less costly (and risky) and faster than developing an entire industrial segment. Regulatory reform and the decline of communication costs have opened a window for developing countries to participate in the expansion of trade in services.<sup>3</sup>

ICT services are essential to the diversification of domestic production and many of the suppliers of ICT services, including ICT infrastructure, do not originate from developing countries. The quality and availability of health and education services determine the productivity and capacity of workers, which is a condition for well-being and development. Trade in services can expand the availability and quality of these services.

As trade and services are important pillars of an economic diversification strategy, trade in services can play a key role in such strategy, and can foster structural transformation and diversification. For a diverse set of countries, there is evidence that improvements in the services sector are an explanatory force for productivity increases and developmental experiences (Duarte, Restuccia, 2010; Hoekman, Shepherd, 2017; Arnold, Javorcik, Mattoo, 2014; Bas, 2014; Arnold, Javorcik, Lipscomb, Mattoo, 2016; Bas, Causa, 2013; Fernandes, Paunov, 2012). For instance, a study found that services reforms in the sectors of banking, telecommunications, insurance and transport all had significant positive effects on the productivity of manufacturing firms in India (Arnold, Javorcik, Lipscomb, Mattoo, 2016). A study on China found that the liberalization of input services increased productivity for firms closer to technological frontier, while financial services liberalization boosted the productivity of laggard firms. This illustrates the positive indirect effects that competitive services can generate. In similar vein, the second round of the Southern African Development Community (SADC) on trade in services prioritize services of relevance to the SADC Industrialisation Strategy and Roadmap (SISR) 2015–2063.<sup>4</sup>

Moreover, in regions where quality services are available, more companies export, which facilitates diversification. A recent study by the International Trade Centre reports that, in regions where there are competitive firms in transport and logistics, financial services, information and communication technology services, and business and professional services, the share of companies that export is 25% higher than in regions where this is not the case (ITC, 2022). In the case of Angola, country-studies have identified significant development potential, but persistent structural challenges that hinder inclusive growth. The challenges include low agricultural productivity; inadequate infrastructure; limited qualified human resources – in particular in business management, science and technology, construction, and manufacturing sectors; weak trade facilitation and export support systems; and a challenging business environment (AfDB, 2017; UNCTAD, 2016a).

There is an evident relationship between the challenges mentioned above and access to competitive, efficient, cost-effective, quality, reliable services. For example, FDI (Mode 3 trade) can be a means to obtain capital and technology to improve infrastructure, and accepting professional services (through Modes 1 and 3) and temporary specialists (through Mode 4) can provide skills and resources in areas in need. In this sense, trade in services may help bridge challenges by increasing access to quality services domestically.

## 5. Challenges for developing countries to promote diversification through services

Government action through well designed institutions and regulations that support a more diversified economy, including services, is centrally important. Yet, not all developing countries actively pursue diversification or have been successful to overcome the dominance of primary commodities (OECD/WTO, 2019, p. 141). Four interrelated challenges refer to (i) the availability of data to orient action, (ii) the transformation of the role of government from provider to regulator, (iii) striking the right balance between market liberalization and regulation, and (iv) a paradox whereby natural resource-wealth can prove an obstacle for countries' economic diversification.

### 5.1. Data challenges

Sound policymaking depends on data. To reap the potential benefits of well-designed and implemented services policies, service-related information and data are essential. However, information on services may be limited and difficult to obtain. For most developing countries, there is no single source of services trade data that provides a complete picture of services trade via the different modes of supply. In Africa, the recently released Balanced Trade in Services Database and Trade in Services by Mode of Supply databases are still being refined and are highly experimental. Accordingly, policymakers must resort to a variety of additional sources, including case studies, survey work and consultations with stakeholders (Cattaneo, 2020, p.3).

Even traditional trade statistics such as directional data (exporter-importer) on a sectoral or sub-sectoral basis can be limited. Moreover, whereas traditional statistics can offer information as to trade in services and have the advantage of being standardized for most countries, they only measure direct trade. This does not account for the indirect importance of services in international trade, including because no value is attributed to the services that have been supplied as part of the production of goods.

Domestic and international cooperation initiatives have attempted to uncover the importance of services by measuring trade in value-added terms rather than direct trade. The prime example is the OECD-TiVA database. The current version of the TiVA database provides indicators of trade in value-added terms for more than 70 countries. The database reveals that trade in services represent about 50% of global trade measured by value-added and is an invaluable source of information for policymaking. However, the data does not include country-specific information for most developing countries.

There is also a significant lack of firm-level data of quality for cross-country analysis and informed policy making in developing countries. While recent initiatives have unlocked new sources of data on firms that can support policymaking (for example, the Exporter's Dynamic Database has enabled analysis of trade at export level), country coverage remains limited and the level of aggregation is high (AUC/OECD, 2019, p.59).

To address data challenges, there is a proposal for an informal working group on services data to meet at the margins of UNCTAD's Multi-year Expert Meetings on Trade, Services and Development. The group's objective would be for services experts, representatives of national statistical bureaus and other relevant stakeholders to exchange views and identify challenges to the collection and use of data (UNCTAD, 2022c, p.4).

### 5.2. The role of government

In order to create and maintain competitive service markets, particularly in the face of capital, technology and human-resource constraints, governments may consider transitioning from the role of direct supplier of services (including through state-owned enterprises) to regulator in suitable services sectors of choice. A supplier offers the service at issue through its own resources. Instead, a regulator sets policies and rules to ensure the attainment of public policy objectives: ensuring the quality of the service, protecting consumers and competition, among others (UNCTAD, 2020a, p.6).



If a country pursues this change in role, the shift will require a reform process that can be complex and subject to the opposition of powerful interest groups. A coherent policy vision and direction of reform for the services sector and its aspired role in the economy should set the basis for concrete institutional-change and rule-change. This applies to horizontal reforms and to sector-specific reforms, and should take into account the peculiarities of services sectors and societal needs related to them.

For example, water and sanitation supply have the character of natural monopoly, and it is unlikely that there is competition in their supply (i.e., no competition in the market). Hence, these services may be government-supplied or supplied by an incumbent under a system of price regulation (whether by administrative prices or contractual obligation). By contrast, there is scope for competition through tendering for the supply of the services (i.e., competition for the market). In this case, potential incumbents compete to be entitled to supply the service(s) in defined areas. Particularly where the government operates as a regulator, developing a suitable regulatory framework is a key step towards ensuring that universal access, affordability and sustainability of supply transit from aspiration to reality.

### 5.3. The importance of sound regulation

Another general challenge for diversifying through services is that it requires a sound approach to regulation. This includes both the institutions and the rules governing the provision of services. Services policies are not simply border measures in the nature of tariffs. They are multidimensional and implicate horizontal and sector-specific regulation at once. Likewise, services negotiations tend to require a broad spectrum of considerations. Accordingly, a “whole-of-government” approach is required when dealing with services regulation.

The GATS and most regional trade initiatives on services recognize governments’ right to regulate. They aim to lock-in countries’ policy options through commitments on market access and national treatment in sectors of choice by the importing country, as chapter 2 will discuss in more detail. There is no general obligation to deregulate or privatize services sectors. There is need for sound regulation. However, the GATS’ provisions do not interfere with countries’ actual regulatory agenda and do not provide detailed guidance on regulatory approaches. A sound approach to regulation will be related to the broader domestic governance structure. The way government institutions function and the relevant consultative mechanisms put in place involving stakeholders have a direct bearing on the outcomes of the process. This is a challenge that governments at different levels of development face, but some developing countries particularly so due to weaknesses in their institutional capacities.

Yet, establishing and maintaining sound regulation is in the best interest of every country. For instance, a study has found that institutional quality potentializes the effects of services trade policies: lower services barriers, notably liberalizing FDI, improve productivity of downstream industries in countries with good institutions. (Beverelli, Fiorini, Hoekman, 2017). Another study has found that investments alone, especially in infrastructure, may yield low returns if policies that restrict competition among service providers remain in place. For example, moving from an intermediate level of trade restrictiveness to an open regime could increase cellular tele-density in the telecommunications sector by 20% and flight connections per airline in the aviation sector by 25 per cent (Borchert, Gootiz, Goswami, Mattoo, 2017). Another study argues that market regulation would be the critical determinant of the price of trucking services, suggesting that investments in road would not themselves reduce transportation costs for end-users (Raballand, Macchi, 2009).

Countries should therefore adopt sound regulations. Because certain services are less directly traded than manufacturing goods, they have a tendency to face less competitive pressure. This may explain large productivity gaps in services relative to manufacturing across countries (Duarte, Restuccia, 2010). Consequently, both trade openness (market access, national treatment for foreign providers) and regulation (specific regulation and competition) strongly influence productivity and the contribution of services to other sectors. For example, regulatory diversity among developing countries can hamper service exports even if they agree on full liberalization. As an illustration, two countries may agree on reciprocal market access and national treatment of engineering services, but impose very different authorization requirements for the supply of such services – even if non-discriminatory. In this scenario, engineering services providers from country A may find it difficult to obtain authorization to provide

their services in country B, and vice versa. Likewise, different requirements on vehicle safety and equipment can be an obstacle to trade in transportation services, notwithstanding full market access and national treatment. From this perspective, regional service sector deals should consider simplification, harmonization and/or mutual recognition of domestic requirements as possible avenues – in other words, regulatory cooperation. Integration should also be carefully considered in the context of Regional Trade Agreements, particularly as smaller scale economies seek to increase the size of services markets.

#### 5.4. A paradox of plenty (recourse curse)

Many developing countries are rich in natural resources. Paradoxically, these countries are often poorer and more likely to suffer from corruption and conflict. This contradiction has been called “the paradox of plenty” (Lynn Karl, 1997), whereby resource wealth can become a barrier to economic diversification. As pointed above, sound regulation and policies can help overcome that challenge. Take the different historical diversification trajectories of Chile and Zambia, two copper-abundant countries, as depicted below (based on OECD, WTO, 2019, p. 141, Meller and Simpasa, 2011).

##### Example

Chile and Zambia are two copper-wealth countries with a similar population size, but very different income levels. Chile’s per capita income (PPP) is about six times that of Zambia. Copper is both countries’ main export product.

Fifty years ago, Chile and Zambia produced similar amounts of copper, with similar patterns of deposit ownership (state-owned companies played a major role). However, Chile and Zambia’s longer-term economic performance has differed markedly: Chile has steadily increased copper production while Zambia has remained somewhat stagnant. Chile progressively lessened its resource-dependence: copper currently represents 50% of exports. Zambia became more dependent: copper currently represents 80% of exports.

Chile followed a two-track diversification strategy: (i) diversification “within” industry (increasing value added in the copper industry by improving the quality of copper extraction and exporting processed products and complementing this with the development of domestic ancillary/logistics services); and (ii) diversification “across” industries (development of fisheries: high quality salmon exports, increasing exports of high value-added agricultural goods such as fruit and vegetables and wine) – including through increased trade in services that enabled such diversification.

Chile additionally set up mechanisms to save the rents from mineral extraction and invest in critical growth expenditures, particularly: (i) a structural fiscal surplus rule that sterilizes the country’s spending levels against copper fluctuations (ensuring macroeconomic stability and accumulating wealth when copper prices are high); and (ii) sovereign funds to administer the rents saved. Chile invested a significant amount of savings in training on advanced skills (e.g., scholarships to enrol Chileans into top global universities) and financing and mentoring to high growth start-up firms.

Chile’s approach to trade in services supported diversification efforts. For instance, a study has found that foreign direct investment in services (i.e., Mode 3 services trade) had a positive effect on the productivity of Chilean manufacturing firms (Fernandes, Paunov, 2012). Chile ranks second among all WTO members by number of notifications of economic integration agreements (services preferential agreements) with 23 notifications – after Singapore with 26 notifications (WTO, Regional Trade Agreements Database, 15 March 2023). According to the OECD, Chile’s Services Trade Restrictiveness Index (STRI) in 2022 is below the OECD average and low compared to most countries in the STRI sample (OECD, 2022).

Chilean services policies on transportation services offer an illustration, given the country’s main exports depend on these services to reach global markets. In the 50 countries surveyed by the OECD, Chile’s STRI for (i) aviation services is by far the lowest, (ii) road freight transport services is the fourth lowest, (iii) maritime transport and rail freight transport services is low compared to the OECD average (even though in recent years the Chilean index has increased in these services).

Unlike Chile, which enjoys a coastal location, Zambia is landlocked and faces much higher trade and transportation costs. A study of 42 countries found that Zambian firms had the second-highest share of “indirect” cost, most of which are attributable to services-related inputs into production – energy, transport, telecommunications, water, insurance, marketing travel, independent professionals, and accounting. This cost is likely to have undermined the competitiveness of Zambian firms in export markets (Eifert, Gelb, Ramachandran, 2005).

Arguably, Zambia’s landlocked status results in increased transport costs for its exports. Yet, studies have found that restrictions on trade in road and air transport services, and limited regional regulatory cooperation regarding these and other “linking” services further isolated Zambia from the rest of the world (Mattoo, Payton, 2007; Borchert, Gootiiz, Grover, Mattoo, 2012). This policy component, in a context of certain institutional and regulatory constraints, may make diversification more difficult to achieve.

It is suggested that services trade policies towards openness applied by strong institutions and stronger regional regulatory cooperation could help Zambia reduce overall costs for its main activities and be a force of economic diversification.

# CHAPTER 2: OVERVIEW OF THE INTERNATIONAL LEGAL FRAMEWORK FOR TRADE IN SERVICES

Most international initiatives on trade in services take inspiration from the structure and terminology of the General Agreement on Trade in Services (GATS): a framework agreement complemented by lists of commitments by participating countries and annexes on particular issues or sectors. The framework agreement additionally incorporates a process of progressive liberalization and harmonization of services trade policies through negotiations among the parties.

This chapter provides an overview of the international legal framework for trade in services. It describes the main tenets of the GATS and relevant concepts, including on preferential services trade.

## Learning objectives

After reading this chapter, you will, at an introductory level:

- Understand the main features of the GATS, including the fact that some of its core obligations (market access, national treatment and domestic regulation) are subject to countries' specific commitments as documented in a "schedule of commitments".
- Recognize the structure of a GATS schedule of commitments.
- Understand how the GATS disciplines economic integration agreements (or preferential services trade).

## Key takeaways

Key takeaways from this chapter are:

- The GATS most-favoured nation (MFN) obligation is based on a "negative list approach: only listed exemptions from MFN and preferential services trade under either Article V (economic integration agreements) or the waiver for LDCs are permitted.
- The GATS market access, national treatment and most domestic regulation provisions are based on a "positive list" approach: they depend on specifically scheduled commitments made by each country on a sector-by-sector (and/or sub-sector by sub-sector) basis for each of the four modes of supply.
- GATS Annexes contain additional disciplines and provisions on further negotiations on selected matters: Movement of Natural Persons, Air Transport Services, Financial Services, Maritime Transport Services, and Telecommunications.
- Generally, the GATS affords considerable flexibility for the implementation of domestic policies and regional trade arrangements (economic integration agreements).

## 1. The WTO and preferential trade

The core multilateral instrument that disciplines trade in services is the GATS. The GATS applies to all WTO Members. As described in chapter 1, the GATS defines trade in services as the supply of a service through any of four modes of supply: cross-border (Mode 1), consumption abroad (Mode 2), commercial presence (Mode 3) and (iv) movement of natural persons (Mode 4).

By virtue of the general most favoured nation (MFN) obligation, WTO Members should not discriminate among WTO Members. However, the GATS also sets a basis for Members to deviate from their MFN obligation and become parties to a services trade preferential agreement. Countries should consider both WTO commitments and preferential trade in conceiving their national trade in services' strategies and policies, with a view to promoting economic development.

## 2. The GATS Agreement

The main tenets of the GATS agreement are briefly presented below: its scope, structure, the general and specific obligations it entails and the exceptions to them.

### 2.1. Scope

Article I of the GATS establishes the scope of application and the sectoral coverage of the Agreement and sets the definition of trade in services. Keeping these in mind is essential for a well-considered negotiating position and a sound negotiating process.

The scope of application is provided in paragraph 1, which stipulates that the GATS applies to measures by Members "affecting trade in services". Such an effect could be direct or indirect. It does not matter whether a measure is taken at central or local government level, or by non-governmental bodies through delegation. The definition of a "measure" covers any measure.

The definition of trade in services is provided in paragraph 2 as the "supply of a service" through any of the four modes. The concept of supply is further defined in Article XXVIII to include "the production, distribution, marketing, sale and delivery of a service".

In terms of the sectoral coverage, Article I:3(b) stipulates that the GATS covers "any service in any sector except services supplied in the exercise of governmental authority". Paragraph 3(c) of the same Article proceeds to define services supplied in the exercise of governmental authority as "any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers". The other exclusion from sectoral coverage concerns the GATS Annex on Air Transport Services, which excludes measures affecting air traffic rights and directly-related services<sup>5</sup> (UNCTAD, 2020a, pp. 9–10).

### 2.2. Structure

The GATS seeks to achieve the progressive liberalization of trade in services through successive rounds of negotiations by WTO members with "due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors" (GATS, Article XIX.2).

The rationale behind the GATS was to provide the space for Members to design, introduce, and implement policy and regulatory reforms which can be complex and lengthy (UNCTAD, 2020a, p. 9). The GATS relies on individual country "schedules of commitments" to determine the levels of market access and national treatment. Thus, country-specific schedules of commitments are important elements to consider when establishing and pursuing trade in services' policies.

**What is a schedule of commitments?**

A schedule of commitments is a document stating all the specific commitments by one Member to provide market access and national treatment for services and service suppliers of other members. When making a commitment, a government binds the specified level of market access and national treatment and undertakes not to impose any new restrictive measures. Specific commitments thus have an effect similar to a tariff binding – they are a guarantee to economic operators in other countries that the conditions of entry and operation in the market will not be changed to their disadvantage (WTO, 2022a).

As part of its basic structure, the GATS also contains Annexes with additional disciplines and provisions on further negotiations on selected matters: Movement of Natural Persons, Air Transport Services, Financial Services, Maritime Transport Services, and Telecommunications.

**2.3. General obligations (or unconditional obligations)**

Before discussing how the GATS addresses domestic regulation, market access and national treatment based on specifically scheduled commitments, it is important to understand the main general obligations, including MFN.

***Most favoured nation (MFN)***

The MFN obligation (GATS, Article II) is applicable to any measure that affects trade in services in any sector under the Agreement, whether specific commitments have been undertaken or not – and unless the Member at issue has explicitly sought an exemption under Annex II of the GATS on MFN exemptions. The general application of the MFN obligation unless an exception has been sought is sometimes referred to as a “negative list” approach regarding that obligation.

Currently, more than 90 members (out of 164 members in total) maintain MFN exemptions. These are mostly intended to cover trade preferences on a sectoral or modal basis between two or more Members. The sectors predominantly concerned are road transport and audio-visual services, followed by maritime transport and banking services (UNCTAD, 2020a, p. 18).

***Transparency and legal remedies for administrative decisions***

Article III of the GATS establishes that Members publish promptly all measures of general application pertaining to or affecting the operation of the GATS, and obliges Members to notify the Council for Trade in Services at least annually of new or changed laws, regulations or administrative guidelines that significantly affect trade in sectors where specific commitments have been made. Members are also required to establish enquiry points that provide specific information to other Members upon request. There is no requirement to disclose confidential information (GATS, Article III bis).

As a complement to the transparency obligation, GATS Article VI:2 on domestic regulation requires that WTO Members maintain domestic mechanisms (judicial, arbitral or administrative tribunals or procedures) for individual service suppliers to seek legal redress from administrative decisions affecting trade in services. Pursuant to Article IV:2, developed countries (and other Members to the extent possible) are to establish contact points to which developing country service suppliers can turn for relevant information concerning commercial and technical aspects of the supply of services; registration, recognition and obtaining professional qualifications; and the availability of services technology.

***Recognition of requirements for service suppliers***

Education, experience, licenses and certifications, and other requirements may be an obstacle for service suppliers to provide their services in any given country. In order to facilitate trade in services, Article VII of the GATS permits a WTO Member to recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country, for the purposes of the fulfilment of its own standards or criteria in that regard. This can be done either autonomously (unilaterally) or by means of a mutual recognition agreement between countries (GATS, Article VII:1).

Members shall not accord recognition in a manner that would constitute a means of discrimination or a disguised restriction in trade in services (GATS, Article VII:3). Mutual recognition agreements and unilateral recognition shall afford adequate opportunity for inclusion of other WTO Members (GATS, Article VII:2).

***Monopolies and exclusive suppliers***

The GATS does not forbid monopolies or exclusive service suppliers. However, they are subject to the unconditional MFN obligation and to specific commitments (GATS, Article VIII:1). Moreover, where such suppliers provide services besides their monopoly rights, Members are required to ensure that they do not abuse their position in a manner inconsistent with specific commitments (GATS, Article VIII:2). In addition, GATS Article VIII:4 requires Members to report the formation of new monopolies and exclusive service suppliers to the Council for Trade in Services if the relevant sector is subject to specific commitments.

**2.4. Specific obligations (conditional obligations)**

In contrast to general obligations, GATS specific obligations apply only to those sectors where a WTO Member's schedule has specific commitments. This is sometimes described as a "positive list" approach. The positive list approach is a central element of the GATS: a WTO member commits itself to opening services trade in sectors and modes of supply of its choice. This approach allows flexibility and incrementalism. As chapter 1 above and chapter 3 below discuss, it is important to consider the quality of institutions and regulations from a holistic perspective when improving services markets. In any event, GATS specific obligations apply on the basis of specific sectors and modes of supply.

***Market Access***

Article XVI of the GATS sets out specific obligations for Members in providing market access to foreign services and suppliers, provided that the Member has undertaken "specific market access commitments" in its Schedule of Commitments. The box below outlines the structure of schedules of commitments. Appendix I to this Manual details the structure and describes the terminology used in schedules of commitments using the actual consolidated WTO schedule of the United States of America as example.

**The structure of schedules of commitment**

Schedules of commitments conform to a standard format to facilitate comparative analysis. For each service sector or sub-sector that is listed, the schedule must indicate, with respect to each of the four modes of supply, any limitations on market access or national treatment to be maintained.

In nearly all schedules, commitments are split into two sections: first "horizontal", and second sector (or sub-sector) specific commitments.

Each commitment consists of eight entries, which indicate the presence or absence of market access or national treatment limitations with respect to each of the four modes of supply. The first column in the standard format contains the sector or sub-sector which is the subject of the commitment; the second column contains limitations on market access; the third column contains limitations on national treatment. In the fourth column, governments

may enter any additional commitments that are not subject to scheduling under market access or national treatment<sup>6</sup> (WTO, 2022a).

The scheduling techniques adopted in the context of the SADC are similar to the WTO 2001 Guidelines for the Scheduling of Specific Commitments – in fact, they refer to the WTO 2001 Guidelines for issues they do not directly address (WTO, 2001; SADC, 2009). Negotiators should strictly follow the specific guidelines applicable to each negotiation. Broadly, it is advisable to keep a uniform approach to scheduling language to avoid ambiguity and possible conflicts.

Article XVI:1 of the GATS provides that WTO members shall accord “services and service suppliers” of other members treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in schedules. Article XVI:2 then defines the measures that Members shall not maintain or adopt unless otherwise specified in the schedule, regardless of whether or not they are discriminatory towards foreign suppliers and services:

- (a) Limitations on the number of service suppliers,
- (b) Limitations on the total value of services transactions or assets,
- (c) Limitations on the total number of service operations or on the total quantity of service outputs,
- (d) Limitations on the total number of natural persons that may be employed in a particular service sector or that a particular service supplier may employ and who are necessary for, and directly related to, the supply of a specific service,
- (e) Measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service, and
- (f) Limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

These measures are considered to be restrictions on trade because they neither relate to ensuring the quality of the service nor the capability of the supplier to supply the service. In other words, they are not considered to serve any objective other than to restrict access to the market.

### Example

The US – Gambling WTO dispute that Antigua and Barbuda brought against the United States of America concerned measures that prevented the cross-border supply of gambling and betting services into the United States.<sup>7</sup> The discussions involved the scope of GATS market access commitments by the United States, and the nature of potential market access limitations to these commitments.

On the scope issue, a WTO Panel and the Appellate Body found that the United States’ schedule included a commitment to grant full market access in gambling and betting services in Section 10.D, under the sub-sector entitled “Other recreational services (except sporting)”. The United States argued that, despite the entry “none” for Mode 1 in the sub-sector at issue, it had made no commitments on gambling and betting services because these would be “sporting” services that the schedule excluded from the commitments. The determination that there was a commitment on market access for “gambling and betting services” as part of “other recreational services” was a very difficult and nuanced one, and was central to the outcome of the dispute. This illustrates that the scope of commitments can become a hotly debated issue.

On the market access issue, the Panel and the Appellate Body found that US federal laws and certain state laws prohibited one, several or all means of delivery of gambling and betting services through Mode 1. They held that this prohibition on cross-border supply was equivalent to a limitation to “zero” service suppliers. Hence, the measure was a “quantitative limitation” prohibited by Article XVI of the GATS.



### ***National treatment***

Article XVII.1 of the GATS provides that WTO Members shall provide “treatment no less favourable” than that they accord to their own like services and services suppliers in respect to all measures affecting the supply of services. National treatment is subject to scheduled commitments. Treatment may be formally identical or formally different, what matters is that it accords no less favourable conditions of competition to services and services suppliers from abroad (GATS, Articles XVII:2, XVII:3).

#### **Example**

The China – Electronic Payment Services WTO dispute that the United States brought against China concerned restrictions and requirements that China imposed on electronic payment services (EPS) for payment card transactions and the suppliers of those services.<sup>8</sup>

The United States argued that China (i) only permitted Chinese entity “UnionPay” to supply EPS for payment card transactions denominated and paid in renminbi in China, (ii) required all payment card processing devices to be compatible with UnionPay’s system, and (iii) required that payment cards must bear that company’s logo. The United States also argued that UnionPay had guaranteed access to all merchants in China that accepted cards, while services suppliers of other Members must negotiate for access. According to the United States, this violated China’s commitment on national treatment for the supply of EPS under Modes 1 and 3.

The Panel found that China required that all payment cards issued in China carried the “UnionPay” logo and were interoperable with that network, that all terminal equipment in China accepted “UnionPay” logo cards, and finally, that acquiring institutions posted the “UnionPay” logo and accepted all payment cards bearing the “UnionPay” logo. These violated China’s Mode 1 and Mode 3 national treatment obligations under Article XVII of the GATS, as they modified the conditions of competition in favour of “UnionPay”.

### ***Domestic regulation***

Article VI of the GATS addresses domestic regulation in sectors where a WTO Member has a specific commitment.<sup>9</sup> In these sectors, the Member must ensure that measures of general application are administered “in a reasonable, objective and impartial manner” (GATS, Article VI:1). Second, if the supply of a scheduled service is subject to authorization, Members are required to inform the applicant within a reasonable period of time of the decision taken, and, upon request and without undue delay, provide information on its status (GATS, Article VI:3). Third, Members shall not apply licensing, qualification requirements and technical standards that nullify or impair commitments, in a manner which could not reasonably have been expected of that Member at the time it made the commitment. Such requirements and standards must be based on objective and transparent criteria and must not be more burdensome than necessary to ensure the quality of the service (GATS, Article VI:5).<sup>10</sup> Fourth, Members that have undertaken commitments on professional services shall provide for adequate procedures to verify the competence of professionals of other Members (GATS, Article VI:6).

Article VI:4 of the GATS mandates negotiations on necessary disciplines that would prevent domestic regulations from constituting unnecessary barriers to trade. These negotiations dragged on and were taken by the negotiations on the Reference Paper on Services Domestic Regulation, which chapter 5 further discusses.

## **2.5. Exceptions**

The GATS affords additional flexibility to services’ policies through exceptions that may apply in defined circumstances. There are three types of exceptions: general exceptions, security exceptions, and the prudential exception (the latest is specific to the financial sector). A fourth flexibility-driven provision of note refers to restrictions to safeguard the balance of payments. The GATS also foresees a non-discriminatory emergency safeguard mechanism (GATS, Article X), but this is subject to negotiations that have not been concluded.

### ***General exceptions***

Article XIV of the GATS provides legal cover for a WTO Member to impose a measure inconsistent with its obligations or commitments in order to protect selected policy objectives. The requirements refer to the objectives that may be protected and the conditions that the Member adopting the measure must observe. The requirements do not themselves define the measures that would be acceptable. The measures shall be either:

- (a) Necessary to protect public morals or to maintain public order (the public order exception may only be invoked where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society),
- (b) Necessary to protect human, animal or plant life or health,
- (c) Necessary to secure compliance with laws or regulations that are GATS consistent, including in relation to (i) deceptive and fraudulent practices or to deal with the effects of a default on a services contract, (ii) the protection of privacy of individuals and confidentiality of individual records and accounts, and (iii) safety,
- (d) Inconsistent with the national treatment obligation, provided that the difference is aimed at ensuring the equitable or effective imposition of direct taxes in respect of services and service suppliers from other members, or
- (e) Inconsistent with the MFN obligation, provided that the difference in treatment is the result of double taxation agreements or the avoidance of double taxation in international arrangements.

In order to be excepted, the measure must also be applied in a manner that would not constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services.

### ***Security exceptions***

Article XIV bis of the GATS addresses national security concerns. No member is required to furnish information if it considers this to be contrary to its essential security interests or prevented from taking action if it considers this necessary for the protection of such interests or in pursuance of obligations under the Charter of the United Nations.

### ***Prudential exception***

The GATS Annex on Financial Services provides for an exception that is exclusive to the financial sector. This provision allows a member to deviate from its obligations and commitments under the GATS to adopt prudential measures. The provision does not specify any types of measures that may be adopted. It states that such measures would be for “prudential reasons” and offers an indicative list of such objectives. This provides regulators with considerable flexibility. However, the prudential exception shall not be used as a means of avoiding commitments or GATS obligations (GATS Annex on Financial Services, 2 (a)).

### ***Restrictions to safeguard the balance of payments***

In the event of serious balance-of payments and external financial difficulties or threat thereof, Article XII of the GATS allows restrictions on trade in services on which a Member has made specific commitments. These can include restrictions on payments or transfers for transactions related to such commitments. The restrictions are subject to the MFN obligation, and shall avoid unnecessary damage to interests of other members, not exceed those necessary to address the circumstances at issue, be temporary and progressively phased out, and be consistent with the Articles of Agreement of the International Monetary Fund. Balance of payment restrictions are also subject to notification and consultations requirements.

### 3. Preferential trade and services

While the GATS establishes an MFN obligation, it also sets a basis for Members to deviate from MFN in the context of economic integration agreements. Specifically, Article V of the GATS allows Members to further liberalize trade in services through bilateral or plurilateral agreements. The conditions are that the preferential services agreement has “substantial sectoral coverage” (GATS, Article V.1(a)), removes “substantially all discrimination” between participants in the sectors covered (providing National Treatment in the sense of Article XVII of the GATS (GATS, Article V.2) and covers the four modes of supply (GATS, Article V.1(a)). These agreements are subject to notification requirements (GATS, Article V.7).

Economic integration agreements must be designed to facilitate trade among participants and shall not raise the overall level of barriers vis-à-vis non-participants in the sectors covered (GATS, Article V.4). Moreover, appropriate compensation must be negotiated with the Members affected if the participants intend to withdraw or modify scheduled commitments (GATS, Article V.5). Such situations may arise, for example, if the preferential regime in a sector is modelled on the previous regime of a more restrictive participating country in the preferential agreement (UNCTAD, 2020, p. 22). Additionally, service suppliers constituted under the laws of a party to the agreement shall be entitled to preferential treatment regardless of the nationality of the owners, on the condition that the supplier engages in substantive business operations in the territory of the parties (GATS, Article V.6).

GATS Article V.3 offers particular flexibility where developing countries are parties to economic integration agreements. First, flexibility is provided for regarding the conditions for permissible services trade agreements, in accordance with the level of development of the countries concerned, both overall and in individual sectors and subsectors. Second, where the agreement involves only developing countries, more favourable treatment may be granted to suppliers owned or controlled by natural persons of the parties (despite Article V.6 described above).

Lastly, GATS Article V bis particularly addresses labour market integration agreements. These agreements typically grant citizens of the parties free right of entry to the employment markets at issue. They are permitted provided that they exempt citizens of parties from requirements concerning residency and work permits, and are notified.

#### 3.1. Overview of regional trade agreements on services

More than 190 Regional Trade Agreements (RTAs) covering services trade have been notified to the WTO. The vast majority involve developing countries (i.e., they are either “North-South” or “South-South” agreements) (WTO, Regional Trade Agreements Database, 15 March 2023).

In terms of listing commitments, RTAs have followed two main approaches: the “positive-list” approach (GATS-type), whereby the committed sectors are listed in the schedule, and the “negative-list” approach, whereby the parties list the sectors that are not committed. Broadly speaking, “negative-list” type agreements tend to be associated with higher levels of ambition in terms of liberalization, harmonization or integration. However, the actual level of ambition is determined by the substantive requirements and disciplines of the agreement, and the negotiated outcomes. Several types of disciplines can be used to tailor a services agreement to the parties’ objectives. Chapter 4 describes different scheduling techniques and types of disciplines that parties can decide to incorporate in their negotiations or agreements.

# CHAPTER 3: POLICIES TO IMPROVE NATIONAL SUPPLY CAPACITY IN SERVICES

This chapter discusses selected policies to improve national supply capacity in services. These include fostering a sound regulatory and institutional framework, regional cooperation, skills development, and strengthening the data ecosystem. Measures to improve services capabilities can be mutually reinforcing and should be approached complementarily for countries to build an enabling environment and enhance services supply capacity.

The national supply capacity in services should not be considered solely as the capacity of purely domestic suppliers. As chapter 1 stated, for instance, services provided from abroad through Mode 1 can provide expertise that is not available competitively in the territory of the country importing the service, and Mode 3 trade can be particularly relevant for capital-scarce economies in need of investments to improve the provision of basic services (e.g., water, sanitation, education, healthcare), energy, construction, and others. Mode 4 measures can provide skilled labour in countries and sectors where there is a deficit of professional experts. Developing services supply is important both to increase supply of inputs and final services that feed the economy, and as a means to increase exports.

## Learning objectives

After reading this chapter, you will, at an introductory level:

- Be aware of potential policy approaches to improve national supply capacity in services: (i) a sound regulatory approach covering both institutions and rules, (ii) approaches to regional cooperation on trade in services (mutual recognition agreements, liberalization, harmonization, and integration); (iii) skills development, and (iv) strengthening the data ecosystem.

## Key takeaways

Key takeaways from this chapter are:

- Reliable institutions that guarantee stability and competition and well-designed rules transparently applied are central to keeping an enabling environment where services can flourish.
- Regional cooperation – for instance, mutual recognition policies, liberalization, regulatory harmonization and integration – can increase the size of services markets and thereby address issues of economies of scale.
- Addressing skills shortages requires an active approach and a sustained commitment, and may include measures concerning movement of persons within the context of regional cooperation.
- The data ecosystem is a significant factor for enabling services. Before adopting measures that either require data localization or liberalize data transfers, policymakers should carefully consider the possible unintended consequences of these policies.

## **1. A sound regulatory approach: Institutions and rules**

Countries should seek a coherent approach to domestic regulation and trade liberalization in the services sector, through adequate design, pacing and sequencing of the regulatory and trade-related measures. Effective coordination mechanisms between policymakers, regulators and trade negotiators, and the alignment of trade and industrial policy to build supply capacity are important dimensions of policy coherence. “Best-fit regulations” should be conceived and implemented. At the same time, the risks and trade-offs that a reform agenda may entail for national regulatory autonomy, policy space and development imperatives must also be taken into consideration (UNCTAD, 2016b).

A sound regulatory framework including reliable institutions and the right rules is normally a basic condition for the development of supply capacity in services, which will contribute to economic diversification and developmental objectives. This applies to all modes of supply and noticeably for the attraction of FDI under Mode 3. An effective approach to regulation normally emanates from a clear policy vision for the services sector concerned, its role in the economy, its contribution to society and the direction that the process of reform needs to take. The sections below point to important aspects to consider.

### **1.1. Reliable institutions**

Institutions that guarantee stability and competition, and promote the right incentives for services suppliers to establish themselves and flourish are a key element of a services-enabling environment. When establishing the framework for regulatory institutions, policymakers should take the following into account (UNCTAD, 2020a, p. 8):

#### ***Mandate***

The mandate of a regulatory institution must be carefully drawn to reflect its objectives, functions and operation. Often, mandates need to be reviewed (sometimes completely changed) to reflect the change of policy direction, for example, changes from a government-controlled to a competitive market structure may require fundamental changes in the mandate of institutions.

The mandate of regulatory institutions should be carefully tailored to meet the objectives of the reform effort at stake. For instance, some of the objectives of reforming the telecommunications sector could be to promote universal access to key services, to foster competitive markets to promote efficient supply, good quality, advanced services and efficient prices, to prevent abuses of market power (e.g., excessive prices and anti-competitive behaviour), to attract and expand investments, to promote public confidence, to protect consumer rights and privacy rights, to promote connectivity, to optimize the use of spectrum, numbers and rights of way.

The institutional structure built to foster these objectives may attribute the policy development function to the Government Ministry or Executive Branch, the regulation function to a sectoral (separate) regulatory authority, and the service provision to private providers (privately or commercially operated). In any case, regulators should be empowered and equipped to push for the established objectives.

#### ***Independence***

A regulator must be independent from any market commercial interest as well as from political influence. The risk of falling captive to vested interests must be avoided. For instance, a telecom regulator unduly affected by political influence or clouted by the influence of dominant providers will hardly be able to promote public confidence and may hamper the development of a competitive market where efficient services are provided.

#### ***Interface***

The institutional structure should provide for an effective interface between different governmental institutions dealing with different regulatory frameworks of mutual relevance. For instance, the interface between the telecom regulator and the competition authority in preventing abuses of market power should be drawn as clearly as

possible and should avoid redundancy and conflicts. The same applies for the interface between the telecom regulator, consumer protection, and data protection bodies.

The interface with private-sector institutions, consumer associations, think-tanks and civil-society organizations should also be encouraged and facilitated. Especially in countries building-up their institutional framework, this interface should be carefully managed in light of the requirement of independence discussed above.

### ***Accountability***

The authority to whom a regulator is accountable, and the terms of such accountability must be drawn carefully. Accountability is necessary – and this does not mean dependence. Accountability would generally impose a duty on regulators to explain their administrative decisions in light of the objectives in question and the pertinence of their decisions to fulfil the regulator’s mandate. Accountability would also generally require regulators to make public their decisions and the justifications thereof.

### ***Resources***

Institutions must be equipped with the required expertise. A sound human resource base is key to the proper functioning of regulators. In view of technological developments and the dynamic and innovative nature of competitive markets, this particular aspect should be a priority. This is also an area where regional cooperation and technical assistance may facilitate reform efforts. For example, countries in the same region where a reform effort has been deemed successful can contribute to countries where reforms are being discussed and or at the stage of initial implementation.

## **1.2. The right rules**

“Rules” in this context refer to measures of general application such as laws, regulations and administrative guidelines. Four basic elements of rules tend to impact the supply of services: design, scope-jurisdiction, content and transparency (UNCTAD, 2020a, p. 8):

### ***Design***

Design refers to the choice of which rules may be contained in general legislation and which may be left to other forms of regulation, decrees or administrative guidelines. Design should facilitate effective application and the need for possible future flexibility to adjust for market development and the evolution of policy objectives. For instance, a shift in the government’s role from telecom provider to regulator may require constitutional changes or a bill of law in a certain format, but aspects such as licensing of operators or spectrum allocation could be implemented by the regulator under its administrative authority and in line with the reform objectives and principles in question.

### ***Scope-jurisdiction***

The interface between central and sub-central government levels is important to consider. Government levels should act in a coherent and complementary manner. The same goes for the interface between sector-specific and cross-cutting types of rules. For instance, consider telecommunications and competition policy. The allocation of competencies to the telecom and competition authorities should be clearly stated in the relevant laws. There should not be overlaps in the mandates of both institutions. However, cooperation between, for instance, the telecom regulator and the competition authority is essential, especially in dealing with competition issues in telecoms market. It is important to create cooperation and consultation mechanisms through memoranda of understandings and technical agreements between relevant institutions for them to consult each other in deciding in the best interest of the country.

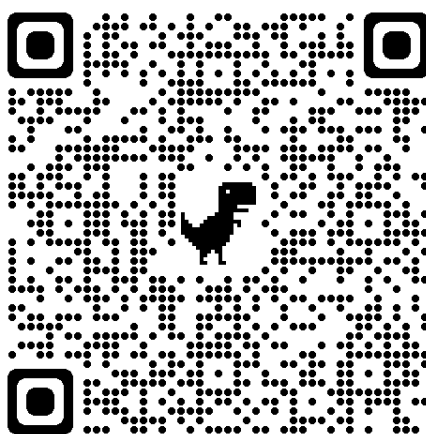
### Content

The rules relating to the supply of services need to be clearly stated and drafted, based on objective criteria and in a coherent manner. They should also, to the maximum extent possible, reduce the scope for discretionary decision-making. Market players should be confident about their burdens and bonuses, rights and obligations, lest investments in the targeted services may not reach their optimal level. Moreover, countries should carefully consider the interface between their domestic rules (policies) for the sector at issue and obligations and commitments on trade in services. For instance, countries willing to attract FDI into a given sector should carefully consider to commit to providing market access and national treatment under Mode 3 for the sector at issue, and any additional commitments that could support the attraction of the targeted investments (both regarding modes of supply and related sectors).

The liberalization of the telecom sector in Barbados, for instance, has been described as a pragmatic initiative that faced many challenges, including an existing incumbent's monopoly that became counterproductive for contemporary needs, and opposition from interest groups – including workers for the incumbent. On the other hand, at the initial stages of the reform it was generally recognized that unlocking the benefits of telecommunications to other services and sectors required a change of approach.

At the WTO level, as early as in 1998, Barbados had submitted a supplement to its Schedule of Commitments addressing Basic Telecommunications. The column on “Additional Commitments” in Barbados’s schedule undertakes the obligations contained in the WTO Reference Paper on Telecommunication Services. The column on “National Treatment” fully binds Barbados in Modes 1, 2 and 3 (i.e., it states “none”, which indicates no limitations, regarding these modes of supply for all scheduled telecommunication services). The column on “Market Access” includes various entries arguably designed to address staged liberalization on Mode 1 and Mode 3 for each specific activity. The relative diversity of commitments across sub-sectors appears to reflect the notion that there are different aspects and activities within the telecommunications sector that warrant a different approach to market access. Participants may use the QR Code below to access Barbados’ WTO commitments in basic telecommunications.

**Figure 5. QR Code for Barbados’ Schedule of (Supplement 1) Commitments in Telecommunications**



Barbados WTO commitments were used to anchor and push for domestic reforms. Domestically, the process entailed in summary (i) the renegotiation of contracts with the incumbent network, (ii) the passing of a legislative package reflecting the tenets of the WTO Reference Paper (concerning issues such as interconnection, independent regulator, universal service, allocation of scarce resources and competition safeguards), and (iii) the implementation of staged market reforms. Implementation began with internet and domestic mobile phone

services through the issuance of licenses to competitive providers and their interconnection with the incumbent network. The next stages involved the opening of international long-distance and fixed lines to competition (Schmid, 2005).

### **Transparency**

Rules must be transparent, including their underlying rationale. They should be easily accessible. Furthermore, the regulatory process itself needs to be transparent, allowing different stakeholders to observe and, where appropriate, participate.

## **2. Regional cooperation**

Motivations for regional cooperation concerning trade in services can vary from one case to the other. They often relate to some or all of the following factors (UNCTAD, 2020a, p. 52):

- Strengthening ties with friendly countries through deeper economic and trade integration,
- Keeping up with new ways of doing business across different jurisdictions to ensure the interoperability of service suppliers,
- Achieving more ambitious market opening in services trade to secure access for services exporters and to ensure broader future trade opportunities,
- Encouraging and consolidating domestic policy and regulatory reforms towards more opening of competitive markets,
- Building more confidence in the stability and predictability of regulatory conditions to attract inward FDI flows, and
- Providing trade-offs in negotiating further liberalization.

Regional cooperation can help nurture supply in services and produce positive effects on trade and the economy through several channels. It can promote efficiencies from the standpoint of the government (for instance, decreasing the cost of regulating and monitoring through economies of scale), service suppliers (for instance, creating opportunities and providing critical infrastructure) and consumers (for instance, increasing competition).

This section briefly describes four broad possible approaches that can be considered on either a horizontal (modal) or a sector-by-sector basis when countries engage in regional cooperation. These approaches can complement one another and are not necessarily exclusive.

### **2.1. Mutual recognition agreements (MRAs)**

MRAs establish a reciprocal recognition that service suppliers that meet the conditions for supply in one of the countries in question are considered to also meet the conditions for supply in any other participating country. MRAs thus facilitate trade in services by reducing the barriers to entry of suppliers from participating countries.

For example, business and professional services can be important for promoting links between developing country exporters and international supply chains (ITC, 2022). Yet, even if neighbouring countries provide market access and national treatment for their respective professional service suppliers, different requirements for recognizing service providers' qualifications (e.g., accountants, engineers, architects) can obstruct trade. To the extent that the foreign supply of professional services would provide direct and indirect benefits to the importing country, their obstruction would harm both the exporting and importing country. MRAs are considered to be one of the elements needed to address shortcomings in Africa's professional services landscape. In recognition of this, for instance, East African Community (EAC) member states have signed MRAs for the recognition of professional qualifications in architecture and accounting services, and are negotiating additional agreements (UNECA, 2021, p. 53). However, MRAs should be conceived in line with Mode 4 policy, especially those addressing



professional qualifications. The positive effects of mutual recognition can be limited if Mode 4 policy (including visa requirements) impedes movement of persons within the territory of the parties (UNECA, 2021, p. 69). This highlights the importance of coherent and consistent services policies across the spectrum.

## **2.2. Liberalization**

Services trade liberalization in the GATS and in most RTAs can be depicted as the granting and receipt of market access and national treatment to foreign services and suppliers. This does not mean de-regulation. For example, in many countries that undertook successful regulatory telecommunications reforms in the past three decades, it can be said that there was a qualitative and quantitative increase in regulation before, during and after the reforms took place. Reference to liberalization (or trade openness) also does not deny that certain services can have the role of public goods, including in areas such as healthcare, water and sanitation. Liberalization often takes place on a sector-by-sector-basis and mode of supply-by-mode of supply-basis through a “positive list” approach, as chapter 2 describes with reference to the GATS. Liberalization can be unilateral or take place on a reciprocal basis. Liberalization can also take place on a regional or multilateral basis.

Liberalization is a specific policy option to open trade in services to foreign suppliers on equal footing with domestic suppliers. This can take place within a context of harmonization or integration, or even outside harmonization or integration initiatives. However, the lack of harmonization or integration can limit trade even in “liberalized” sectors. This is because regulatory diversity between trade partners can impose a compliance burden on providers and hamper service exports even if there is reciprocal market access and national treatment. Regulatory cooperation is hence an important pillar to also consider.

## **2.3. Harmonization**

Harmonization refers to the streamlining of policies so countries apply identical rules and standards affecting the supply of services. Harmonization reduces complexity and transaction costs for investment, service supply and trade.

Harmonization can be unilateral, where one country decides to adopt rules identical to another, bilateral, regional or multilateral under international agreements of various types. Harmonization tends to require less coordination than integration because it does not imply a broader, common institutional framework. Accordingly, harmonization can provide “quicker wins” than integration in the sense that it is easier and less costly to achieve. For instance, it can be faster to harmonize spectrum licensing or road transport rules across given countries than create a regional authority that will be responsible to administer spectrum licensing or enforce traffic rules – especially assuming that suitable national authorities are already in place. Simple harmonization tends to be better suited to areas where the parties are essentially “like-minded”, where the relative cost of creating common institutions outweighs the benefits or where other considerations militate against integration.

## **2.4. Integration**

Integration is normally a broad project where a host of dimensions come into play. These tend to include historical factors, geographical proximity, political, economic and social ties, and common long-term objectives. In the context of trade in services, integration implies a wider and deeper process than harmonization, whereby countries join initiatives to combine their services markets into one. Integration evokes attempts to eliminate all barriers to the movement of goods, services, people and capital. Trade integration may include or result from successful deployment of MRAs, liberalization and harmonization, in addition to other joint initiatives and the establishment of common market institutions. It is commonly believed that the gains from deep integration are much larger than those from simple trade liberalization (UNECA, 2020a).

One example of the potential of harmonization and integration to enhance the supply of services is the creation of the Pan-African Payment and Settlement System (PAPSS) to facilitate intra-African trade.

**Example**

Financial services are essential enablers of trade in both goods and services. One constraint to intra-African trade has been the disconnected nature of payment and settlement systems within the continent, which prevented payment of goods and services across Africa in local currencies. Imagine a small business in Botswana supplying a service to a business in Ghana. The Botswanan supplier would quote in pula, and the buyer would settle in cedi. Behind the scenes, the pula would have left Africa to be converted to euros or US dollars (“hard currencies”) and then would have come back into Africa as cedi. That journey would take time (a matter of days) and drain hard currency liquidity.

A harmonization and integration initiative aims to address those shortcomings. In January 2022, after completion of a pilot project in the West African Monetary Zone, the African Export-Import Bank (Afreximbank) and the AfCFTA Secretariat announced the commercial launching of the Pan-African Payment and Settlement System (PAPSS).

PAPSS aims to help integrate African economies by complementing existing regional and national payment systems. It provides a payment and settlement service to which commercial banks, payment service providers and fintechs can connect as ‘Participants’. PAPSS can also cooperate with other systems to extend beyond Africa and facilitate investments and trade.

Sending payments using the PAPSS involves the following steps: 1) issuing a payment instruction to the local bank or payment service supplier; 2) the bank sending instructions to its Central Bank, which sends it to PAPSS; 3) PAPSS’ validating the instruction and (4) forwarding it to the beneficiary’s Central Bank and then to the local bank or payment service provider; and 5) the local bank paying the transferred funds in local currency to the beneficiary. Compliance, legal and sanction checks are performed within the system. Optional services can be provided, targeting different customers (including requests to pay and escrow services, among others). On a daily basis, PAPSS settles the balance of all of the transactions among individual African currencies. Participating Central Banks resolve the remaining difference and the process starts again the next day.

From the users’ perspective, that complex cooperation scheme translates into a simpler payment structure. Thus, the Botswana/Ghana transaction can be instantly converted from pula to cedi. The services exporter and the importer use their own currencies. This reduces the hard currency liquidity problem, and save people’s time and money. The user may not even be aware of what the PAPSS entails: harmonization of the legal, regulatory and operational framework for payment confirmation and settlement, comprising standardised rules, formats and governance arrangements, and harmonized Know-Your-Customer and Anti-Money Laundering procedures. Compliance with the set rules and standards is a condition for participation, and in turn empowers oversight by national Central Banks.

PAPSS’ Governing Council includes representatives from national Central Banks, the Afreximbank, the African Development Bank and the African Union. The Council’s Secretary General comes from the AfCFTA. As of April 2023, the PAPSS network consisted of nine central banks, 39 commercial banks and four switches, in addition to various strategic partnerships. The plan is to expand into the five regions of Africa before the end of 2023. All Central banks are to sign up by the end of 2024, and all commercial banks operating in Africa by the end of 2025.

The Afreximbank estimates that PAPSS will save more than USD 5 billion a year in transaction costs alone. It is expected that the AfCFTA will increase transaction volumes within Africa, whereas the PAPSS will help by transforming and facilitating payment, clearing and settlement of cross-border transactions. PAPSS can also assist in tracking informal small-scale trade and help with formalization. This is therefore an example of regional cooperation potentially fostering trade in services and driving diversification, by creating and keeping the necessary financial market infrastructure for trade to take place. More broadly, it is an example of regional harmonization and integration with multiple benefits for the countries involved.

*Sources:* ABSA, 2022; AfCFTA 2022d; Afreximbank, 2022; African Business, 2022; African Business, 2021; PAPSS, 2022.

### 3. Skills development

Skills development is a policy path that countries should actively pursue to develop supply capacity in services and facilitate economic development. This is particularly the case of developing countries, where the overall capacity to form, attract and retain talent tends to be more limited. Addressing this need requires long-term commitments to sustained investment and public-private cooperation. Additionally, facilitating movement of persons can foster labour mobility and direct skilled workers to where they are needed most. Skills development can be pursued unilaterally, in the context of regional cooperation initiatives, and with the support of development aid. The coordination of education and movement of people initiatives in the context of integration can enhance the overall impact of such policies.

#### 3.1. Developing a skills base

Building a skills base requires investments in education, innovation, institution building and physical assets to create strong knowledge economies. Public policies should be implemented to support innovation, promote technology transfer, facilitate collaboration between public research and development institutions and industry, and encourage entrepreneurship. The promotion of regional centres of excellence (taking into account existing pockets of excellence) can help promote innovation and technology development (AUC/OECD, 2019, pp. 130-131).

Public-private sector coordination should take place in developing curricula, tailored courses and training, and in matching workers with service employers.

#### Example

In Ghana, the Industrial Skills Development Centre has provided training in mechanical, electrical and process engineering with industry representation on its executive board and strong partnerships with local firms.

In Kenya, a public-private collaborative program for youth called Generation Kenya trains mostly secondary school graduates aged 18-35 for high-growth employment activities including financial services sales representatives and hospitality agents. Reportedly, 85% of almost 12,000 trained people were hired on completion of the program, 57% of which women (compared to a national average of 29% in the formal sector), and 82% of supervisors indicate that they would hire Generation Kenya graduates again (AUC/OECD, 2019, pp. 76-77).

New technology can complement existing training methods and facilitate high quality training on a large scale and tailored to specific needs. In rural Niger, mobile phone-based training within the Project Alphabétisation de Base par Cellulaire (Basic Cellular Literacy Project) increased adults' writing and math test scores by 20% – 25% higher than the standard adult literacy and numeracy programme.

The African Virtual University serves 38 e-learning centres in 26 African countries through open and distance e-learning (AUC/OECD, 2019, p. 77).

The SADC has developed an Open and Distance Learning Policy Framework to promote technology advancement and virtual learning to increase access to quality and relevant education and training opportunities, which should result in the establishment of a SADC Centre for Distance Learning and a SADC Virtual University of Transformation. The plan is to address skills shortages in the region, including in science, technology, engineering, and mathematics (STEM) (SADC, RISP 2020-2030, p. 36).

Initiatives to support skills formation focused on the needs of firms can offer a laboratory to establish broader support programs to develop firm-based capabilities. In Singapore, where foreign-owned firms account for a large part of the services sector, domestic SMEs were lagging behind and had limited links to the leading foreign multinational enterprises. The government contracted with the Japanese Productivity Center to set up a

Standards, Productivity and Innovation Board (SPRING) to support the capability of local firms. SPRING initially focused on improving firm management. It currently offers a wide range of firm-capability programmes, including awards and prizes to incentivise the private sector, making equity investments or co-investments, and building capacity through multiple partnerships (AUC/OECD, 2019, p. 71).

### 3.2. Movement of people

Movement of people can contribute to regional integration because of associated gains on both goods and services trade through skills supply and development. By contrast, impediments on the movement of persons limits such gains and can force service suppliers into informality or less productive economic transactions (AUC/OECD, 2019, pp. 84). This can aggravate skills shortage issues.

#### Example

The Common Market for Eastern and Southern Africa (COMESA) includes a Protocol on the Free Movement of Persons, Labour, Services and the Right of Establishment and Residence. This protocol was adopted in 2001 as part of COMESA's common market implementation. It requires the removal of all restrictions on the free movement of persons and provides for the rights of establishment and residence. Implementation was planned in five stages, starting with the gradual removal of visa requirements. The second stage started in 2004, aimed at enhancing the movement of skilled labour. Kenya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Eswatini, Uganda, Zambia and Zimbabwe have provided 90-day visa access and visa-on-arrival access to certain COMESA member states. Mauritius, Rwanda and Seychelles have waived visa requirements for all COMESA citizens. Since 2013, Zambia has waived visas and visa fees for all COMESA citizens travelling on official business. However, it is still not clear what implementation will entail during the third stage on the movement of services, the fourth stage on the right of establishment, and the final stage on the right of residence. If fully implemented, the Protocol would positively affect business services trade and the sectors impacted by it (AUC/OECD, 2019, p. 213).

## 4. Strengthening the data ecosystem

Data-driven digitalization has pervasively affected life and will increasingly do so as technologies evolve. In this context, the supply and demand for services and the creation and exchange of value have undergone major transformations. Data and data-flows are crucial to economic development, and so is the capacity to turn data into intelligence and business opportunities. Data are strongly linked to trade, and they can provide strong competitive advantages to those capable of benefiting from them (UNCTAD, 2021a). Hence, strengthening the data ecosystem and keeping it healthy becomes essential to enable economic transformation and diversification, and to improve national supply capacity in services.

The regulation of data flows is a challenging and multidimensional exercise. From an economic perspective, countries should consider the most optimal frameworks for their digital development requirements taking into account the current scenario. For instance, MSMEs in smaller developing economies may have an opportunity to grow by using international digital platforms and cloud services, rather than by devising local solutions. In this sense, the provision of these services can stimulate the development of other services and sectors. Further, especially in smaller markets, highly localized data sets may not facilitate high-quality Big Data or Artificial Intelligence (AI) products, which are driven by the volume, velocity and variety of data. From this perspective, ownership restrictions applicable to foreigners and the restriction of data flows, for instance, to create local data champions, may ultimately harm consumers by reducing the quality and functionality of digital products and services available locally. Moreover, in small markets with strict data localization policies and poor governance and infrastructure, certain foreign companies may decide not to enter the market at all, to avoid regulatory risks and costs. Hence, local presence requirements may not effectively lead to investments even if the country commits

to eliminating ownership restrictions and opens itself for such investments under Mode 3. Further, compliance with strict data localization policies and complex data regulations that are targeted to limit the power of Big Tech may actually be more affordable for these huge technology companies than for smaller companies with limited resources. Accordingly, such policies could further increase market dominance of existing data conglomerates, rather than enable the emergence of local players. All of these should be considered as they may work counter to developing national supply capacity in services (UNCTAD, 2021a, p. 133).

On the other hand, countries adopting strong data protection laws without unreasonable or infeasible restrictions on cross-border data flows may be more attractive to foreign companies. By the same token, countries with strong reputation for good regulatory infrastructure, including trustworthy business environments, can benefit from greater data flows and eventually get access to better data in the future. (UNCTAD, 2021a, p. 134).

# CHAPTER 4: TRADE IN SERVICES NEGOTIATIONS' LIFE-CYCLE

This Chapter presents negotiation options and scheduling techniques for the different levels of trade in services negotiations. It provides a run-through the life-cycle of a services negotiation process (World Bank, 2010; UNCTAD, 2020b, p. 44): (i) mapping a strategy for trade in services in national development plans, (ii) preparing for services negotiations, (iii) conducting a services negotiation, (iv) implementing negotiated outcomes, and (v) navigating the outcomes of negotiations to best take advantage of them. The next sections discuss each of these steps.

## Learning objectives

After reading this chapter, you will, at an introductory level:

- Understand the life-cycle of a services negotiation.
- Understand scheduling approaches and binding techniques.

## Key takeaways

Key takeaways from this chapter are:

- A successful services negotiation begins with the mapping of a strategy for trade in services in the context of the overall national strategy for development, and follows through preparations that require extensive coordination and consultation. Each negotiation should be informed by specific offensive, defensive and enabling interests.
- Services negotiations can represent an opportunity for countries at all levels of development to secure more favourable terms of access to foreign markets, which cannot take place through reliance on unilateral reform alone.
- The main scheduling approaches are the “positive list” and the “negative list”, which can be combined in “hybrid list” approaches. Scheduling conventions and terminology are important to facilitate negotiations and avoid ambiguity in commitments.
- Reference papers, model schedules and understandings can be used to guide negotiations and further standardize scheduling around specific areas or sectors of agreement.
- Specific provisions and language can be used to future-proof or temper commitments.
- Implementation issues must be born in mind since the preparation for negotiations.

## 1. A strategy for trade in services

A successful negotiation starts well before the actual bargaining. Policymakers should carefully consider and ideally implement a host of matters before negotiators sit by the table to exchange offers. Policy questions and related action regarding the strategy for trade in services should include determinations as to (World Bank, 2010, pp. 10-13):

- The desired state participation in the different services sectors and the form of state participation: Will the state's role include the supply of the service (possibly exclusive), or will it be limited to regulation? The optimal regulatory framework will depend crucially on the role of the government and the overall objectives at stake.
- The extent of private sector involvement in the different sectors. This point is coextensive with the definition of the role of the state.
- The extent to which foreign providers should be allowed to be involved in the different sectors. This point is coextensive with the definition of the role of the state and of the private sector.
- The regulatory framework that will best serve the objectives of a reform, including the sequencing of measures and the required transition periods.

With those determinations in mind, at this point, trade in services negotiation initiatives enter the picture: What are the possible initiatives that can support the process to implement the determinations above? Among these initiatives, which ones should be prioritized? Which ones should be approached more offensively or more defensively?

The approach to trade in services negotiations can vary depending on, for instance, whether the negotiations are intended to: (i) anchor domestic reforms in progress or already made and signal this to other countries/foreign providers, (ii) be a precursor to anticipated/desired domestic reforms and signal this to domestic players, (iii) preserve as much policy space as possible because there is no definition as to the track to be taken, (iv) foster liberalization in sectors where there are strong offensive interests, (v) preserve defensive interests for some legitimate policy reason, or (vi) guarantee suitable transition periods to accommodate ongoing transformation while pushing for progressive implementation of reforms.

Although the overall approach to negotiations must be consistent and coherent, this definitely does not mean that all services sectors and modes of supply should be treated the same. Given the complexity of the services sector, ideally a cross-sectoral, multi-issue committee should address them, with the support of a coordination function. Depending on the reform strategy and resource-constraints, consideration may be given to adopting a productive chain approach to select the services activities to be prioritized or a cluster approach to select geographic locations to be prioritized. For example, as chapter 5 further describes, SADC and AfCFTA services negotiations have prioritized certain services sectors.

## 2. Preparing for negotiations

In the ideal world, only after the strategy is in place should the actual preparation for negotiations begin. In practice, developing countries may have little time to prepare for negotiations – especially so in multilateral negotiations and in negotiations with larger partners, where the bigger players tend to act as agenda setters. From the government's perspective, the preparation for negotiations entails basically: (1) developing an informed negotiating strategy or identifying the capacity needs required to do so, and (2) setting up the proper channels of communication with key stakeholders. These are not trivial steps.

### 2.1. Determining interests and priorities

The development of a negotiation strategy involves defining negotiating interests and priorities and tactics. Governments must first clarify at the domestic level the policy objectives they wish to achieve in the specific context. Consultations with relevant stakeholders in each sector can inform the identification of priority sectors

and priorities within sectors and for given items. Through this bottom-up approach, the different sectoral issues can surface. Policymakers should assess the apparent priorities against national objectives to ensure consistency and coherence, without losing sight that different services and modes of supply can raise different issues and warrant different approaches.

Policymakers should also conduct anticipated assessments of the counterparties horizontal and sectoral interests to the extent possible – both to enable coalitions around shared interests and to avoid surprise requests that can lead to deadlocks. Red-line and bottom-line positions should be defined as clearly as possible in light of the expected upcoming scenarios.

Through this process, policymakers should ideally develop a national position on each service-related issue that can be subject to negotiations. Capacity constraints to that effect can include:

- The need to survey existing regulatory frameworks to identify the applied services regime as it relates to specific sectors, modes of supply and how relevant measures relate to the subject matter of negotiation (also called a regulatory audit report). This determines what can be offered in terms of bindings (whether each existing measure is adequate and acceptable and should be bound, or whether the measure needs changing and if so whether changes are viable within the applicable timeframes and should be offered in international negotiations).
- Defining a negotiating position based on coordination/consultation with all relevant ministries, regulatory agencies as well as other stakeholders (managing the trade environment).
- Drafting templates of schedules of commitments that reflect the desired negotiated outcome with all its intended policy and legal implications (preparing both for the negotiation and the implementation).
- Developing a clear understanding of the implementation follow-up regarding commitments that require regulatory reforms (including concerning structural weaknesses that may derail reforms to spur economic growth) (World Bank, 2010; UNCTAD, 2020b, p. 44).

One particularly useful step in the development of national positions is the preparation of a regulatory audit report. In this context, on 24 November 2022 the AfCFTA Secretariat, in partnership with the World Bank, issued the AfCFTA 'Trade in Services Regulatory Audit Reports'. These reports identify restrictions on market access and national treatment affecting the supply of services into AfCFTA countries as defined in the AfCFTA Trade in Services Protocol. A goal of the reports is to support Phase I negotiations on Trade in Services (AfCFTA, 2022). The report is a noticeable source for AfCFTA countries, including Angola, to assess their own services policies and prepare for multilateral, continental and regional negotiations.

## 2.2. Consulting stakeholders

Proper channels of communication with relevant stakeholders are important. Stakeholder consultations should be a continuous, two-way exercise: they can help at the strategy definition stage, the preparation stage, during the actual negotiations and at the implementation and fruition phase. They tend to be more effective when an ongoing feedback mechanism is in place.

Consultations have multiple relevant objectives:

- Learning who is already exporting which services and by which mode of supply. This can be particularly helpful given the data challenges regarding services discussed in chapter 1. Awareness of a country's own competitive strengths and weaknesses is key.
- Learning what will make a competitive difference for a country's development aspirations (e.g., promoting upgrading and diversification) and service firms: countries should know what regulatory obstacles their service exporters are encountering (by mode of supply) both in their sector and in related sectors. Countries should also know the obstacles that firms face in their domestic market in particular services sectors, and whether those obstacles may stand in the way of upgrading and diversification.



- Determining priority export markets and eyeing potential opportunities in other markets.
- Gauging the impact of various liberalization strategies on the domestic economy, and understanding which sectors would be candidates for further liberalization that would generate positive effects for other sectors (including manufacture and agriculture).
- Building domestic support for the liberalization of services trade.

Consultations should seek a representative cross-section of input. In this sense, they should indicatively include representatives of (i) domestic service suppliers and exporters, (ii) foreign firms established in the domestic market, (iii) relevant regulators, (iv) advocates for services suppliers/exporters, (v) consumers (including relevant agricultural and industrial users), (vi) employees in the services sector, and (viii) relevant researchers.

### Example

The following table highlights that views on liberalization of any given sector may vary. It presents a stylized example related to professional and business services supplied across borders by means of digital platforms for business outsourcing operating in Country A and linking professionals from Countries A, B and C.

#### Professional and business services (Mode 1): interests

- An online platform for business outsourcing in Country A facilitates that businesses in country A engage professionals in countries A, B and C. The online platform business is thriving and subcontractors in countries A, B and C have expanded opportunities.
- Businesses in Country A use the platform to contract with lawyers, accountants and architects in Countries B and C, where rates are cheaper. Among those businesses are also professional service firms in Country A outsourcing work to providers in countries B and C. The platform is a welcome resource for those businesses.
- Professional associations in Country A are concerned that services are provided by unregulated and uncertified service providers in Countries B and C.
- Clients of professional service firms in Country A that outsource work to Countries B and C worry that subcontractors in Countries B and C have access to personal data.
- Tax authorities in Countries A, B and C wish to collect tax on the income of workers from Countries B and C.

*Source: Adapted from UNECA, 2020b, p. 14.*

Consultations should include both cross-cutting issues of importance (such as business entry, mutual recognition, e-commerce) and issues of particular interest to stakeholders. Consultations should aim to attract stakeholder participation and avoid duplication. A range of mechanisms can be considered to implement the consultations process: virtual consultation via email or virtual questionnaires, in-person focus/discussion groups, topical surveys, media and social media content, sectoral advisory groups (UNCTAD, 2020b, p. 44). It is not a given that consultations will yield significant participation and input.

The government should compile the outcome of negotiations so as to inform the actual negotiations. Issues can be divided into three broad categories (UNCTAD, 2020b, p. 45): offensive interests, defensive interests and enabling interests.

### Offensive interests

Offensive interests are likely in items where a country has a comparative advantage and wishes to export more, but where suppliers (exporters) face obstacles. The compilation of offensive interests can inform negotiating positions. For instance, it can lead to: (i) a direct bilateral request to the import-restricting country, (ii) the negotiation of a regional agreement or provision that removes the restriction, (iii) a request at the WTO. Particularly in the case of LDCs, offensive interests can also lead to a request for preferential treatment under the WTO LDC services waiver. A similar logic can apply to asymmetrical preferential negotiations.

### Defensive interests

Defensive interests are likely where service suppliers established locally are not ready to face international competition. Possible measures to address defensive interests are, for example, (i) a refusal by the country to adopt commitments for the sector at issue, (ii) the inscription of commitments that do not fully liberalize the sector at issue (including the liberalization of Mode 3 in order to allow the sector to receive investments while protecting entry through other modes of supply), and (iii) the granting of subsidies to local service -providers.

### Enabling interests

Enabling interests arise in sectors where the country wishes to attract foreign service suppliers. In these cases, possible policy options include: (i) domestic measures (improving infrastructure, conducting domestic reform), (ii) bilateral investment treaties and other tools to promote FDI, and (iii) liberalization of the sector (in full or in part), either unilaterally or after inscribing commitments in services schedules at the bilateral, regional or WTO level.

### Example

The following table presents stylized examples of offensive, defensive and enabling interests in the telecommunications sector, and possible initial request-offer approaches or scheduling options in each scenario. This is just an illustration; the objective is not to exhaust the discussion but to point to selected possibilities.

Offensive interests	Defensive interests	Enabling interests
<p>Telecommunications service supplier from Developing Country A seeks a new market in Developing Country B.</p> <p>Interests include cross-border supply, commercial presence and the ability to have officers and managers sent from country A to country B.</p> <p>Country A may request:</p> <ul style="list-style-type: none"> <li>(a) No market access limitations in Modes 1, 3, and the 4; or</li> <li>(b) No market access limitations in Modes 1 and 3, and permission for moving officers and managers.</li> </ul>	<p>Country B seeks to limit entry of foreign telecommunications providers in order to prioritize the development of its telecommunications sector through the championing of domestic service providers.</p> <p>Country B may:</p> <ul style="list-style-type: none"> <li>(a) Limit market access, for instance, remaining "Unbound" with regard to the sector across modes of supply</li> </ul>	<p>Country B seeks to attract foreign service suppliers (for instance, to improve domestic capacity, create jobs, increase tax revenue). However, Country B may or may not wish to ensure that jobs are created for its nationals or remain free to incentivize domestic providers.</p> <p>Country B may:</p> <ul style="list-style-type: none"> <li>(a) Grant market access under Mode 3 without restrictions (limitations are "None"), and</li> <li>(b) Limit market access under Mode 4 (remaining unbound) either in the horizontal section or in the specific sector, and</li> <li>(c) Limit national treatment, for instance, regarding the number of foreign workers, or leaving room for the granting of subsidies or tax rebates to domestic providers.</li> </ul>

### 3. Conducting the negotiations

Services negotiations modelled on the GATS framework tend to address two main elements: (i) rule-making and (ii) commitments. The rule-making exercise basically comprises the definition of the scope of negotiations, the scheduling approach, frontier issues of particular interest (e.g. e-commerce, digital trade) and a program for the future. Commitments include the sector and sub-sector specific requests and offers by the negotiating parties and the negotiation of annexes.

#### 3.1. Scope

The scope of negotiations refers to the issues that the negotiation intends to address. Options can theoretically range anywhere from the exclusion of services from negotiations to the inclusion of all services and modes of supply. In practice, recent negotiations have lied between these two extremes. For instance:

- At the SADC level, the first round of trade in services negotiations has prioritized six services sectors, (communication, construction, energy-related,<sup>11</sup> financial, tourism, and transport), cross-cutting annexes on 'Substantial Business Operations', 'Interim Arrangement relating to Commitments on Subsidies', and 'Movement of Natural Persons' (Mode 4), and regulatory annexes on 'Financial Services', 'Telecommunication Services' and 'Tourism Services'.
- At the AfCFTA level, the first round of negotiations on services has focused on five priority sectors: financial, communication, transport, professional services, and tourism. This will also be complemented by Protocols on particular matters.

In many cases, developing country governments take a relatively passive stance regarding the definition of the scope of negotiations. However, this definition tends to determine the set of possible outcomes. Therefore, the stakes are high. At a minimum, countries should adopt a proactive stance and to attempt at building coalitions around areas of priority interest in order to set the scope for the negotiations.

#### 3.2. Scheduling approaches

The approach for scheduling commitments is a core aspect of the rule-making exercise during services negotiations. Draft schedules are references for bilateral request-offer exercises and can also be used in plurilateral negotiations where groups of members propose negotiating objectives in given sectors. There are three basic approaches to scheduling commitments: the positive-list approach, the negative list approach or a combination of the two approaches.

##### *Positive list approach*

The positive list approach has been adopted for WTO schedules of commitments on market access and national treatment, and also in the SADC and AfCFTA negotiations under the respective Protocols on Trade in Services regarding priority sectors.

A positive list approach is bottom-up: a party explicitly lists the sectors or subsectors to be open to foreign service suppliers under the same conditions that apply to domestic service suppliers through market access and national treatment commitments and the applicable obligations on domestic regulation. Then, in a second step, the party lists the limitations to such commitments through the market access or national treatment limitations that it wishes to apply.

Generally, developing countries would find the positive list approach advantageous for lightly regulated or unregulated sectors, especially if the government wishes to maintain policy space. A positive list is flexible, since parties only need to make actual commitments on what they wish to liberalize and tailored to the degree of liberalization they wish (UNECA, 2021, p. 70). This is especially so in cases where commitments below the current status quo are accepted. For instance, in the Uruguay Round negotiations, many countries remained unbound in sectors where the domestic policies effectively afforded market access and national treatment to

foreign suppliers. In other cases, countries deliberately chose to bind themselves to their own current status quo in order to lock-in the effect of domestic reforms and signal this to potential investors.<sup>12</sup>

At the same time, the positive list approach can make the request-offer process relatively more complicated. This is because the bottom-up nature of a positive list instils a sector-by-sector discussion that becomes hard to manage in negotiations involving many different players with diverse interests in each sector at play. In order to facilitate the process, negotiators have resorted to certain templates for scheduling commitments. Three examples to note are “Reference Papers”, “Understandings” and “Model Schedules”, all of which have been used in WTO negotiations.

### Reference papers

In the GATS context, the term “Reference Paper” has been used to refer to a template of “Additional Commitments” to be scheduled pursuant to Article XVIII. The text of a reference paper is normally negotiated to reflect the desired outcome. The Members would then incorporate the content in their individual schedules, which would take legal effect. The scope of a reference paper is normally limited to the scope Article XVIII (as additional commitments) and therefore to regulatory matters, not measures that are subject to scheduling under Articles XVI (Market Access) and XVII (National Treatment). The most prominent example of such a template is the Reference Paper on Regulatory Principles in the Basic Telecommunications Sector (UNCTAD, 2020b, p. 38).

### Understandings

In the GATS context, the term “Understanding” has been used to refer to a template that combines market access, national treatment and additional commitments. The prominent example of a template of this type is the Understanding on Financial Services agreed at the end of the Uruguay Round. It contains a “standstill” obligation that provides that members scheduling according to the Understanding should list only “existing non-conforming measures” with market access and national treatment. In other words, it adopts a specific “negative list” approach for market access and national treatment commitments for the services covered. As in the case of a reference paper, the understanding takes effect upon incorporation in the individual schedules (UNCTAD, 2022b, p. 38).

In terms of scope, an “Understanding” in the GATS context can be similar to some “Protocols” in the AfCFTA and the SADC contexts. However, differently from understandings in the GATS contexts, in the AfCFTA and SADC contexts, “Protocols” would normally take legal effect by themselves for the members accepting them, and do not require specific scheduling.

### Model schedules

Model schedules are template schedules to illustrate desirable outcomes of the negotiations of commitments. Their effect is also dependent on the incorporation of the model into the members’ actual schedules. An example is the 1995 Model Schedule for Commitments on Basic Telecommunications, which the WTO Secretariat prepared and circulated as an informal note during the negotiations on the sector (UNCTAD, 2020b, p. 38; WTO, 2001, p. 29).

### Negative list approach

A negative list approach is top-down: all sectors or subsectors that a party does not expressly list are open to foreign service suppliers and subject to national treatment by default (UNECA, 2021, p. 70). The negative list approach has been associated with higher levels of liberalization relatively to the positive list approach – even if the question is one of scheduling convention, the negative list tends to immediately consolidate the status quo as the existing restrictions that will be maintained are normally listed. For similar reasons, a negative list approach would fit best for well-regulated sectors and would be more easily employed by negotiators equipped with extensive mapping and thorough knowledge of the regulatory landscape in all the sectors and subsectors at issue.

### Hybrid approaches

Hybrid approaches combine features of both the positive and negative lists. Negotiations can take place through a hybrid approach, for example, using a positive list for given modes of supply (say Mode 1 – cross-border supply) and a negative list for other modes of supply (say Mode 3 – commercial presence). Another possibility is the use of negative lists for certain sectors and positive lists for other sectors (UNECA, 2021, p. 70).

### 3.3. Frontier issues

Negotiations often encompass frontier issues, which are matters that can have the potential to displace existing processes and attract significant attention at the time of negotiations. One illustration of a frontier issue that has dragged on for decades is how to address e-commerce.

#### Example

Electronic commerce (e-commerce) — the sale or purchase of goods or services ordered over computer networks or online platforms — is a significant segment of the digital economy. At the WTO, since 1998 e-commerce discussions have taken place mainly at a multilateral track through the Working Program on E-commerce (WPEC). In 2017, a parallel plurilateral track emerged: the Joint Statement Initiative on E-commerce (JSI on E-commerce). While the WPEC has had an exploratory and informative nature, the JSI on E-commerce seeks negotiated outcomes.

The co-conveners of the JSI on E-commerce negotiations (Japan, Australia and Singapore) stated in October 2022 that the negotiations, which involve 87 members, are at a critical moment towards the issuance of a revised consolidated text. The topics covered in negotiations have been grouped into: (i) enabling e-commerce, (ii) openness and e-commerce, (iii) trust and e-commerce, (iv) cross-cutting issues, (v) telecommunications and (vi) market access.

The negotiations would require striking a delicate balance in reconciling different regulatory practices and priorities across countries with respect to such sensitive public policy areas as privacy, personal data protection, competition, consumer protection and cyber security, as well as industrialization objectives for the digital economy. Many developing countries are yet to develop their own national policy frameworks to support their ability to harness the evolving digital economy. A key question that confronts trade negotiators is what negotiated outcome would allow developing countries – both participant and non-participant – to harness potential benefits of e-commerce for sustainable development.

As a new data value chain consolidates, from raw data to “digital intelligence”, developing countries are challenged to build and develop required skills and capacities to create and capture value from digital data. Irrespective of whether they join the JSI negotiations, the formulation of adequate national regulatory frameworks to build digital capabilities should remain an essential component of a broader national development agenda.

Source: UNCTAD, 2021b.

### 3.4. Unfinished business

Sequential negotiations tend to take over what was left undecided during previous rounds. For example, during several years, the rule-making agenda of the GATS remained open regarding additional disciplines on domestic regulation. From 2017 to 2021, a number of WTO Members engaged in negotiations on the topic. On 27 September 2021, participants finalized text-based negotiations as detailed in the Reference Paper on Services Domestic Regulation. The commitments will be incorporated in the participants' WTO schedules.

The Reference Paper on Services Domestic Regulation essentially locks-in what some Members consider to be good domestic regulatory practices (notably regarding the administration of authorization requirements, assessment of qualifications and technical standards). Adequate domestic regulation disciplines have the potential to increase services trade (WTO, 2022). OECD studies estimate that domestic regulation disciplines

could reduce services trade cost by around 7% on average in the Asia-Pacific Economic Cooperation (APEC) region and 6% for the G20 (OECD, 2021a, 2021b). The Reference Paper's outcomes apply to services exports from LDCs through the exemption for LDCs, and also due to the tendency that regulations apply across the board and do not afford specific origin distinctions as far as service imports are concerned.

### **3.5. Additional examples of potential provisions**

The rule-making exercise in services negotiations can entail many other elements. While it would be difficult to think of an all-encompassing list, the following are examples of other ingredients that may apply individually or in different combinations, to one or more of all sectors covered by commitments in a schedule (UNCTAD, 2020a, pp. 52-53). They can be employed in an attempt to “future proof” or temper commitments, depending on the level of ambition at issue.

#### ***Standstill obligations***

“Standstill” obligations bind the parties to existing levels of openness. Parties then list only non-conforming measures as caveats to their commitments. The GATS Understanding on Commitments in Financial Services (paragraph A) offers an illustration of this approach.

#### ***Ratchet provisions***

“Ratchet” provisions establish that autonomous (“unilateral”) liberalization after the entry into force of a commitment would automatically turn into a commitment.

#### ***Binding of “new services”***

New services can be automatically added to the sectoral coverage of existing commitments. An example is found in the Financial Services Understanding (paragraph B.7) in relation to Mode 3.

#### ***Government procurement commitments***

Parties may include government procurement commitments as part of service commitments in the sectoral or modal coverage of choice. These could also be incorporated in a template-like approach. An example is to be found, again, in the Financial Services Understanding (paragraph B.2), notwithstanding Article XIII of the GATS on Government Procurement.

#### ***Commitments on state-owned enterprises***

Parties may also decide to cover commitments on state-owned enterprises. Under the GATS, if not privileged by government interventions, state-owned enterprises are to be dealt with as any other commercial entities. Deeper obligations could be provided for. For example, the Financial Services Understanding (paragraph B.1) provides a legal obligation, on a best-endeavour basis, to eliminate monopolies or reduce their scope even in financial “activities conducted by a public entity for the account or with the guarantee or using the financial resources of the government”.

#### ***Additional commitments on regulatory issues***

Additional commitments on regulatory issues could cover a wide range of issues and could be considered as an evolving agenda of negotiations. These could be negotiated under Article XVIII of the GATS which is specifically designed for that purpose. An example is the Reference Paper on regulatory principles for basic telecommunications under the GATS. It provides for additional legal obligations on transparency, interconnection, licensing, allocation and use of scarce resources, and even institutional arrangements such as the establishment of independent regulators. Article XVIII of the GATS provides a legal framework for negotiation on any regulatory matter that concerns measures not covered by market access and national treatment.

### 3.6. Commitments

In practice, probably the most time-consuming effort by negotiators is the actual bargaining regarding market access, national treatment and additional commitments with respect to specific sectors and subsectors. To date, in contrast to goods negotiations at the WTO, the practice of services negotiations has largely eschewed formula-based approaches. Instead, countries have basically exchanged commitments through a request-offer approach. This is complemented by more generic or cross-cutting discussions (e.g., labour mobility or investment, competition and government procurement as applied to services, domestic regulation) and discussions on frontier issues (e.g., e-commerce). Appendix I to this Manual provides scheduling conventions and terminology that have been used in concrete schedules as outcomes of negotiations on specific commitments.

A key question for negotiators in request-offer negotiations is the level of ambition in the scheduling of commitments, namely whether the negotiations seek additional liberalization related to the status quo, binding commitments according to the status quo (thereby locking-in the current level of liberalization), or binding commitments below the regulatory status quo (thereby preserving policy space to back-track from the existing unilaterally, self-imposed regulatory framework).

The determination as to the level of market access and national treatment to grant implies three core issues: (i) the benefits to be achieved, (ii) the political concerns and downsides, and (iii) the required regulatory framework and reform efforts at stake. It appears that in most times, most developing countries have focused their energy on defensive interests. This may be explained by a combination of information gaps (lack of knowledge leading to a precautionary stance), supply capacity limitations (on the services-export front), sensitivities of domestic providers (on the services-import front), and the actively demanding posture of negotiating counterparts (forcing a response-focused approach). More recently, however, developing countries have increasingly engaged in services negotiations, particularly in labour-intensive services.

Enabling interests as defined above may prompt a less resistant approach to services liberalization and is an area to which developing country negotiators should drive their attention. Policymakers and negotiators may consider whether and how the binding of ongoing or recent reform efforts at the status quo level may be presented as “concessions” in exchange for outcomes in sectors where offensive interests are identified (including outside the services sector, e.g., in agriculture). It may be possible to maximize win-win scenarios by bridging domestic services regulatory reform efforts and market access for exports, supporting economic diversification. Services negotiations can indeed represent an opportunity for countries at all levels of development to secure more favourable terms of access to foreign markets. Reliance on unilateral reform alone does not lead to that. (World Bank, 2010, pp. 49-54).

## 4. Implementing negotiated outcomes domestically

The outcome of services negotiations comprises obligations that tend to go far beyond traditional border measures. Developing countries may face particular implementation challenges including due to recurring and mounting costs that new rules in regulated sectors normally imply. Costs may further be associated with several compliance measures, including the creation and strengthening of regulatory agencies. Compliance costs can be higher for acceding economies, because accession has involved far-reaching commitments to substantive legal and institutional reforms. Implementation costs also involve ancillary measures to reap the benefits (and reduce transition costs) deriving from implementation and liberalization. (World Bank, 2010, p. 55). While liberalizing trade in services should improve overall economic conditions, there will likely be winners and losers in the process. Moreover, there may be a timing mismatch between some of the expected benefits (e.g., long term) and some of the possible adverse effects (e.g., short term).

One mundane aspect of the implementation challenge is the at-first-sight “simple” issue of the domestic formal legal incorporation of commitments resulting from negotiations. This appears to be an easy step, particularly when the previous stages of the negotiations’ life-cycle have been completed. Yet, this process may depend on action by various actors (including the Executive Branch and the Legislative Branch) and take time. This can delay

the implementation and the fruition of the expected benefits of negotiation outcomes. The example below, based on the situation of Brazil, illustrates the challenge.

### Example

Historically, in Brazil the formal incorporation of international treaties has taken several years. The Brazilian National Confederation of Industry (CNI) estimated an average of 1,590 days between signing and domestic incorporation of a sample of treaties. The time that each branch (Executive and Legislative) took to perform its own activities regarding incorporation has been roughly even (CNI, 2018; CNI, 2017).

CNI understands that the long formal incorporation process (longer than in other countries surveyed) prevents the private sector from quickly reaping the benefits of trade agreements. CNI argues that the Executive Branch takes about one year to send the agreement that the Executive itself has signed, and about one year to promulgate the agreement after the Legislative branch approves it.

CNI suggested the following measures (among others) to expedite the internal procedures towards formal incorporation of international instruments: (i) the introduction of specific disciplines and timelines for each Ministry involved in the process to conclude their internal assessments, (ii) eliminating the practice to restart assessment by Ministries where there is a change of Minister, (iii) creating monitoring mechanisms to ensure that deadlines and goals are met, (iv) establishing a focal point for intra-governmental approvals.

Brazil has not yet fully implemented CNI's suggestions. But, awareness and stakeholder pressure appear to have contributed to reduce the time for formal incorporation of certain international instruments. For instance, a recent Brazil-US Protocol on Trade Rules and Transparency that private sector entities supported took less than one year and ten months for incorporation (from signing until coming into force, less than half the average time). The lesson is that stakeholder involvement and internal mechanisms to ensure the promptness of formal incorporation of international instruments can help expedite formal incorporation and thereby their implementation.

Significant policy changes may emanate from negotiation outcomes beyond the particular sectors at issue. Policymakers and negotiators should have this in mind since the early stages of preparation and follow-up through negotiations and implementation. The three examples below illustrate that implementation efforts may need to be far-reaching (UNECA, 2020b):

- The liberalization of tourism sectors may require the review of visa and residence regulations to foster an uptick in arrivals and unleash the sector's potential.
- Commitments in telecommunications may intersect with regulations on technology infrastructure and privacy as part of the creation of an enabling data ecosystem.
- Cross-cutting issues of standards harmonization, consumer protection and regulation across committed sectors will arise.

## 5. Taking advantage of negotiated outcomes through services exports

A final stage of the life-cycle of trade in services negotiations involves the ability to supply opened markets, thus increasing diversification (especially through exports). There are successful examples in sectors such as telecommunications (take Mexican-based turned into a pan-Latin American supplier of mobile telecom services America Movil), business-process outsourcing (take the success stories of Business Process Outsourcing (BPO) hubs in African countries such as South Africa, Egypt and Kenya), and others. Still, developing-countries tend to face challenges also when it comes to developing their supply capacity.

Governments, the private sector, and development partners must be creative to promote competitive supply responses. This is arguably the most difficult element in the services negotiating cycle because the development of supply capacity tends to involve expertise and institutions that are not centrally involved in previous parts of the



negotiations (World Bank, 2010, pp. 64-65). This might explain why developing countries have also been shy to request market access for services exports of their own. Moreover, most export development initiatives focus on trade in goods. This pro-goods bias does not dovetail with the relative importance of services.

Developing countries could actively request concrete technical assistance and support commitments in the development of supply capacity, including through existing preference schemes or those under negotiation. The experience regarding the EU-CARIFORUM Economic Partnership Agreements (EPA) suggests that this is an area where developing countries may consider pushing for. Where the overall benefits of concluding the negotiations become clear due to other factors, developing countries may seek additional benefits in the form of concrete assistance to develop their national supply capacity, taking into consideration previous successful experiences.

### Example

The EU-CARIFORUM EPA, signed in 2008, comprises agreements between the EU and 14 Caribbean countries. The EPA includes commitments on trade in goods, services, investment and other trade-related issues. As to services, the EPA is asymmetrical in favour of Caribbean countries: CARIFORUM opens up 65-75% of their markets, supposedly focusing on sectors with greatest impact on development and where investment and technology transfer is required, while the EU opens up 90% of its services market.

Yet, the EPA does not feature explicit language on the level of development financing to be made available overall or for the specific issues and sectors covered. This has spurred criticism in the CARIFORUM region, based on the argument that the development provisions are somewhat abstract and not legally enforceable, while the liberalization commitments are explicit, legally binding, and enforceable. Responding to this criticism, the Office of Trade Negotiations of the CARICOM Secretariat has cautioned that these perceptions should be balanced with the recognition that the EPA is not the primary vehicle for the achievement of development. Instead, it is a strategic instrument in a range of economic development strategies.

*Sources: World Bank, 2010, p. 78; EC, 2022a.*

Development assistance can target intermediary (or meso-level) institutions and processes, such as private sector associations, support structures for small and medium enterprises, and public-private dialogue and partnering activities, including towards export promotion. (World Bank, 2010, pp. 65-67). This would be in line with the idea that, at the implementation stage, expertise that was not necessarily required to conduct the negotiations is key to successful outcomes.

It is also important that developing countries consider the links between services trade and goods trade at the implementation stage. Services liberalization may provide additional export competitiveness to agricultural and industrial goods, and as a result lead to the exports of embedded and embodied services linked to those goods. This phenomenon may not be reflected in traditional measures of international trade focusing on balance of payments, but will be captured by the lens of value-added-trade.

# CHAPTER 5: TRADE IN SERVICES NEGOTIATIONS INVOLVING ANGOLA

This chapter describes the frameworks of the trade in services negotiations that Angola has undertaken. In addition to the WTO, Angola has participated at (i) the Southern African Development Community (SADC), (ii) the Economic Community of Central African States (ECCAS), (iii) the Tripartite Free Trade Agreement (TFTA), and (iv) the African Continental Free Trade Area (AfCFTA). Among these, it appears that the SADC and the AfCFTA have gained momentum. This chapter also walks the reader through a hypothetical commitment in the transport sector from strategy to implementation.

## Learning objectives

After reading this chapter, you will, at an introductory level:

- Recognize the initiatives involving trade in services with which Angola has engaged at the multilateral, continental and regional levels.
- Know the main negotiating disciplines and initiatives regarding trade in services at the WTO, the SADC and the AfCFTA.

## Key takeaways

Key takeaways from this chapter are:

- Angola has few scheduled commitments under the GATS and has not acceded to the SADC FTA and the SADC Protocol on Trade in Services, with offers to join pending analysis.
- The AfCFTA has a potential to consolidate intra-African initiatives on trade in services, but there has been a delay with regard to previously established deadlines.
- The different trade in services negotiations require coordination to avoid conflicting outcomes and improve regulatory coherence.
- A cluster approach to services may facilitate service sector policies' consistency.
- The recently published Regulatory Audit Report for Angola can be instrumental to inform Angola's negotiation positions in the different international initiatives at issue.

## 1. Overview of Angola's participation in trade in services initiatives

Angola is a major oil producing country. It is one of the top oil producers in Sub-Saharan Africa. The country holds significant proven gas reserves as well as extensive mineral resources. Angola depends largely on the offshore petroleum industry for GDP and government revenues. The oil sector also accounts for more than 90% per cent of the country's total exports (UNCTAD, 2020, p. 53, World Bank, 2022a).

In 2021, Angola exited a five-year recession, with GDP growing 0.7%. The removal of COVID-19 related restrictions, the lagged impact of macroeconomic reforms, and the government's efforts to diversify the economy boosted non-oil growth, especially in agriculture and services. This more than offset a renewed contraction of the oil sector, ending the country's long recessionary cycle. The positive economic momentum has continued into 2022, with the economy growing by 2.6 % year-on-year in the first quarter. However, the scars of the COVID-19 shock and the lengthy recession remain evident – GDP declined by a cumulative 10.2 % between 2016 and 2020 (World Bank, 2022b).

Angola had the objective of becoming an upper-middle income country by 2020 and graduating from LDC status in 2021. This did not take place. The graduation objective has been postponed to 2024. The country is in strong need of reformulated policies and institutions to help diversify its economy and maximize regional and global trade opportunities. Yet, it has recognized that the weak effects of existing efforts to diversify the economy are an issue impeding graduation (UNDP, 2022).

Angola has identified trade in services as a way to diversify the economy and promote sustainable development. The country is among the largest services importers in Africa and faces a relatively large trade deficit in services, driven at the sub-sector level by 'Technical, trade-related and other business services', 'Sea freight transport' and 'Construction'. This is largely related to the country's status as an oil exporter (Cattaneo, 2020, pp. 25-26). Services exports revenues mostly come from a single sector: tourism and travel related services. Yet, Angola's services sector is marked by various horizontal and sectoral restrictions (AfCFTA, 2022c). This indicates that trade in services diversification should be actively and strongly pursued, but that it requires significant and continuing reform efforts. The existing instruments and negotiations on trade in services present challenges and offer opportunities for Angola to consider carefully.

### 1.1. WTO

Angola has been a WTO Member since 1996. With respect to the GATS, it has undertaken scheduled commitments in few areas, namely in banking and other financial services, tourism and travel related services, and recreational, cultural and sporting services. The WTO membership accords benefits to Angola under the LDC Services Waiver until Angola's graduation from LDC status (UNCTAD, 2020, p. 54).

Whereas the GATS provides for flexibilities, the scarcity of scheduled commitments by Angola compounds such flexibilities and leaves considerable room for the implementation of domestic and regional services policies. Article V.3(b) of the GATS permits preferences granted through an Agreement between Angola and developing countries to be limited to service providers 'owned or controlled by natural persons of the parties to such an agreement'. This provision can offer an avenue for Angola to take part in regional or continental frameworks in selected services sectors before it engages in North–South services negotiations.

It should be noted that Angola's Regulatory Audit Report points to numerous restrictions on ownership that may hinder FDI and thereby diversification. While this reality merits a thorough and careful assessment on its own, lifting some of these restrictions for service providers owned or controlled by SADC or AfCFTA parties might be more plausible than eliminating them at the level of the WTO. On the other hand, the paucity of Angola's GATS commitments may reduce the certainty that reforms and existing efforts to improve trade in service will consolidate in the long term.

Angola has not joined the recently concluded plurilateral WTO negotiations leading to the Reference Paper on Services Domestic Regulation that chapter 4 describes. Angola's potential services exports stand to benefit

from the recently enhanced disciplines on domestic regulation through the exemption for LDCs. However, because Angola is not a participant, it fails to signal through its WTO commitments that it accepts to implement domestically the practices that the Reference Paper aims to consolidate. Participation could also be considered if there was a particular interest to consolidate or lock-in domestic reforms through the WTO.

The EU and Angola recently concluded a “Sustainable Development Facilitation Agreement”.<sup>13</sup> The text of this Agreement has some functional and drafting similarities with the WTO Reference Paper on Services Domestic Regulation. This suggests that, concerning some of the overall principles and substantive requirements at issue, Angola would likely have no opposition to engaging with the WTO initiative on domestic regulation. Yet, because there is no ongoing round of multilateral trade negotiations – let alone comprehensive services negotiations – and as Angola still benefits from the LDC waiver, Angola may have little to gain in exchange for making specific service commitments at the WTO in the present circumstances.

## 1.2. SADC

Angola is part of the Southern African Development Community (SADC), a Regional Economic Community (REC) comprising 16 Member States. Pursuant to the SADC Treaty, SADC shall develop policies aimed at the progressive elimination of obstacles to the free movement of capital and labour, goods and services, and of the people of the region generally, among member States (SADC Treaty, Article 5.2(d)). The SADC Common Agenda repeats this endeavour. To that effect, infrastructure and services are particular areas where SADC Members agreed to cooperate (SADC Treaty, Article 21.3(b)).

Thirteen SADC members currently form the SADC FTA. Angola recently submitted an offer to accede. Dedicated negotiations on Angola’s provisional schedule of tariffs are scheduled to start in January 2023. The SADC Protocol on Trade in Services was signed in 2012 and entered into force in January 2022, after ratification by eleven SADC member states (SADC, 2022). However, as with the FTA, Angola is not a party to the Protocol, which constitutes the existing framework for services trade in the REC.

The Protocol’s objective is to progressively liberalize services trade towards the creation of a single market. It is modelled on the GATS, with a similar structure and obligations. Moreover, SADC negotiations have recognized the principle of asymmetry, reflecting individual countries’ disadvantages by reason of size, structure, vulnerability and level of development. Disadvantaged parties may open fewer sectors and liberalize fewer modes of supply (SADC, 2009; SADC, 2021).

Three additional aspects are to note. First, participants jointly prioritized six services sectors for the first round of negotiations: communication, construction, energy-related, financial, tourism, and transport. Second, the parties adopted cross-cutting annexes on ‘Substantial Business Operations’, ‘Interim Arrangement relating to Commitments on Subsidies’, and ‘Movement of Natural Persons’ (Mode 4). Third, the parties adopted regulatory annexes on ‘Financial Services’, ‘Telecommunication Services’ and ‘Tourism Services’. These sectoral annexes drew on previously existing SADC Protocols.

The first round of SADC services negotiations took place from 2011 to 2019, about four years longer than originally planned. The negotiations followed a GATS-plus, request-offer, positive list approach. Accordingly, existing GATS schedules were the starting point for negotiations. In the case of SADC non-WTO members, the baseline was a blank schedule of commitments. The parties remained free to take commitments beyond the six sectors prioritized (SADC, 2009).

While the countries participating at the SADC Protocol on Trade in Services undergo a second round of negotiations, Angola’s initial offer on trade in services with respect to the sectors prioritized in the first round of negotiations is still pending analysis. To the extent that Angola takes part in the second round, this may lead to an overlap of first and second round matters in the discussions. Furthermore, because Angola has not concluded its accession, since January 2022 with the entry into force of the Protocol, it is not entitled to the preferences under the schedules of specific commitments of participating SADC Members. Generally, policymakers should bear in mind that an accession process tends to limit the acceding party’s chance to take commitments from other members according to its specific offensive interests.

The second round of SADC services negotiations include all services sectors covered by the Protocol, with a priority for: (i) services of relevance to the SADC Industrialisation Strategy and Roadmap (SISR) 2015-2063, particularly business services and distribution services, (ii) all other sectors not prioritized in first round, and (iii) unfinished sectors from the first round, notably any of their elements relevant to the fulfilment of the SISR 2015-2063 or where there are outstanding requests from the first round.<sup>14</sup> The second round will also consider unfinished work from the first round and the “built-in agenda” issues of the Protocol on Trade in Services: domestic regulation, mutual recognition, subsidies, and trade and investment promotion (SADC, 2021).

Like the first round, second round SADC services negotiations are GATS-plus. The Negotiating Guidelines for the second round further provide that the SADC lists of commitments should include or improve on the commitments being offered in the context of the AfCFTA negotiations (SADC, 2021). This suggests that the objective is to also have an AfCFTA-plus outcome, which is coherent with the idea that the AfCFTA is supposed to build on the RECs, including the SADC. In any case, the overlapping of SADC’s first and second round negotiations and AfCFTA negotiations (described below) produces a coordination challenge for Angola. It can also pose a significant burden on administrative and financial capacities in terms of implementation (AU, 2021, p. 27).

### 1.3. ECCAS

Angola is also a member of the Economic Community of Central African States (ECCAS), a REC that consists of 11 countries in Central Africa. SADC’s and the ECCAS’ membership overlap regarding Angola and the Democratic Republic of Congo.

The ECCAS’ main objective is to establish a single Pan-African common market (an objective that is common to other RECs). In practice, there has been little substantive development within the framework of ECCAS, which has undergone an institutional reform process for several years. ECCAS and SADC report relatively high scores on the African Market Regional Integration Index (AMRII). Hence, at first sight, they may look relatively integrated compared to other regions within Africa. Nevertheless, these RECs’ performance is explained by achievements of sub-regional organisations within them: the Economic and Monetary Community of Central Africa (CEMAC), a subregional arrangement that is nested within ECCAS, and the Southern African Customs Union (SACU), which is nested within SADC (AU, 2021, p. 31). Angola is not a party to any of these subregional communities. As described above, neither is Angola a party to the SADC Trade in Services Protocol. Thus, Angola has not used the RECs to which it is a party to their fullest extent as frameworks to diversify trade in services.

### 1.4. Tripartite Free Trade Agreement

The Tripartite Free Trade Agreement (TFTA) is an initiative to bring together 28 countries that are Members of three African RECs, namely SADC, the East African Community (EAC) and the Common Market for Eastern and Southern Africa (COMESA). The TFTA aims at creating a single market with free movement of goods and services to promote intra-regional trade. As of February 2023, 11 Member/Partner States had ratified the TFTA Market Integration Pillar (14 ratifications are required for entry into force). Angola had not.

Services would be subject to a second phase of TFTA negotiations (UNCTAD, 2020, p. 55, Declaration Launching the Negotiations for the Establishment of the TFTA, Article 5(b)). However, negotiations have reportedly been suspended to benefit from results on the AfCFTA negotiations (SADC, 2022).

### 1.5. AfCFTA

The African Continental Free Trade Area (AfCFTA) is a high-ambition initiative with a comprehensive scope: goods and services, investment, intellectual property rights and competition policy. Fifty-four African Union Member States signed the AfCFTA Agreement, which counts 44 ratifications as of December 2022. According to the World Bank, implementing the Agreement would boost Africa’s income by USD 450 billion by 2035 (a gain of 7%) (AU, 2021, p. 117).

The AfCFTA Agreement, including a Protocol on Trade in Services, entered into force on 30 May 2019. There is a timeline of 5-10 years to eliminate 90% of tariffs on goods starting from 1 January 2021. In practice, commercially meaningful trade under the AfCFTA has not commenced due to the missing of deadlines for the certification of tariff schedules and conclusion of Phase I negotiations on trade in services. In order to fast-track AfCFTA trade, the AfCFTA Secretariat has steered a Guided Trade Initiative – a pilot project involving selected countries and products (AfCFTA, 2022a).

The Protocol on Trade in Services envisages progressive liberalization through successive rounds of negotiations. The AfCFTA guidelines for services negotiations establish that member States will have to commit to a “minimum threshold of sectors and subsectors” reflecting “substantial liberalisation” and “effective elimination of barriers to trade in services.” The starting point for negotiating sector-specific commitments in the case of African Union WTO members (such as Angola) will be GATS-plus. On the other hand, the starting point for non-WTO African Union States will be “autonomous liberalisation at the national level”. The starting point for the development of regulatory cooperation frameworks will be an assessment of REC and AU protocols and regulations (Cattaneo, 2020, pp. 43, 45-46). As of 6 February 2022, 46 countries had submitted initial services offers, including Angola. The negotiations were set to complete in June 2022 (AU, 2022, p. 4), but remained outstanding in December 2022.

The first round of negotiations on services focuses on five priority sectors: financial, communication, transport, professional services, and tourism. Except for professional services, the initially prioritized sectors coincide with priority sectors at the SADC first round of negotiations. Yet, the possible trade-offs and effects of commitments for Angola may vary depending on whether the SADC or the AfCFTA is at issue. It should also be noted that the draft negotiating guidelines for the second round of SADC services negotiations provide that the offers in the AfCFTA negotiations are a basis for the SADC negotiations. Therefore, Angola’s negotiators should bear in mind that a future round of SADC negotiations would have the consolidated AfCFTA outcomes as a basis for Angola’s commitments.

## **2. Applied discussion on road freight transportation**

This section discusses the sectoral example of the transport sector and suggests possible considerations for Angola’s policymakers and negotiators along the negotiation life cycle. The aim is to illustrate the concepts and tools presented in this Manual by looking at one sector and not to suggest concrete negotiating positions.

### **2.1. Transport services in the broader economic context**

How should the transport services sector be seen in light of Angola’s development strategy? Consider the following excerpt from the ARIA X report addressing transport as a key sector that could help promote commercial agriculture (UNECA, 2021, p. 92):

*In broad terms, services trade reform in Africa should be geared towards promoting commercial agriculture in the context of value chains. Services essential for promoting full employment and inclusive growth such as storage, processing, transportation and distribution should be given the highest attention to promote inclusive and sustainable growth and development.*

The same reasoning would apply to the importance of transport to manufacturing. Accordingly, the national strategy for transport services (and other services) should be seen from a “holistic” perspective that captures not only the specific service sector at issue or even the broader service sector at large, but also the other economic sectors in light of the country’s overall development strategy. That is why it is important to set up a broad stakeholder consultation process when developing specific sectoral positions, and to be mindful of the interrelationship between goods and services from negotiation to implementation.

## 2.2. Transport services through a cluster lens

How should Angola approach the transport services sector from a supply chain perspective in order to maximize its contribution to Angola's development and diversification strategy? Although the example discussed here is sectoral, policymakers should keep in mind that services sectors should not be seen in isolation from each other – just like services at large should not be seen in isolation from other economic sectors. Considering the complexity of the topic, a good lens to address services reforms and organize negotiating positions is the “cluster approach”. A cluster view of services aggregates groups of services sectors to address particular problems and organize sector reforms. The ARIA X Report thus describes the cluster approach (UNECA, 2021, p. 91):

*A cluster view of services in Africa would help develop a robust strategic approach to reforming services trade to support inclusive and sustainable growth and development. An approach using the following four clusters can be considered:*

- *A digital network services cluster (telecommunications, broadcasting and computer services).*
- *A transport and supply chain services cluster (transport, courier, logistics and distribution services).*
- *A market bridging and support services cluster (legal, accounting and commercial banking services).*
- *A physical infrastructure services cluster (construction, architecture and engineering services).*

*The clustering approach emphasizes a holistic view in which services address a particular challenge. It emphasizes that a series of services may be required once the challenge has been identified. A cluster perspective helps in analyzing the critical and possibly binding constraints to an efficient service cluster with a view to develop appropriate policy reforms.*

*For instance, efficient energy supply service is not only central but also a critical and indispensable input to all the clusters. So, fixing and promoting stable, reliable, environmentally friendly energy should be accorded high priority because of its wide linkages to other sectors of the economy. The cluster approach implies that it is futile in reforms not to recognize a hierarchy of services.*

*Similarly, a digital network service cluster, especially its telecommunication and computer service aspects, provides important inputs to the development (joining and upgrading) of both regional and global value chains. It is thus complementary to the transport and supply chain services cluster, in which problematic physical linkages by different modes of transportation—air, water, land (road and railways), and pipelines—pose constraints on effective intra-African trade in goods and services. Services in this cluster also require huge investment. Thus, the physical infrastructure services cluster exemplifies complementarity of policies in services trade reforms.*

Once a general view of the policy direction for the given cluster is in place, it can be translated into specific sector and sub-sector policies – bearing in mind their specificities – to attain the broader objectives in question.

In the cluster approach, a transport and supply chain services cluster would encompass transport, courier, logistics and distribution services. The ARIA X report argues that addressing these sectors as a cluster would help to develop appropriate policy reforms targeting problematic physical linkages by different modes of transportation limiting intra-African trade in goods and services. Importantly, services in this cluster require huge investment. Hence, limitations on investments may be particularly harmful to the development of this cluster and the sectors it serves (UNECA, 2021, p. 91).

### **2.3. Existing specific commitments and limitations**

As described above, both the SADC and the AfCFTA first round of negotiations prioritized transport services. In this respect, Angola needs to answer some questions before starting any negotiation, such as:

- What are Angola's WTO commitments in this sector?
- What is the current status of Angola's regulations affecting transport services?
- What would be Angola's positions regarding transport services requests and offers in the context of AfCFTA and SADC negotiations?

Transport services are one of the 12 sectors in the WTO services sectoral classification list used as a basis for scheduling GATS, AfCFTA and SADC commitments. The sector is divided into nine subsectors,<sup>15</sup> most of which feature a larger set of specific activities.<sup>16</sup> As an example, consider the "Road Transport Services" sub-sector, which include "freight transportation" activities, and as a consequence the transport of goods between two places within Angola (also called cabotage). The following discussion focuses on freight transportation activities.

Angola does not have any scheduled GATS commitments in the transport services sector. Therefore, assuming conformity with Article V of the GATS on preferential services trade, Angola's negotiating positions on transport services in the SADC and the AfCFTA are not impacted by GATS commitments: any commitment Angola makes will be "GATS-plus".



**TRAINING MODULE FOR TRADE IN SERVICES FOR DEVELOPMENT**  
**CHAPTER 5: TRADE IN SERVICES NEGOTIATIONS INVOLVING ANGOLA**

Angola's Regulatory Audit Report lists the following domestic-law restrictions applicable to trade in road freight transportation services (AfCFTA, 2022c):<sup>17</sup>

MS	O	Measures	Description	Comment
1	MA	Art. 4 Law 20/03 of 19 August; Art. 5 Presidential Decree 160/10 of 30 July	Limits on the scope of the service	Cabotage is not allowed. International transport and cabotage transport to be carried out by non-resident carriers (companies established abroad) is subject to authorization by the National Directorate of Road Transport, which is conditioned by the principle of reciprocity.
1	MFN	Art. 4 Law 20/03 of 19 August; Art. 5, 16 Presidential Decree 160/10 of 30 July.	There are reciprocity requirements	International transport and cabotage transport to be carried out by non-resident carriers (companies established abroad) is subject to authorization by the National Directorate of Road Transport, which is conditioned by the principle of reciprocity.
3	MA	Art. 5.5 Presidential Decree 160/10 of 30 July; Art. 12, 19-20 Law 20/03 of 19 August	Foreign branches are prohibited	Local establishment is allowed in the form of licensed collective entities at least 50% owned by nationals.
3	MA	Same as above	Maximum foreign ownership in new locally incorporated company (%): 50	
3	MA	Same as above	Maximum aggregate foreign ownership allowed for the acquisition of an existing domestic entity (%): 50	
3	MA	Same as above	Prohibition on foreign acquisition of controlling stake in an existing domestic entity	A maximum of 50% ownership/control is allowed
3	MA	Same as above	There are limits to the proportion of shares that can be acquired by foreign investors in publicly-controlled firms	A maximum of 50% ownership/control is allowed
3	MA	Art. 5 Presidential Decree 160/10 of 30 July	Other restrictions on the form of entry	Licensing of individuals to provide road freight transport is only allowed for national citizens and resident foreigners.
3	MA	Art. 19.2 Law 20/03 of 19 August	Number of firms or suppliers restricted by quantitative limits	Quantitative limits may be imposed by the regulators in the geographical area of competence to protect competition.

Notes: **MS** indicates Mode of Supply; **O** indicates Obligation (Market Access, MFN, National Treatment); **MA** indicates Market Access.

Based on the above and on anticipated possible reforms, in light of the overall economic considerations complemented by a cluster approach, Angola's policymakers and negotiators should establish a negotiating position and determine what can be offered. Questions to ask include:

- Are the existing measures adequate and acceptable?
- Do these measures need changes?
- Are these changes viable and in what timeframe?

## 2.4. Offering/scheduling commitments

Depending on the answers to the above questions, Angola’s policymakers and negotiators would consider the potential offer or binding of commitments in item 11.F.b of Angola’s draft schedule below the current status, at the status quo, or beyond the status quo. For example, an offer removing the reciprocity requirement, foreign ownership limitations and quantitative restrictions would lead to full liberalization in Modes 1 and 3. The table below illustrates this scenario:

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
11.F. Road Transport Services ...			
11.f.b. Freight transportation	(1) None (2) Unbound (3) None (4) Unbound <sup>18</sup>	(1) None (2) Unbound (3) None (4) Unbound	

Policymakers and negotiators should also bear in mind that a liberalization of road freight transportation services would likely benefit from reciprocal liberalization of the same sector in neighbouring countries and from harmonization measures (for example, possible requirements concerning truck loads, drivers’ licensing, etc). Consideration can also be given to preferential treatment for suppliers “owned or controlled by natural persons of the parties” under Article V.3 of the GATS. Such considerations should be brought to the negotiating table to the extent that they may increase the potential of negotiating outcomes for the parties.

## 2.5. Implementation

What would the implementation follow-up be concerning Angola’s expected outcome regarding commitments as to freight transportation? For instance, in the scenario that the above table illustrates, implementation would likely require amending Law 20/03 and Decree 160/10, notably to eliminate ownership requirements and the authorization for local regulators to impose quantitative restrictions.

It should be noted that Angola’s law provides that the authorization regime for the supply of international transport and cabotage transport by non-resident suppliers does not apply where an international agreement has liberalized such transport (Presidential Decree 160/10 of 30 July, Article 16.3). Accordingly, it appears that, if Angola were to make commitments to withdraw the above restrictions regarding the authorization regime, implementation of this commitment would not require additional legislative changes. In any case, it is a good practice to strive for as clear a regulation as possible. Consequently, it would be advisable to consider the incorporation of the liberalization commitment by amending the authorization regime. Additionally, legislative amendments should be explained to representatives of the National Directorate of Road Transport and to local regulators (in webinars and meetings, for instance, or in a guide) in order to avoid mismatches between the legal text and practice.

## 2.6. Taking advantage of outcomes

In order to realize the potential for additional presence of foreign suppliers as a result of the commitments undertaken, Angola’s representatives should also consider how and when to approach potential investors concerning the initiatives at stake. Capacity building of local owners of carrier companies should also be considered, particularly with regards to the new market challenges and opportunities that may arise from the negotiations. For instance, would there be room for some market consolidation creating regional road freight transportation companies? This and other questions should be explored.

## Endnotes

- <sup>1</sup> The decline in communication costs has been asymmetric across countries. It is suggested that reducing communication costs through trade in services can contribute to economic transformation and diversification. By contrast, high communication costs can reduce opportunities to upscale the economy. In practice, the “digital divide” within and across countries is compounded by the high cost of connectivity in less developed regions: the cost of data rates in most middle- and low-income economies is high, and the region with the highest cost is Sub-Saharan countries (ITU, 2021, UNCTAD, 2022b, UNCTAD, 2021a).
- <sup>2</sup> See also n 15 to chapter 5 and the related discussion.
- <sup>3</sup> The decline in communication costs has been asymmetric across countries. It is suggested that reducing communication costs through trade in services can contribute to economic transformation and diversification. By contrast, high communication costs can reduce opportunities to upscale the economy. In practice, the “digital divide” within and across countries is compounded by the high cost of connectivity in less developed regions: the cost of data rates in most middle- and low-income economies is high, and the region with the highest cost is Sub-Saharan countries (ITU, 2021, UNCTAD, 2022b, UNCTAD, 2021a).
- <sup>4</sup> See also n 15 to chapter 5 and the related discussion.
- <sup>5</sup> Measures affecting aircraft repair and maintenance services, the selling and marketing of air transport services, and computer reservation system (CRS) services are included.
- <sup>6</sup> Additional commitments are those not subject to scheduling under Article XVI or XVII of the GATS, including those regarding qualifications, standards or licensing matters, which shall also be inscribed in Members’ schedules (GATS, Article XVIII).
- <sup>7</sup> US – Measures Affecting the Cross-Border Supply of Gambling and Betting Services (DS285).
- <sup>8</sup> China – Certain Measures Affecting Electronic Payment Services (DS413).
- <sup>9</sup> The discussion on transparency in section 2.3 addresses Article VI:2, which is a general obligation. The other obligations in Article VI of the GATT expressly refer to specific commitments.
- <sup>10</sup> In the case of licensing procedures, they should not in themselves constitute a restriction on the supply of the service.
- <sup>11</sup> Energy-related services refers to a collection of services and not to a specific sector in W/120.
- <sup>12</sup> One study contrasts the position of Chile, on one hand (relatively fewer commitments, binding less than the status quo) and Argentina, on the other hand (relatively more and deeper commitments to lock-in and signal domestic reforms) (Bouzas and Soltz, 2005).
- <sup>13</sup> The parties concluded the negotiations on 18 November 2022 (EC, 2022b).
- <sup>14</sup> The prioritization of SISR enabling services recognizes the link between services and industrialization, which chapter 1 has highlighted.
- <sup>15</sup> These are: A. Maritime Transport Services, B. Internal Waterway Transport, C. Air Transport Services, D. Space Transport, E. Rail Transport Services, F. Road Transport Services, G. Pipeline Transport, H. Services auxiliary to all modes of transport, I. Other transport services (WTO, 2001).
- <sup>16</sup> For instance, sub-sector “Road Transport Services” is split into a. “Passenger transportation” (CPC 7121+7122), b. “Freight transportation” (7112), c. “Pushing and towing services” (7124), d. “Maintenance and repair of road transport equipment” (6112+8867), and e. “Supporting services for road transport services” (744).
- <sup>17</sup> For present purposes, limitations not specific to the sector addressed in the Regulatory Audit Report are not addressed. These include tax law, foreign exchange law restrictions that may limit cross-border transfers and e-commerce, and the lack of specific visa for drivers on short term stays (the regime for carriers is the same as in standard immigration law). See AfCFTA 2022c.
- <sup>18</sup> For international road freight transportation through Angola, a Mode 4 commitment would need to consider the situation of non-resident drivers. This could be considered in the horizontal section of the schedule to the extent that it is a general situation, or in the specific section of the schedule.

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# APPENDIX I. EXCERPTS FROM SCHEDULES AND MFN EXEMPTION LIST

## 1. Horizontal commitments

The first section of schedules of commitments states “horizontal” commitments. Below is an excerpt from the first section of the consolidated schedule of the United States of America, for illustration purposes.

Horizontal commitments stipulate limitations or undertakings that apply to all of the sectors included in the schedule. Any evaluation of sector-specific commitments must take the horizontal entries into account. The purpose of the horizontal section is to avoid repetition in each sectoral section.

Indicates mode of supply (in this case, mode 4). Horizontal commitments often refer to a particular mode of supply, notably mode 3 and mode 4.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
<b>I. HORIZONTAL COMMITMENTS</b>			
<u>ALL SECTORS COVERED BY THIS SCHEDULE:</u> For the purpose of this schedule the "United States" is defined as encompassing the 50 states of the United States, plus the District of Columbia.			
All Sectors: Temporary Entry And Stay of Natural Persons <sup>1</sup>	4) Unbound, except for measures concerning temporary entry and stay of nationals of another member who fall into the categories listed below:  <u>Services Salespersons</u> - persons not based in the territory of the United States and receiving no remuneration from a source located within the United States, who are engaged in activities related to representing a services supplier for the purpose of negotiating for the sale of the services of that supplier where: a) such sales are not directly made to the general public and b) the salesperson is not engaged in supplying the service. Entry for persons named in this section is limited to a ninety-day period.	4) Unbound	



## 2. Sector and sub-sector commitments

The second section of schedules of commitments states commitments that apply to trade in services in particular sectors or sub-sectors. Below is an excerpt from the second section of the consolidated schedule of the United States of America, for illustration purposes.

Limitations on market access indicate for each mode of supply what limitations, if any, the Member maintains on market access.

Limitations on national treatment: indicate for each mode of supply what limitations, if any, the Member maintains on national treatment.

Additional commitments: The Member may decide to make additional commitments under Article XVIII. This column is to be used to indicate positive undertakings, not additional limitations or restrictions.

Modes of supply:		1) Cross-border supply	2) Consumption abroad	3) Commercial presence	4) Presence of natural persons
Sector or subsector		Limitations on market access		Limitations on national treatment	Additional commitments
b) Accounting, Auditing and Bookkeeping Services	1) None	1) None		1) None	“None” indicates that there are no limitations (here, on national treatment) in the given sector and mode of supply. This is subject to Horizontal Commitments.
	2) None	2) None		2) None	
	3) Sole proprietorships or partnerships are limited to persons licenced as accountants, except in Iowa where accounting firms must incorporate	3) None		3) None	
	4) Unbound, except as indicated in the horizontal section. In addition, an in-state office must be maintained for licensure in: Arkansas, Connecticut, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New Hampshire, New Mexico, Ohio, Vermont, and Wyoming.  US citizenship is required for licensure in North Carolina.	4) In-state residency is required for licensure in: Arizona, Arkansas, Connecticut, District of Columbia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee, and West Virginia.		4) Unbound, except as indicated in the horizontal section	
c) Taxation Services	1) None	1) None		1) None	“Unbound” indicates that the Member wishes to remain free in the given sector and mode of supply to introduce or maintain measures inconsistent with (here) market access. Here, the binding is subject to the Horizontal commitments, with the caveat of the specified licensure requirement.*
	2) None	2) None		2) None	
	3) None	3) None		3) None	
	4) Unbound, except as indicated in the horizontal section	4) None		4) None	

\* In some situations a particular mode of supply — such as the cross-border supply of bridge-building services — may not be technically possible or feasible. In such cases the term Unbound\* has been used, usually in conjunction with an explanatory footnote stating “Unbound due to lack of technical feasibility”.

The sector or sub-sector column contains a clear definition of the sector, sub-sector or activity that is the subject of the specific commitment. Members are free, subject to the results of their negotiations with other members, to identify which sectors, sub-sectors or activities they will list in their schedules, and it is only to these that the commitments apply. Committed sectors are sometimes very broad, as in “banking and other financial services” and sometimes very narrow, as in “noise abatement services”. This depends on negotiations. In most schedules, the order in which the sectors are listed corresponds to the Services Sectoral Classification List (MTN. GNS/W/120).

To avoid ambiguity in the scope of commitments, it is advisable that sectoral entries are accompanied by numerical references to the Central Product Classification of the United Nations (UN CPC), on which the W/120 Classification List is based. Where this is not possible, sectoral descriptions should provide a sufficiently detailed definition.

In many cases it will be seen that there are textual descriptions of bound commitments which indicate limitations on market access or national treatment. Such entries, which vary in length considerably, do not use uniform terminology but are based on one of two common approaches:

- The entry describes in the appropriate space the nature of the limitation, indicating the elements which make it inconsistent with Articles XVI and XVII of the GATS.
- The entry indicates a limited commitment by describing what the Member offers rather than the limitations they are maintaining. Such an approach is often used to indicate the market access opportunities for the entry of certain categories of foreign natural persons who supply services.

It should also be noted that, according to Article XX.2 of the GATS, where a Member maintains a measure inconsistent with market access and national treatment, the measure shall be inscribed in the column on market access and this inscription will also be considered a limitation under national treatment. In order to avoid doubts, the 2001 Guidelines for the Scheduling of Specific Commitments explain that Members could indicate in the market access column that the measure “also limits national treatment”.

### 3. MFN Exemptions

Particular measures inconsistent with the MFN obligation can be maintained — in principle for not more than ten years and subject to review after not more than five years. Such measures must have been specified in a list of MFN Exemptions submitted at the entry into force of the GATS for the member concerned. Subsequently, requests for exemptions from Article II (MFN) can only be granted under the waiver procedures of the Marrakesh Agreement.

These lists are largely self-explanatory and are structured in a straightforward manner. In order to ensure a complete and precise listing of MFN exemptions, five types of information are required for each exemption:

- (i) Description of the sector or sectors in which the exemption applies;
- (ii) Description of the measure, indicating why it is inconsistent with Article II;
- (iii) The country or countries to which the measure applies;
- (iv) The intended duration of the exemption;
- (v) The conditions creating the need for the exemption.

Below is an excerpt from the United States of America consolidated MFN Exemption List:

**UNITED STATES OF AMERICA - FINAL LIST OF ARTICLE II (MFN) EXEMPTIONS**

Sector or subsector	Description of measure indicating its inconsistency with Article II	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
Movement of persons	<p>Government issuance of treaty trader or treaty investor non-immigrant visas that extend a special visa category to nationals of treaty partners in executive and other personnel categories engaged</p> <ul style="list-style-type: none"> <li>• solely to carry on substantial trade, including trade in services or trade in technology, principally between the US and the foreign state of which a natural person is a national, or</li> <li>• solely to develop and direct the operations of an enterprise in which a natural person has invested or is actively in the process of investing a substantial amount of capital</li> </ul>	Countries with whom the United States has a Friendship, Commerce and Navigation Treaty (FCN), a Bilateral Investment Treaty (BIT), or certain countries as described in Section 204 of the Immigration Act of 1990	Indefinite	To facilitate trade under FCNs and BITs

Source: Based on WTO, 2022a.

It is a basic principle of the GATS that specific commitments are applied on an MFN basis. Where commitments are entered, therefore, the effect of an MFN exemption can only be to permit more favourable treatment to be given to the member to which the exemption applies than is given to all other members. Where there are no commitments, however, an MFN exemption may also permit less favourable treatment to be given. It is not necessary to list measures providing for preferential liberalization of trade in services among members of economic integration agreements, such as Free Trade Areas; such preferential treatment is permitted under Article V of the GATS and must meet the criteria laid down in that Article.