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Abstract

This paper examines the approaches to liberalization of trade in services adopted within existing regional agreements (RTAs) as compared to prevailing GATS' commitments. Using examples from Africa, Latin America, and Asia (of total of over 30 RTAs), it explores how the difficult issues associated with services trade and investment liberalisation are tackled in the RTA-type arrangement and how much further access is granted under RTAs. The results show that in all market access areas, RTAs generally offer superior value added over GATS. In nearly all the modes of supply and sectors, RTA commitments tend to go significantly beyond GATS offers in terms of improved and new bindings (although improvements in mode 4 remains modest in scope across all RTAs). Most RTAs, however, are at the same pace with GATS in securing the rule-making interface between domestic regulation and trade in services and with regard to special treatment for less developed members. RTA commitments tend to lag behind GATS on safeguard mechanism, and disciplines on subsidies.

JEL Code: F13, F15.

Key words: GATS, regional approaches, RTAs, trade in services, trade and investment liberalisation, developing countries, Africa.

Content

1 Introduction

The service sector is the most important economic sector for the majority of countries when measured as a share of overall production, and is the single largest source of employment. The World Trade Organization's (WTO) General Agreement on Trade in Services (GATS), adopted in January 1995, represented the first attempt at multilateral level to lay the groundwork for services liberalization. The GATS mandates WTO members to progressively open up trade in services through successive rounds of negotiations. Part IV of the GATS carries the heading, *Progressive Liberalization* and the associated text talks of achieving "a progressively higher level of liberalization" through successive rounds of negotiations. However, the level of liberalization achieved or committed to is quite modest so far. At the same time, since the entry into force of the GATS on January 1, 1995, WTO Members around the world have concluded no fewer than 100 regional and sub-regional arrangements containing disciplines on trade in services. A critical question that must obviously be asked is whether the difficult issues associated with services trade and investment liberalisation actually had any impact is causing this shift, and potential implications for the multilateral trading systems—GATS as a vehicle for further liberalization.

This paper reviews the approaches to liberalization of trade in services adopted within existing sub-regional arrangements as compared to prevailing GATS' commitments. It looks at how the RTAs have tackled the difficult issues associated with services trade and investment liberalization. In so doing, the paper hopes to contribute to growing empirical literature on services trade and investment liberalization, and to offer lessons for future services negotiations.

The GATS is intended to offer for services trade a similar legal stability that arises from mutually agreed rules, binding market access and non-discriminatory commitments that the GATT has provided for goods trade for over half a century (Sida, 2004)—applying the same fundamental principles of the GATT–national treatment, Most-Favoured Nation (MFN) treatment, transparency in domestic regulation, and fair application of laws. However, the services sector differs fundamentally from the goods sector. First, while cross-border flows of goods are easy to quantify and origins are relatively easy to track, services sector products are diffuse and difficult to track. Consequently, many services require proximity between

the supplier and the consumer, and hence factor mobility is necessary for a number of services transactions.

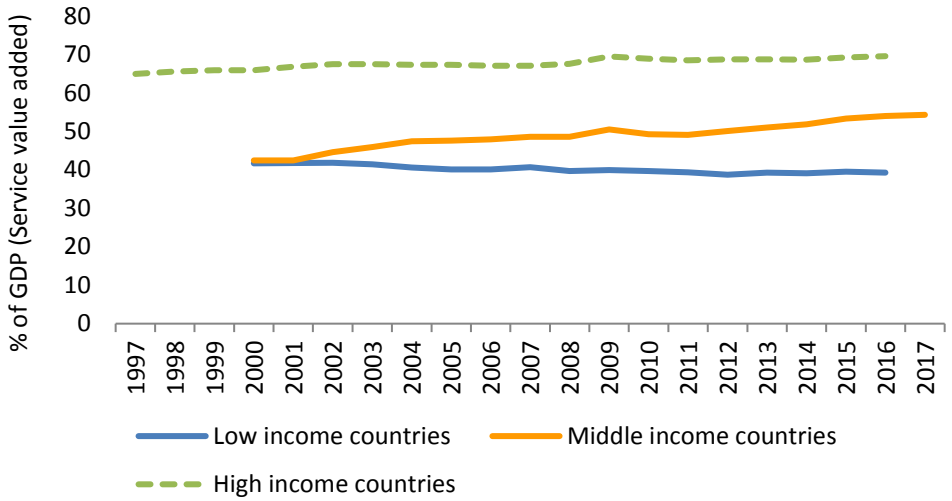
Second, services liberalization is not only limited to the elimination of discriminatory restrictions that affect both services and service providers, but extends to a number of nontrade measures geared to the protection of health, environment, public order, and morals, as well as issues related to immigration, competition and consumer protection (Cattaneo et al, 2010). In other words, service trade liberalization does not stop and, often, does not even start at the border. Effective access to services markets involves interplay of a large number of policies measures, including those not typically falling within the scope to the services trade frameworks—requiring coordination between government agencies responsible for policy formulation in transport sector, tourism, telecommunications, health, justice, and so on. Adding to this complexity, the international movement of natural persons to deliver services requires the involvement of immigration authorities. The limited scope for "border" restrictions in international services means that domestic regulations remain the key factor in achieving trade in services (Mattoo and Fink, 2002).

To move liberalization process forward in trade in goods, Members have sometimes agreed to a formula on the basis of which they cut tariffs. In the Tokyo Round (1973-79), and more recently, in the WTO's Doha Round, a weighted formula has been used for goods trade so that higher tariffs would have a deeper cut than lower ones. This approach had the effect of moving the liberalisation process ahead on multiple fronts. Such an approach works well with a single policy instrument – the tariff, not where different policy instruments are involved. In services sphere, trade protection does not take the simple form of a tariff (tax) on trade flows, but consists of a myriad of laws and regulations affecting services and service suppliers. The limitations attached to WTO members' GATS commitments cover a broad range of measures, including numerical quotas, limits on foreign ownership, and discriminatory subsidies. Many different instruments determine the prevailing degree of liberalization, and the lack of adequate nomenclature may complicate efforts to ensure uniformity of commitments among Members.

Most, if not all WTO members recognize the crucial importance of services for the growth and development of their national economies and for world trade, and seem to welcome the idea that services must form an essential part of any Doha Round outcome.

What remains a sticky issue is, the desirable levels of improved coverage or depth of commitments. The service sector plays an important role in economic growth, export competitiveness, employment creation and poverty reduction. The services sector now accounts for more than two-thirds of the world economy: 70 percent of the services value added in gross domestic product (GDP) in high-income countries, 54 percent in middle-income countries, and 40 percent in low-income countries (Figure 1).

Figure 1. Services, value added (% of GDP), 1977–2017



Source: World Development Indicators (WDI) Database.

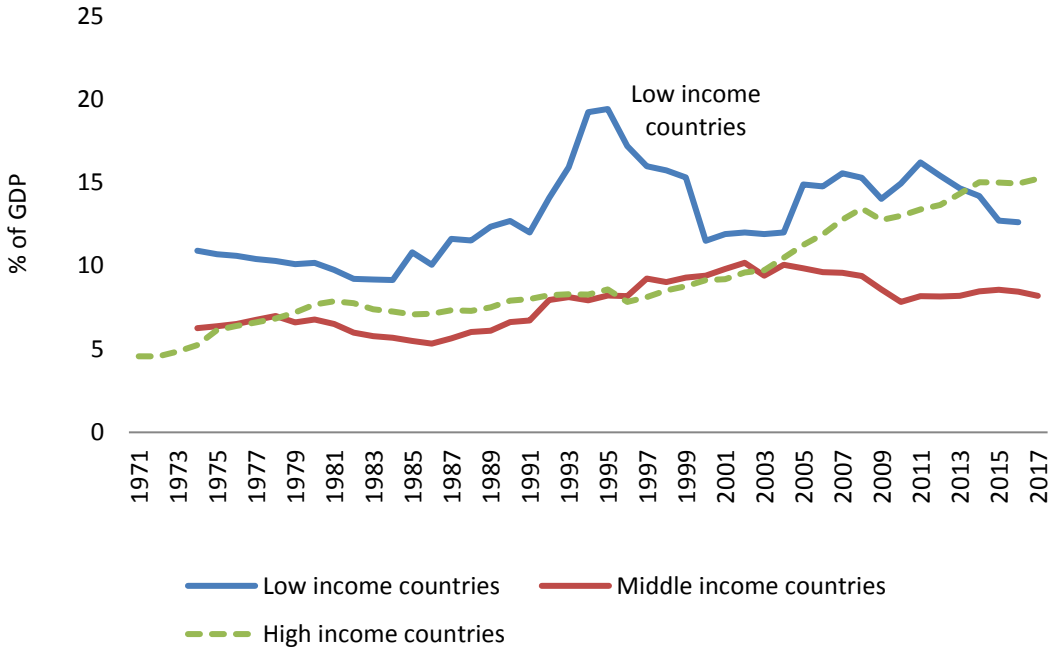
In 2017, services accounted for over 70 percent of employment in developed countries and over 33 percent in developing countries. In the United States, services sector accounts for 78 percent of employment. In India, it employs over 20 percent of the total workforce.

The emerging trend is that there is increasing shift of employment (moving) from agriculture and industry sectors to the services sector. In 1997–2007, this inter-sectoral shift accounted for a 5 percentage points gain in services employment in high income countries (WTO, 2010: p.8; cited in Kategekwa, 2014), while middle income countries such as Mauritius and Malaysia registered a much higher growth of about 8 percentage points. Other economies such as Mongolia, Nicaragua and Turkey recorded growth in services employment of over 10 percentage points during the same period.

The growing importance of the services sector has been driven by income-related demand shifts and growth in information and communication technology as well as the growing importance of basic infrastructural services, including communication and finance. While the services share in economic value added has increased worldwide, this growth has been particularly strong in developing countries. In 1980–2017, the services share in world GDP rose by about 5 percentage points; and by about 10 percentage points for the increase for low and middle income countries.

The intensity of services in world production, however, is not reflected in its share of world trade. As noted in Figure 2, the share of the trade in services in overall trade although has been increasing for much of the last four decades, still remain below 20 percent of GDP.

Figure 2. The expanding role of the trade in services in the world economy, 1971–2017



Source: World Development Indicators (WDI) Database.

Nonetheless, trade in services has grown faster than the trade in goods, and adds approximately 10 percent to global GDP annually. The European Union and the United States, together, still account for over 60 percent of service exports in the world, but developing economies' exports of commercial services have grown relatively faster than exports in developed countries as a result of the greater mobility of people and technological change. This growth in global trade in services increases the scope for specialization in

production and trade, but the competitiveness of firms in domestic and export markets largely depends on the availability, cost, and quality of supporting services such as finance, transport, and telecommunications (Eschenbach and Hoekman, 2006).

The non-tradability of a significant share of services has been due mainly to technical constraints faced in supplying the foreign markets. While the advent of information and communication technologies and rapidly changing the situation, market access restrictions and regulations in foreign markets remain key determinants of growth of global trade. While it is widely accepted that further liberalisation of the trade in services will produce gains which are both substantial for developing economies and global economy, many countries have since been reluctant to schedule bound commitments under the GATS. Indeed, most service liberalization around the world has been pursued unilaterally.

The aim of this paper is to understand the factors causing this shift, whether merely driven by a domestic agenda rather than a trade agenda, or by a desire to find potential ways around the challenges and difficulties presented in the multilateral negotiating framework. By looking at the approaches to liberalization of trade in services adopted within existing sub-regional arrangements as compared to prevailing GATS' commitments, the paper aims to establish, how much further access is granted under PTAs and whether FTAs are indeed succeeding in meeting these challenges. This way, the paper provides aim is to provide a fresh understanding of whether it is easier to solve the problems of trade and investment liberalisation in services among smaller groups of trading partners on a bilateral basis in free trade agreements (FTAs) with major trading partners or in a plurilateral regional arrangement.

We begin in Section 2 with an overview of the GATS commitment—the coverage, clarity and depth of commitments. Section 3 evaluates the depth of the new or improved commitments in RTAs—against sets of market access and rule-making benchmarks—including tackling rule-making interface between domestic regulation and trade in services, emergency safeguards and subsidies issues, cross border trade in services (mode 1), handling areas of policy sensitivities, and temporary movement of persons (mode 4). Section 4 focuses on WTO Doha Round GATS negotiations, and Section 5 concludes.

2 Overview of GATS Commitments

2.1 Sector coverage, commitment and scheduling

The 11 broadly defined services sectors in the framework of the General Agreement on Trade in Services (GATS) of the World Trade Organization are listed in Table 1. These 11 sectors are further divided into approximately 160 sub-sectors (of which about two-thirds of the WTO Members have committed on 60 subsectors or less.

Table 1. The Scope of Services Covered in GATS

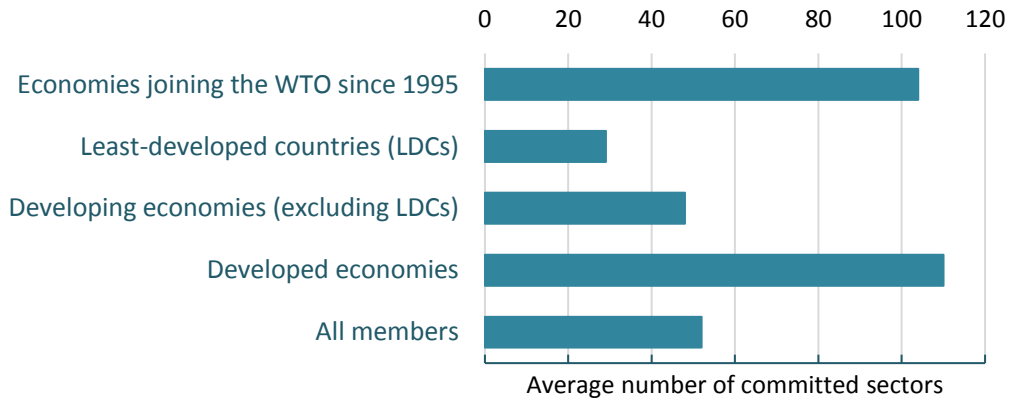
1. **B**usiness (& professional) services /1	7. Financial services
2. Communication services /2	8. Health-related and social services
3. Construction & related engineering services	9. Tourism and travel-related services
4. Distribution services	10. Recreational, cultural & sporting services
5. Educational (& training) services	11. Transport services
6. Environmental services	12. Other services not elsewhere included (e.g. energy, etc)

Source: WTO database

Notes: /1 including accountancy services, advertising services, architectural and engineering services, computer and related services, legal services /2 including audiovisual services, postal and courier services, telecommunications. The GATS covers all services with the exception of those provided in the exercise of governmental authority and greater part of the air transport sector. The backbone services include, primarily, communications, financial intermediation, and transport.

Figure 3 provides a summary of current commitment. Out of 160 service sectors, WTO members have, on average, listed about 50 in their schedules of commitments.

Figure 3. Average number of committed sectors, by group of WTO members

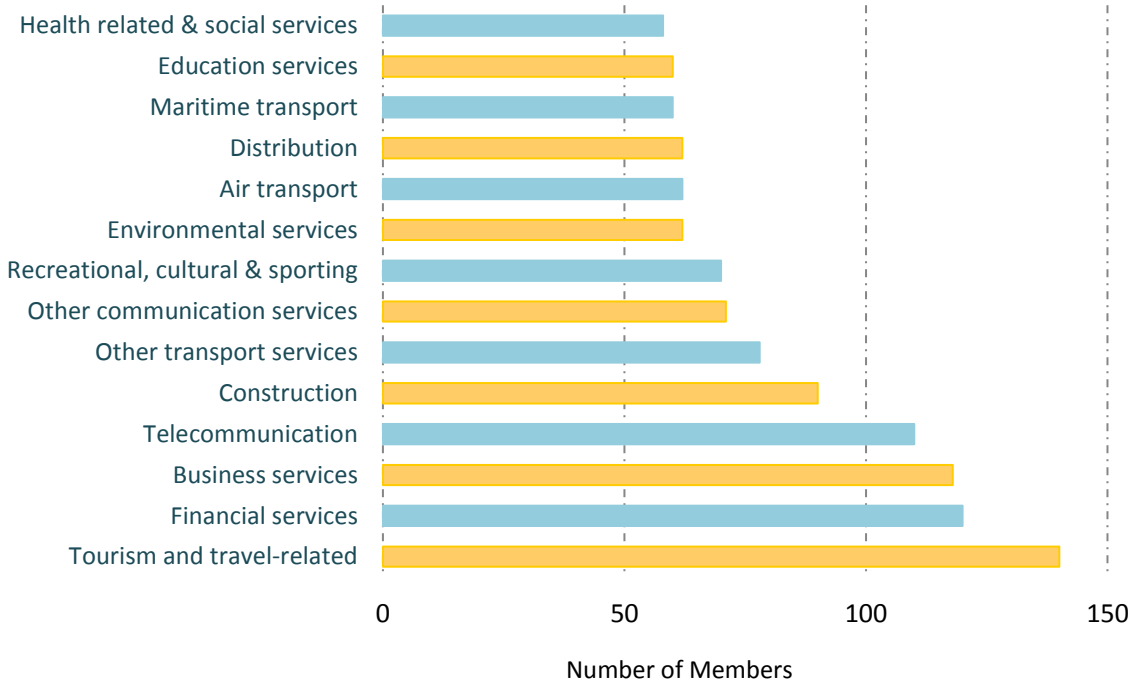


Source: WTO Secretariat

Developed countries have commitments in nearly four times as many sectors (some 110) as least-developed countries (LDCs). Members that joined the WTO after 1995 have committed to a significantly higher number of sectors than the "original" members at similar levels of development.

Among the 11 broad services sectors, tourism has drawn by far the highest number of bindings (Figure 4). More than 90 percent of WTO Members have included at least one subsector of tourism in their schedules.

Figure 4. Number of WTO members with commitments, by sector, 2015



Source: WTO/World Bank World Integrated Trade Intelligence (I-TIP) Services database, June 2015.

The second most included sector is infrastructure services (financial services, business services, and telecommunications). The reason for inclusion of these sectors might be governments' interest in attracting foreign direct investment. However, cursory look at the services schedules reveal significant number of restrictions in sectors such as basic telecommunications, banking and insurance services. For example, a high number of commitments undertaken on basic telecommunications are subject to restrictions on foreign equity participation, and many of the bindings scheduled for banking and other financial

services provide for limitations on the number of suppliers. The sectors least frequently included in commitments are education and health services, largely reflecting the high levels of direct government provision in these services. The low level of inclusion of distribution services highlights apparent restrictions of new entry in these services, possibly reflecting deeply seated policy concerns about competitiveness of domestic firms in the whole sale and retailing activities.

The overall scope of the GATS can be summed up as: provisions of the GATS, plus its Annexes plus Members schedules of specific commitments (Kategekwa, 2014).

Scheduling of commitments

The GATS takes a model approach to defining *trade in services*. The supply of a service is defined to include "the production, distribution, marketing, sale and delivery of a service," as contained in Article XXVIII (a). The GATS defines trade in services as taking place under four different modes of supply:

- Mode 1: Cross-border supply, from the territory of one Member into that of another (This corresponds to the traditional movement of goods across borders), an example is business processing outsourcing;
- Mode 2: Consumption abroad, in which the service is supplied in the territory of one Member to the consumer of another (e.g. a Ugandan receiving medical treatment in India);
- Mode 3: Supply through commercial presence, in which the service supplier is legally established in the export market (e.g. a Nigerian based Eco Bank operating a branch in Uganda, Kenya, etc, and a South Africa's Woolworth opening up a shop in Uganda; and
- Mode 4: Supply through the movement of natural persons, meaning the temporary presence of individuals without legal personality, to supply services in a Member's market (e.g. Ugandans seeking temporary employment in the United Arab Emirates).

These modes are also used for scheduling purposes. WTO Members may make commitments guaranteeing the right to supply services under any or all of these modes (WTO, 2001). The entry "none" against Members' commitment under each of the four

modes signifies full access (no limitations are maintained). "Unbound" indicates that no commitment is made on the mode of supply concerned. In this case, Member is free to introduce restrictions. Between these two extremes are partial commitments.

Comparing bindings undertaken across the four modes, they are significantly more liberal for mode 2 than those for other modes. The apparent sensitivity of mode 4 is reflected in lowest share of unlimited access in mode 4—close to 0, and more importantly, in high number of horizontal limitations that have been made in individual schedules to apply to all committed sectors—close to 100 compared to 20 for mode 2.

A services schedule consists of horizontal and sectoral commitments. Sectoral commitments are presented in a four-column format. The first column defines the sector or subsector concerned, the second column presents any limitations on market access and the third column, any limitations on national treatment. The fourth column presents "additional commitments" made under Article XVIII on measures not subject to scheduling under Article XVI or XVII. A good example is the regulatory principles, providing safeguards against abusive or anti competitive behavior by monopolies and dominant suppliers, which was subscribed by nearly all members in the negotiations on basic telecommunications in the 1997. Commitments or limitations, which relate to all sectors are recorded as "horizontal commitments" in the first part of the national schedule, in the same four-column format. However, it is reasonable to mention that the information provided in the schedules does not (on the face of it) reflect the substance of the legal commitment being undertaken. Even the most comprehensive schedules contain a large number of restrictive limitations which will be a target for negotiating partners.

Measures by members affecting trade in services is defined to include restrictions in respect of (1) the purchase, payment or use of a service; (2) the access to and use (in connection with the supply of a service) services, which are required by those Members to be offered to the public generally; (3) the presence, including commercial service in the territory of another Member. The four modes of supply, therefore, face different kind of measures: Restrictions on commercial establishment (i.e. foreign ownership caps, joint venture obligations), restrictions on types of commercial presence and number or type of services that can be provided, discriminatory registration requirements and licensing

procedures, nationality and residency requirements, economic needs tests and discriminatory treatment advantaging domestic companies over the foreign ones.

In the Uruguay Round, Members identified categories of restrictions, mainly of a quantitative and discriminatory nature, which were made subject to the disciplines of Articles XVI and XVII. In sectors where they have no specific commitments, Members are free to impose market access and national treatment restrictions. However, in sectors where specific commitments have been undertaken, all restriction falling within the scope of Articles XVI and XVII are prohibited, unless they have been inscribed in a Member's schedule. Within Members' right to regulate, that right is not absolute either. Article VI (Domestic Regulation) has provisions calling for the minimisation of the trade restrictive effects of domestic regulation which did not fall within the scope of Articles XVI and XVII.

Article VI of the GATS contains: (a) some binding provisions; (b) a mandate for the development of multilateral disciplines; and (c) a mechanism for the provisional application of the main principles underlying the future disciplines. Paragraph 1 of Article VI requires Members to administer all measures of general application affecting trade in services in a reasonable, objective and impartial manner in sectors where specific commitments have been undertaken. Paragraph 2 provides for the establishment of mechanisms for the review of administrative decisions affecting trade in services. Members are required to maintain or institute judicial, arbitral or administrative tribunals or procedures, which if not independent of the agency entrusted with the administrative decision concerned, shall at least provide for an objective and impartial review.

2.2 Clarity of scheduled commitment

Many practitioners and commentators have singled out several aspects of the design of schedules and scheduling techniques that are subject of interpretative ambiguity in the GATS, making the agreement less effective as a system of rules and vehicle for further liberalization.

The first area of ambiguity concerns the relationship between market access and national treatment. Article XVI list six different types of limitations on market access, which must be scheduled (regardless of whether or not they contain any elements of discrimination against foreign services and service suppliers – as set out in Table 2. Article XVII on national

treatment also permits WTO Members to schedule and maintain limitations (discriminatory measures). This approach of distributing measures between market access limitations and discriminatory measures creates confusion about the nature of Members' scheduled commitments.

This confusion is compounded by Article XX:2, which provides for scheduling of discriminatory market access limitations when they fall within the scope of both Articles XVI and XVII. Article XX:2 prescribes that the relevant measures be inscribed in the market access (Article XVI) column of the schedule and would be understood to provide a condition or qualification to Article XVII (national treatment) as well. This presents a challenge. It is not easy to tell whether the measures concerned are non-discriminatory or discriminatory.

Table 2. GATS Article XVI: Limitations on market access

Market-access limitations	Example
(a) Limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;	Licences for new restaurants subject to economic needs test based on population density
(b) Limitations on the total value of service transaction or assets in the form of numerical quotas or the requirement of an economic needs test;	Foreign bank subsidiaries limited to x percent of total domestic assets of all banks.
(c) Limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;	Restrictions on the broadcasting time available for foreign films.
(d) Limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;	Foreign labour should not exceed x percent of the work force and/or not account for more than y percent of total wages.
(e) Measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service;	Commercial presence excludes representative offices
(f) Limitations on the participation of foreign capital in terms of maximum percentage limit on foreign share-holding or the total value of individual or aggregate foreign ivestment.	Foreign equity participation in domestic insurance companies should not exceed x percent.

Source: WTO (2001)

With the overlap between Article XVI and Article XVII, the scope of the national treatment obligation becomes blurred. Besides, should a Member only undertake to provide

national treatment and not full market access, there is no way of knowing whether any unscheduled improvements in market access would have to respect full national treatment. The challenge is bigger in mode 3 where securing market can be visualised as a two-stage process, requiring first, a set of measures to define the terms of entry for foreign investor and another that establish the conditions for post-entry activity.

Ambiguity is also apparent in the current system of defining specific commitments in terms of modes of supply. The challenge stems from the overlap between modes 1 and 2 and the difficulty of interpretation associated with the definition of "likeness" of foreign and national services and service suppliers across modes of delivery and with regard to the right acquired through specific commitments at the model level. For example, there has been debate about whether a cross border financial service transaction should be treated as mode 1 or mode 2 transaction. Depending on where the transaction is initiated, the services supplied may fall under either of the two modes. [1]

In addition to issue of interpretation, there is a possibility that a commitment on a particular service in one mode can be undermined by an intervention in another, for instance, a government may accord unrestricted access to foreign supply of a service under mode 1 in respect of both market access and national treatment on one hand, and offer a subsidy to domestic producers on the other.

Another area of ambiguity relates to the question of neutrality in scheduling (i.e. the idea that a commitment covers all means by which the service in question might be delivered within a mode of supply). The GATS is unclear on whether a commitment is intended to be technology-neutral. This became apparent in the negotiations on basic telecommunications and in discussions in the WTO on electronic commerce and in the committee on Specific Commitments – where Members seem to have agreed that a commitment on a service should be invariant with respect to the means by which the service is delivered.

Ambiguity also exists in the relationship between scheduled commitments and domestic regulation; particularly the distinction between Article XVI and Article VI – regarding whether a public policy measure falls under one or other of these provisions. This issue

[1] If the transaction is deemed to have originated with a supplier in one jurisdiction selling a service to a consumer in another, then from the point of view of the jurisdiction in which the consumer is located, this would be classified as cross border delivery, or a mode 1 transaction. If, on the other hand, the consumer initiates the transaction or solicits the service, it could be classified as consumption abroad (Low, 2006).

remains unclear. Under GATS, Members are expected to distinguish between measures intended as limitations on access to the domestic market by foreign-produced services and service suppliers (falling under Articles XVI and XVII) and measures adopted in pursuit of public policy objectives (Article VI).

The practice is to have all measures on market access restriction under Article XVI and discriminatory measures under Article XVII, or under Article VI, otherwise. The reality is that, regulatory interventions cannot be categorized as wither restricting trade or not restricting trade. Similarly, a discriminatory measure that is "excessive" in the sense of going beyond what is necessary to achieve a public policy objective would not be dealt with as an unnecessary barrier to trade under Article VI, but as a measure in need of liberalization under Article XVII. In the Working Party on Professional Service (WPPS) some members felt that embracing certain regulatory disciplines could imply de facto acceptance of market – access commitments. A range of measures falling within the scope of Article XVI and/or Article XVII were consequently excluded from consideration. Furthermore, the disciplines on Domestic Regulation in the Accountancy subsector drawn up by the WPPS apply only in cases where Members have entered into specific commitments.

3 Services trade liberalization at regional/bilateral level

3.1 Global proliferation of services RTAs

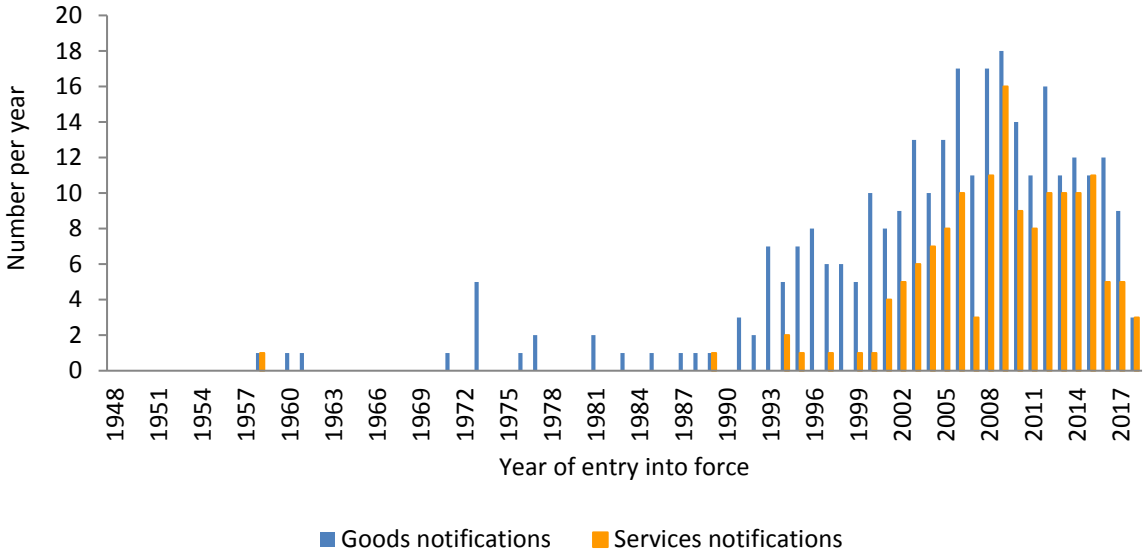
Article V of the GATS (as in Article XXIV of GATT, which sets out the rule for RTAs covering trade in goods) permits WTO Members to enter into regional services agreements (RSAs). It states in part,

> "This Agreement shall not prevent any of its Members from being a party to or entering into an agreement liberalizing trade in services between or among the parties to such an agreement …"

As of 31 December 2017, 445 RTAs in force had been notified to the GATT/WTO since 1948 under GATT Article XXIV, the Enabling Clause, or GATS Article V. Up to 376 of these agreements have been notified since 2000.[2]

Of the 149 services notifications made since 1948 (i.e. from 1948–2018), up to 141 of these agreements have been notified since 2001, which shows the rapid proliferation of services RTAs after coming into force of the GATS.

Figure 5. RTA notifications, 1948–2018

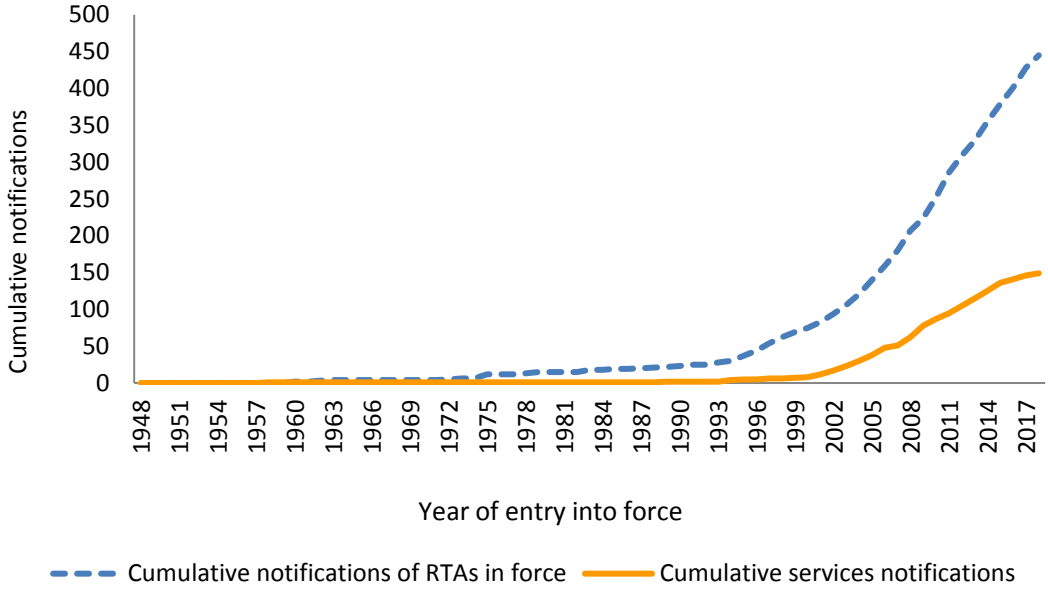


Note: Notifications of RTAs: goods and services are counted separately.
Source: WTO Secretariat —December 31, 2019

Figure 6 shows the number of notifications of RTAs currently in force. In Figures 5 and 6, it is easy to see that services RTAs are recent phenomena. Out of the 36 new PTAs that were notified under GATS Article V until 2006, more than three-quarters (29 of them) were notified since the start of the WTO services negotiations in 2000, of which 10 were in 2005-2006 and 12 in 2003-2004, during key phases of the Doha Round. In Figure 6, we still see a huge gap between the notifications of RTAs in force and services notifications, yet almost every RTA (new and old) now has services agreement. Many WTO Members seem to realise that preferential treatment may be hard to confer in services trade under the GATS framework, prompting them to take the regional path (RTAs).

[2] See also information on PTA notifications on the WTO website: http://www.wto.org/english/tratop_e/region_e/region_e.htm

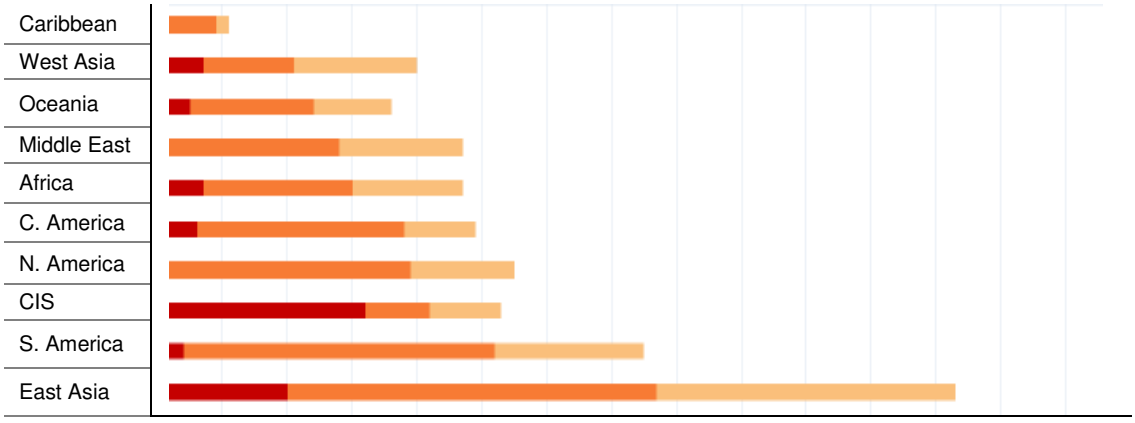
Figure 6. Total notifications, 1948–2018

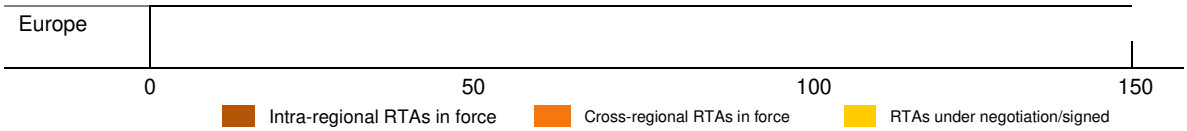


Source: WTO Secretariat —December 31, 2019

The wide variation in RTA intensity across regions of the world (Figure 7 shows the number of RTAs in force and under negotiation by region) reflects, to some extent the differences in the number of bilateral agreements covering new areas of cooperation e.g. investment, competition policy, and government procurement.

Figure 7. RTAs in force, and under negotiation by region, 2016





Source: WTO secretariat

Europe accounts for 20 percent of all RTAs in force), followed by East Asia (17 percent), South America (12 percent) and the CIS (Commonwealth of Independent States) region (9 percent). Countries in these regions also continue to be active in RTA negotiations.

With regard to services, parties to some of the regional/bilateral services agreements are key traditional *demandeurs* in the services negotiations, such as the United States, Japan and the EU. By 2016, several new agreements had been concluded United States, Japan and the EU with countries in Latin America, Asia, Africa, and the Middle East. Others had just entered into force but had not yet been notified. Several others were under negotiation or consideration. Other key players in services negotiations – from developing countries - e.g., India, China, Chile, Mexico, India, Hong Kong, Thailand, Malaysia, Korea, and Singapore are doing the same – concluding regional services agreements. Since WTO Members do not strictly follow their notification obligations, the actual number of services PTAs pursued since 2000 is likely to be much higher than what is reported (140). More importantly, many of the most important advocates of liberalization in the multilateral services negotiations are involved in services RTAs.

3.2 Approach to services liberalization by Africa's RTAs

We reviewed approach by 3 Africa RTAs (the East African Community[3], the Southern African Development Community, and the Central African Economic and Monetary Community[4]) based on data from the EAC secretariat as well as WTO database. In the Arabian Gulf, we looked at the Cooperation Council for the Arab States of the Gulf (GCC), Pan-Arab Free Trade Area Agreement (PAFTA), EFTA–GCC Free Trade Agreement, and the GCC-Singapore Free Trade Agreement (GSFTA). In the Americas (North, South and Central America), we reviewed 28 bilateral trade arrangements studied by Roy, Marchetti

[3] Comprises Burundi, Kenya, Rwanda, Tanzania, and Uganda
[4] Central African Economic and Monetary Community (CEMAC)—comprising Cameroon, the Republic of the Congo, Gabon, the Central African Republic (CAR), and Chad, and Equatorial Guinea.

and Lim (2006)[5] and based on the WTO database. We assessed, among other things, how much further than the GATS these RTAs/PTAs go in the members' services commitment.

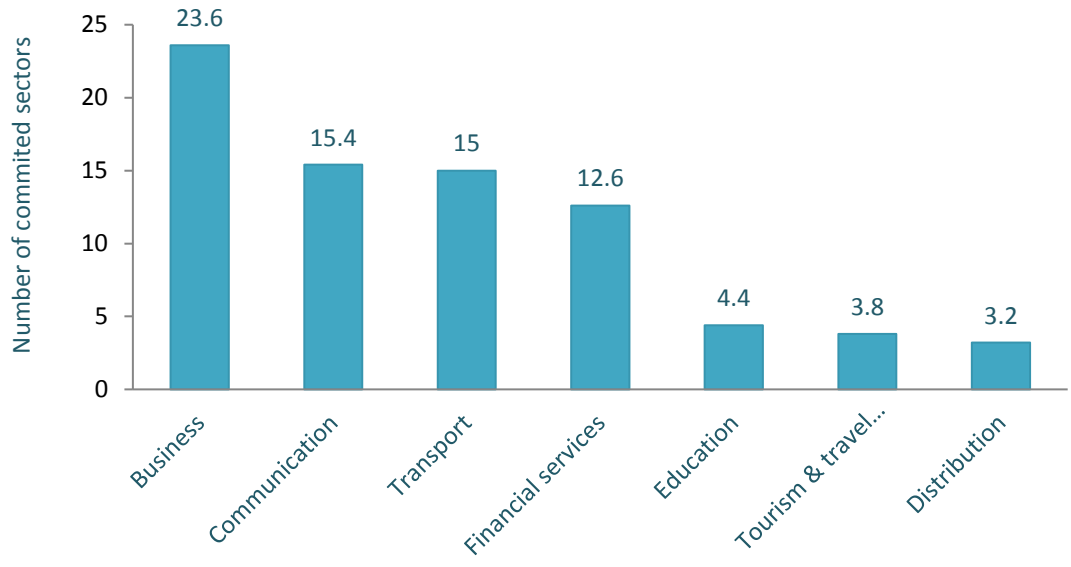
3.2.1 The East African Community

The East African Community (EAC) follows a GATS-type approach to service liberalisation, and like the GATS, the EAC Common Market Protocol (CMP) mandates EAC Partner States to progressively open up trade in services. Article 23 (1) states, "liberalization shall be progressive and in accordance with the negotiated Schedules of Specific Commitments as provided in Annex V of the Protocol." Annex V of the East African Community Common Market Protocol (CMP) adopts a positive list (as in the GATS), scheduling commitments on market access and National Treatment according to the 4 modes of supply.

Out of the 11 broad services sectors, the EAC Partner States have included seven sectors in their schedules of commitments (Figure 3.3), with business and professional services drawing by far the highest number of commitments, and distribution services the leas bindings (Figure 5).

Figure 8. Average number of committed sectors, by EAC Partners

[5] New Zealand – Singapore, EFTA – Mexico, EC – Mexico, Chile – Costa Rica, Japan – Singapore, Singapore – Australia, US – Chile, US – Singapore, Chile – El Salvador, Republic of Korea – Chile, EC-Chile, EFTA – Singapore, China – HKC, China – Macao China, EFTA – Chile, US – Australia, Thailand – Australia, Panama – El Salvador, Japan – Mexico, US – Bahrain, US – Oman, US – CA + DR, US – Morocco, US – Peru, Japan – Malaysia, Korea – Singapore, US – Colombia, Singapore – India



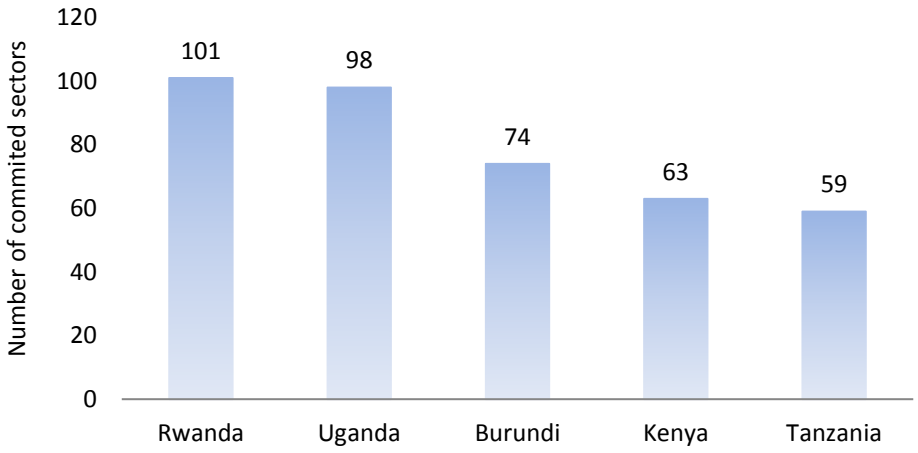
Source: EAC (2009), EAC Secretariat

The sectors not included in commitments are and health related services; construction; environmental; and recreational, cultural and sporting services—reflecting the high levels of direct government provision in most of these services.

As Figure 4 shows, commitment varies across countries. There is even more variation among members in the sectors they have chosen to schedule (see Figure 6). These reflect the scheduling preferences of these countries. Among them, Rwanda has committed to a significantly higher number than the other partner states.

Distribution services are the least scheduled of the major sectors. It is however, striking that tourism, which is highly promoted in the region is one of the least scheduled services by far (Figure 6). Rwanda and Uganda impose a lot of restrictions on distribution services (commission agents; wholesale trade services; retailing services; and franchising). Uganda's wholesale and retailing services are essentially preserved for the nationals. Non-Ugandans are not permitted to trade outside the city, municipality or town or in goods not declared in his/her license. Tanzania on the other hand, shows no commitment to open up the franchising subsector.

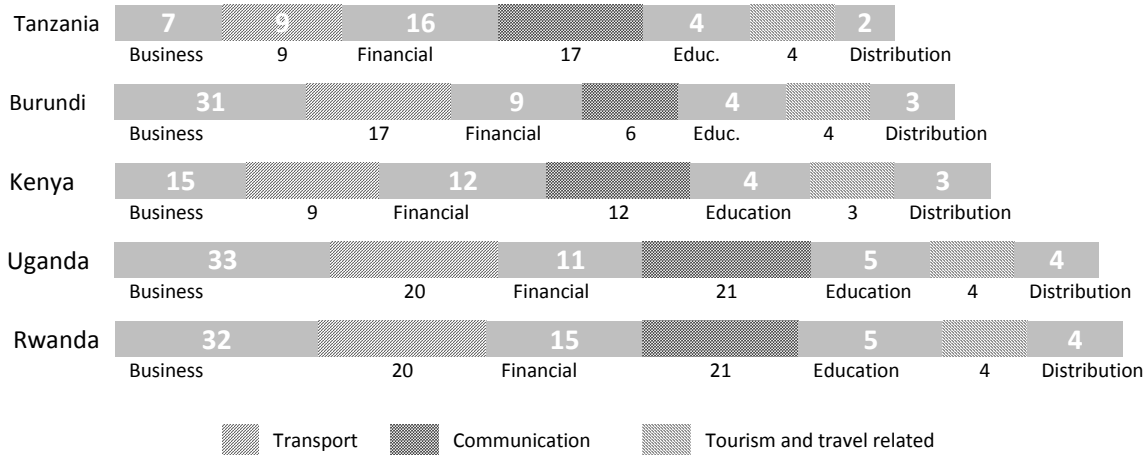
Figure 9. Number of committed sectors, by the East African Community Partner States, 2015



Source: EAC (2009), EAC Secretariat

The tourism sector especially in Tanzania is subject to numerous taxes and fees, including a Tourist Agency Licensing (TALA) fee. Together, the hotel subsector attracts 14 types of taxes/fees, while 11 types of taxes/fees apply to the travel and tour subsector. Zanzibar has its own tourism policy, with different tax and incentive regimes. The industry is regulated by the Zanzibar Commission for Tourism.

Figure 10. Sector commitment by EAC partner states



Source: EAC (2009), EAC Secretariat

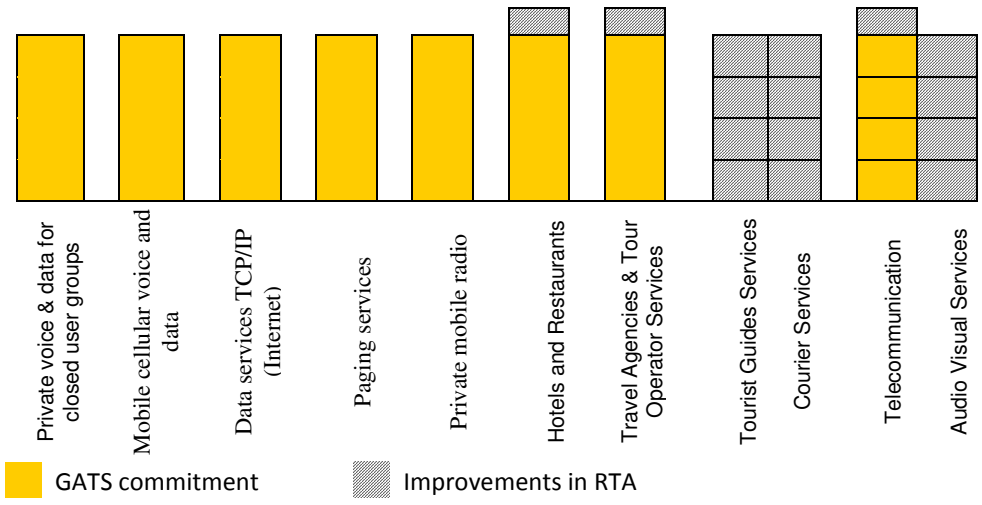
Entry for foreign investors in Hotels and Restaurants is open for 3 stars categories and above (for Islands, National Parks and Game Reserves it is from 4 stars and above). Investment is subject to economic needs test, with higher licensing fee for foreigners. For travel operators

(except island), there is higher licensing charges for foreigners. Travel agent services, trekking and tour guides, and car-hire services are reserved for Tanzanian citizens.

In Tanzania, foreign investment in Courier Services requires 35% local shareholders. In areas of audio visual services especially Radio and Television Transmission Services foreign investment must include 51% local shareholder.

Figure 11 presents the results for one country: Uganda reviewed for modes 1-4. By looking at the proportion of new and improved commitments for each sector, the figure illustrates the value-added of each sector's RTA commitments over the existing GATS schedule. Of the 11 sector (sub-sector) presented, only 3 had some improvement in the RTA schedule in both market access and national treatment (hotels and restaurants, travel and agency and tour operators services, and telecommunication); and 3 sub-sectors that were included in the RTA offer (schedule) are excluded from the existing GATS schedule (tourist guides services, courier services, and audio visual services).

Figure 11. Uganda's sectoral commitments under the GATS and EAC framework



3.2.2 The Southern African Development Community

Article 23 of its Protocol on Trade provides for services liberalization. SADC States have since developed a specific Protocol on Trade in Services. Sectoral protocols related to specific services sectors include Protocols on Transport, Communications and Meteorology (1996), Energy (1996), Education and Training (1997), Development of Tourism (1998), Movement of Persons (2005) and Protocol on Finance and Investment (2006).[6] Botswana, Lesotho, Swaziland and Mozambique have opted to negotiate on trade in services with the EU.

Like the GATS, the Protocol on Trade in Services provides—in Articles 2 and 16—for progressive trade liberalisation through successive negotiating roundsjust. Article 2 states the first objective of the Protocol as that to,

> Progressively liberalise intra-regional trade in services on the basis of equity, balance and mutual benefit with the objective of achieving the elimination of substantially all discrimination between State Parties and a liberal trading framework for trade in services with a "view of creating a single market for trade in services.

Article 16 of the Protocol carries the heading, *Progressive Trade Liberalization* (same as Part IV of GATS) and it states in paragraph 1:

> State Parties shall enter into successive rounds of negotiations three years after completion of the previous one with a view of achieving an integrated regional market for services. Such negotiations shall be in conformity with Article V of the GATS and aim at promoting economic growth and development for all Member States.

Article 3 of the Protocol on Trade in Services defines the cross-border supply of services in line with the four GATS modes of supply.

Sector coverage

Article 16 stipulates that the first round of negotiations will cover six priority sectors, namely communication services, construction services, energy services, financial services, tourism and travel, and transport services. Future negotiations will cover all sectors, subject to provision of Article 3. Article 16(5) states that Parties which are "disadvantaged by reason of size, structure, vulnerability and level of development of their economy shall benefit from flexibility for the implementation of the commitments negotiated under each round. Assistance to and facilitation of the participation of LDCs and disadvantaged

[6] Sectoral annexes to the Trade in Services Protocol are being negotiated to align the Services Trade Protocol to the individual sector Protocols.

countries is also emphasised in Articles 7(3) (Mutual Recognition) and Article 8(3b) (Transparency).

Four of the six priority sectors for the first round of the SADC negotiations—communication, construction, financial and tourism and transport services—are also amongst the broad sectors in which most sub-sectoral acommitments were made under the GATS. The six priority services sectors for liberalisation are "deemed to cover the sub-sectors included in the 1991 WTO Services Sectoral Classification List" (SADC, 20019, p1). The 1991 WTO Services Sectoral Classification List is based on the UN's 1991 Provisional Central Product Classification (CPC) and has no broad sector with sub categories specified for energy sector. It is interesting to see whether this may not limit the sub-sectoral coverage for the energy services to three sub-sectors: services incidental to mining, energy distribution and pipeline transport, and transportation of fuels.

The negotiating and scheduling guidelines state that the starting point for the first round of SADC negotiations will be the existing GATS commitments of member states and that the offer-request method of negotiation will be followed (SADC, 2009, p.2). Each party is expected to offer "some improvements" to existing GATS obligations in each of the priority sectors by the end of the first round of negotiations. It is yet early to know the extent of the additional commitments expected. The SADC negotiating guidelines re-emphasise the principle of asymmetry set out in the Protocol on Trade in Services stating that "[d]isadvantaged State Parties shall be granted the flexibility to open fewer sectors and liberalise fewer types of transactions" (SADC, 2009, P.2-3)—hence replicating the differential treatment provided in the GATS.

3.2.3 The Central African Economic and Monetary Community

In the CEMAC region[7], foreign suppliers of professional services pay twice the rate paid by CEMAC nationals in handling fee to supply certain services. Access by foreign suppliers depends on the existence of a reciprocity agreement with the country of origin and the possession of a permit to reside permanently in one of the member States. Foreigners may establish a tax consultancy with CEMAC nationals on condition that the latter represent a two-thirds majority by numbers and capital investment (WTO, 2O13). To exercise the

[7] Central African Economic and Monetary Community (CEMAC)—Cameroon, the Republic of the Congo, Gabon, the Central African Republic (CAR), and Chad, and Equatorial Guinea.

profession of chartered accountant the Law requires one to secure the approval of the Council of Ministers. Foreign nationals are not allowed to exercise the profession individually or join together to set up an accountancy firm. However, they may work as salaried employees in an accountancy firm or set up an accountancy firm with CEMAC nationals, provided that the latter represent a two-thirds majority share holders and capital investment.

Only chartered accountants and accountancy firms are allowed to perform the functions of a statutory auditor. The profession of legal expert in accountancy is also reserved for accountants approved by the Council of Ministers. The latter are required to enrol on a list maintained by the ordinary court or court of appeal which seeks their expertise. Customs clearing service is open to foreigners on condition that nationals of one of the CEMAC States benefit from the same concession in the foreign country (WTO, 2013). None of the CEMAC member States has made specific commitments on telecommunications under the GATS, and none participated in the WTO negotiations on telecommunications services (after the Uruguay Round), concluded in 1997. However, the domestic legislations applicable to the telecommunications sector do not contain any special restrictions with respect to market access for foreign suppliers. Mobile phone services are generally open to competition, in particular from abroad. However, fixed-line telephone services still remain a public monopoly in most of the States. Efforts at CEMAC level to create a common regulatory framework have not been replicated at the national level yet.

Most CEMAC Member countries maintain a State monopoly, often with a foreign partner, on the supply of fixed telephone services. The persistence of public monopolies in this sector is engineered by the failure to reform these enterprises; to make them profitable and attractive to private investors than a deliberate policy of public intervention.

3.3 Services liberalization by the Gulf States

3.3.1 Cooperation Council for the Arab States of the Gulf

Established on 25 May 1981 (with the Unified Economic Agreement signed on 11 November 1981) in Abu Dhabi by the Kingdom of Bahrain, the State of Kuwait, Oman, Qatar, the Kingdom of Saudi Arabia and the United Arab Emirates, the Cooperation Council

for the Arab States of the Gulf (GCC) created a free trade area exempting from customs duties all goods originating from within the GCC. In January 2008 the common services market was created.

According to the new law, companies established in the UAE are required to have a minimum of 51 percent UAE national ownership except for free zones, where 100 percent foreign ownership is allowed. The provisions of the Commercial Agencies Law require that foreign principals distribute their products in the UAE only through exclusive commercial agents that can be UAE nationals or companies wholly owned by UAE nationals. The foreign entity can appoint one agent for the entire UAE or for a particular emirate or group of emirates. Distribution of imported goods may only be undertaken by trade agencies which must be owned by UAE nationals or by companies wholly owned by UAE nationals.

The UAE made no commitments on telecommunications under the GATS.

The Telecommunications Law provides that no person may supply telecommunications services to the public or conduct a regulated activity unless licensed to do so, and it also prevents the Telecommunications Regulatory Authority (TRA), from issuing licences to any entity having less than 51% local ownership.

3.3.2 Pan-Arab Free Trade Area Agreement (PAFTA)

The PAFTA agreement, which created an Arab Free Trade Area, also known as the Greater Arab Free Trade Area, entered into force at the beginning of 1998.

Table 3. UAE WTO financial services commitments

	Limitations on market access Mode				**Limitations on national treatment Mode**			
	1	2	3	4	1	2	3	4
7 FINANCIAL SERVICES								
7.B Banking and other financial services (excluding insurance) (not including settlement and clearing services for financial assets)	None	None	i) No limits for establishment of representative offices ii) Unbound new licences for operating bank branches iii) Unbound for expansion of activities of existing financial entities	Unbound, except as indicated in the horizontal section	None	none	none	Unbound, except as indicated in the horizontal section
HORIZONTAL SECTION								
Mode 3								

Market access: Commercial presence for all sectors will be through either (i) a representative office or (ii) an incorporation as a company with maximum foreign equity participation of 49% subject to UAE law. National Treatment: (i) Acquisition of land and real estate is not permitted to foreigners or to companies in which foreign nationals have a shareholding. (ii) Foreign nationals or companies with foreign shareholdings may be required to pay direct taxes on income derived from work or operations in the UAE, whereas local services suppliers or local UAE companies may not be required to pay similar taxes keeping in view the provisions of paragraph (d) of Article XIV. (iii) Government subsidized services may only be extended to UAE nationals.								
Mode 4								
Market access: Unbound except for measures concerning entry and temporary stay of natural persons who fall into one of the following categories: (i) Business visitors: persons not based in the territory of the UAE and receiving no remuneration from a source within the UAE, who visit the UAE on behalf of a service supplier for business negotiations (and not for selling services directly to the public) or for doing preparatory work for establishing commercial presence in the UAE. Entry for persons in this category shall not be for more than ninety days. (ii) Intra-corporate transferees: managers, executives and specialists (as defined below) who have been in the employment of a juridical person of another Member outside the UAE, for a period of not less than one year prior to the date of application for entry into the UAE and are being transferred to a branch or affiliate in the UAE of the aforesaid juridical person. Entry will be subject to the following conditions: a) The number of managers, executives and specialists shall be limited to 50% of the total number of managers, executives and specialists of each service supplier. b) Their entry shall be for a period of one year subject to renewal for two additional years with a maximum of three years. c) Their stay in the UAE will be subject to UAE labour and immigration laws.								

Source: WTO, World Bank I-TIP online database.

3.3.3 EFTA–GCC Free Trade Agreement

The EFTA-GCC Free Trade Agreement entered into force on 1 July 2015. The Agreement covers trade in goods, trade in services, government procurement and competition. On services, the GCC members have taken commitments in 11 GATS sectors. The Chapter on trade in services has a similar structure to the GATS. It covers all four modes of supply of a service, as defined under the GATS, and addresses different services sectors. The Chapter deals with general disciplines, whereas more specific provisions for certain sectors or aspects are contained in Annexes (such as on Mutual Recognition, Movement of Persons, Financial Services and Telecom).

Table 4. UAE WTO construction-related services commitments

	Limitations on market access Mode				**Limitations on national treatment Mode**			
	1	2	3	4	1	2	3	4
1 BUSINESS SERVICES								
1.D Architectural services 1.E Engineering services 1.G Urban planning and landscape architectural services	None	None	None	Unbound, except as indicated in the horizontal section	None	none	None, except as indicated in the horizontal section	Unbound, except as indicated in the horizontal section
3 CONSTRUCTION AND RELATED ENGINEERING SERVICES								
3.A General construction work for buildings	None	None	None	Unbound, except as indicated in the horizontal section	None	None	None, except as indicated in the horizontal section	Unbound, except as indicated in the horizontal section

3.B General construction work for civil engineering 3.C Installation & assembly work 3.D Building completion and finishing work 3.E Other								
HORIZONTAL SECTION								
Mode 3								
Market access: Commercial presence for all sectors will be through either (i) a representative office or (ii) an incorporation as a company with maximum foreign equity participation of 49% subject to UAE law.								
National treatment: (i) Acquisition of land and real estate is not permitted to foreigners or to companies in which foreign nationals have a shareholding. (ii) Foreign nationals or companies with foreign shareholdings may be required to pay direct taxes on income derived from work or operations in the UAE, whereas local services suppliers or local UAE companies may not be required to pay similar taxes keeping in view the provisions of paragraph (d) of Article XIV. (iii) Government subsidized services may only be extended to UAE nationals.								
Mode 4 - following categories: (i) Business visitors: persons not based in the territory of the UAE and receiving no remuneration from a source within the UAE, who visit the UAE on behalf of a service supplier for business negotiations (and not for selling services directly to the public) or for doing preparatory work for establishing commercial presence in the UAE. Entry for persons in this category shall not be for more than ninety days. (ii) Intra-corporate transferees: managers, executives and specialists (as defined below) who have been in the employment of a juridical person of another Member outside the UAE, for a period of not less than one year prior to the date of application for entry into the UAE and are being transferred to a branch or affiliate in the UAE of the aforesaid juridical person. Entry will be subject to the following conditions: a) The number of managers, executives and specialists shall be limited to 50% of the total number of managers, executives and specialists of each service supplier. b) Their entry shall be for a period of one year subject to renewal for two additional years with a maximum of three years. c) Their stay in the UAE will be subject to UAE labour and immigration laws.								

Source: WTO, World Bank I-TIP online database.

On investment, there are no specific provisions contained in the Agreement on Investment, but a side letter, forming part of the Agreement, sets forth the Parties' obligation to conduct negotiations on business establishment in non-services sectors within two years of the entry into force of the Agreement.

Cross-border supply of insurance services is not possible for companies located abroad. All assets and risks in the UAE must be insured domestically. Maximum foreign ownership of domestic insurance companies is set by law at 49%. Representative offices may not engage in business or act as agents.

3.3.4 GCC – Singapore Free Trade Agreement

The GCC-Singapore Free Trade Agreement (GSFTA) entered into force on 1 January 2015.[8] The Agreement covers trade in goods and services, customs procedures, technical regulations and standards, rules of origin, ecommerce, and government procurement.[9] On services, the GSFTA builds on the commitments made by Singapore and the GCC countries

[8] 21 For more information see Singapore Government online information at: http://www.fta.gov.sg/fta_C_gsfta.asp?hl=49.

[9] 22 WTO documents WT/COMTD/N/45/Rev.1 and S/C/N/807/Rev.1, 14 July 2015 – Notification under of the Enabling Clause, Paragraph 4(a) and GATS, Article V:7(a).

at the multilateral level, in particular, the WTO General Agreement on Trade in Services (GATS). Specifically, Singapore and the GCC have committed to liberalize various services sectors beyond its WTO commitments. Broadly, the schedule of specific commitments include the following sectors: business services: professional services, computer and related services, rental and others; communication services; construction and related engineering services; distribution services; educational services; environmental services; financial services; health related and social services; tourism; recreational, cultural and sporting services; and transport services.[10]

3.4 Approach to services liberalization by other RTAs

The results of the 28 bilateral PTAs notified after 2000 studied by Roy, Marchetti and Lim (2006) show much diversity among the countries reviewed in what the PTAs were able to achieve. Some countries made significant improvements in their PTA commitments especially those that had signed a PTA with the United States (e.g. Bahrain, Central American countries, Chile, Colombia, Dominican Republic, Morocco, Oman, Peru, and Singapore). Taken together, PTA commitments exceeded GATS offers in terms of improved and new bindings. The proportion of new or improved commitments was much greater in PTAs than in GATS (when compared to existing GATS commitments).

Most countries had mode 1 (cross border movement) and mode 3 (commercial presence) bindings in their GATS schedules/offers in less than half of all services sub-sectors. They made significant improvement in terms of sector coverage. On average, they had PTA commitments for both modes of supply (modes 1 and 3) in more than 80 percent of all services sub-sectors. Those with a higher number of sectors already bound in their GATS schedules/offers had improved the level of binding for a good proportion of them.

Overall, with exception or rules (safeguard mechanism, disciplines on subsidies or domestic regulation), PTAs appear to offer superior value added over GATS. Most PTAs reviewed also include comprehensive sets of disciplines on government procurement, although these are not specific to services and are stand alone in their own chapter.

[10] 24 For more information see Singapore Government online information at: http://www.fta.gov.sg/fta_C_gsfta.asp?hl=49.

4 A general comparison of RTAs and GATS in achieving liberalization commitments

There are relatively few studies available to date which compare the disciplines of the GATS with the liberalising thrust or otherwise of the services provisions in FTAs. This section assesses the depth of commitments in PTAs/RTAs—against sets of market access and rule-making benchmarks—drawing substantially from Sauvé (2003).

4.1 Cross-border trade in services and treatment of mode 4

Many RTAs have gone a step further to complement disciplines on cross-border trade in services (modes 1 and 2) with additional set of rules on investment and the temporary movement of business people though in a generic manner. RTAs and GATS both differ in their approaches in regard to the interplay between cross-border trade and investment in services. The GATS for example is silent on matter of investment protection although it incorporates services as one of the four modes of service delivery. In the case of the EAC, protection of cross border investments appears within the scope of co-operation in Article 5 of the Common Market Protocol, Paragraph 3(b); with Article 29, whole devoted to Protection of Cross-Border Investments. The SADC Protocol on Trade in Services does not have specific provision on matter of investment protection though it recognises commercial presence (Article 3) as one of the four modes of services delivery. The Protocol also incorporates *promotion of investment in services* in Article 18, but mostly in the context of providing a conducive business environment.

Under mode 4 (movement of natural persons) RTAs (e.g. NAFTA) are ahead of GATS as regards the broader range of professional categories benefiting from temporary entry privileges. RTAs have been able to draw much needed policy attention to the essential trade facilitating role that labour mobility provisions can play alongside trade and investment liberalisation. Except that they are also exposed to political sensitivities on display at multilateral level in area of labour mobility. Under mode 4, movement of natural persons, the EAC has bound measures affecting supply, by a limited range of senior professional

staff, in engineering, medical, computer, management consulting, hospital, and hotel and catering services.

4.2 Rule-making interface between domestic regulation and trade in services

Most RTAs have made limited progress compared to GATS in tackling rule-making interface between domestic regulation and trade in services. This is consistent with earlier observation by Sauvé (2003) in a study of Latin America and the Caribbean. Article 20 of the Protocol on the Establishment of the East African Community (EAC) Common Market, paragraph 1 allows the Partner States to regulate their services sectors in accordance with their national policy objectives provided that the measures are consistent with the provisions of the EAC protocol and do not constitute barriers to trade in services. Paragraph 2 requires the Partner States to "ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner", which is similar to provisions arising under Article VI of the GATS. Most RTAs, however, contain weaker provisions with narrow focus that look mainly on professional services than those arising under Article VI of the GATS.

4.3 Necessity test and domestic regulation

Article VI:4 of the GATS adopts "necessity" as the central rule to assess the compatibility with the GATS of trade restrictive domestic regulatory measures.[11] The chapeau of Article VI:4 identifies the main objective of the disciplines on domestic regulation, which the Council for Trade in Services is called upon to develop: to ensure that "measures relating to qualification requirements and procedures, technical standards and licensing procedures do not constitute unnecessary barriers to trade in services."

The disciplines for the accountancy sector developed by the Working Party on Professional Services (WPPS) contain a binding necessity test, which only applies to non-discriminatory and non-quantitative measures. Section I, paragraph 2 (*General Provisions*) states that:

[11] Article VI of the GATS (Domestic Regulation) provides a mandate for negotiating disciplines that would ensure that domestic standards and licensing requirements are not "more burdensome than necessary to ensure the quality of the service."

> "Members shall ensure that measures not subject to scheduling under Articles XVI or XVII of the GATS, relating to licensing requirements and procedures, technical standards and qualification requirements and procedures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary barriers to trade in accountancy services. ... Members shall ensure that such measures are not more trade-restrictive than necessary to fulfil a legitimate objective. Legitimate objectives are, *inter alia*, the protection of consumers (which includes all users of accounting services and the public generally), the quality of the service, professional competence, and the integrity of the profession."

The necessity test links the measure with a legitimate policy objective as exists also in other WTO Agreements, for instance, the 1994 Panel Report on "United States – Taxes on Automobiles" found that the first step in the analysis under Article XX(g) of the GATT was to determine:

> "… whether the *policy* in respect of which these provisions were invoked fell within the range of policies to conserve exhaustible natural resources."[12]

The 1990 Panel Report on "Thailand – Restrictions on importation of and internal taxes on cigarettes" examined the legitimacy of policy objective invoked by the Member, before testing the necessity of the measure to achieve that objective.[13]

The determination of whether a policy objective qualifies as a legitimate one is simpler when dealing with an exception as the policy objectives listed in Article XX of the GATT (and XIV of the GATS) are a closed group. The policy objectives in Article VI:4 disciplines might not be a closed group. They have to be related to the broad objective of ensuring the quality of the service, which is stated in indent (b) of Article VI:4. For instance, objectives such as consumer protection and ensuring professional competence would qualify as legitimate objectives.

Fifteen years ago, it was only the EU and agreements reached between the EU countries in central and eastern Europe that had made some progress in delineating the possible elements of a necessary test as is potentially foreseen under the GATS' Article VI:4 mandate (Sauvé, 2003). The same applies to regulatory harmonisation where RTAs had not

[12] DS31/R, (unadopted) 11 October 1994, para. 5.56.

[13] WTO, *DS10/R - 37S/200,* p.20, para 73, adopted on 7 November 1990: https://www.wto.org/english/tratop_e/dispu_e/gatt_e/90cigart.pdf

generally succeeded apart from EU and the Australia New Zealand Closer Economic Agreement (ANZCERTA) as observed in Sauvé (2003). Most RTAs, by then, did not have article on domestic regulation per se in their service chapters, but only narrowly drawn disciplines relating to licensing and certification of professional services. Most major RTAs now have article on Domestic Regulation, for instance, the East African Community (EAC) Common Market Protocol has Article 20 devoted to Domestic Regulation. Protocol on Trade in Services of the Southern African Development Community (SADC) also has Article 6, whole devoted to Domestic Regulation. Both articles are cast in similar language and tone as GATS Article VI.

Although the progress in area of domestic regulation has been slow in both regional and multilateral level, from this observation, it is reasonable to say the gap between the GATS and RTAs are closing, and RTAs could in near future overtake GATS in this area.

Finally, although no WTO Member inscribed an economic needs test in its schedule of commitments in the post-Uruguay Round negotiations on basic telecommunications and financial services, perhaps indicating a willingness on the part of Members to dispense with this instrument of trade restriction, economic needs test is frequently inscribed in schedule of commitments in RTAs.

4.4 Key infrastructure areas (basic telecommunication, financial services) and areas of policy sensitivity

GATS had until recently, by far achieved higher level of bound liberalisation in the area of basic telecommunications and financial services, than that on offer in most RTAs. Sauvé (2003) noted, and rightly so that the issue of timing is crucial in assessing progress. Services at RTAs are evolving (liberalisation has been in progressive manner across all RTAs). For a number of countries, ten years ago, it was difficult to contemplate far-reaching liberalisation in basic telecommunication services that we see in some of these countries. It was possible to achieve this with GATS at the time GATS Agreement on Basic Telecommunications was concluded in 1997.

Limited progress has been seen at regional level in sectors such as maritime transport, audio visual services, or energy service. In fact, RTAs have generally made limited progress to open up those sectors that have to date proven particularly difficult to address at the

multilateral level. Most RTAs have tended to exclude the bulk of transportation services from their coverage. On air transport services, only EU has included intra-EU traffic. In the case of the EAC, Article 38 of the Common Market Protocol deferred the making of the regulation applicable to (a) railway transport; (b) maritime transport and port operations; (c) pipeline transport; (d) air transport; (e) non-motorized transport; and (f) multimodal transport and logistics to some later dates within three years upon entry into force the Common Market Protocol. The Protocol came into force on 1 July 2010, but no regulation has since materialized, which shows the level of political sensitivities attached to these issues. In the case of the Southern African Development Community (SADC), Article 3 of the Protocol on Trade in Services paragraph 3 curves out the traffic rights and services directly related to exercise of traffic rights as the area of air transport that are not subject to the Protocol.

4.5 Mutual recognition

Lack of progress is also associated at regional level with regulatory harmonisation and mutual recognition in services. Only some progress has been made within EU and the Australia New Zealand Closer Economic Agreement (ANZCERTA), although they have had slow progress with regard to the recognition of professional qualifications despite the perceived 'common labour market policies' or integrated single markets. North America and East Africa Community have made some progress by concluding mutual recognition agreements (MRAs) in a number of professions such as accountancy, architecture and engineering, though variable levels of disparity in compliance exist among sub-national licensing bodies. Progress in concluding MRAs has proven slow and difficult for most RTAs, particularly where they are pursued between countries with federal systems. One area where RTAs have made speeder headway is in opening up procurement market for services (although this has been made in procurement negotiations).

With regards to financial services, acceptance of home-country rules and supervision, together with harmonization of essential rules, is the basis of the EU single-market program for the financial sector. Outside the European Union, however, few recognition arrangements exist for financial services.

In the case of the EAC, one area where the region has made progress is in mutual recognition of academic and professional qualifications. Annex VI on Mutual Recognition

of Academic and Professional Qualifications was adopted and Bilateral Memorandum of Understanding has been concluded by lawyers, medical boards, architects, and accountants in the EAC Partner States. In a bid to facilitate free movement of labour, under Article 11 of the Common Market Protocol, Partner States agreed to harmonize and mutually recognize academic and professional qualifications granted, experience obtained, requirements met, licences or certification granted, in other Partner States. They also agreed to harmonise curriculum, examinations, standards, certification and accreditation of educational and training institutions. The flip side of the current MRAs is that EAC nationals holding foreign qualifications cannot benefit from the mutual recognition agreement. The underlying intention is to encourage the development of regional qualifications but this is causing some difficulties to individual EAC nationals. Template on mutual recognition was adopted, and the benchmarks for Recognition of Foreign Academic and professional qualifications that have been developed are yet to be adopted. In addition, Partner States are in the process of enacting legislation to regulate professionals that are not regulated. Other challenge that is hampering the implementation of commitments in the Common Market Protocol is slow processing of work permits which has had an impact on the effectiveness of the mutual recognition agreement to promote mobility.

In the SADC region, Article 7 of SADC Protocol on Trade in Services establishes a framework for negotiation of agreement providing for the mutual recognition of requirements, qualifications, licenses and other regulations.

4.6 Emergency safeguards and subsidies

Disciplines on emergency safeguards and subsidies for services have eluded both the RTAs and trade liberalisation in services at multilateral level – which shows same technical and political challenges faced at both levels. In the case of the EAC safeguards measures are provided for under Article 26 of the Common Market Protocol (CMP). Paragraph 1 and 2 spells out the circumstances under which such measures can be allowed: to counter the negative consequences of a foreign exchange policy of a Partner State, and in case of balance of payment difficulties. Paragraph 1 allows a Partner State to take safeguard measures in a situation where the movement of capital leads to disturbances in the functioning of the financial markets of the Partner State. However such measure must

adhere to the conditions provided under Article 27 of the CM Protocol. Under Paragraph 2, safeguard measures are allowed where a competent authority of a Partner State makes an intervention in the foreign exchange market, which seriously distorts the conditions of competition. Again, such necessary measures to counter the consequences of the intervention must be for a strictly limited period. Paragraph 3 also allows a Partner State to take safeguard measures, where the Partner State is in difficulties or is seriously threatened with difficulties, as regards its balance of payments position.

In the SADC region, Article 11 of the Protocol on Trade in Services permits State Parties to provide subsidies to their domestic service suppliers, without clear mechanism on how to avoid trade distortive-effect of subsidies. While States agreed to negotiate disciplines to avoid trade distortive effect of subsidies the Protocol does not provide timeline on such negotiation when it should be expected to begin or the framework for the negotiation. As such it would be unlikely that subsidies disciplines might be expected any time in near future.

5 WTO Doha Round GATS negotiations

After the Uruguay Round, sectoral negotiations took place in the WTO: on the movement of natural persons (1995), on telecommunications (1997) and on financial services (1997). During the sectoral negotiations, participating countries took new commitments specifically in those sectors. These new schedules replaced the corresponding section in the original schedules. Not all WTO members participated in the sectoral negotiations.

5.1 Timeline and negotiating tracks

The new negotiations on services were formally launched by a special session of the Services Council on 25 February 2000. The negotiations are overseen by the Council for Trade in Services, meeting in special session, and its subsidiary bodies, in particular the Working Party on Domestic Regulation and the Working Party on GATS Rules. The purpose of the successive rounds of negotiations on services trade mandated by Article XIX of the GATS is to achieve a “progressively higher level of liberalisation”, meaning the

improvement of market access by extending the sectoral coverage of schedules and reducing or eliminating the restrictive effects of scheduled measures.

The GATS Negotiations began in 2000 and progressed under two negotiating tracks: market access track and rule-making (Emergency Safeguard Measures, Government Procurement, Subsidies and Domestic Regulation). The market access track includes negotiations on new or improved commitments for inclusion in Members' schedules of specific commitments under the GATS, and the re-negotiation of current MFN exemptions as mandated by the Annex on Article II Exemptions.

In November 2001, the Doha Ministerial Declaration reaffirmed the Negotiating Guidelines and Procedures for the Negotiations adopted by the General Council for Trade in Services on 28 March 2001 as the basis for continuing the negotiations, and set out the deadline for submission of initial requests for specific commitments by 30 June 2002 and offers by 31 March 2003.

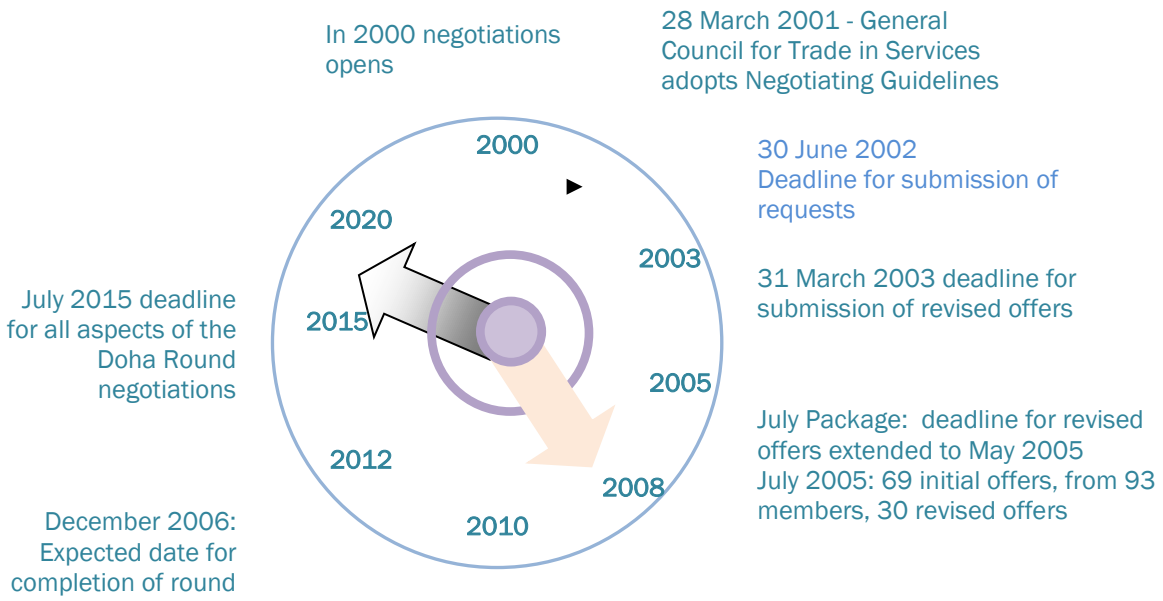
The Guidelines and Procedures for the Negotiations on Trade in Services under Paragraph 11 state the "main method of negotiation [to] be the request-offer approach." These negotiations are to be undertaken through bilateral, plurilateral and multilateral negotiations. The Negotiating Guidelines on market access establish the request-and-offer approach as the main negotiating tool. The request-offer approach begins with a Member exchanging bilaterally with another a "request" for liberalisation in specific service sectors and modes of supply of their interest in hopes of receiving an "offer" (from the requested) of a multilateral commitment in the services and modes of supply and degree (i.e. full, partial/limited or no liberalisation) for liberalization. Appropriate flexibility is to be provided to individual developing countries, which may open fewer sectors and liberalize fewer types of transactions in line with their development situation as stated in the Negotiating Guidelines.

> There *shall be appropriate flexibility for individual developing country* Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV (emphasis added).

Figure 6 presents the timeline for the negotiations. However, the 30 June 2002 deadline for submission of initial requests and the 31 March 2003 for revised offers were both missed.

The General Council decision on "2004 July Framework" reset deadline for revised offers to May 2005. By end of November 2005 and the Hong Kong Ministerial, 69 initial offers have been tabled (representing 93 Members), a total that had remained unchanged since July 2005. Not including LDCs Members, 23 initial offers remained outstanding. Thirty revised offers (representing 54 Members) had been circulated. The slow pace at which initial and revised offers are coming in and poor quality of offers have been a major concern to many Members. This concern about lack of progress in the services negotiations is reflected in the 28 November 2005 report by the Chairman to the Trade Negotiations Committee.

Figure 12. Timeline for services negotiations



In 2015, the special session of the Council for Trade in Services made desperate attempts to consider possible services elements of a post-Bali work programme, in the hope of meeting a July 2015 deadline set for all aspects of the Doha Round negotiations and on the possibility of deliverables for the Tenth Ministerial Conference in Nairobi in December. An

idea was mooted, to "calibrate" services in some way with those in agriculture and non-agricultural market access (NAMA), although views differed on the nature of such calibration. Some could have viewed this approach as a deviation from the set Guidelines and Procedures for Negotiations on Trade in Services. Members, instead agreed, as a starting point, to provide a list of sectors and modes of supply they are willing to include or improve upon before entering into "request and offer" negotiations. They thought this would help them determine the level of ambition for the services negotiations. The list include express delivery, transport and logistics, telecommunications, computer services, distribution, financial services, construction and energy-related services as well as the temporary movement of contract suppliers and independent professionals (mode 4).

Meanwhile, the ACP (Africa, Caribbean and Pacific) group of developing countries called attention to the GATS provisions that allow developing countries to provide market access in fewer services sectors than in developed countries, in line with their development situation, and the importance of achieving liberalization in sectors and modes of supply of interest to developing countries. Despite the various ideas put forward, WTO members were unable to produce a text of clearly defined work for services for the post-Bali programme.

In the run-up to the Tenth Ministerial Conference (MC10) in Nairobi in December 2015, WTO members made a number of proposals in the special session of the Council for Trade in Services on transparency issues as potential deliverables for MC10, but failed to reach a consensus on the proposed texts. This potential deliverable, based on proposals by the European Union, Canada, Australia and Russia, related to transparency in domestic regulation in services. Two distinct positions emerged on whether to start discussions on a potential services outcome in transparency, such as disciplines for the publishing of regulatory measures, the establishing of mechanisms to respond to requests for information by service suppliers and publishing of draft regulation to facilitate comments of service suppliers. Proponents expressed readiness to explore appropriate development components, but several developing countries said they would not take on new obligations on their domestic regulations.

Other proposals were tabled by India, regarding transparency in the question of movement of natural persons, and by the ACP group on maintaining flexibility for developing countries in all areas of WTO negotiations, including services. In the end, there

was not sufficient time to reach consensus among WTO members on texts related to these proposals prior to the Nairobi Ministerial Conference.

In Nairobi, therefore, the only services-related decision adopted by ministers was a proposal that originated from discussions in the regular sessions of the Council for Trade in Services. The ministers extended the current waiver period under which WTO members may grant preferential treatment to LDC services and service suppliers. The waiver, adopted in December 2011, runs 15 years. The ministerial decision extends this an additional four years, or until 31 December 2030.

The interest of African group is an outcome that would enhance market access while, protecting the right to progressive liberalization and to regulate. Through pursuing operationalization of GATS Article IV that calls for increased participation of developing countries in international trade in services through inter alia, enhanced market access in developed countries of sectors and modes of export interest to Africa; preservation of flexibility envisaged in Article XIX:2 of GATS: providing for progressive liberalization, attaching conditions to liberalization that a country deems necessary for its national development; supports the proposed waiver for LDCs; adoption of LDC modalities that seek to secure more favourable treatment of LDCs in the outcome of the services negotiations;

5.2 Special and differential treatment

A number of developing countries have expressed their negotiating objectives and expectations in written submissions (offers/proposals) since the start of the services negotiations in 2000. More than 30 developing country Members have expressed interest in at least one sector or mode of supply under negotiation.

Services negotiations can help to improve export access in areas of developing country interest, such as the movement of natural persons, cross-border supply of services, or in specific sectors. The GATS can also be used to secure access to markets that are already open, and where developing countries are acquiring a comparative advantage, such as the cross-border trade of electronically delivered services. On the other hand, specific commitments can spur and promote investment in the unilaterally liberalized sectors, by making access to the market predictable, secure, and discrimination-free. Moreover,

specific commitments can be shaped to take into account eventual adjustment processes and to allow for the development of necessary regulatory frameworks.

The GATS contains 8 special and differential treatment provisions. Article IV:3 on *increasing participation of developing countries in world trade*; Article V:3 on *economic integration*; IV:1 and Article IV:2; Article XIX:2 on *negotiation of specific commitments* and Article XIX:3; and Article XXV:2 on *technical co-operation*.

Article IV:1—states that "The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different Members pursuant to Parts III and IV of this Agreement, relating to: (a) the strengthening of their domestic services capacity and its efficiency and competitiveness, inter alia through access to technology on a commercial basis; (b) the improvement of their access to distribution channels and information networks; and (c) the liberalization of market access in sectors and modes of supply of export interest to them."

Developed countries continued to dominate services trade. Some developing countries wanted developed countries to adopt commercially meaningful commitments in areas of interest to developing countries to make Article IV meaningful and effective (S/C/M/38, paragraph 42). Some expressed difficulties faced by developing countries in participating in the international trade in services. (S/C/M/39 paragraphs 10,11, 17, 20, 21, 23, 24). Some Members have pointed out that developed countries have offered service providers of developing countries inadequate access, whereas those of developed countries have been able to penetrate developing countries' markets (S/C/M/34, paragraph 37). Data indicate that there were 100 horizontal limitations with respect to mode 4, compared to 20 for Mode 2.

Article V:3 maintains that "(a) Where developing countries are parties to an agreement of the type referred to in Article V:1, flexibility shall be provided for regarding the conditions set out in Article V:1, particularly with reference to Article V:1(b) thereof, in accordance with the level of development of the countries concerned, both overall and in individual sectors and sub-sectors. (b) Notwithstanding Article V:6, in the case of an agreement of the type referred to in Article V:1 involving only developing countries, more favourable treatment may be granted to juridical persons owned or controlled by natural persons of the parties to such an agreement."

According to *Article XIX:2*—on Negotiation of Specific Commitments—"the process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV."

Members have adopted specific instruments to guide the negotiations, in accordance with GATS Article XIX. The 'Guidelines and Procedures for the Negotiations on Trade in Services', *inter alia*, recall that the negotiations aim to achieve progressively higher levels of liberalization and increase the participation of developing countries in services trade. It reaffirm that the process of liberalization shall take place with due respect for national policy objectives, the level of development and the size of economies of individual Members. It requires Members to give special attention to sectors and modes of supply of export interest to developing countries; and recognizes the right of Members to regulate and to introduce new regulations.

Article XXV:2— states "Technical assistance to developing countries shall be provided at the multilateral level by the Secretariat and shall be decided upon by the Council for Trade in Services."

Special provision has been made for LDC participation in the negotiations. It affirms the need for greater flexibility in terms of the depth and coverage of LDC commitments, calling for particular attention on the part of other Members in opening up sectors of interest to LDCs, emphasizing the importance of assisting LDCs to participate more effectively in international trade in services. *Article IV:3* states "Special priority shall be given to the least-developed country Members in the implementation of Article IV:1 and 2. Particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs."

However, the request-and-offer process has only produced limited results so far. By the end of March 2007, only 70 Members (counting the EC as one) had submitted offers,

including 30 revised offers. At Hong Kong in December 2005, Ministers agreed to give due consideration to proposals on the trade-related concerns of small economies, to develop methods for the full and effective implementation of the LDC Modalities, and to provide targeted technical assistance with a view to enabling developing and least-developed countries to participate effectively in the negotiations.

Developing-country Members are actively taking part in the plurilateral request-offer mechanism agreed to at Hong Kong. Apart from being recipients of many requests, some of them have also co-sponsored plurilateral requests for market access in areas of specific interest to them such as the movement of natural persons, cross border supply of services, computer related services, construction and related engineering services, and the removal of MFN exemptions. Movements of natural persons (Mode 4) and, more recently, the cross-border supply of services (Modes 1 and 2), have also received some attention.

Proposals on Mode 4, which plays a crucial role for many developing countries, have included a call for the harmonization of categories of service suppliers used in scheduling commitments, more commitments on lower-skilled workers, the reduction of barriers involving such matters as nationality, residency and work permit requirements, tax treatment, wage parity requirements, and the duration of stay. The emergence of "off-shoring" activities in recent years has generated more interest in cross-border trade. A number of developing countries have recently called for ambitious commitments under both Modes 1 and 2 across a wide range of sectors, including business services, research and development services, computer services, management consulting services, call-centre services, and transfer of financial information and data.

5.3 Special treatment for LDCs

Original proposals include Proposal on modalities for the Special Treatment for LDCs in Services Negotiations (TN/S/W/13, 7 May 2003), LDC Group Request on Mode 4 (JOB(06)/155, 24 May 2006) and a Mechanism to operationalize Article IV: 3 of the GATS (TN/S/W/59, 28 March 2006).

At the meeting of the Special Session of the Council for Trade in Services held in May 2006, the delegation of Zambia submitted on behalf of the LDC Group a communication presenting their collective request in Mode 4 (JOB(06)/155). The LDC Group requests

Members to make commitments in four categories of natural persons, with each category applying to a number of specified sectors of export interest to this group. Both formal and informal have been conducted on the implementation of the LDC modalities, on the basis of the communication submitted by Zambia on behalf of the LDC Group – "A mechanism to operationalize Article IV:3 of the GATS" (TN/S/W/59) 28 March 2006. Article IV:3 of the GATS talks of providing special priority to LDCs,

> "Special priority shall be given to the least-developed country Members in the implementation of paragraphs 1 and 2. … in view of their special economic situation and their development, trade and financial needs."

At the meeting of the Special Session of the Council for Trade in Services held on 14 July 2006, the EC delegation presented a proposal co-sponsored by the US, Japan and Canada. The new proposal provides that all Members notify, by September 2006, how they would grant "special priority" to LDCs in the negotiations, pursuant to Article IV:3 of the GATS. It also provides that a review of these notifications be conducted and that the Chairman of the Council for Trade in Services in Special Session compile a "list of best practices" in this regard. At the same meeting, the African Group presented a document regarding S&D proposals. The document calls for the Council for Trade in Services to undertake, before the conclusion of the Doha Round, an evaluation of the extent to which the envisaged services package contributes to the full and effective implementation of Article IV of the GATS. It also proposes, *inter alia*, a regular review of the implementation of Article IV by Members. While the document was generally well received at an informal meeting in March 2007, demandeurs and some other Members differed on certain aspects.

Intensive discussions on this issue have continued since the resumption of the negotiations in February 2007, although significant gaps remain to be bridged.

Operationalisation of the LDC service waiver

The LDC Services waiver allowing developed countries to provide LDCs with preferential market access in services was already adopted in the 8th Ministerial Conference (Preferential Treatment to Services and Service Suppliers of Least-Developed Countries", Decision of 17 December 2011, WT/L/847). However, it has remained an empty shell. LDC Group has made earlier proposals (including on Mode 4) for preferential market access, the

latest proposal - (TN/C/W/63 of 31 May 2013 - LDC package for Bali). However, Members (developed countries) have not come forward to actually make concrete offers to LDCs. The outcome of the Bali conference was, from the perspective of LDCs, disappointing.

Bali text: The Council for Trade in Services shall convene a High-level meeting six months after the submission of an LDC collective request identifying the sectors and modes of supply of particular export interest to them. At that meeting, developed and developing Members, in a position to do so, shall indicate sectors and modes of supply where they intend to provide preferential treatment to LDC services and service suppliers.

The language remains best endeavour (non-binding).

5.4 The rule-making negotiations

The rule-making negotiations, which already started in 1995, are based on the mandates contained in Article VI:4 (Domestic Regulation), Article X (Emergency Safeguard Measures), Article XIII (Government Procurement), and Article XV (Subsidies). Pursuant to the Doha Declaration, they were integrated into the broader agenda of the new round of negotiations. The Hong Kong Ministerial Declaration (2005) reaffirmed the mandate in Article VI:4 to develop disciplines on domestic regulation, and called upon Members to develop text for adoption. Following the informal resumption of the negotiations in late 2006, the Chairman conducted several rounds of informal consultations and finally submitted, in April 2007, a room document containing a draft negotiating text for the Article VI:4 disciplines. The Hong Kong Declaration also called upon Members to intensify their approaches to conclude the negotiations on rule-making under GATS Articles X, XIII and XV, in accordance with their respective mandates and timelines. While a number of issues have been raised and discussed in the Working Party on GATS Rules since then, overall, there was no notable change in long-held positions.

Given the overall context of the Doha Round negotiations and the focus on possible deliverables for the Nairobi Ministerial Conference, 2015 saw little progress in the Working Party on GATS Rules in its technical discussions on emergency safeguard measures, government procurement and subsidies (discussions conducted in accordance with the

negotiating mandates contained in Articles X, XIII and XV of the WTO General Agreement on Trade in Services).

GATS rules

Emergency safeguard measures (ESM). The Working Party continued its dedicated discussion on emergency safeguard provisions in regional trade agreements, as proposed by the "Friends of ESM" (comprising Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Thailand and Viet Nam) in October 2013. On substance, however, WTO members brought no new elements to the negotiating table.

Government procurement: No significant progress has since been reported in this area.

Concerning subsidies: The WTO Secretariat issued a revised version of its background note on "Subsidies for Services Sectors – Information contained in WTO Trade Policy Reviews". It is understood that more conceptual work are needed to better understand how subsidies are provided and what trade effects they might have.

Domestic regulation

The Working Party on Domestic Regulation has explored a variety of technical issues in recent years, including the clarification of concepts and terms as they relate to regulatory frameworks and practices as well as experience-sharing of regulatory provisions in regional trade agreements.

Several delegations have provided substantive views on their domestic regulation priorities in the context of a post-Bali work programme, which included provisions to discipline licensing and qualification requirements and procedures. There has also been suggestion to allow other areas of the negotiations to progress before the issue of domestic regulation could be considered. In the run up to the Nairobi conference, the discussion in the special session explored issue of transparency in domestic regulation as potential content of a "Nairobi package". While the proposal received support from some delegations, a number of developing countries were uncomfortable with this move, of "cherry-picking transparency" in the services negotiations would add little value to the development goal,

particularly given the uncertainty on what the Nairobi package would deliver for development.

6 Conclusions

This paper assessed the the approaches and disciplines within the framework of the GATS and selected RTAs in Africa, Latin America, and Asia, in achieving liberalisation of trade in services and reached the conclusion that RTAs offer superior value added over GATS in market access areas and may be a more effective vehicle for further liberalisation of trade in services. In nearly all the modes of supply and sectors, RTA commitments tend to go significantly beyond GATS offers in terms of improved and new bindings. Most RTAs, however, are at the same pace with GATS in securing the rule-making interface between domestic regulation and trade in services and in treatment of less developed members. RTA commitments tend to lag behind GATS particularly on safeguard mechanism, and disciplines on subsidies. This shows perhaps that it is just as hard with small group arrangements as with multilateral process to tackle the unfinished GATS rules issues.

RTAs, although have shown much improvement over exiting GATS commitment on temporary movement of labour (mode 4), the commitments (improvements) remain rather modest in scope. As evident from commitments in sectors such as communication, RTAs may be suitable vehicle for further liberalisation in sectors where policy sensitivities are high. However, to the extent that other policy measures not typically falling within the scope to the RTAs framework may still affect the value of commitments in the members' schedule, it requires Members of RTAs to be alert to such potential impediments and ensure that proper coordination exists with national officials in related policy areas. Doing so will help ensure that countries secure commercially meaningful and development-promoting commitments from their RTA partners.

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Tables and figures

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Appendices

Uganda's scheduled commitments in the tourism sector in the EAC Common Market and the GATS frameworks

	EAST AFRICA COMMUNITY COMMON MARTKET		GATS	
	Limitations on market access	Limitations on national treatment	LIMITATIONS ON MARKET ACCESS	LIMITATIONS ON NT
Hotels and Restaurants (including Catering) (CPC 641- 643)	1) None 2) None 3) None, except in areas where Government has granted concessions. (4)In accordance with the Schedule on the Free Movement of Workers. Elimination date: 2010	1) None 2) None 3) Investment Code and its Regulations apply as stated in the horizontal commitment. (4) In accordance with the Schedule on the Free Movement of Workers Elimination date: 2010	1) None 2) None 3) Government approval Is required in accordance with the investment Code and the regulation with it 4) Unbound except for personnel except where Ugandans are or become available. Entry and temporary stay of foreign Service suppliers subject to compliance with laws, regulations & guidelines in force in Uganda.	1) None 2) None 3) None 4) Unbound except for personnel stipulated under Market access
Travel Agencies & Tour Operators Services (CPC 7471)	1) None 2) None (3) Unbound (4) Entry and temporary stay in accordance with the Common Market Protocol provisions on movement of persons /workers. Expected elimination date: 2013	1) None 2) None 3) None, except for Gorilla Permit where Foreign Companies are required to make joint ventures with the local incorporated operators 4) In accordance with the Schedule on the Free Movement of Workers. Expected elimination date: 2013	1) None 2) None 3) Government approval is required through Investment Authority 4) Unbound except for personnel except where Ugandans are or become available. Entry and temporary stay of foreign Service suppliers subject to compliance with laws, regulations & guidelines in force in Uganda.	1) None 2) None 3) None Unbound except for Technical personnel Stipulated under market access

Tourist Services (CPC 7472)	Guides	(1)None (2)None (3)Unbound (4)In accordance with the Schedule on the Free Movement of Workers. Elimination date: 2015	None None Unbound In accordance with the Schedule on the Free Movement of Workers Elimination date: 2015
Others		(1)None (2)None (3)None (4)In accordance with the Schedule on the Free Movement of Workers Elimination date: 2010	None None None In accordance with the Schedule on the Free Movement of workers Elimination date: 2010

Source: East African Community Secretariat and WTO Secretariat (GATS/SC/89)

Uganda's scheduled commitments in the communication sector in the EAC Common Market and the GATS frameworks

Subsector	EAST AFRICA COMMUNITY		GATS	
	Limitations on market access	Limitations on NT	Limitations on market access	Limitations on NT
Courier Services (CPC 7512)	1) None 2) None 3) None 4) In accordance with the Schedule on the Free Movement of Workers. Elimination date: 2010	1) None 2) None 3) None 4) In accordance with the Schedule on the Free Movement of Workers. Elimination date: 2010		
Telecommunication	1) None	1) None	1) International traffic only carried through networks of the duopoly major licence holders.	1) None

Services*	2) None	2) None	2) None	2) None
(CPC 7521 – 843)	3) Mobile operators entry is allowed only through acquisition of existing local entities owing to a moratorium on new licenses for the next 10 years	3) None	3) Existing monopoly anticipated not to go beyond December 1998. Thereafter, Uganda Telecom Limited (UTL) and Second National Operator (SNO)1 duopoly exclusivity, subject to Uganda Government review after 2003. No limitations on foreign investment except that neither UTL nor its affiliates shall hold ownership in the SNO or its affiliates and neither SNO or its affiliates shall hold ownership in the UTL or its affiliates. Company must be registered in Uganda. Bulk sale of capacity allowed only to other major or minor licence holders.	3) None
	4) In accordance with schedule on the Free Movement of Workers	(4) In accordance with the Schedule on the Free Movement of Workers.	4) Unbound except for technical personnel except where Ugandans are or become available. Entry and temporary stay of foreign service suppliers subject to compliance with laws, regulations and guidelines in force in Uganda.	4) Unbound except for technical personnel stipulated under market access.
	Elimination date: 2010	Elimination date: 2010		
Audio Visual	1) None	1) None		
Services	2) None	2) None		
CPC 9611 –9613 and 7524)	3) None 4) In accordance with the Schedule on the Free Movement of Workers	3) None 4) In accord with the Schedule on the Free Movement of Workers		
	Elimination date: 2010	Elimination date: 2010		
Private voice & data for closed user groups (group of people with stable common and long-term economic interest)			None, except where provider is a commercial minor licence operator, the first cross-border access alternative should be through the duopoly major licence holder.	None
			None	None
			Resale of excess capacity not allowed. Company must be registered in Uganda. Unbound except for technical personnel except where Ugandans are or become available. Entry	None Unbound except for technical personnel

	and temporary stay of foreign service suppliers subject to compliance with laws, regulations and guidelines in force in Uganda.	stipulated under market access.
Mobile cellular voice and data	1) Roaming is allowed but cross-border access permitted only via network of duopoly major licence operator.	None
	None	None
	3) One operator existing. Up to 2003 a maximum of (two) 2 more operators to have cellular mobile licences as a service within major licence. Company must be registered in Uganda	None
	4) Unbound except for technical personnel except where Ugandans are or become available. Entry and temporary stay of foreign service suppliers subject to compliance with laws, regulations and guidelines in force in Uganda.	4) Unbound except for technical personnel stipulated under market access.
Data services TCP/IP (Internet)	1) None	1) None
	2) None	2) None
	3) Company must be registered in Uganda	3) None
Paging services	4) Unbound	4) Unbound
	1) Cross border permitted only via major licence operator.	1) None
	2) None	2) None
	3) Company must be registered in Uganda	3) None
	4) Unbound	4) Unbound
Private mobile radio	1) Cross-border supply only via a duopoly major licence operator	1) None
	2) None	2) None
Trunked mobile radio	3) Company must be registered in Uganda	3) None
	4) Unbound except for technical personnel except where Ugandans are or become available. Entry and temporary stay of foreign service suppliers subject to compliance with laws, regulations and	4) Unbound except for technical personnel stipulated under market access.

	guidelines in force in Uganda.	
Global mobile personal communications by satellite operations	1) None apart from arrangements under GMPCS-MoU. 2) None 3) Company must be registered in Uganda 4) Unbound	1) None 2) None 3) None 4) Unbound

* Applies to GAT
Facilities based public-switched telecommunication services on fixed network infrastructure:
(a) Basic voice services except over value-added networks like Internet
(b) Packet-switched data
(c) Circuit-switched data
(d) Telex services
(f) Facsimile services
(g) Private leased circuit services
*Excludes video and audio broadcast services
The interpretation of "Major licence" and "Minor licence" are as by the definitions given by the Uganda Communications Act 1997.2
1"SNO" means the first public operator other than UTL issued with a major licence.
2i.e. Major licence includes a licence for the provision of local, long distance or international telephone services, trunk capacity resale, rural telecommunications, store and forward messaging, cellular or mobile services and; minor licence includes all other licences not being major licences.