Introduction

Philip English and Dominique Njinkeu

“To succeed in the 21st century, Africa has to become a full partner in the global economy.” So began the chapter on trade policy in a previous joint publication of the African Economic Research Consortium (AERC), the World Bank, and three other agencies. All African countries are too small to thrive on their own or even through regional integration alone. Indeed, it is for this reason that trade has always played a major role in their economies. And yet, while previously closed parts of the world open up and already active traders extend their involvement in global commerce, Africa is in retreat. It is losing market share in most of its traditional exports while failing to diversify into new product lines and services. While a few exceptions to this rule can be found, the overall picture is discouraging. If this trend is to be reversed, it will require action on at least four broad fronts:

• A development agenda in the World Trade Organisation (WTO) which focuses squarely on the needs and priorities of developing countries;

• Policy changes in developed countries to provide improved market access (preferably but not necessarily within the WTO framework), to facilitate adjustment in domestic sectors exposed to import competition, and development assistance to build African supply capacity;

• Multilateral cooperation beyond the WTO to expand trade through development assistance, as well as to deal with environmental protection and labour rights; and

• Policy reforms and concerted public support in African countries to provide a sound climate for private investment and stimulate export activities.

Past work by the AERC, the World Bank, and others concluded that the most important dimension of the problem is often the last one: the WTO has become increasingly important as a mechanism to obtain improved market access, to lock-in domestic reforms, and to establish the rules of the game. After generally neglecting its predecessor, the GATT, African countries began to engage in this institution during the Uruguay Round only to discover that the agenda had become very complex and was steadily expanding over time. Some commitments were made and a few concessions were obtained. However, in retrospect, Africa was primarily learning the ropes, rather than using them to promote its development objectives. With negotiations on the built-in agenda of agriculture and services already under way and the prospect of a new round, African governments and regional institutions are working to ensure that they are better prepared this time. But the challenge remains huge. Little attention has been given to analysis of different options since the end of the Uruguay Round, representation in Geneva is weak or non-existent, and links between these representatives and analysts in the capitals are poor. For some, the agenda is so daunting that they question the wisdom of embarking on a new round at this point. However, since some negotiations are already under way and a new round could be an important opportunity to pursue further African priorities, it behooves African analysts and policymakers to deepen their understanding of the issues.

Fortunately, two networks of researchers have been active in Africa over the last five years or more, exploring the implications of the Uruguay Round, assessing domestic trade policies, and reflecting on the role of the WTO in Africa. One is AERC, which initiated a collaborative project in 1997 entitled “Africa and the World Trading System,” followed in 2000 by a new project, “African Imperatives in a New World Trade Order.” The second was the Coordinated African Program of Assistance on Services (CAPAS), begun in 1991 and designed to build capacity in the new area of trade in services. In the last few years, the World Bank joined various other donors to support both of these networks with expertise and resources.

As a result, a body of African knowledge is gradually emerging which is directly relevant to its priorities in WTO negotiations and is generated by African trade specialists. While the work continues, it is
important to disseminate preliminary findings in a timely fashion in order to meet the needs of African trade negotiators and their advisors. Consequently, it was decided that a workshop should be held in Geneva on March 9, 2000 for African representatives to the WTO, to present some of the country studies along with some thematic overviews. In addition to disseminating available knowledge, the workshop served to build bridges between African WTO negotiators and researchers. The workshop was a significant example of collaboration across numerous multilateral institutions as it was co-sponsored by the United Nations Economic Commission for Africa (UNECA), the Organisation for African Unity (OAU), the United Nations Department of Economic and Social Affairs (UNDESA), and the United Nations Conference on Trade and Development (UNCTAD) in addition to AERC and the World Bank.

This volume represents some of the material presented at that workshop. It covers trade in services in some depth, with both country studies and two overview pieces. Other papers are devoted to industrial policy, intellectual property rights, special and differential treatment, and experience with technical assistance for capacity building. Agricultural trade is handled in a separate volume, given its importance and complexity. However, a few of the key agricultural issues are summarised in the first paper in this volume by Oyejide and Njinkeu. This paper also fills in the other main gaps not covered elsewhere—implementation, participation, WTO governance, and investment. Finally, it summarises the key issues related to other topics covered in more detail in this volume, and thereby serves as an appropriate introduction and overview for the entire book.

It is important to emphasise that the papers published here represent work-in-progress. They are based on readily available data but it is clear that, with time, more data can and must be obtained and analysed. The AERC project plans to do just that. Templates or questionnaires have been developed with the World Bank for various service sectors and these are facilitating the collection of comparable data on trade barriers and performance in selected countries, which will then permit cross-country analysis. Similar work is also proceeding between the two institutions on standards and technical regulations. Other topics will also be explored in more depth, both at the country level and in thematic papers, in consultation with the OAU and the UNECA as those bodies identify priority needs for African negotiators.

WTO trade negotiations tend to be protracted efforts, which should allow ample time for follow-up research to inform the process. But that process has already started and African negotiators are being swamped with requests for input and with information from non-African sources. The editors of this volume felt it was time to disseminate the best available information from Africa in the hope that this would help clarify what Africa’s priorities might be and provide some ideas on how to address them.

---

2 Adapted from World Bank (2001), Chapter 6.
3 These projects were supported by a variety of donors.
4 This network was jointly sponsored by UNDESA and UNCTAD, with support from the International Development Research Centre (IDRC) of Canada and the Carnegie Foundation.
5 World Bank financial assistance was possible thanks to trust funds provided by the governments of the United Kingdom (DFID) and the Netherlands.
6 A preliminary paper on this topic is included in the volume on agricultural trade referred to earlier.
African Countries’ Proposals and Objectives in the Post-Seattle Framework of WTO Trade Negotiations

T. Ademola Oyejide and Dominique Njinkeu

The market access focus of the WTO framework and the Uruguay Round Agreements (URAs) does foster greater openness to trade, which in turn tends to promote economic growth. However, this second link cannot be taken for granted in low-income countries because it is highly contingent upon their domestic human and institutional capacity. Efforts to superimpose a development agenda on the WTO framework must address this capacity issue and other supply-side constraints. After a brief review in Section 1 of the key problems with the current state of play, Section 2 summarises the main proposals emanating from African countries on a range of crosscutting issues. In Sections 3 and 4, we focus on the key sectors of agriculture and services, respectively, expanding on current African proposals to explore the full set of priorities.1

Imbalances in the WTO Process and Uruguay Round Agreements

A number of imbalances have worked against the interests of developing countries: (a) the WTO framework and negotiation process; (b) the results of the Uruguay Round; (c) the implementation of the Uruguay Round Agreements (URAs); and (d) the obligations which the URAs impose on developing countries relative to the benefits they confer.

The primary focus of the WTO on market access predisposes it toward negotiations that ignore key elements of the development agenda. This bias is aggravated by the difficulty of ensuring a pro-active and effective engagement with the WTO process, given its huge, complex, and increasingly demanding agenda. There are great disparities in negotiating power and resources among the WTO member countries. Most low-income countries lack both the ability to recognize and argue effectively against proposals that are not in their interests and the capacity to articulate and defend alternative and more acceptable proposals. The WTO negotiating agenda and the way it is structured have tended to reflect the concerns of the high-income countries.

For example, the launch statement which kicked off the UR negotiations in 1986 committed the developed countries to a negotiating process that would be built around the prior acceptance of the special and differential treatment (SDT) of low-income countries embedded in the 1979 Framework Agreement. This declaration was an important factor, which encouraged many developing countries to participate in the UR. Yet the issue of SDT was not itself part of the negotiating agenda of the UR, while several of its key elements were in fact radically transformed in the course of the negotiations through a piece-meal process that did not permit negotiators to fully understand its implications until the damage was done.

The adoption of “Single Undertaking” as the underlying principle of negotiation in the UR worked in the same direction, forcing low-income countries to accept a variety of disciplines in areas that were obviously unlikely to promote their development interests. Adoption of the Single Undertaking rule enabled the high-income countries to multilateralise many Tokyo Round Codes which low-income countries had correctly perceived to be basically unnecessary luxuries given their level of development.

Not surprisingly, the UR results also contained inherent imbalances in terms of the distribution of benefits. Africa, as a region, either suffered a loss or gained very little. In the particular case of the Agreement on Agriculture (AoA), the developing countries were expected to benefit from improved market access and, hence, increased exports to the developed countries. This expectation has generally not been fulfilled because of the way the AoA has been implemented. Dirty tariffication and tariff peaks continue to penalise products of export interest to developing countries, and the administration of the tariff quota system has deprived access to developing countries. Furthermore, many developing countries are experiencing market-access difficulties in the area of processed food products where sanitary and phytosanitary (SPS) measures are increasingly
used. Another example is the Trade-Related Intellectual Property Rights (TRIPs) agreement, which imposes substantial short-run costs on low-income countries.

There is therefore an inherent imbalance between the obligations incurred in the URAs by low-income countries and the benefits they obtained. It is estimated, for instance, that implementing the requirements under the agreements on customs valuation, SPS and TRIPs could cost the typical low-income country as much as US$150 million—a sum equal to a year’s development budget in some cases. An attempt to meet such WTO obligations would amount to institutional crowding-out, the sacrifice of other more developmentally relevant investments in institution building.

The world trading system’s pre-UR efforts to incorporate a development dimension were broadly captured by its SDT provisions. These provisions were meant to enhance the market access opportunities of developing countries and to permit them flexibility in the use of various trade-related measures. The latter policy autonomy, by enhancing their supply-response capacity, would enable them to take advantage of greater market access.

The enhanced market access component of SDT has fallen far short of its advertised potential. Only about 17 percent of OECD imports from low-income countries benefit from preferential market access schemes, schemes which are inherently unilateral and time-bound, and contain restrictions on product and country coverage, rules of origin, and “graduation” clauses which render them unreliable as an instrument for promoting long-term development.

The texts of the URAs essentially redefine the policy-autonomy component in two ways. In some cases, they contain explicit and mandatory “concessions” relating, for instance, to higher de minimis thresholds for developing and least developed countries (e.g., countervailing duties and safeguards), lower reductions in protection and support levels (agriculture), longer transitional periods (e.g., safeguards, TRIMS), and fewer concessions (GATS). In other cases, the SDT provisions granted substantial policy discretion to low-income countries. This policy-autonomy component of the SDT provisions came under sustained attack during the UR. In the end, the application of the Single Undertaking ensured that all members of the WTO were required to adhere to nearly the same set of trading rules. The URAs did contain extraordinary and “best endeavour” types of SDT language that included offers of technical and financial assistance on rules, as well as obligations for developed countries to give “special consideration” to developing countries. However, these proved impossible to enforce. In the end, the pre-UR world trading system was more development-friendly than its post-UR version.

In order to reflect greater balance between market access and development, a comprehensive restructuring of SDT provisions is required to address well-established constraints to supply-response. This restructuring must review current URAs as well as further negotiations in order to ensure consistency and coherence, such that previously agreed general SDT principles are subsequently applied to agreements on specific sectors and rules. This kind of sequencing was absent during the UR process. It is therefore not surprising that SDT provisions vary so widely and inexplicably across the URAs.

African Proposals For Addressing the Imbalances in the WTO Agreements

Through a series of meetings, African countries have developed several proposals for their negotiating objectives, both at the WTO and in the ACP-EU context, which would contribute to the structural transformation of African economies. They address three broad areas:

- It is expected that future negotiations will lead to significant improvement in market access for products of export interest to them.
- Issues of development are expected to be addressed decisively, through agreements, rules, and disciplines that strengthen the supply capacities of African countries by providing flexibility in the use of appropriate trade policy instruments.
- Problems associated with the WTO framework and processes must be addressed through greater transparency, fast-track accession procedures, and more effective implementation of the decisions on the provision of technical assistance.
TRIPS

African countries have several proposals related to the TRIPS Agreement that are aimed at addressing the imbalance in the rights and obligations of the users and holders of intellectual property. First, implementation of the TRIPS Agreement by African countries should be made conditional on the transfer of technology from developed countries along with the provision of the technical and financial assistance offered in Article 67 of the Agreement.

Second, the transitional period specified for implementation should be extended, given the difficulties many African countries continue to experience in modernising their administrative infrastructure and their legal systems, and in strengthening their institutions. The moratorium on the application of the non-violation remedy of the Agreement needs to be maintained indefinitely, until members review the scope and modalities of non-violation on disputes. The duration of the transitional period should be linked to the adequacy of the resources required to meet the challenges posed by the implementation of the TRIPS Agreement. (Similar proposals are made regarding the extension of the transitional periods associated with the implementation of other WTO Agreements on rules and Customs Valuation.)

Third, a number of specific modifications are proposed. The exclusion of the patentability of plants and animals should be extended to include microorganisms; the similar exclusion with respect to “essentially biological process” should be extended to “microbiological process.” The review process should ensure that the conservation and sustainable use of biological diversity, the protection of the rights and knowledge of indigenous and local communities, and the promotion of farmers’ rights are fully taken into account. African and other developing countries should be able to exercise sovereign rights over their biological resources and to safeguard the right of holders of traditional knowledge to share the benefits arising from any related innovation. Geographical indications could be extended to cover products other than wines and spirits so that exclusively African products could benefit from intellectual property protection. Also, African (and other developing) countries should not be prevented from imposing compulsory licensing for essential drugs.

Trade-Related Investment Measures (TRIMS)

With respect to investment, African countries would like to have a set of studies to better understand the obstacles that continue to discourage foreign direct investment (FDI) before engaging in further liberalisation, whether in the context of the TRIMS Agreement or a multilateral agreement on investment. A second request is for an extension of the transition period within which African countries are obliged to phase-out all prohibited TRIMS. A third African request argues in favour of preserving policy space for developing countries. In particular, it calls for exemptions from the disciplines regarding the application of local-content requirements, emphasising the role of performance requirements in building supply and export capacity in developing countries.

Standards

Participation of African countries in international standard setting bodies is extremely limited and ineffective, and provisions in current agreements to ensure greater participation have not been satisfactorily implemented. African proposals with respect to the Agreements on Sanitary and Phytosanitary (SPS) measures and Technical Barriers to Trade (TBT) argue that these issues are closely linked to the problem of supply capacity. They suggest correction of deficiencies in the current agreements and the elaboration of appropriate rules consistent with the capacity of African countries. Technical assistance contained in the two Agreements should be made contractual and binding on the developed countries, and the SDT provisions articulated in Article 10 of the SPS Agreement should also be made fully operational with binding contractual status.

Subsidies

African proposals on the WTO disciplines regarding subsidies and countervailing measures fall into two groups: those that accept the special “concessions” provided for by the so-called Annex VII countries but argue that the list countries so favoured should be extended to include all low medium-income countries as so defined by the World Bank; and proposals aimed at expanding the range of special “concessions.”
Governance

Regarding the general WTO framework and negotiating process, it is suggested that “Green Room” consultations be opened up to more members outside the “big players,” and that these consultations should not take precedence over more open decision-making processes embedded in the WTO framework. In addition, an independent group of technical experts is needed within the WTO Secretariat to carry out investigations on behalf of low-income countries involved in dispute settlement cases.

SDT

African proposals contain significant requests relating to SDT, including the need to insert SDT provisions in all future WTO Agreements and to make all such provisions operational and contractual. The setting of transitional periods and threshold levels appears haphazard and ad hoc; and is not closely linked to or explicable in terms of objective criteria reflecting differences in levels of development or a country’s institutional and human capacity. In the light of post-UR implementation experience, they also appear to have been excessively optimistic. A redefinition of SDT needs multilateral agreement on the measurable development, trade, and other parameters that should be used to establish transitional periods, to classify WTO member countries to determine who should benefit, and to define the graduation process.

Special market access through trade preferences has, historically, been an important component of SDT. Its actual benefits have fallen far short of the potential due to the many limitations of the Generalised System of Preferences (GSP) scheme, including product coverage, rules of origin, and its unilateral nature. Nonetheless, the continued importance of such arrangements should not be underestimated. They could provide an important boost to the exports of low income countries, especially if limitations could be eliminated in the context of the current proposal to grant duty-free, quota-free, and multilaterally-bound access for all exports of the least-developed countries to the developed country markets. If other developing countries could also extend multilaterally bound preferential market access to the least-developed countries at tariff rates of at least 50 percent of their applied levels, this would show the readiness of the multilateral trading system to accommodate the needs of its different categories of members.

Capacity-Building

To ensure an effective integration of African countries in the world trading system, it is crucial that an adequate capacity-building package that addresses each of these dimensions be designed, especially with respect to the techniques of negotiations and diplomacy, analysis of trade policies, law, and institutional aspects of the WTO accords. Technical assistance programs need to be brought under the WTO Secretariat’s regular budget with an established minimum level of resources allocated to them each year. Scale economies could be better exploited by shifting the focus to regional economic cooperation. Capacity building is also required for adequate representation in Geneva and at the country levels, both in terms of support staff and qualified personnel to monitor the various aspects of the WTO mandate.

Priority Issues of Common Interest to African Countries in WTO Negotiations on Agriculture

African proposals regarding the AoA can also be classified into those concerning the implementation of the commitments made by developed countries and those requesting further improvements in the concessions in favour of developing countries. The former covers both market access and greater flexibility in some of the rules and disciplines of the AoA. The existing imbalances in the AoA could be partially corrected if developing countries were permitted greater flexibility in domestic agricultural support commitments, notably with regard to food security and the protection of the livelihood of small farmers.

The agenda of WTO negotiations on agriculture includes a review of the existing AoA as well as emerging new issues associated with further liberalisation. On the review component, perhaps the most important concern is that existing provisions in the AoA have created imbalances by continuing to permit substantial agricultural protection, domestic support, and export subsidies in the developed countries. This calls for changes in several areas, including significant reductions in total aggregate measures of support
(AMS), making AMS reduction commitments product-specific, limiting the applicability of the peace clause (AoA Article 13), and ensuring that export subsidies which displace domestic production are eliminated or, at least, significantly reduced.

AoA implementation experience shows that the Green Box has provided the legitimacy for developed countries to raise rather than lower their overall domestic support levels, in direct violation of the spirit, if not the law, of the Agreement. WTO members need to tighten up the criteria for including any domestic support measure in the Green Box or, perhaps more pointedly, accept that all domestic support measures can be trade-distorting (directly or indirectly) and therefore place all such measures in a “general subsidies box” and count them as part of the total AMS subject to reduction.

Domestic measures meant to enhance agricultural productivity (e.g., agricultural investment and input subsidies), increase rural development, and support subsistence farmers should be treated as “non-actionable.” Since many African countries could not record some of these measures in their schedules of commitments prior to the conclusion of the AoA, they have requested that the consequent restriction on the use of such measures and export subsidies be removed.

To enhance market access for African agricultural exports, the goal should be to eliminate the use of complex tariffs, expand tariff rate quotas, and make their administration more transparent. African countries must seize the opportunity offered by new negotiations to press for a reduction of tariff peaks (notably in staple foods, fruits and vegetables, and processed food products), as well as the elimination of tariff escalation whose existence could frustrate the diversification of African exports.

African countries also face major market-access challenges in terms of raising the SPS/TBT standards of their exports to international standards. Strategically, the points of focus for African countries in the review of the SPS and TBT agreements could be two-fold; (1) to link their support for the strengthening of the agreements to the concretisation and effective operationalisation of the commitments by developed countries to provide financial and technical assistance as contained in the agreements; and (2) to ensure the operationalisation of commitments in order to enhance the participation (in terms of both the number and effectiveness) of African countries in the activities of the international standard-setting bodies.

The development of their agriculture requires that African countries be permitted some flexibility in the use of trade and trade-related policies. A distinction can and should be made between the protection, domestic support, and export subsidies that are used by the developed countries which distort world’s markets, and those that may be used by African countries to promote agricultural production, ensure food security, and diversify agricultural exports. One potential framework is the “Development Box” that had been proposed as an addition to the AoA by several developing countries. A “Development Box” would aim at protecting and enhancing domestic food production capacity, increasing food security, sustaining employment for the rural poor, and assisting small farmers to increase their production capacity and enhance their competitiveness. The measures proposed would include not only those currently available under the SDT and Green Box provisions of AoA but also the use of tariffs and the declaration of particular agricultural products that developing countries would wish to exclude from the disciplines of the AoA provisions on the grounds of non-trade concerns. Within the same context, African countries might wish to consider the use of the special safeguard (SSG) as a permanent instrument for a limited number of sensitive basic foodstuffs.

There are at least two additional institutional mechanisms available to pursue these objectives. Commitments under the Marrakech Ministerial Decision on Measures Concerning Possible Negative Effects of the Reform Program on the Least Developed Countries and the Net Food Importing Developing Countries have been treated largely as “best endeavour” statements, in spite of the clear indication that the problems foreseen by the Ministerial Decision have become quite real and pressing. In reviewing the AoA, African countries should demand that these commitments be effectively implemented, starting with establishment of the Decision as a legally binding and at par with other elements of AoA. Then, appropriate mechanisms need to be created to determine how the affected countries can become eligible for the financial and technical assistance offered by the Decision and how the assistance will be funded.

On the other hand, introducing a development dimension into the general WTO Framework and taking account of the non-trade concerns in the AoA may, perhaps, be more systematically accomplished through the articulation and multilateral negotiation of a more comprehensive set of SDT provisions. Whether elements of these are then reflected in each WTO Agreement around particular sectors or rules and disciplines could then be a matter for discussion.
Priority Issues of Common Interest to African Countries in the WTO Negotiations on Services

Turning to the General Agreement on Trade in Services (GATS), there is a need to focus on the liberalisation of market access in sectors and modes of supply that are of export interest to developing countries. The implementation of GATS suggests that African countries are penalised by undue restrictions imposed on the movement of suppliers of services and by a series of other barriers, including anti-competitive practices in air and sea transportation as well as in professional and business services. While sectoral agreements have been negotiated for sectors such as telecommunications and financial services in which developed countries have a clear comparative advantage, there has been much less progress on the sectors and modes of supply in which African countries may have an advantage. A new round of negotiations should provide an opportunity for African countries to argue in favour of the elimination of various barriers against the movement of natural persons.

Currently, the movement of natural persons, especially from Africa, faces many barriers and barrier-like formalities including visa requirements, quotas, and residence permits. African services providers are also often subjected to economic needs tests (ENTs) and qualification requirements. Typically, the entry of African services providers into many developed countries is conditioned upon the determination that no national is available and qualified to provide such services on the same conditions. Qualification and licensing requirements of professional bodies also serve as an entry barrier against African services providers whose local qualifications are often not recognised. Developed countries could make commitments that eliminate some of these barriers. Alternatively, an ENT Exemption List should be established in favour of low-income countries to cover services sectors and categories of professions for which ENT would not be used. This could be combined with a system of short-term exemptions from visa requirements for services providers or an arrangement that provides automatic visas. Current African proposals call for the removal of ENTs for specific categories of persons, the establishment of clear and transparent criteria for the application of ENTs wherever absolutely necessary, and the binding of current levels of market access granted by developed countries with respect to the temporary movement of service suppliers.

A second priority for African countries is whether or not special SDT provisions need to be built into GATS. As GATS evolves beyond market access to embrace rule-making areas such as safeguards, government procurement, and subsidies, the need to develop specific SDT provisions may become crucial. Two different routes could be taken. One is to have a comprehensive set of SDT provisions that would apply across all WTO Agreements. The other is to design agreement-specific SDT provisions. In the latter case, it would seem reasonable to proceed by adapting provisions that have been designed for similar purposes in the context of GATT 1994 or AoA.

Lastly, African countries must link their liberalisation commitments to their national development policy objectives. In particular, it would make sense for African countries to offer market access concessions in sectors and modes of supply that will enhance the efficiency and competitiveness of their domestic services capacity. Examples might include basic telecommunications, energy supply, and air and maritime transportation where the injection of foreign investment, management, and competition could make significant contributions to services output and efficiency.

---

1 This chapter is based on a paper prepared for the Seminar on the Assistance in the Preparation of African Countries for the WTO Trade Negotiations, co-organised by AERC, UNECA, OAU, The World Bank, UNDESA, and UNCTAD, March 9, 2000, Geneva, Switzerland.
In broad terms, provisions relating to various elements of special and differential treatment (SDT) constitute a set of rights and privileges embedded in the GATT/WTO framework for developing and least-developed country members from which their developed country counterparts are excluded. In effect, these provisions are meant to grant the developing and least-developed countries more favourable access to the markets of the developed countries and to give them substantial policy discretion with respect to their own domestic markets.

In principle, the existence of SDT provisions in the GATT/WTO framework reflects the recognition that the multilateral trading system consists of countries at markedly different levels of development. Because disparities in terms of economic situation and capacities exist among these countries, there are significant differences in the benefits that different countries reap from the global trading system. Hence SDT provisions are aimed at relating these to the obligations and commitments that different categories of member-countries would be expected to undertake.

There appears to be some concern that many developing and least-developed countries may not have derived as much benefit from various rounds of multilateral trade negotiations as expected and that very few of them actually participate effectively in the WTO process. More specifically, a disproportionate increase in exports generated by these trade negotiations have accrued to the developed countries partly because the negotiations have typically reduced tariffs on products of export interest to the developed countries more sharply than on those of interest to the developing and least-developed countries. Yet, these countries have typically been handicapped in negotiating reductions of the high tariffs facing their exports because they are often not “principal suppliers.” Furthermore, they may have little to offer in multilateral trade negotiation since their “essential” imports of capital and intermediate goods already carry zero or minimal tariffs while their heavy reliance on trade taxes as sources of fiscal revenue often constrain the extent to which they can reduce these tariffs as “concessions” in the negotiating process. Finally, their capacity to participate effectively in the WTO process is constrained by their limited leverage, which arises from a series of factors, including the smallness of their economies, limited number of their export commodities, greater vulnerability to terms of trade shocks, endemic nature of their balance of payments problems, and limited human and institutional capacity.

Broadly reflecting these concerns, SDT provisions are designed to accomplish two objectives: one is to enhance market access conditions facing the beneficiary countries while the other is to permit them derogation from certain multilateral trade disciplines and thus enable them to exercise some flexibility in the use of various trade and trade-related measures. In operational terms, enhanced market access has been implemented through trade preferences offered by the developed countries on an individual basis to specific developing and least-developed countries. The right of the developing and least-developed countries to regulate access to their own markets is operationalised through the maintenance of trade barriers and substantial exemption from several GATT/WTO disciplines, including permission to use quantitative import restrictions for both infant industry protection and balance-of-payments, to establish preferential regional trading arrangements among themselves, and to benefit from tariff reductions achieved in the process of multilateral trade negotiations, in accordance with the most-favoured nation (MFN) principle, without reciprocity. These two sets of SDT provisions are obviously inter-related and complementary. The derogation from certain rules ensures that beneficiary countries are not deprived of the essential tools for strengthening their export supply capacity without which they may not be able to take full advantage of the offer of preferential access to the developed-country markets.

Pre-UR Special and Differential Treatment

Full development of traditional SDT strategy occurred during the period between the mid-1960s and the mid-1980s. In particular, in 1968 during UNCTAD II, the principle and objectives of a generalised and non-reciprocal system of trade preferences for developing countries received approval. Eventually, by its decision
of 25 June 1971, GATT provided legal backing for the UNCTAD agreement. In effect, GATT approved a waiver of the provisions of its Article I for a period of 10 years, thus enabling its developed-country members to offer trade preferences to developing countries without offending the MFN principle.

It can be claimed that SDT provisions achieved their peak during the Tokyo Round. The 1979 Framework Agreement on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, also known as Enabling Clause, offers a fairly comprehensive statement on the core SDT provisions. In particular, it provided permanent legal cover for the GSPs, identified the least-developed countries as a separate category of GATT members deserving of more favourable treatment than other developing countries, and codified the “graduation” principle by which developing countries would be expected to take on more and more of the obligations of GATT membership as their economies grew stronger. While specifying the SDT provisions applicable under the Tokyo Round Codes, the Framework Agreement identified three special SDT modalities. First is the offer of technical assistance to developing countries to help them comply with the new rules. Second, it granted the right to weaker disciplines for developing countries in certain respects. Third, it granted exemptions from some of the new obligations on the grounds that the developing countries concerned faced limitations of administrative and implementation capacity.

Up to the UR multilateral trade negotiations, the key SDT provisions, which granted special trade policy discretion to the developing and least-developed countries, were codified in GATT Article XVIII. Part A of this Article permitted developing countries to modify previously negotiated tariff bindings in order to assist the establishment of a particular industry. Part B allowed the use of quantitative import restrictions by the developing countries as an instrument for dealing with balance-of-payments problems; while Part C permitted developing countries to use quantitative import restrictions for infant industry protection. Of these three, parts A and C were subject to compensation or retaliation. Hence, part B was much more widely invoked than parts A and C. Finally, GATT Article XXVIII bis (3) permitted developing countries not to offer full reciprocity for negotiating concessions made by developed countries, in recognition of the need of developing countries to use import duties for general economic development and fiscal purposes.

Enhanced market access through the GSPs constitutes one major component of SDT that was expected to produce concrete results. But the benefits have been limited by their typically narrow product coverage and restrictive rules of origin as well as by the application of safeguard measures in some preference-granting countries. Furthermore, the GSPs are not multilateral agreements. Hence, preference-granting countries have exercised the right to exclude from or graduate specific developing countries out of GSP benefits. In the early 1980s, only 26 percent of dutiable imports of the OECD countries from GSP beneficiaries actually enjoyed preferential treatment. During the first decade of the scheme, less than 11 percent of eligible imports actually received GSP treatment. A decade later, only 27 percent of all dutiable imports were granted preferential access. The total value of preferential imports other OECD GSPs increased at an average annual growth rate of 12.7 percent (from US$10.4 billion to US$79.0 billion) between 1976 and 1993.

The benefits derived by developing countries from the GSPs have thus been quite small (relative to the total exports of developing countries); they have also been heavily concentrated in a few beneficiary countries. Up to the mid-1980s, three countries (Hong Kong, South Korea, and Taiwan) accounted for about 45 percent of total GSP gains. This concentrated nature of GSP benefits remained unchanged through the early 1990s as between 6 and 12 of the largest beneficiaries claimed 71 to 80 percent of the total.

Both of the key components of SDT provisions have been criticised in the literature. It has been argued that the component which grants greater flexibility to developing countries in their use of trade policy instruments is counter-productive because the “market-distorting” measures impose a self-inflicted cost on their own economies while non-reciprocity may preclude the use by them of the GATT/WTO framework as an “agency of restraint.” It is argued that the GSP component does not provide a stable and reliable basis for investment while, at the same time, it creates production and trade inefficiencies in the beneficiary countries. These criticisms foreshadowed developments regarding SDT especially during the UR negotiations.

Post-UR Special and Differential Treatment

The launch statement that flagged off the UR in September 1986 contained an explicit understanding that developing countries would be accorded SDT in the negotiations in accordance with the terms of the 1979 Framework Agreements. But the adoption of “Single Undertaking” as the guiding principle for the Round
ensured that the UR Agreements would radically change the form and content of most of the key elements of the second dimension of SDT provisions, especially as they apply to developing countries. In particular, these Agreements had the effect of reducing the scope of many of the existing SDT provisions, while in other areas, the surviving SDT provisions were reformulated essentially in the form of longer time periods within which developing countries should implement the new agreements. In other words, the intent of the UR agreements is that developing countries would be expected, eventually, to meet virtually the same set of standards as the developed countries on a broad range of market access issues.

Thus, many post-UR SDT provisions are expressed in terms of transitional periods and differences in threshold levels as the UR agreements specify how soon and to what extent the developed and developing countries should meet their obligations. In addition, some of the agreements add non-mandatory offers of technical assistance to help developing countries in meeting their obligations. The implied eventual convergence in standard of behaviour of the developed and developing countries applies, in particular, in such areas as the use of quantitative trade restrictions, offer of special assistance to producers, tariff binding, and reciprocity.

For example, the use by developing countries of quantitative restrictions for dealing with balance-of-payments problems has been constrained by the imposition of more stringent rules and procedures. Publicly announced time-schedules for removing existing quantitative restrictions are required, in addition to which there is an explicit preference for “price-based measures” for curtailing imports. Where its use is justified, quantitative import restriction must be limited in duration and be applied on a non-discriminatory basis. Similarly, the right of developing countries to use export subsidies has been sharply curtailed, except for those with per capita income below US$1000 that are required to eliminate export subsidies within eight years (i.e. by 2003).

Some of the UR agreements appear to preserve some of the pre-UR SDT provisions. For instance, the TBT agreement includes a statement to the effect that developing countries are not required to use international standards which are not appropriate for their needs or which may hinder the preservation of indigenous technology. Similarly, the provisions on safeguards exempt a developing country’s exports from countervailing measures as long as its share of total imports of the product is 4 percent or less. For the least-developed countries, most SDT provisions survived the changes introduced in the UR. Perhaps the single most important SDT provision to survive the UR without modification is the GSP. But the UR did not do anything to eliminate or even reduce many of the restrictions (including the unilateral nature) that have traditionally curtailed the benefits derivable from the scheme.

Therefore, it may be concluded that, in general, post-UR SDT for developing countries reduces essentially to extended transition periods over which the same levels and scope of obligations as those of developed countries would be assumed by developing countries. But the setting of transitional periods and threshold levels appear haphazard and ad hoc, and are not closely linked to or explicable in terms of objective criteria reflecting differences in levels of development or a country’s institutional and human capacity. In the light of post-UR implementation experience, the transitional periods and threshold levels appear to have been excessively optimistic in many cases.

Redefining SDT

The deficiencies associated with post-UR SDT provisions suggest the need for a careful rethinking of the concept, its justification, form, and content. The absence of this during the UR probably led to the patchwork nature of the post-UK SDT provisions. For example, the adoption and wholesale use of “transitional period” appear not to have been carefully thought through. The transition period is probably meant to reflect the cost of a change in trade policy rule on an economy. But this is typically associated with at least three different types of costs: cost of adjustment, implementation cost, and cost of compliance. Some policy changes (e.g., tariff rate reduction) may be associated with minimal implementation and compliance costs, although the adjustment cost could be high if it is a large reduction that is implemented quickly. A long transition (implementation) period could be a way of reducing (or, perhaps, spreading out) the adjustment cost. By comparison, a policy change which mandates increased protection of intellectual property rights could be associated with high costs of implementation, compliance, and adjustment, to the extent that it involves human and institutional capacity-building for implementation and compliance, in addition to the cost of adjustment. In such a case, the use of transitional period may, by itself, be neither fully adequate nor
appropriate for taking account of the full costs associated with the policy or rule change. It is obvious that the limited duration of the transitional periods used to reflect SDT “concessions” in many UR agreements renders them both inadequate and inappropriate as a basis for capacity-building for enhanced production and trade in the low-income countries.

Redefining of SDT also needs multilateral agreement regarding the classification of WTO member countries and the measurable development, trade, and other parameters that should be used in this categorisation. Currently, the WTO appears to recognise (implicitly at least) three categories of countries in its membership, i.e. developed, developing, and least-developed. The WTO indirectly defines the least-developed countries by adopting the United Nation’s List. This list is defective for at least two reasons. It is income-based and hence does not necessarily reflect trade competitiveness with which the WTO is (or should be) concerned. It also excludes several low-income countries. This may be why the UR agreement on subsidies expands the UN list to include other countries with per capita income of up to US$1000. The WTO has no specific definition for “developing countries.” In practice, it falls back on an implicit self-designation arrangement that permits countries to so describe themselves.

An explicit categorisation of WTO member countries based on a multilaterally agreed set of measurable criteria could also address another question: which countries should be graduated out of which SDT provisions and when? The UR agreement on subsidies offers an example. By categorising beneficiaries in terms of per capita income, it could express graduation threshold in terms of measurable economic indicators (i.e. exceeding a specified per capita income over three consecutive years or achieving a specified export share) rather than in terms of a transitional period. Thus, a solution to the problems associated with country categorisation and graduation could be the adoption and generalisation of the principle used in the UR agreement on subsidies. Alternatively, the WTO may consider adopting the World Bank’s classification of countries into low-income, middle-income, and high-income countries. This has at least two advantages: it is determined in a transparent way and it enjoys wide acceptability. This income-based indicator could be supplemented by a measure of trade competitiveness (such as manufactured products as a percentage of total exports) to distinguish between least developed countries (less than 20 percent), developing countries (20 - 40 percent), and developed countries (over 40 percent).

Furthermore, a redefining of SDT requires the identification and negotiation of the multilateral rules for which full or partial derogation should be granted to the least-developed and developing country categories. The least-developed countries should probably be granted full derogation, as is essentially the case currently, except with respect to some obligations (such as tariff binding and negotiated and phased tariff reduction) that would commit them to a regime of rational and sound trade policy conducive to their own economic growth and development.

Finally, special market access through trade preferences has, historically, been an important component of SDT. Its actual benefits have fallen far short of the potential due to the many limitations of the GSP scheme. Negotiated MFN tariff reductions have also reduced preferential trade margins. In spite of these, the continued importance of special market access arrangements should not be underestimated. They could provide an important boost to the exports of low-income countries, especially if current limitations regarding product coverage, rules of origin, and the unilateral nature of the schemes could be eliminated in the context of the proposal to grant duty-free, quota-free, and multilaterally-bound access for all exports of the least-developed countries to the developed-country markets. This could be made more fully multilateral if the developing countries could also extend multilaterally-bound preferential market access to the least-developed countries at least 50 percent of their applied tariff rates. The “burden” of this special market access scheme on the developed and developing countries is likely to be small, given the rather low share of the total export market accounted for by the least-developed countries. The sharing of this “burden” by the developing countries would be an important way not only to demonstrate “South solidarity” but also to show the readiness of the multilateral trading system to accommodate the needs of its different categories of members.

The various SDT provisions that evolved in the GATT/WTO framework were established in response to the perceived special problems of the developing and least-developed countries. Their continued relevance must be shaped by a process of redefining that pays attention to the changing nature and significance of these special features and problems.
1 See Hudec (1987).
2 See UNCTAD (1985).
3 See Wolf (1987).
4 See UNCTAD (1995).
Developing Countries in the New Round of GATS Negotiations: 
Towards a Pro-Active Role

Aaditya Mattoo

Developing countries need to ensure that multilateral rules and commitments on trade in services contribute to economically rational policy-making at the national and international levels. Their reluctant participation in past negotiations has not been conducive to the achievement of this goal. The next round of services negotiations requires a change in negotiating strategies. Rather than resisting the liberalisation of domestic markets and seeking a dilution of multilateral rules, they need to push aggressively for the liberalisation of both domestic and foreign services markets and to promote the development of improved rules. If developed countries rise to the challenge of eliminating the barriers they maintain to exports from developing countries, we may well witness a virtuous cycle of mutually beneficial liberalisation.

A number of basic themes emerge in this chapter and the related research on services liberalisation:

- There are significant potential gains both from liberalisation within developing countries, especially in key infrastructure services, and from the elimination of barriers to their exports. These gains may however not be realised if reform programmes are not properly designed.
- Successful domestic liberalisation requires greater emphasis on introducing competition than changing ownership; efficient regulation to remedy market failure and pursue legitimate social goals; and credibility of policy reform programs;
- Effective access to foreign markets requires the elimination of explicit restrictions as well as disciplines on implicit regulatory barriers.

A central question in preparing for the next round of services negotiations is how the GATS can help achieve these objectives.

This chapter discusses why liberalisation of trade in services should lead to improved economic performance; argues that certain policy choices developing countries made in key services sectors, often under negotiating pressure, were not socially desirable, discusses the substantial gains that could arise from the elimination of the barriers to developing country service exports, and demonstrates how appropriately designed GATS rules on domestic regulations can help both to promote reform at the national level and meaningful market access at the international level. Table 1 provides a summary of these issues, their current status, and what seem to be the desirable outcomes.

The Benefits of Liberalising Trade in Services

Restrictions on trade in services, as on trade in goods, reduce the level of real gross domestic product (GDP), which is equivalent to a loss in welfare. In the case of services, there is an additional twist in that many services are inputs into production—such as telecommunications, transport, and financial services. Inefficient production of such services acts as a tax on the production of goods. Thus, trade liberalisation in the absence of service liberalisation could well result in negative effective protection for goods, highlighting the need for the latter to keep pace with the ongoing efforts around the world to reduce trade protection in goods. There are also important links between services sectors. For instance, tourism in many countries suffers because of the high cost of air transport services, typically a highly protected sector.
Services liberalisation entails, in most instances, the movement of factors of production. A country that liberalises its services sector is likely to attract more capital—and crucially human capital and technology—through increased FDI. The impact of this on long run growth is likely to be positive.

Some of the limited evidence available tends to support the view that liberalisation is beneficial. For instance, a country like Ghana which introduced competition in telecommunications (Table 2), has witnessed a much more rapid expansion in the number of main lines than countries like Ethiopia and Tanzania which did not (Chart 1). However, there is also evidence that puts the gains from liberalisation into question. For instance, certain countries that have open markets, like Kenya and Malawi (Table 3), have witnessed a dramatic increase in interest rate spreads in recent years (Table 4). It has been argued that this does not represent a failure of liberalisation per se, but is a consequence of other factors, such as incorrect sequencing (e.g., liberalisation of interest rates before fiscal deficits were brought under control, weakness of institutions), especially those responsible for prudential regulation and supervision, or increased market risks (or improved risk assessment).

The ambiguous evidence suggests that in services, attaining efficiency is not just a matter of mechanically eliminating trade barriers. A reform programme has at least three important dimensions: the introduction of competition; allowing a change of ownership (from public to private, or national to foreign hands); and instituting an appropriate domestic regulatory framework. Moreover, the sequence in which each of these changes is introduced is of critical importance.

Choosing the Pattern of Liberalisation

This section examines two issues: the interplay between competition and ownership and lending credibility to gradual liberalisation programmes.

Entry and Ownership

A basic conclusion from the literature on privatisation is that larger welfare gains arise from an increase in competition than from simply a change in ownership from public to private hands. In the GATS context, countries have often conceded increased “market access” under pressure from trading partners in the form of increased foreign ownership of existing domestic firms, rather than by allowing new entry. Considerable negotiating energy was devoted to relaxing these limitations and to maintaining existing foreign ownership, notably in the financial services negotiations, where the so-called “grandfather provisions” guaranteed ownership and branching rights of incumbent foreign firms while far more limited rights were assured for potential entrants, potentially placing them at a competitive disadvantage.

Foreign investment can bring benefits even in situations where it does not lead to enhanced competition. However, if FDI comes simply because the returns to investment are artificially raised by restrictions on competition, the net returns to the host country may be negative. This risk can be minimised by profit taxation or by holding competitive auctions of licenses or equity, but the static and dynamic inefficiencies from lack of competition would still exist.

Restrictions generally aim to protect existing suppliers (not necessarily national) from immediate competition for infant industry-type reasons, to facilitate “orderly exit” or simply because of political economy pressures. Monopolistic or oligopolistic rents may also be seen as a means to allow firms to fulfil universal service obligations. In some cases a form of “investment pessimism” exists, leading to the belief that promises of oligopoly rents are necessary to attract new investment. However, it is not clear why the market structure needs to be determined by policy, unless there are some initial investments the benefits of which may be appropriated by rivals. Finally, governments may seek to raise revenue (or rents for politicians/bureaucrats) by auctioning monopoly or oligopoly rights. This amounts to indirect appropriation of consumers’ surplus.

Entry restrictions are becoming harder to justify in the face of growing evidence of the benefits of competition. Some of the evidence on the telecommunications sector in Africa has been presented above. In Latin America, countries that granted monopoly privileges of six to ten years to privatised state enterprises saw connections grow only half as fast as in Chile, where the government retained the right to issue
competing licenses at any time. A significant positive relationship has been found in the telecommunications sector between performance (measured by price and quality indicators) and the number of firms and the existence of an independent regulator.

**Pre-Commitment to Future Liberalisation**

One reason for the failure of infant industry policies in the past, and the innumerable examples of perpetual infancy, was the inability of a government to commit itself credibly to liberalise at some future date. The GATS offers a valuable mechanism to overcome the credibility difficulty. Governments can make binding commitments to provide market access and national treatment at a future date. Failure to honour these commitments would create an obligation to compensate those who are deprived of benefits, making the commitment more credible than a mere announcement of liberalising intent in the national context. A precommitment to liberalise can also instil a sense of urgency in domestic reform and in efforts to develop the necessary regulatory and supervision mechanisms.

Several governments, including some in Africa (see Table 5), have taken advantage of the GATS to strike a balance between their reluctance to unleash competition immediately on protected national suppliers and their desire not to be held hostage in perpetuity either to the weakness of domestic industry or to pressure from vested interests. The most striking examples are in basic telecommunications, where a number of developing countries have bound themselves to introduce competition at precise future dates. The use of the GATS as a mechanism for lending credibility to liberalisation programmes has been disappointing in other sectors.

**Services Exports of Developing Countries**

There are likely to be significant gains worldwide if restrictions on services exports from developing countries are eliminated. With greater liberalisation, particularly in mode 4—the movement of natural persons—many more developing countries could “export” at least the significant labour component of services such as construction, distribution, environmental, and transport.

One of the most striking recent examples of a developing country service export success story is the Indian software industry, which has emerged as a significant supplier to developed country markets. Indian software exports grew from US$225 million in 1992-93 to US$1.75 billion in 1997-98 (an annual growth rate of roughly 50 percent). Despite the growing importance of cross-border electronic delivery of software services, the temporary movement of programmers still accounts for 60 percent of Indian exports, i.e. services are delivered on-shore, at the client’s site overseas.

Significant gains can be had from further liberalisation. There are wide differences in the cost of software development and support: the average cost per line of code in Switzerland (the most expensive country) exceeds by more than five times that of India (the cheapest country). By outsourcing programming activities, firms in developed countries can save significantly. With a total market for software services worth about US$58 billion in the United States, US$42 billion in Europe and US$10 billion in Japan, such cost savings could well be substantial. Other gains from trade liberalisation for importing countries include a more competitive market structure for software services, increased choice (as countries develop a special expertise for certain development or support services), and greater diffusion of knowledge.

Health services are another area in which developing countries could become major exporters, either by attracting foreign patients to domestic hospitals and doctors, or by temporarily sending their health personnel abroad. In Cuba, the government’s strategy is to convert Cuba into a world medical power. SERVIMED, a trading company created by the government, prepares health/tourism packages. During 1995/96, 25,000 patients and 1,500 students went to Cuba for treatment and training respectively, and income earned from sales of health services to foreigners was US$25 million. Again, cost savings for patients and health insurers can be significant. The cost of coronary bypass surgery could be as low as Rs 70,000 to 100,000 in India, about 5 percent of the cost in developed countries.
A major barrier to consumption abroad of medical services is the lack of portability of health insurance. For instance, US federal or state government reimbursement of medical expenses is limited to licensed, certified facilities in the United States or in a specific American state. The lack of long-term portability of health coverage for retirees from OECD countries is also one of the major constraints to trade. In the United States, Medicare covers virtually no services delivered abroad.

Many different barriers constrain the movement of natural persons. The many formalities make red tape related to FDI seem trivial by comparison. The most obvious barriers are explicit quotas and/or ENTs, e.g., requirements that employers take timely and significant steps to recruit and retain sufficient national workers in the speciality occupation and that no worker has been laid off for a certain period preceding and following the filing of any work permit or visa application. Qualification and licensing requirements and the regulations of professional bodies are major barriers as well. The entry of foreigners can be impeded by non-recognition of their professional qualifications, burdensome licensing requirements, or by the imposition of discriminatory standards on them. The requirement of registration with, or membership in, professional organisations can also constitute an obstacle for a person wishing to provide services on a temporary basis.

Using the GATS Negotiations to Enhance Market Access for Individual Service Providers

There is no doubt that the Uruguay Round outcome in services was unbalanced. The much-touted trade-off between modes of delivery simply did not take place. Although antipathy to commitments on labour mobility in partner countries was a major contributing factor, unwillingness on the part of developing countries to open up domestic services markets made their demands for labour mobility difficult to sustain. With developing countries opening up their markets, the prospects for serious inter-modal trade-offs are greater now—e.g., liberalisation of labour movement in return for allowing greater commercial presence for foreign service providers. Severe shortages of skilled labour in the US and the powerful constituency of high-technology companies lobbying for relaxation of visa limits also makes this a propitious time to put labour mobility squarely on the negotiating agenda. But, it is in the interest of all countries to separate clearly temporary movement from migration, and to push for liberalisation only with respect to the former.

One option to extract meaningful mode 4 commitments would be to require a country to provide increased “foreign labour content entitlements” to their domestic firms in relation to the country’s increased exports of services. The requirement would be internationally symmetric: all countries would be obliged to create such entitlements, although how much they are used would be determined by sound economic considerations of modal comparative advantage. Entitlements would not be bilateral, but international. This approach is also based on a balance of concessions, an appealing principle in trade negotiations. Exporters of labour services would receive benefits commensurate with efforts to open up their domestic services markets. The scheme would also generate a desirable liberalising momentum. Conventional mercantilist negotiations on trade barriers create a holdback problem: I would rather give less to get more from you. By linking my export possibilities to your actual exports, the proposed scheme induces me to be more open.

Ensuring Barrier-Free Electronic Commerce

WTO Members have decided that electronic delivery of products will continue to be free from customs duties. For the moment, this commitment is temporary and political, but there are proposals to make it durable and legally binding. However, liberating e-commerce from duties is either superfluous or virtually devoid of value. Since the bulk of such commerce concerns services, the relevant regime is that established by the GATS regime on cross-border trade. The GATS allows countries to decide whether to commit to market access (i.e. not to impose quotas) and to national treatment (i.e. not to discriminate in any way against foreign services and suppliers). If a country has already made such a commitment, then any further promise not to impose duties is superfluous because customs duties inherently discriminate against foreign services. If a country has not made such a commitment, then the promise not to impose customs duties is worth little, because a country remains free to impede access through discriminatory internal taxation—which has been carefully excluded from the scope of the decision. Worse, the prohibition of such duties may induce recourse
to quotas, which are ironically still permissible in spite of being economically inferior instruments. Hence, the focus on duty-free treatment is misplaced. The objective should rather be to push trading partners into making deeper and wider commitments under the GATS on cross-border trade regarding market access (which would preclude quantitative restrictions) and national treatment (which would preclude all forms of discriminatory taxation).

Dealing with Domestic Regulations

Developing countries have much to gain from strengthened multilateral disciplines on domestic regulations. The development of such disciplines can play a significant role in promoting and consolidating domestic regulatory reform. The telecommunications experience is a powerful example of this possibility. Such disciplines can also equip developing country exporters to address regulatory barriers to their exports in foreign markets. For instance, unless disciplines are developed to deal with licensing and qualification requirements for professionals, market access commitments on mode 4 will have only notional value. However, there are limits to what can be achieved at the multilateral level, and some of the key regulatory challenges must still be addressed at the national level. This is because multilateral trade rules are designed to ensure market access, and not directly to promote economic efficiency or social welfare.

One of the ironies of the GATS is that among its weakest provisions are those dealing with domestic regulations, which have such an obviously powerful influence on international trade in services. The reason is not difficult to see: it is extremely difficult to develop effective multilateral disciplines in this area without seeming to encroach upon national sovereignty and unduly limiting regulatory freedom. Nevertheless, it is desirable and feasible to develop horizontal disciplines for domestic regulations. The diversity of services sectors and the difficulty in making certain policy-relevant generalisations have tended to favour a sector-specific approach. However, although services sectors differ greatly, the underlying economic and social reasons for regulatory intervention do not.

Such a generic approach is to be preferred to a purely sectoral approach for at least three reasons: it economises on negotiating effort, leads to the creation of disciplines for all services sectors rather than only the politically important ones, and reduces the likelihood of negotiations being captured by sectoral interest groups. It is now widely recognised that the most dramatic progress in the European Union (EU) single-market programme came from willingness to take certain broad cross-sectoral initiatives. In the WTO context, the experience of the accountancy negotiations shows the propensity for single sectoral negotiations on domestic regulations to produce a weak outcome.

The economic case for regulation in all services sectors arises from market failure attributable primarily to three kinds of problems: natural monopoly or oligopoly, asymmetric information, and externalities. Because the relevant GATS provision (Article VIII dealing with monopolies) is limited in scope, in the context of the telecom negotiations, the reference paper with its competition principles was developed. These principles should be generalised to a variety of other network services, including transport (terminals and infrastructure), environmental services (sewage), and energy services (distribution networks), to ensure that any major supplier of essential facilities provides access to all suppliers, national and foreign, at cost-based rates.

Anticompetitive practices that fall outside the jurisdiction of national competition law may be important in sectors like maritime, air transport, and communication services. The current GATS provision in this area (Article IX) provides for only information exchange and consultation. Strengthened multilateral rules are needed to reassure small countries with weak enforcement capacity that the gains from liberalisation will not be appropriated by international cartels. For instance, two obligations could be created. The first would require an end to the exemption from national competition law of collusive agreements that affect other countries. For instance, both the United States and the EU currently exempt maritime conferences from the scope of their competition law. The second obligation would create a right for foreign consumers to challenge anti-competitive practices by shipping lines in the national courts of countries whose citizens own or control these shipping lines. The second obligation is necessary to deal with the possibility of inadequate enforcement
by public agencies and already has a precedent in the WTO rules on intellectual property and government procurement.

In all other cases of market failure, multilateral disciplines do not need to address the problem per se, but rather to ensure that domestic measures to deal with the problem do not serve unduly to restrict trade (also true for measures to achieve social objectives). Such trade-restrictive effects can arise from a variety of technical standards, prudential regulations, and qualification requirements in professional, financial, and other services, as well as from the granting of monopoly rights to complement universal service obligations. This entire class of regulations is best disciplined by complementing the national treatment obligation with a generalisation of the so-called “necessity” test, which leaves governments free to deal with economic and social problems provided that any measures taken are not more trade restrictive than necessary to achieve the relevant objective. In the case of professionals like doctors, a requirement to re-qualify would be judged unnecessary, since the basic problem, inadequate information about whether they possess the required skills, could be remedied by a less burdensome test of competence. This necessity test is already part of the recently established disciplines in the accountancy sector. This is not to say that there is no need for sector-specific disciplines, but we can make a useful beginning by taking a cross-sectoral approach.

The development of multilateral disciplines is not a substitute for strengthening domestic regulatory mechanisms and institutions. At least three areas are important.

Dealing with Monopolies

The telecom Reference Paper illustrates both the strengths and the limitations of the multilateral approach. The primary concern of the paper, as of WTO rules in general, is to ensure effective market access, hence the focus on the terms of interconnection. Wider concerns about consumer interests and how they may be affected by monopolistic behaviour are not addressed. While price determination is ideally left to competitive markets and regulatory price-setting is fraught with difficulties, yet regulatory authorities in developing countries where competition is slow to develop need to equip themselves, legally and technically, with the ability to regulate prices. This is particularly desirable in countries that have locked themselves into exclusive supply contracts. While nothing in the GATS prevents a country from any form of pro-competitive regulation provided it is not discriminatory, the capacity of most developing countries to exercise such regulation is limited and needs to be enhanced.

Dealing with Asymmetric Information

The need for effective regulation of financial services needs no elaboration, and such regulation is clearly necessary to benefit fully from liberalisation. Other areas where the inadequacy of regulatory mechanisms to deal with asymmetric information is a problem have received relatively less attention. For instance, in professional services, low standards and disparities in domestic training and examinations can become a major impediment to obtaining foreign recognition. Thus inadequacies in domestic regulation can legitimise external barriers to trade.

Achieving Universal Service and Non-economic Objectives

Attaining social objectives in an economically efficient manner is a major challenge for national policymakers. The manner in which they pursue this objective can have a profound impact on trade in a variety of areas, ranging from financial, transport, and telecommunications to health and education services. Interestingly, the telecom Reference Paper acknowledges the right of a country to define universal service obligations provided they are administered in a transparent, non-discriminatory, and not excessively burdensome manner. But it does not prescribe the appropriate means to achieve this objective.

Historically, governments frequently relied on public monopolies to pursue (often unsuccessfully) universal services objectives, either through cross-subsidisation across different segments of the market, or through transfers from the government or government-controlled banks. In addition to the inefficiencies
created by monopolistic market structures, the burdens imposed by these obligations on existing national suppliers are even now a major impediment to liberalisation in many countries. For instance, domestic banks saddled with bad debts because of past directed-lending programmes are not well equipped to deal with foreign competition.

Nevertheless, the current handicap of universal service obligations can in principle also be imposed on new entrants. Thus, such obligations were part of the license conditions for new entrants into fixed network telephony and transport in several countries. But as in many other cases, recourse to fiscal instruments has proved more successful than direct regulation. In Chile, government subsidies equivalent to less than 0.5 percent of total telecommunications revenue, allocated through competitive bidding, mobilised 20 times as much private capital to extend telephone services to rural areas.

A third instrument is to fund the consumer rather than the provider. Governments have experimented with various forms of vouchers, from education to energy services. This instrument has at least three advantages: it can be targeted directly at those who need the service and cannot afford it; it avoids the distortions that arise from artificially low pricing of services to ensure access; and it does not discriminate between providers.

1 See World Bank (2000).
2 The movement would have to be temporary to avoid the costs of “brain drain.”
3 Other barriers to movement of natural persons include double taxation, wage-matching requirements (wages paid to foreign workers should be the similar to those paid to nationals in that profession, eliminating the cost advantage for foreigners), and local training requirements (to replace foreign with national labour within a certain time frame).
4 For instance, recent World Bank research has shown that while maritime trade liberalisation would lead to an average reduction in transport prices by 9 percent and cost savings of up to US$850 million, the breakup of private carrier agreements would cause prices to decline further by 25 percent and additional cost savings of up to US$2 billion on goods carried to the US alone.
Chapter 4

Trade-Related Capacity Building for Enhanced African Participation in the Global Economy

David F. Luke

The purpose of this chapter is to revisit issues concerning the question of trade-related capacity building and technical assistance for the enhanced participation of African countries in the international economy. This question has been the focus of ongoing attention from African governments and development partners since the conclusion of the Uruguay Round and given the challenges posed by the broader context of globalisation and liberalisation. The question raises two main issues. The first is institutional capacity building for effective participation in the multilateral trading system. The second is addressing supply side constraints of African countries as trading nations. The first issue arises from identifiable weaknesses on several fronts including capacity for the formulation and management of a dynamic trade policy as well as for meeting the demands of participation in the WTO framework in many African countries, especially in those designated as least developed. The second issue arises from the declining competitiveness of African economies as expressed through a falling share in world trade, down to 2 percent by the end of the 1990s, as compared to 4.2 percent in 1985. The region’s share of world manufactured exports is almost negligible.

Building upon efforts at policy reform and trade liberalisation during the 1980s and 1990s, there has been what may be described as a ‘first’ and a ‘second wave’ response to the need for trade related capacity building in African countries. The WTO, UNCTAD, and the International Trade Centre (ITC), sometimes collectively referred to as the three Geneva trade agencies, have been at the forefront in designing and implementing the required interventions. Indeed, the three Geneva trade agencies have over the years developed a diverse array of trade capacity building tools and expertise within their respective competencies over the years. But bilateral donors and other development agencies such as the UN Development Programme (UNDP), the World Bank, and the International Monetary Fund (IMF) have also been involved. Indeed, inter-agency cooperation on trade capacity building interventions and assistance has proved a major challenge. This is to be expected, given the separate mandates and different interests and approaches of donors and agencies on the one hand, and the range of country initial conditions and needs, questions of ownership, and the setting of priorities on the other.

The ‘first wave’ response can be dated to the second half of the 1990s. It has been focused on three initiatives. The first to be launched, in May 1996 at UNCTAD IX in Midrand, South Africa, was the Joint Integrated Technical Assistance Programme for Selected Least Developed and Other African Countries (JITAP). The second initiative was taken in December that year, at the first WTO Ministerial Conference in Singapore, where the Comprehensive and Integrated WTO Plan of Action for LDCs was adopted. The Plan envisaged closer cooperation among the WTO and other multilateral and bilateral agencies assisting least developed countries (LDCs) in the area of trade. To implement the Plan of Action, the WTO convened a High Level Meeting in October 1997, where the Integrated Framework for Technical-Related Assistance, Including Human and Institutional Capacity Building to Support Least Developed Countries in their Trade and Trade-Related Activities (Integrated Framework or IF for short), was launched.

Alongside these two initiatives emerged a third, encompassing a variety of interventions including UNCTAD’s positive agenda (PA) programme, designed to assist African countries prepare for future WTO negotiations.

JITAP and the IF complement each other. They were not designed as alternatives. JITAP has so far been limited to eight African countries, 5 LDCs and 3 developing countries. The IF aimed only at LDCs is yet to take off fully. The interventions aimed at assisting African countries to prepare for future negotiations have provided much welcome assistance in preparation for WTO negotiations, including on the built-in agenda that has been in progress since early 2000. However, it must be emphasised that fundamental issues related to overcoming supply side constraints, building competitiveness, diversification of exports, investment in enterprise, and infrastructure development remain to be adequately addressed.
Dating from some point around mid-2000 and following reviews of the experience of JITAP and the IF, the ‘second wave’ response apparently has broader objectives and a much wider scope. It is concerned with ‘mainstreaming trade’ as an integral part in the overall development and poverty reduction effort. That is to say, the second wave response is more explicit in its recognition of trade as a major engine of enterprise development, diversification, economic growth, and poverty reduction. Consequently, it is focused on assisting the countries concerned to identify and prioritise structural supply-side constraints including inadequate human, institutional and productive capacity, and trade-related infrastructure. It is significant that the ‘second wave’ response has emerged in the context of a renewed effort of major international financial institutions such as the World Bank and IMF and the development community as a whole to pursue a more inclusive policy agenda that is aimed at addressing entrenched poverty and the marginalisation of the poorest countries in the new global economy.

The ‘second’ wave responses hold the key to a sustainable integration of African countries in the global economy and more effective participation at the WTO. This will require complex interventions, demanding a coherent approach from African policy-makers, development partners, and various other actors. To the extent that regional markets and regional integration constitute a springboard for enhancing integration into the global economy, it will be argued further that there is need to for specific provisions in these interventions to support the development of intra-African trade.

‘First Wave’ Response: JITAP, the IF, and Assistance in Preparation for Future Negotiations

Thirty African countries signed the Final Act Embodying the Results of the Uruguay Round that inter alia established the WTO at Marrakech, Morocco, in April 1994. This was not withstanding the fact that only a handful of African countries had been active participants in the Uruguay Round negotiations and in the multilateral trading framework established by the General Agreement on Tariffs and Trade (GATT). By 1998, ten more Africa countries had joined the WTO and five others were at various stages of accession. The forty African members of the WTO constitute nearly a third of the entire membership. This surge in the interest of African countries in the multilateral trading system reflected the fact that several of them had undertaken significant liberalisation of their national economies as part of economic reform programmes under adjustment programmes supervised by the Bretton Woods institutions. It further reflected a basic perception that with the increasing globalisation of the world economy, the disciplines of the WTO Agreements provide a framework for stable and predictable market access and for safeguarding national trading and related interests.

However, it was clear from the start that participation in both the WTO framework and in international trade would require the build-up of the necessary capacity. Shortly after Marrakech, African Ministers of Trade adopted a Framework for Action for the Implementation of the Uruguay Round Agreements by African Countries at a meeting in Tunis in October 1994. The Framework was substantially concerned with identification of capacity building needs for the development and management of trade policy including the implementation of the Uruguay Round Agreements, participation in the WTO framework and the promotion of exports. JITAP, the IF and PA interventions were the responses that emerged during the second half of the 1990s to meet the concerns. The focus of each of these responses is briefly outlined.4

JITAP was established as a collaborative venture between the three Geneva trade agencies in cooperation with interested international donors. As previously noted, the Geneva trio had over the years acquired substantial expertise in providing technical assistance for various aspects of trade capacity building as part of their respective mandates. Indeed, JITAP was conceived as a vehicle for utilising this expertise by adopting a systematic approach and a framework for donor and inter-agency coordination. To enhance the sustainability of JITAP interventions, much emphasis was placed on human resource development and institutional capacity building as well as strengthening export supply capabilities.

Eight countries (Benin, Burkina Faso, Côte d'Ivoire, Ghana, Kenya, Tunisia, Uganda, and Tanzania) were initially selected for JITAP projects. The objectives of JITAP were put into effect through a series of
interconnected activities aimed at building national capacity to understand the WTO Agreements and their
development implications for each beneficiary country, including for trade negotiations, adapting the policy
and regulatory framework to the WTO Agreements, and enhancing the country’s capacity to take advantage
of the WTO Agreements through improved export readiness. However, although the JITAP concept was
launched in 1996, it took off only two years later following the establishment of a Common Trust Fund to
finance programme activities and the receipt of pledges to the Fund from 13 donor countries, amounting to
US$8.2 million out of estimated funding needs of US$10.3 million over four years. The Fund is managed by
ITC and supervised by a Steering group of representatives of donors, beneficiaries and Secretariats of ITC,
UNCTAD, and WTO. In 1999, the three agencies implementing JITAP delivered just under US$3 million of
activities.⁵

The Integrated Framework

The JITAP concept of inter-agency coordination in the delivery of trade capacity building interventions also
underlies the IF. The Geneva trio along with the World Bank, IMF, and UNDP constitute the six core
organisations collaborating in the delivery of trade capacity building assistance under the IF. The IF is the
product of the expressed desire of WTO member states ‘to foster an integrated approach to assisting least-
developed countries in enhancing their trading opportunities.’⁶ As noted earlier, the IF was established at the
High Level Meeting organised by the WTO in October 1997 to put into effect the Comprehensive and
Integrated WTO Plan of Action for the Least-Developed Countries, which was adopted at the first WTO
Ministerial Conference in Singapore in December 1996.

The main assumption underlying the IF is that each LDC has a different set of ‘initial conditions’ and
therefore a specificity of trade capacity building requirements. Accordingly, it was emphasised right from the
start that the envisaged interventions under the IF must be ‘demand driven’ to ensure relevance and country
‘ownership’ of the capacity building process. Each participating country was therefore required to carry out a
needs assessment for trade-related technical assistance. The six agencies and other collaborating partners were
then expected to respond to the specific needs that were identified.

To this end, the IF adopted a methodology based on a standard questionnaire, designed to assist the
countries carry out the needs assessment exercise with the assistance of any, some, or all of the six agencies.
Following completion of the needs assessment exercise, the six agencies were to cooperate in the preparation
of a provisional programme of trade-related technical assistance that responded to the needs that were
identified. The provisional programme, which was to be known as the integrated response, was to be
discussed and agreed with the LDC concerned. Each of the six agencies would then assume responsibility for
implementation of those aspects of the integrated response that fell within its competence and specialisation.
By mid-1999, 40 of the 48 LDCs had completed the needs assessment exercise.⁷

To facilitate implementation of the integrated response, it was further expected that the exercise would
culminate in the scheduling of a trade sector roundtable meeting, typically in the context of a World Bank
Consultative Group Meeting or UNDP Roundtable Meeting. The purpose of these meetings was to provide
development partners an opportunity to endorse a multi-year programme of trade-related technical assistance
and to pledge to support elements of the programme. By mid-1999, only Uganda had been able to organise
such a meeting although more than 20 countries had expressed an interest to the WTO in organising a donor
meeting.⁸

PA Initiatives

The Singapore Ministerial Conference revealed serious flaws in WTO decision-making processes. Basically,
an inner circle of only 34 of the WTO’s 128 members took responsibility for negotiating an agreed text on the
sensitive issues including textiles and clothing, labour standards, investment, and competition policy that
remained to be finalised for inclusion in the Ministerial Declaration that was to be issued at the end of the
conference.⁹ Few African and LDC representatives were part of this inner circle. In addition, African and
LDC representatives had little input in the negotiations that were concluded during the Conference to
eliminate tariffs on information technology products and on a number of pharmaceutical products. Reflecting the absence of export capacity in these sectors, the WTO’s LDC members and a substantial majority of the African delegations at the conference were effectively marginalised during these negotiations.

The experience of Singapore raised the question as to how developing countries in general could take issues of interest to them forward in future WTO negotiations. It was in response to this question that the PA initiative emerged, principally under the leadership of UNCTAD, acting in concert with other inter-governmental organisations and regional organisations such as UNDP, the South Centre, the Commonwealth Secretariat, and the OAU. The objective of the initiative was to step up research and analysis aimed at assisting the countries concerned to develop a positive agenda for future WTO negotiations, including the built-in agenda negotiations on agriculture and services that were due to be launched at the third WTO Ministerial Conference, subsequently scheduled for Seattle at the end of 1999.

Assessment

The ‘first wave’ response (including the regular trade-related technical assistance activities of the Geneva trio and other bilateral and multilateral agencies outside the framework of JITAP and the IF) during the second half of the 1990s to the demand for trade-related capacity building was designed to respond to a country’s specificity, thereby avoiding ‘one size fit all solutions,’ and to facilitate preparation for future negotiations. It is arguable that this effort has resulted in greater sensitisation in African countries as regards both the requirements for compliance with WTO membership and for participation in rules-based multilateral trade decision-making, including negotiations. However, JITAP and the IF were constrained by serious deficiencies. JITAP was limited to just a handful of countries and like the IF was not able to deliver projects concerned with enhancing competitiveness and overcoming supply side constraints that the beneficiary countries faced including investment in production and infrastructure. The IF actually never really took off, although it was generally acknowledged that the needs assessment exercise had enabled both governments and development partners to carry out a dialogue on trade policy issues and priorities as well as to undertake serious reflection on overcoming the constraints on inter-agency cooperation. Issues related to regional trade policy were mostly ignored. This is quite a curiosity as the mid- to late-1990s was also a period during which important strides were made towards regional integration especially in eastern, southern, and francophone West Africa.

On the other hand, by the end of 1999 when the third WTO Ministerial Conference was held in Seattle, the fruits of the PA initiative were clearly in evidence. During the preparatory process leading up to the Seattle Conference, developing countries submitted well over 100 negotiating proposals, more than half the total.10 African countries in particular exhibited an unprecedented degree of preparedness and greater awareness of the issues at stake.11 For the African countries, this was derived from intensive preparatory events as well as serious efforts in formulating an Africa-specific ‘positive agenda,’ thanks to UNCTAD’s technical cooperation activities in this area. Moreover, the difficulties in implementation experienced by all African members of the WTO had further enhanced awareness of the impact of rules emanating from multilateral trade negotiations on their economies. When the Seattle Conference reverted to Singapore-style inner circle decision-making, African delegations were in the forefront in denouncing this approach. This was one of the factors leading to the break down of consensus and the eventual failure of the Conference.

‘Second Wave’ Response: Mainstreaming Trade

During 2000, mandated reviews of the functioning of both JITAP and the IF were undertaken. These reviews occurred at a time of renewed effort at the World Bank and the IMF—and the development community at large—to address the constraints faced by the poorest countries in a more comprehensive manner while taking key factors such as ownership, sustainability, market failure, and overcoming institutional resistance to donor coordination into account.12 It is therefore not surprising that these were the themes that provided the sub-text for the JITAP and IF reviews, quite apart from the fact that the latter was task-managed by the World Bank.
The overall message from these reviews was the need to ‘mainstream trade’ as an integral part of the overall national development and poverty reduction effort. To this extent, the ‘second wave’ response lays considerable stress on ensuring that trade policy, trade-related technical assistance, and capacity building needs are articulated in a broad development context and not addressed in isolation.

Thus, in the specific case of JITAP, in addition to examining ways of streamlining its management process, the mid-term evaluation carried out during 2000 emphasised the need to strengthen the role of Ministries of Trade as the focal point in the development of trade policy, including extension services to the private sector and engagement with the WTO. Further emphasis was to be placed on building a network of trainers through the involvement of local universities and business schools. It was also envisaged that the remodelled JITAP would be extended to an additional 10 to 15 African countries given the demand for its accelerated and integrated mode of delivery of trade capacity building interventions. While regional integration considerations were mostly ignored under JITAP I, it was proposed that one of the criteria for selecting the additional countries to be included in JITAP II would be their role in regional processes.

For IF eligible countries, the centrepiece of the new arrangements is that trade-related technical assistance and associated programmes and projects are to be made through a country-led process of defining national poverty reduction strategies. This would be ensured principally through such instruments as the national Poverty Reduction Strategy Papers (PRSP) or the United Nations Development Assistance Framework (UNDAF), which were to provide the basis for an agreed programme of assistance with development partners. This mainstreaming effort was to be led and coordinated by the World Bank, according to the principles of its Comprehensive Development Framework with participation and input from other core agencies and other stakeholders. Building on initial needs assessments and subsequent work, this would involve formulating country-specific strategies as part of the mainstreaming process. These activities were expected to feed into the World Bank Consultative Groups (CGs) and UNDP Round Table Meetings (RTs) where countries will present their medium-term policy frameworks and financing needs, including trade-related assistance, for support by the donor community.

Another aspect of the mainstreaming arrangements is the decision to seek donor support for and voluntary contributions to an IF Trust Fund (IFTF). The Trust Fund which would involve some US$20 million over three years would be primarily dedicated to helping LDCs to develop the necessary analytical and policy framework for mainstreaming trade into national development strategies and for developing programmes and projects. It has subsequently been agreed that implementation of IF II will proceed on the basis of a pilot scheme to assist countries that have demonstrated a clear choice and commitment to mainstream a ‘trade integration chapter’ as part of their country development strategies as expressed through PRSPs or UNDAF.

Thus, under the new arrangements, the need for trade-related assistance was to be assessed alongside a country’s other priorities and supported accordingly by the government concerned and the donor community. These arrangements were expected not only to ensure that trade takes its rightful place in policy terms but also to create a viable framework for the resources required to be made available to foster the necessary skills, institutions, and infrastructure for the effective integration of the LDCs into the world economy.

Assessment

It is of course too early to assess the ‘second wave’ response since implementation has hardly begun. However, a few positive elements have emerged from the reviews of JITAP and the IF that could potentially bridge the major gaps that were evident in the first wave response.

As regards JITAP, the effort that is to be made to strengthen the role of Ministries of Trade as the focal point for trade policy is to be welcomed. The experience of several developing countries in East Asia, Latin America, and elsewhere has shown the need for such a corporate framework to manage the trade policy process, to oversee policy issues concerned with multilateral and regional trade agreements (RTAs), including compliance and negotiation, and to facilitate coordination with other institutions concerned with national economic management, with a view to ensuring that supply side constraints are to be adequately addressed.
In this regard, human resources development and training for trade-supporting services are essential. The JITAP II proposal for a stronger involvement of local universities and business schools to complement other activities aimed at strengthening the network of trainers if acted upon will go a long way. There is considerable scope for inter-country cooperation in this area in promoting high quality regional centres of excellence to provide training, advisory, analytical, and research functions. These could be developed from within existing institutions.

JITAP II further proposes to address relevant regional integration elements by including as criteria for the extension of the programme to other countries such factors as the role of a country with respect to regional integration, the potential to benefit from it, and proximity to regional clusters and possibilities for regional synergies and economies of scale at implementation stage.

With respect to IF II, to the extent that the IF was deemed to be an ‘unfunded’ mandate, with varying priorities being given to it by different donors and agencies, situating it at the centre of a beneficiary country’s programme of assistance with development partners, provides a more solid basis for establishing the link between trade and development on the one hand and development strategy and poverty reduction on the other. If, indeed, IF II takes off as expected, the proposed trade chapter of the PRSP would include the identification and prioritisation of trade-related capacity requirements from infrastructure to human resources within a coherent policy framework.

It has been suggested that, ultimately, mainstreaming trade would give greater visibility to the linkages between trade and all other related policy areas, including health, education and general social conditions. This would require governments to reflect on how to use the limited resources they can devote to trade most efficiently. In this regard, it is to be hoped that in the reassessment of the use of resources, such constraints as the understaffing of the WTO Missions of African countries in Geneva and cases of complete non-representation would be resolved in a decisive manner.

By the same token, it would require development partners to re-examine development assistance priorities to ensure that they are sending a coherent message across their different assistance mechanisms and institutions. The World Bank, in particular, as the lead agency in the mainstreaming exercise, faces a major challenge. Its internal processes would require streamlining to ensure that it becomes proactive in engaging national trade policymakers to determine the nature and extent of trade-related technical assistance and capacity building needed by a country.

**Conclusion**

This chapter has revisited the question of trade-related capacity building for enhanced African participation in the international economy. It has suggested that the ‘first wave’ response to this question during the second half of the 1990s has resulted in greater sensitisation in African countries on international trade issues including participation in the WTO. However, JITAP and the IF as the main instruments of capacity building interventions were constrained by serious deficiencies. JITAP was limited to just a few countries and, like the IF, was not able to deliver projects concerned with enhancing competitiveness and overcoming supply side constraints including production and infrastructure. The IF itself never actually took off. Issues related to intra-regional trade policy were mostly ignored.

On the other hand, by the end of 1999 when the third WTO Ministerial Conference was convened in Seattle, there was much evidence that the effort given to technical assistance to prepare African countries for trade negotiations had paid off. In Seattle, African countries exhibited an unprecedented degree of preparedness and greater awareness of the issues at stake. Technical assistance for trade negotiations is an ongoing activity that would require improved coordination among the various partners involved.

Mandated reviews of JITAP and the IF during 2000 have resulted in a ‘second wave’ response concerned with mainstreaming trade as an integral part of the overall development and poverty reduction effort. For JITAP, specifically, the review resulted in a commitment to extend JITAP II to an additional 10 to 15 more countries, given the demand for its accelerated and integrated mode of trade capacity building interventions. It was further proposed that one of the criteria for selecting the additional countries would be their role on regional integration processes. For the IF, the centrepiece of the new arrangements is that trade-
related technical assistance are to be made through the framework of a country’s national PRSP process. This is expected not only to ensure that trade takes its rightful place in policy terms but also to create a viable framework for the resources required to be made available to foster the necessary skills, institutions, and infrastructure for the effective integration of the IF-eligible countries into the world economy. IF II will require complex interventions, demanding a coherent approach from African policy-makers, development partners, and various other actors. In particular, the World Bank being the IF II lead agency, faces a major challenge to ensure that its internal processes are geared to support mainstreaming through the creation in beneficiary countries of an environment that encourages trade as the foundation of sustainable, long-term economic growth.

1 See, for example, OAU (1994) and OECD (1999).
4 It should be noted that the regular trade-related technical cooperation activities of the Geneva agencies and of other bilateral and multilateral donors continued outside the framework of the three initiatives.
5 See, for example, UNCTAD (2000b) and International Trade Centre (2000).
8 See World Trade Organisation (1999a).
9 See Blackhurst (forthcoming).
15 See World Trade Organisation (2000).
CHAPTER 5

Industrialising Africa Using WTO Framework

Dominique Njinkeu and Charles C. Soludo

Perhaps the most enduring challenge facing Africa in the new millennium is not whether but how Sub-Saharan Africa (referred to in this chapter as Africa) can diversify its economies and achieve competitive industrialisation. So far, industry is largely underdeveloped, undercapitalised, and at a pre-industrial stage. In 1999, only five countries (Mauritius, South Africa, Swaziland, Zambia, and Zimbabwe) have a share of manufacturing in total GDP of over 20 percent, while the aggregate figures for the sub-regions are: North Africa 14 percent; West Africa 8.5 percent; Central Africa 10.7 percent; East Africa 8.1 percent; and Southern Africa 21.7 percent. Africa’s share in global manufacturing value added shrunk from 0.6 percent in 1970 to 0.3 percent in 1995. Exports of manufactures account for barely 18 percent of total exports compared to about 54 percent for other developing regions, and export of machinery account for a mere 2 percent of total exports. Africa remains the only region in the world that has intensified its concentration on primary commodity production and exports in the last two decades. Europe provides the dominant market for exports (82 percent), despite some increases in intra-regional trade. Thus, even though the diversity of the region is recognised and few exceptions noted, it is safe to generalise that industrialisation and diversification into labour-intensive manufactures is yet to happen in much of Africa.

However, Africa has no choice but to diversify and industrialise. This is more so given that the region has the fastest growth rate of urbanisation in the world (requiring different kinds of jobs), as well as the volatile and declining terms of trade for primary commodities. Thus, a more productive debate is not whether Africa has static comparative advantages in industrialisation but how to achieve dynamic comparative and competitive advantages especially under the new rules of the game.

So far, the reforms undertaken under the structural adjustment programs (SAPs) and trade liberalisation schemes have had modest results. In some countries, the annual growth rate of non-traditional exports (NTEs) has been phenomenal in recent years (1994-98)—Ghana 42 percent; Uganda 72 percent; Mozambique 50 percent; Zambia 17 percent; Côte d'Ivoire 16 percent; and Senegal 9 percent. Much of these performances are from a very low base, but they nevertheless go to demonstrate the possibilities that exist. The challenge is to deepen the reforms and to sustain the performance.

The potential catch-up effects of good policies and structural reforms are great. The simulation exercise by Elbadawi and Soludo, based solely on ‘domestic’ policy and geography variables, indicates that the median African country could increase its manufactures and processed exports from a few hundred million dollars to over US$50 billion if it were to benchmark its exchange rate policies, transaction costs, investment, educational level, and coastal population density to those of the East Asian countries. Such results hold out both a promise and a daunting challenge, daunting in the sense that it points to the magnitude of the domestic reform agenda that African countries need to undertake if they wish to realise the potentials. No doubt, many of the reforms are within the reach of the median African country, but most of them also require huge human, institutional, and financial resources, which are presently beyond the median country.

Even if the median African country can benchmark its policies and geography to the East Asian level, a major complication is that under the current WTO framework, much of the flexibility in the selection of policy instruments that started and sustained industrialisation in other parts of the world are no longer permissible. More specifically, Africa faces a different kind of global environment, which might frustrate the domestic reforms. Most countries that are currently industrialised used protectionist policies. The British industrialisation between 1770 and 1830, the North Atlantic revolution between 1873 and 1914, and the South-East Asia miracle between 1950 and 1995 all occurred when tariff trend was on the increase. Africa is thus going to be the only region in history that would have to industrialise and compete but without the preferential treatments available to earlier late industrialisers. Is the WTO framework the problem or the solution? How can it help? This chapter attempts to answer these questions. We focus
more narrowly on the global trading system especially given the skewed attention in the literature on the domestic agenda.8

The chapter is structured as followed. In section 1, we briefly outline the nature of the reforms undertaken so far under the trade liberalisation/WTO rules and the outstanding issues. Section 2 evaluates how much of a problem the global trading system is to Africa. In section 3, we flesh out an agenda for action under the WTO.

**Unfinished Agenda of Domestic Reforms**

While there is intense debate about the weights to be attached to the various factors that have stalled African industrialisation, the short list of the factors are coterminous to the ones that explain the region’s failed growth and development. Such factors include: the brand of import-substituting industrialisation (ISI) strategy; the region’s initial conditions (including its geography, peculiar history of colonialism, and its legacies of fragmented tiny national markets, weak private sector, and governance structure); poor technological base and low human capital development; deficient and expensive infrastructure (high transaction costs); poor macroeconomic environment; and risky investment climate.

Much of the first and second generations of reforms in Africa have tried to address many of these factors. There is now a greater recognition of the need for outward-orientation (as opposed to the ISI strategy), hence a greater convergence of views on the need for a competitive exchange rate regime, export promotion measures, tariffication of non-tariff barriers (NTBs), and simplification of the tariff structure. In addition, most African countries have implemented reforms focusing on changes in the regulatory framework governing investment, elimination of price controls and commodity marketing boards, privatisation of public enterprises, financial sector reforms, liberalisation of foreign exchange markets, establishment of export and investment promotion agencies, and establishment or review of ‘investment codes.’ The reforms accomplished in three specific areas, namely, import protection, direct export promotion, and exchange rate policies, are examined herebelow.9

**Import Protection**

Import protection has been a principal instrument of industrial policy in Africa.10 As part of their WTO commitments, African countries are required to translate quantitative restrictions into tariffs, to bind their tariffs against further increases, and to reduce them over time. Transparency is also required on other duties and charges applicable to international transactions. These duties and charges are also required to be made public through the country's submissions at the WTO.

In general, most African countries have reformed their tariff structure aiming at reducing the number, level, and variance of tariff (although this is attributable to unilateral SAP-driven liberalisation rather than as part of WTO commitments). Sachs and Warner index (1996) reckons that a tariff level of 40 percent or more constitutes the ‘distorting’ range. Judged against this, most African economies could be considered ‘open.’ But the tariff levels on the average, except for South East Asia, remain higher than other developing regions. Given that African countries constitute the principal market for other African countries’ industrial export, the applied intraregional tariffs also hinder African industrialisation.

However, members of regional integration schemes have moved toward a common external tariff (CET), which is complemented by some sort of VAT scheme for domestic taxation. These tariffs have further been consolidated and bound against further increases. For example, Cameroon and its other regional partners of UDEAC/CEMAC11 have a CET, with a customs duty of four import categories at respectively 5 percent, 15 percent, 35 percent, and 50 percent. The CET is complemented by a temporary surcharge tax, used to alleviate the burden from elimination of protection formerly provided to firms via NTBs. The temporary surcharge is allowed to fluctuate but cannot exceed 30 percent. Regional industrialisation is encouraged by lower intra-CEMAC tariff structure.

A CET is also applicable in the Union Economique et Monétaire Ouest Africaine region (UEMOA). Average tariff in Côte d’Ivoire declined from 34.8 percent in 1993 to 27 percent in 1994-1995,
and 25 percent in 1996. The country consolidated its tariff on all non-agricultural products at a ceiling rate of 15 percent, except for a list of 29 products whose tariffs were to be bound at rates of 5 percent to 75 percent initially, then 4 percent to 64 percent in 2004. The country also committed itself to consolidate duties of selected industrial products between 10 percent and 25 percent. In Ghana, the import code comprises three rates of respectively 0 percent, 10 percent, and 25 percent. A limited list of 16 import categories is covered by a different, more protective, regime. A sales tax of 15 percent is applicable, with a higher rate (17.5 percent) for luxury goods. As part of regional arrangements, selected imports have special tariff privileges. In the case of Kenya, the number of tariff categories had been reduced as part of SAP, with the maximum tariff of 70 percent compared to 170 percent in 1987. Nigeria has improved from some of the most restrictive trade regimes to a much simpler regime (with tariffs ranging from 0 percent to 100 percent for the period 1995-2001). Tariffs were to be reduced by 50 percent over the period 1995-2001, although the escalation of tariff rates among capital, intermediate, and consumer goods is still pronounced.

A similar trend is observed in South Africa. Tariffs were in general lowered in South Africa prior to entering the WTO in 1994. The rate was lowered on textiles and clothing from 100 percent to 45 percent while the rate on cars was reduced from 100 percent to 50 percent. South Africa further committed to a faster liberalisation (over a five-year period) compared to WTO requirement of eight years. This also involved the reduction of the number of tariffs from over 100 to 6, ranging from 0 percent to 30 percent. This was part of a unilateral liberalisation trend that started before WTO. For example, the number of tariff lines under import tariff was reduced from 12,000 to 8,000 between 1992 and late 1994. Import tariff was lowered on most products by 50 percent. Consumption goods were reduced from 34 percent to 17 percent, intermediate goods from 8 percent to 4 percent, and capital goods from 11 percent to 5 percent. A specific feature of the URA binding was the possibility to include commitments not to raise the tariff over a ceiling determined by product, sectors, or across the board.

Despite the progress made as part of their unilateral liberalisation, quantitative restrictions are still used by several African countries as protective measures. Kenya regularly uses administrative controls to manage its balance of payments and to provide protection to some industries. As part of the WTO commitments, this practice is expected to be limited. The list of prohibited imports has declined significantly in Nigeria in recent years with a commitment of the government to phase out all the remaining import prohibitions by 2005. South Africa kept the option of using, over a limited period, import controls under special circumstances. These measures are to be used mostly against non-WTO members or on WTO members while waiting for the national anti-dumping and countervailing laws to be revised. Quantitative restrictions have been largely eliminated in Uganda and replaced with more transparent taxes that operate through the price mechanism.

**Direct Export Promotion Policies**

Various instruments of direct export promotion have been used in most countries. These include export subsidies and trade-related assistance to reduce cost for exporters. Most of direct export promotion instruments are not permitted by the URAs. Existing schemes such as export subsidies could not be increased. Most African countries are not affected by this clause, as their income level is lower than the US$1000 per capita income threshold level. Countries are, however, allowed to introduce measures that can lead to reduction in the cost of export operations. The application of subsidies can be countervailed in cases they are judged to cause serious injury to industries of importing countries. Export restrictions are not, as a general principle, allowed by the WTO. A given country could exempt its exporters of indirect but not direct taxes; direct taxes are allowed only in exceptional cases such as an export processing zone (EPZ). In general, most countries have initiated reforms aiming at complying with these requirements.

In the case of Côte d’Ivoire, attempts at curbing the effect of the French franc appreciation against the U.S. dollar on the real exchange rate were made through a ‘mock devaluation’ consisting of simultaneous increases in import tariffs and export subsidies. A manufactured export subsidy had existed in Kenya until September 1993, when it was replaced by a duty/VAT remission scheme for intermediate
inputs. Other indirect supports to export activities have included manufacturing-under-bond and EPZs. Export promotion and diversification are promoted in Nigeria through such incentive schemes as government direct subsidies in production that are applied in a non-discriminatory basis to firms. Direct export promotion has been done in South Africa using export subsidies, and an export incentive scheme based on value-added and local content. Other productivity enhancing measures such as on research and development (R&D) and marketing have also been introduced. Exporting firms in Mauritius are mainly supported through the incentive package of the EPZ. An important framework for providing support to exporters in Cameroon is the industrial free zone, which allows investors to virtually operate outside the jurisdiction of the country’s legal and regulatory system. An investment code management unit provides for a one-stop-shop for investors. Export promotion centres exist in several countries but their efficiency has been hampered by several difficulties.

Complementary Reforms

Other policies for promoting industrialisation include the efficient supply of export support services (exchange rate, finance, infrastructure, insurance) and pricing of relevant goods and services. One important limitation to export activities is the shallowness of financial institutions and of capital markets, when they exist, due to their inability to raise sufficient funds to meet private sector’s needs. In the Franc zone, the financial and insurance sectors have been reformed and private ownership allowed, although it is still very limited. Reforms have included regional supervision of financial and insurance institutions. Competition is constrained by the dominance of the state in these sectors. Financial reforms have significantly enhanced the efficiency of financial services in other sample countries, although credit remains a major constraint both in CFA and non-CFA countries. In all countries, the financial system needs further improvements to support an outward oriented trade strategy.

Compared to the 1980s, the exchange rate policy in African countries is currently more supportive of export-led growth. Ghana had, beginning in 1983, progressively moved to a flexible exchange rate regime through various undertakings that have led to an overall depreciation in its real exchange rate. The Kenya shilling has been managed according to market fundamentals, with complete float of the currency after the liberalisation of the current and capital accounts. On average, Kenya has maintained a fairly good foreign exchange rate policy with exchange rate misalignment consistently kept below 10 percent. The exchange rate has also been kept under close monitoring to avoid massive overvaluation in Uganda. In Mauritius, the authorities could succeed in stimulating exports through a careful coordination of EPZ provisions and an implicit policy of depreciation of the rupee. In Cameroon and Côte d’Ivoire, monetary and fiscal policies are limited by Franc zones rules according to which countries cannot autonomously change the nominal exchange rate, to the point that only indirect measures can be contemplated to change the real exchange rate. It is largely believed that the current institutional framework in the Zone can easily lead to exchange rate appreciation with little room for maneuver by national authorities.

In all countries, various institutional reforms have aimed at enhancing the performance of government departments servicing export activities; most of the time, some efforts are coordinated at the regional level. Trade liberalisation has been accompanied and supported by internal deregulation, restoration of expropriated assets, privatisation, and a supportive investment regime. Investment promotion centres exist in many countries and serve as a one-shop centre for investors. Overall, administrative supports to imports and export activities have been enhanced in most countries.

In spite of progress made in domestic reforms, several impediments still remain. Open trade regime in itself is not enough to ensure competitive industrialisation. Supply side constraints and institutional weaknesses still prevail. The first of these pertain to the inefficiencies of complementary measures to support industrialisation, particularly poor infrastructure. Poor basic infrastructure—transportation, water, electric power, waste disposal, storage, telecommunication, etc.—greatly raises the transaction costs faced by African firms and hamper their integration into international trade. Most public utilities are still under public sector control and, in general, the quality of services rendered is low. The customs clearance system is cumbersome in most countries and takes weeks to complete, while it now takes as low as 15 minutes in
some industrial countries. There is thus the challenge of how to reform the system of public service provision and delivery so as to give producers and exporters world-class standard services.

There are also problems such as weak technological capacity, lack of entrepreneurial, marketing and technical skills, paucity of long-term finance, expensive trade credit and pre-shipment finance, and inadequate legal and regulatory frameworks. These require policy reforms as well as long-term investment.

**Structural and External Constraints to Africa’s Industrialisation**

The domestic trade-related and supply-side reforms outlined above are only necessary but by no means sufficient conditions for Africa to diversify its economies and be globally competitive in industrial products. The nature of the global trading regime generally (WTO rules) and practices in the developed countries constitute another set of constraints. There are several channels through which the external environment imposes serious constraints to Africa’s industrialisation efforts including: the insistence on reciprocity and erosion of preferences previously enjoyed by Africa; tariff peaks and escalation that bias incentives away from industrial exports towards primary commodity exports; terms of trade losses that drain away scarce investible resources; subsidies to agriculture that encourage dumping of agricultural products in Africa thereby hampering the fullest exploitation of the region’s comparative advantages in the sector; and the lack of appropriate synergies/coordination between the operations of the WTO and other UN agencies. We briefly examine some of these.

The WTO rules and the globalisation process are double-edged swords, providing both opportunities as well as constraints. On the one hand, they provide opportunities for freer (liberal) trading regime with potentials for increased market access. On the other hand, they limit the policy handles available for discretionary national policies and insist on the principle of reciprocity. As UNCTAD observes:

> It is undeniable that the global economy is currently going through significant changes. The new trading regime under the WTO has reduced the scope for using some measures, which call for trade-related subsidies, lax enforcement of intellectual property rights, and strategic conditions imposed on foreign investments, which were integral parts of the East Asian development strategy. Certainly, the more generalized protection, which provided a backdrop for targeted policies in East Asia, is no longer possible, and many of the export promotion policies no longer permissible. It may also be true that the changes will reduce the scope for policy maneuver for developing countries, which wish to pursue a strategy involving vigorous infant industry protection and export subsidies.

The SDT treatment for ‘least developed countries’ is listed in Annex VII to the Agreement on Subsidies and Countervailing Measures. Such measures are typically in the form of transition arrangements providing a certain length of time within which to bring policies into conformity with the WTO rules. The new rules have significantly narrowed the instruments for industrialisation and export promotion from specific to generic forms. African countries therefore have little scope to deploy instruments to target and develop specific industries. Furthermore, the rules are ownership-neutral in the sense that subsidies and local content protection do not distinguish between domestic enterprises and foreign affiliates. The ‘trade-effects’ of specific instruments must be neutral. Countries therefore lose much of the discretion to apply special policies to compel multinational firms to serve ‘national interests.’

Furthermore, since MFN and national treatment is the cornerstone of the new rules-based system, reciprocity is a guiding principle. Africa is disadvantaged specifically because of the erosion of existing preferences it enjoys under the various arrangements. First, members of the African, Caribbean, and Pacific (ACP) group enjoy non-reciprocal preferences in the EU under the Lome Convention. According to this Convention, most African industrial products enter the EU market free of customs duties and quantitative restrictions. In addition, most non-oil exporting African countries benefit from the GSP that provides for preferential treatment in major developed country markets, including the USA, Japan, and
Canada. The single undertaking nature of the WTO framework will open these privileges to non-preference receiving competitors, thereby reducing the competitive edge of African producers. One conservative estimate suggests that complete liberalisation of MFN tariffs in the EU would generate total trade losses of over US$250 million in Africa; and for 30 major African exporters, the losses could represent as much as 2 percent of their current export values. Especially given the atypical supply and institutional constraints faced by African countries, the competitive disadvantage can be much larger than the conservative estimate.

Second, African industrial products are concentrated on low-tariff products for which liberalisation during the Uruguay Round of trade negotiations was not important. The average tariff is 3.2 percent on African industrial exports, compared to 7.4 percent and 8.3 percent for non-African low-income and low-and-middle income countries. However, the across the board reduction in tariff and restriction in the use of quantitative restriction led to larger reduction in trade barriers facing African competitors on the international market, which reduces the competitive position of African exports. For example, preference erosion on Mauritius exports will be associated with the future of the sugar protocol and the implementation of the phase out of the Multi-Fibre Agreement (MFA) and the entry into force of the Agreement on Textile and Clothing (ATC).

Another problem of the trading system is that tariff peaks and escalation constrain exports and bias incentives towards primary commodity production and exports. As African countries enter the 2000 negotiations, their exports of industrial products face high tariff barriers on selected markets. The generalised tariff reductions were less pronounced on some sensitive products, hence leaving the sectors concerned with significant tariff peaks and escalation that constrain Africa’s industrialisation efforts. Tariff escalation encourages trade of raw materials and is particularly problematic since it limits the possibility of diversifying into higher value-added exports. After full implementation of the UR, the average applied tariff facing imports from developing by developed countries will exceed 12 percent and tariff peaks for some important products will reach 350 percent. These peaks will represent 20 percent in the USA markets, 25 in the EU, and 30 in Japan. Tariff peaks on industrial products of interest to African countries will prevail for fish, the food industry, textile and clothing, footwear, leather and travel goods, the automotive sector, and a few other transport and high technology goods. Tariff peaks on industrial goods are in particular important for textile and fish-exporting African countries including Kenya, Mauritius, and Senegal. With tariffs escalating as products under further processing, there is a clear bias of incentives against processed (industrial) products. Preferences are extended to unprocessed primary commodities, thereby encouraging African countries to specialise in these products with all the volatility in the terms of trade.

African industrialisation is also marginally constrained by non-tariff restrictions, and progress during the URAs was limited. Overall 26.6 percent and 25.5 percent of all imports in the EU and USA respectively were subjected to NTB in 1986; post-UR coverage is 19.1 percent and 16.8 percent. Among the NTB protection, coverage by quantitative restrictions was 19.5 percent in the EU and 20.4 percent in the USA in 1986; they were reduced to 13.1 percent and 10.9 percent by the UR negotiations. Its coverage on textile, which is an important industrial product for several African countries, increased from 74.9 percent to 75.4 percent on the EU market. It fell in the USA from 84.1 percent to 68.3 percent but still quite high. For example, NTB coverage for SSA average in the EU and US markets are 13.1 and 19.7 percent. In the case of manufacturing exports, the SSA average is 5.6 percent. The industrialisation of Africa is even more constrained by non-tariff measures (NTMs) such as safeguards, SPS, and TBT, which are increasingly being used as surrogate for protection.

Safeguards have mostly been used by developed countries and predominantly on products of interest to Africa, especially on textiles. For countries that have less than 3 percent market share of a given commodity, safeguards measures are not a constraint in market access but they are likely to be the case if their market share increases. TBTs constitute another major form of constraint to the export of industrial goods. They could include technical aspects, packaging, and design. Contrary to standards that are voluntary, technical regulations are mandatory. If the system is either non-transparent or discriminatory, TBTs will have the same effects as any protectionist measure, hence a limiting factor to market access.
TBT could be a protective measure for the exporter since it limits possibilities of creating unnecessary obstacles to trade. The protection is done through internationally agreed standards. In the case of voluntary standards, national standardisation institutions are expected to conform, as far as possible, to the principles underlying mandatory standards. To make sure that these standards do not limit market access, member countries are required to establish an inquiry point where all relevant information can be obtained. If upon examination potential exporters find that measures are indirect barriers to trade, their home government can be invited to protest. The human and financial requirements, however, make TBT a constraint to market access for the African exporter of industrial exports. East African countries, for example, experienced significant losses in 1997 when fish exports to the EU were banned. The agreements on technical barriers and on SPS measures have constituted important market access constraints to Ghana as well. Out of 38 fishing and fish processing firms in Ghana, only 6 could meet the requirements for exporting into the EU market, and the financial and human resources to satisfy these requirements are beyond what the country can afford in the medium to longer terms.

The implication of these is the need for African countries to demand further dismantling of protectionist measures against Africa’s industrial exports. Such a dismantling of measures is also needed in Africa’s intraregional trade. Ironically, the protection that African industrial products face within African markets is, in general, higher than the level of protection facing developed countries’ industrial products within the OECD countries. Reciprocal market access among African countries would go a long way in boosting economic efficiency.

Antidumping and countervailing aspects are also indirect protective measures. Members are allowed to impose a countervailing duty on an imported product that can be unfairly priced. This has been used for protection by rich countries mainly. Antidumping measures include unilateral decisions taken for protection once it has been determined that the import pricing disadvantages domestic producers. These measures can only be applicable after specific substantive and procedural requirements have been satisfied. Particularly, procedural requirements to ensure transparency and equitable treatment are crucial. Exports can be countervailed for developing countries supplying more than 4 percent. Hence expansion in trade will make these measures even more important aspects of African market access conditions of industrial products. All these non-trade measures have heavy human and financial requirements that include the strengthening of institutional capacity to maintain product quality, to test, and to certify products to international standards.

Two other features of the international trading environment that affect Africa’s industrialisation efforts are the huge agricultural subsidies in the industrial countries and the declining and volatile terms of trade faced by Africa. The OECD countries’ subsidy to agriculture is about the size of the combined GDPs of all Sub-Saharan African countries. This has two effects on Africa’s production. First, OECD farmers have huge competitive edge and can afford to dump their output on Africa’s markets at below market prices. Thus, even though Africa has static comparative advantages in agriculture, it loses competitive edge. All the complementarities that a booming agricultural sector is supposed to have with the nascent industrial sector (especially agro-allied industries) are weakened. Second, Africa has difficulty competing in the OECD markets in the light of the subsidies, thereby depriving the region the needed foreign exchange to import intermediate inputs and machinery for industrialisation. Furthermore, declining and volatile terms of trade for Africa’s exports offsets about 70 percent of total overseas development assistance (ODA) to the region. This huge income loss hampers development generally and industrialisation in particular. What is needed, as a response, is a comprehensive strategy of diversification and not the biasing of incentives to confine Africa to primary commodity exports.

**Prospects of Africa’s Industrialisation in the WTO Framework**

So far, we have shown that Africa faces some atypical challenges in its quest for competitive industrialisation, and that the global trading system is part of the problem. The question now is how the WTO process can be used to provide a major solution. Put differently, the question is how the WTO framework can be integrated within a holistic domestic strategy for production diversification and
industrial competitiveness that also achieves the goals of poverty reduction. In the current structure, poverty reduction is not systematically addressed within the framework. Trade and investment liberalisation is sometimes discussed as if they are ends in themselves.

Increasingly, a coalition of international NGOs and analysts point to the need to bring issues of poverty to the centre stage of the WTO process. As with the conventional wisdom in addressing poverty at the national levels, the idea of a poverty-focused WTO process raises issues about SDT for poor countries, empowerment of the poor in negotiations and implementation, and targeted interventions and social safety nets that benefit the poor countries. (see Boxes 1, 2, and 3 for summaries of emerging agenda on the specific proposals). This stage of development seems not to be adequately captured within the existing framework.

The need for SDT is hardly controversial. Since the inception of GATT, the clause to recognise the stage of development story has always been there, although the specific contents have varied over time. Earlier, we noted that the erosion of preferences leads to a net loss to African exporters. However, recent initiatives under the US-Africa Trade and Opportunity Act (AGOA), and the EU-ACP agreement (Lome V) underscore the increasing political commitment among the major economic blocks to address Africa’s special constraints. What is missing is the formalisation and binding of these disparate preferences within the multilateral (WTO) framework. Binding of bilateral preferences (e.g., AGOA) within the WTO could serve two purposes: first, it eliminates the discretion to change or alter the preferences, and; second, it harmonises the preferences with existing WTO provisions and could, for example, modify the ‘local content.’

Two other issues about the current S&D treatment clauses pertain to their adequacy, and the inability to take advantage of existing provisions due to more stringent requirements of the SAP. Those who question the adequacy of the existing provisions would want to see that deeper S&D preferences include positive discrimination in favour of developing countries, not merely longer time periods for implementation of the same obligations. As the governments of Cuba, the Dominican Republic, Honduras, Indonesia, and Pakistan have emphasised recently, “trade rules do not adequately take into account the unequal size of competitors in the global market. Slightly longer phase-in periods for developing countries to meet their obligations and modest ‘technical assistance’ do not ‘level the playing field’." As a concrete example of what can be done, a consensus seems to be emerging in favour of allowing poor African countries to export all products free of duties and other restrictions into the OECD markets, as well as mobilising resources and technical assistance to build basic infrastructure and capabilities (see Boxes 2 and 3).

The other issue about the current S&D on the books is the consistency with the SAP policies, which are pressing for deeper unilateral liberalisation. As the Government of Zambia has argued, while S&D provisions exist on the WTO books, many developing countries are also implementing SAPs with the IMF “which prevent them from taking advantage of some of the flexibilities built into the WTO agreements.” This observation calls for greater coordination among the various multilateral institutions. The rights and obligations embodied in the URAs help increase policy transparency and stability and enhance policy credibility, which in turn attracts domestic and foreign investors. Market access in African export markets is important to benefit from the opportunities provided by the multilateral agreements. Improved market access, in turn, increases the incentives for investments in tradable sectors. As such, the WTO Agreements could be useful complements to domestic policy reforms implemented by African countries since the 1980s. Unfortunately, policy initiatives are currently taking place at disparate centres and ultimately the ones that get implemented are the ones emanating from those institutions with the resources to leverage their preferred policies. This needs to change. Future negotiations should, therefore, aim at greater coherence in global economic policy-making and ensure that international institutions, especially those involved in SAP, pursue mutually supportive policies.

As evidenced in the Boxes 2 and 3, there is a growing call for the next round of negotiation to be based on thorough scientific research. First, research is required to evaluate the impacts of the existing agreement on poor countries. Second, more research and consultation are needed on what really is required by developing countries, and then the substantive rules should be re-negotiated accordingly. This
is more so as more evidence indicates that the SPS, TRIPS, and Customs Valuation agreements are unsuitable for many developing countries and skew their development priorities. Related to the stage of development is the need for caution in pressing for further tariff liberalisation. The issue of the appropriate level of tariffs is controversial. Simply arguing that tariffs in Africa are higher than elsewhere is no sufficient basis to warrant further reforms. As indicated earlier, the average tariff rate in most countries falls well below the 40 percent range (above which Sachs-Warner indicates to be ‘distorting’). The remaining issue therefore is how much further could tariffs be lowered. It is not clear, for example, whether a tariff rate of 25 percent is necessarily more distorting than a 20 percent rate. A litmus test is to demonstrate that such a lower tariff regime significantly contributes to productivity and diversification, and also consistent with the country’s level of development--in particular compatible with the balance of payments and fiscal revenue objectives. The IMF Research Director captures this empirical ambiguity when he argues that:

Although theory suggests that a small economy cannot influence world prices, and that the optimal tariff is zero, practical and political considerations make this impractical. We can therefore assume that tariff rates will be positive for purposes of domestic protection and to generate fiscal revenues. There is no magic formula to determine the appropriate level of tariffs pertinent to the implementation of a medium-term growth strategy in Sub-Saharan Africa, and ultimately the particular circumstances of each country will determine the extent and pace of reform.

Implicit in the above is that initial conditions matter, and peculiar country circumstances matter. Despite all arguments to the contrary, there are still robust arguments in favour of the infant industry protection. Having passed through the worst (‘distorting’) forms of trade restrictions, further reforms must be carefully designed to serve development/industrialisation objectives.

The effect of NTMs is less controversial. The ability of an African country to take advantage of the tariff and non-tariff reduction of the URAs and industrialise is significantly curtailed. Except for isolated cases, progress on quantitative restrictions was more limited during the URAs and indirect NTMs constitute major constraints to exports African countries.

There are other more specific areas in which the WTO framework could be used to leverage the rapid industrialisation of Africa. Some of these are considered below.

Reduce Transactions Costs

A major impediment to Africa’s industrialisation as outlined earlier is the ability to address supply-side constraints. Africa’s industrialisation will especially require that countries overcome the infrastructure bottlenecks, especially transport. An example of such intervention could be in shipping. International shipping has undergone a major transformation in which procedures for cargo utilisation, port operations, and related logistical functions have evolved into highly complex operations. Policy environment in a typical African country has prevented this from being translated into reduction in transaction costs. Trade liberalisation without significant reduction in transport costs and customs procedures will have limited effect. Reforms are required aiming at simplifying, harmonising, and automating trade transactions to make Africa competitive on local and international markets. Trade facilitation entails the liberalisation of NTMs in order to encourage cost effectiveness and efficiency.

It is important that trade facilitation instruments adopted in the WTO framework take into account those already developed by specialised organisations. A major problem with trade facilitation instruments is that they do not always take into account the capacity of firms, especially those in African and least developed countries. Trade facilitation is currently pursued through the Harmonised System (HS), the Customs Valuation Agreement and the Agreement on Rules of Origin. Besides identifying qualifying goods for tariff preferences, rules of origin can also be used to administer marking regulations, quota regimes, anti dumping duties and countervailing duties. Trade facilitation is closely linked to advances on electronic commerce. Electronic commerce can simplify, clarify, and harmonise market access techniques.
and represents an opportunity to modernise existing procedures. Other agreements related to trade facilitation also include Pre-shipment Inspection (PSI).

Unfortunately, trade facilitation and customs legislation as currently conceived in the WTO framework is too costly and beyond the capacity of African countries. A fundamental redirection would be required and this is probably one area where the single undertaking characteristic of WTO agreements should not apply until sufficient capacity has been built in such areas as impact of various rules of origin, procedures for PSI through a progressive introduction of modern management techniques, and expertise to implement the customs valuation agreements.

Antidumping and Competition Policies

Liberal trade and investment policies are crucial to exploit all opportunities associated with the WTO. Most African countries have long recognised the significant potentials of competition law and policy in sustaining their economic reform process. But, only a limited number of them have domestic competition law and policy or effective enforcement agencies. The primary reason behind this has been weak human and institutional capacity. The need for competition-related discussions in the WTO arises from the increasing use of anticompetitive measures as surrogates for direct protection. The list of widely used measures includes antidumping, safeguards, government procurement, intellectual property, and TRIMs.

A major challenge is to design a framework that can supplement domestic undertakings consistent with a smooth integration in the world trading system. It is, therefore, also necessary to define and analyse the development dimension of any possible multilateral rules on competition, as well as the feasibility of introducing competition provisions in different multilateral trading agreements. The relationship between competition and competitiveness should be studied, while assessing the impact of globalisation and liberalisation on developing countries’ capacity to compete in the international market.

To facilitate the industrialisation of African countries, a focus also ought to be enhancing the operation of other measures that are being increasingly used as surrogate for trade protection and that are related to competition. For example, trade liberalisation has increased market contestability in Africa but governments do not have the expertise, capability, or resources to effectively use antidumping and countervailing measures to protect their firms. The Agreement should be amended to provide more flexibility to developing countries, especially in situations where the domestic industry is characterised by a large number of small producers.

In sum, active competition policies are essential but this does not need to be carried out in the WTO at this time. Because of the mercantilism basis of multilateral trade negotiations, the negotiations are likely to be dominated by market access issues, at the cost of a coherent competition policy. As a result, a better approach would be to mainstream competition policy provision in various multilateral trading agreements. Otherwise there is a need to condition the completion of an Agreement on Competition Policy to a technical assistance and capacity-building program that would prepare African firms to compete.

Reforming the Investment Framework

Given the level of capitalisation of African industrial sectors, foreign investment is important to sustain long-term industrialisation. Despite more than one decade of economic reform the level of investment is extremely low, and all efforts should be made to create a conducive environment for investment by both domestic and foreign residents. Measures used by African governments to attract and protect investments from domestic and foreign sources have been covered by investment codes. These codes have been of national or regional natures. For example member countries of CEMAC, UEMOA, Common Market for Eastern and Southern Africa (COMESA), East African Community (EAC), and Cross-Border Initiative (CBI) have or are formulating regional investment schemes. Countries also have bilateral investment treaties, and most African countries are also members of the Multilateral Investment Guarantee Agency (MIGA). All these undertakings are based on the assumption that there are desirable features specific to
foreign investment that would assist their development process. Some of these features include technological and managerial spillovers, and access to investment, markets, and distribution networks.

Simultaneously several African sectors are still considered strategic and hence not fully ready for the type of environment to be created by some international investment proposals such as the Multilateral Investment Agreement (MAI). This is not necessarily driven by protectionist motives. The typical African country faces a dilemma. On one hand, the benefits of openness are not questioned; on the other, despite the generous framework provided for FDI, except for some mineral rich countries/sectors, the level of FDI on the continent has been very low. An element of the positive agenda for Africa would be a set of studies to determine the set of investment incentives that would be effective in making the continent an attractive investment destination.  

Before such a review is done, further liberalisation, whether in the framework of TRIMs or a MAI, is not warranted. Furthermore, these need to be coordinated with discussion on competition in the multilateral framework. The WTO could, therefore, play an important role in the improvement of the investment environment facing the African industrial sector through appropriately reformed TRIMs. The reform could include three main elements. The first would allow sufficient flexibility in using TRIMs, such as export performance requirements, in order to sustain the reform efforts and to ensure balanced economic development. Second, in order to sustain the market opening efforts of African countries, the WTO could lead the option to revise TRIMs notifications, and when necessary incorporate investment-friendly measures. This could be done through the determination of the length of transition periods for removing TRIMs appropriately linked to adequate graduation criteria. Before the appropriately determined threshold is reached, African countries would need to have the flexibility of channeling investments in a manner that fulfils their developmental needs. Third, a review could be made to allow host African governments to direct investment according to national priorities. Given an adequate review of TRIMs provisions, negotiations on a MIA in the WTO could be postponed until supply capacities have been enhanced such as to make African economies competitive and able to attract the type of investment most needed to meet their development objectives.

Technology

Technology has become the most important determinant of economic development. The technology gap between developed and developing countries is widening. Effective transfer and dissemination of technology at fair and reasonable costs to developing countries constitute key elements in ensuring the industrialisation of Africa. The application of various aspects of the TRIPS agreement constitutes important constraints to industrialisation. These are mostly due to weak technological base. Urgent measures should be taken on the modernisation of the administrative infrastructure, the modernisation of the regulatory and legislative frameworks, the strengthening of institutions, the creation of a culture for the protection of intellectual property, and the creation of an appropriate framework for promoting R&D. To ensure effective transfer of technology to developing countries, the negotiations should ensure that developed countries provide incentives to their enterprises and institutions to encourage them to transfer technology to these countries. The TRIPS Agreement should, therefore, be reviewed to consider ways and means to operationalise the objectives and principles in respect of the transfer and dissemination of technology, at affordable prices, to African and other developing countries.

Capacity Building

A crosscutting constraint to Africa’s industrialisation is weak capacity for an adequate understanding of the contents, implications, benefits, and constraints of these agreements and the ability to internalise them in the formulation and implementation of development policies. Weak capacity assistance also concerns the ability of a given sector, country or region to address its supply-side constraints through adequate technical training, industrial development, sectoral capacity building, and support program.
To ensure an effective integration of African countries in the world trading system, it is crucial that an adequate capacity-building package that addresses each of these dimensions be designed. There is, therefore, a need to carefully consider the capacity building requirements and amend the existing programs accordingly. Capacity building should be considered in all issues discussed in the WTO. In particular there would be a need for enhanced and better coordinated trade-related capacity building. This could be done by obtaining that increased participation in international trade is designated as a priority objective of the WTO, with technical cooperation activities the fundamental means of achieving that objective.

Conclusions

Africa has huge unexploited potentials in industrialisation and the challenges of a late industrialiser in today’s world are daunting. Anecdotal evidence indicates that the current global trading system is part of the problem. But there is also latitude for the WTO framework to play pivotal roles in mobilising for special and targeted interventions towards African industrialisation. This would require deepening the SDT system. Such treatments, however, need to be predicated on solid research about the costs and benefits of the existing agreements and simulations about the implications of alternative new proposals. This should inform the synthesis of Africa’s common negotiating positions. Such research should be the fulcrum of the unfinished agenda.

This chapter is based on a paper written for the World Bank Research and Capacity-Building Project, “Preparing for the WTO 2000 Negotiations,” in collaboration with AERC.

1 See Economic Commission on Africa (2000b).
2 See Table 1 for the summary of market orientation of Africa’s products.
4 See Elbadawi and Soludo (1999) and World Bank et al. (2000).
5 UNIDO (1996) articulates a number of the daunting challenges to competitive industrialisation in Africa, including the facts that: Africa’s main competitive strengths are in industries where demand growth is slowest and where international competition—especially from low-cost Asian suppliers is intense; the region is not part of any cluster to benefit from the kind of Japanese flying geese phenomenon experienced by the East Asians; the private sector is weak, dominated by a few multinational corporations at one extreme and by a mass of small enterprises at the other; technological terms of trade have shifted against late starters; the cost of acquiring new technology has risen both in money and, more important, in the skills of operators, technicians, and managers; the importance of labour quality in attracting foreign direct investment counts against Africa; etc.
6 See Amsden (1999).
8 See World Bank, et al. (2000) for details of the domestic agenda.
10 See Mwega (1999) for detailed review of domestic policies.
14 See Yeats (1994).
26 The review could analyse the trend and structure of relevant trade and investment indicators. It would also need to carefully assess the component of various national and regional investment incentive schemes, including the investment and trade agreements. It should provide alternative options consistent with the overall development aspirations of African countries at the national and regional levels. Some of the concerns of African countries are shared by other developing countries (see Correa 1999 in the case of Islamic Development Bank member countries).

27 This conclusion was also reached by the African Ministers of Trade meeting in Harare in 1998.
Increasingly, the creation and utilisation of knowledge is becoming the basis of growth and development. African countries cannot expect to base their growth and development strategies on the continued export of unskilled labour-intensive products. The skills composition of their exports may have to be higher than the earlier developers. This arises in part from changing tastes as a result of increasing world per capita incomes as well as technological developments that increase the sophistication of products. Secondly, globalisation implies that even within their own economies, product demand will be increasingly sophisticated. These developments imply that the ability of African economies to compete both within their own economies and internationally will depend on their ability to produce high quality differentiated products.

In view of the low levels of savings and investments, and the fact that Africa is a net technology importer, success in this direction will require substantial foreign investment, access to modern technology, and human capital development to create the domestic capacity to absorb and adapt to rapidly changing production technologies. Africa must therefore be concerned about the role of the TRIPs agreement in terms of its implications for:

- trade flows and the costs of imports;
- foreign direct investment and access to technology; and
- food security and the competitiveness of its traditional agricultural exports.

It is within this development context that we examine the implications of the TRIPS agreement for Africa and its response in the next round of negotiations.1

**General Provisions of the Agreement**

The TRIPS agreement is unique in two respects. First, unlike the other provisions of the WTO that seek to liberalise trade, TRIPS seeks to provide minimum standards of protection for intellectual property rights (IPRs). Second, it is an exercise in regulatory convergence in the sense that it seeks to substantially harmonise the levels of protection and the IPR regimes of member countries.

The basic premise of IPR protection is to provide incentives for creativity in the development of new products and technologies and the dissemination of these products in the economy. The underlying assumption is that pure private provision will lead to under-provision of information and product creation in the light of the huge R&D costs and the uncertainty in R&D outcomes.2

The Agreement:

- sets minimum standards of protection with respect to all aspects of intellectual property, copyright and related rights, trade marks and service marks, patents, geographical indications, industrial designs, layout-designs of integrated circuits, and protection against acts of unfair competition including protection of trade secrets;
- prescribes procedures and remedies to enforce rights in member countries;
- extends the general dispute-settlement mechanisms of the WTO to TRIPs-related conflicts; and
• obligates signatories to extend the basic principles of national treatment and the MFN clause of the GATT to IPRs.

In incorporating the provisions of the TRIPs agreement into their national laws, member countries may adopt measures to protect public health and nutrition and promote the “public interest.” However, public interest cannot be cited in regards to areas of non-patentability, duration of patents, or exclusivity of rights of patent holders. Member countries may also take appropriate measures, consistent with the TRIPs agreement, to prevent the abuse of IPRs by rights holders or restrictive practices that may restrain trade or adversely affect the transfer of technology.

The method of implementation of provisions of the agreement are to be determined within each member’s “own legal system and practice.” While all member countries had one year—January 1 1996—following the date of entry into force of the agreement to implement the provisions, developing countries were entitled to a delay of an additional four years—January 1 2000—for all provisions of the agreement except those in respect of national treatment and MFN. Least developed countries, to which the majority of African countries belong, have ten years—January 1 2006—to conform with the agreement and may request extensions of this period.

Members must provide a minimum of twenty years patent protection for all inventions including both processes and products. Until the agreement, individual countries were free to determine areas of non-patentability, the duration of the terms of patents, and the set of exclusive rights conferred on patent holders. Now, patents are to be granted irrespective of the place of invention, the field of technology, and whether the product is produced locally or is imported. In spite of the transitional arrangements, in the case of pharmaceutical and agricultural chemicals, developing countries must accept applications for product patents and grant exclusive marketing rights for five years or until the patent is granted or rejected, whichever is shorter.

The permitted exclusions from patentability are plants and animals (other than micro-organisms) as well as essentially bio-technological processes. Plant varieties, however, must be given protection. This can be done either by patents or by an effective sui generis system. Countries are allowed to exclude inventions from patentability for reasons of morality, public order, or because of therapeutic, diagnostic, or surgical usefulness. Conditions to be applied regarding compulsory licensing and government use of patents without the owners’ authorisations are provided.

**Intellectual Property Rights and Economic Activity in Africa**

The extent to which the enforcement of the TRIPs agreement will affect an individual country and its use of the IP system as a contributing element in development will depend on its stage of development, its technological capability as measured by its human resource development and R&D, as well as its overall development strategy.

The structure of production for most African countries shows the dominance of the agricultural sector. This will imply that in a static context, IPRs related to agricultural activities would attract the most attention and have the most impact on African economies. This is further buttressed by the fact that African exports are also dominated by agricultural raw materials. Thus, issues related to plant breeders rights (PBRs) could have serious implications for food security in Africa and the competitiveness of Africa’s traditional exports that must provide the foreign exchange resources for development.

It is important to emphasise that the current structure of economic activity in Africa is the result of the failure of past economic strategy and policy. Therefore, the objective of the emerging development strategy is to change the structure of economic activity and diversify into manufactured exports. While the share of manufacturing in GDP is reasonably high, the level of productivity of the current technologies and the competitiveness of the products in terms of international market are more problematic. Most factories were established during the import-substitution industrialisation (ISI) period, combining factor proportions (unskilled labour-intensive production) and demand characteristics suitable to domestic demand. In diversifying into manufactured exports, it could be argued that textiles and garments, leather and leather products, and wood and wood products would initially be the starter industries. For such matured industries, it is argued, proprietary rights must have expired and, therefore, IPRs will not be relevant.
However, the importance of TRIPs to Africa cannot be judged by the current structure of production but by the requirements of its development strategy. There is a huge technological gap between Africa and the rest of the world. This gap creates difficulties for African industry in competing within their domestic economies. They need better technologies to be competitive. Thus, IPRs are critical for the success of the emerging African development strategy and its competitiveness. The sources of this dynamic complementarity to current economic reforms must be FDI, adoption of improved technology even in old standardised or matured products, and human capital development. It should be noted, however, that both FDI and transfer of technology have their own downside risks that policy must address.

TRIPs, Foreign Direct Investment, and Technology Transfer in Africa

Africa will to a large extent be an imitator and a net importer of technology. At the same time, the success of its emerging strategy requires that it upgrade technologies in existing industry as well as attract new industry and investment. Africa’s main interest in the TRIPs agreement must therefore relate to the extent to which the agreement can be used to promote both the selection and development of technology transfer of proprietary technology and FDI. Both are essential elements in generating competitiveness in the manufacturing sector in Africa.

In theory, the effects of stronger IPR on FDI and technology transfer are ambiguous. A foreign firm, for instance, with some advantage that it wishes to exploit profitably may proceed as follows: it can exploit its advantage through arms length exports; it can invest directly in a subsidiary or joint venture or license an independent producer in a foreign country. A number of general predictions emerge from both theoretical and empirical analyses of the relations between IPRs, FDI, and technology transfer.

In general, it appears that:

1. FDI and technology transfer are relatively insensitive to international differences in IPRs in industries with old and standardised labour intensive technologies;
2. FDI in sectors with complex but easily copied technologies is likely to increase as IPRs are strengthened;
3. to the extent that stronger IPRs reduce licensing costs by lowering the licenses and expenses of deterring defection from contracts, FDI could be displaced over time with efficient licensing; and
4. whatever the mode, the likelihood that the most advanced technologies will be transferred rises with the strength of IPRs. This may occur through reduction in costs of licensing, increased security over the protection of proprietary information in the license, and the licensor’s greater ability to set and monitor terms under which the licensees operate.

Not surprisingly, empirical work on the relations between IPRs, FDI and technology transfer in Africa is virtually absent. In a survey of African investment promotion agencies (IPAs) on factors likely to have a positive influence on FDI to Africa, the profitability of investments, the regulatory and legal framework, and the political and economic outlook were most frequently mentioned. The regulatory and legal framework is of critical importance. This is because the current sources of FDI are limited to firms with better knowledge of the environment. The regulatory and legal framework in this context goes beyond the concerns of TRIPs to include issues of property rights, contract enforcement, and the credibility of the judicial system. Where this system is weak, investors perceive their investments at risk and therefore tend to be hesitant in investing in the particular economy. Therefore, to the extent that implementation of TRIPs reduces fears of the regulatory environment, it should diversify the sources of FDI to Africa.

Perhaps even more important for FDI in Africa is the credibility that anchoring to WTO standards may generate. The economic reforms undertaken by African countries since the second half of the 1980s have improved the macroeconomic fundamentals and the returns to investment necessary to attract FDI. Returns on FDI in Africa during 1990-94 were around 60 percent higher than in other developing regions, in the range of 24-30 percent as against 16-18 percent. However, Africa’s share of FDI to developing
countries has declined. Furthermore, FDI still remains a small proportion of gross domestic capital formation compared with other developing countries.

While private investment generally is positively related to economic fundamentals, private investment in Africa appears significantly lower than is explicable in terms of economic fundamentals. The problem is that Africa is perceived as a risky environment for foreign investment. “Investment ranking services list Africa as the riskiest region in the world. Indeed, there is some evidence that Africa suffers from being perceived by investors as bad neighbourhood.” The importance of TRIPS in the African context may therefore relate to its influence on perceptions of foreign investors about the African investment environment rather than any direct relations between strength of IPRs and FDI. It is the credibility that compliance and effective implementation of the TRIPS agreement will impart to other efforts to create a hospitable investment environment that may matter the most.

Using TRIPS to generate credibility implies several points:

- Concessions under the agreement should be seen to be applicable to all developing countries and should not be Africa-specific. Africa cannot afford to worsen its perception among investors by seeking special exemptions.

- Delay in the implementation will not be in Africa’s interest. Instead, Africa should try to use the negotiating process to obtain the resources, both financial and technical, required to implement and benefit from the agreement as soon as possible. This will show commitment and create the relevant environment to go with the economic changes that are taking place.

- Since the agreement seeks to harmonise IPRs, it is effective implementation that will be the critical determinant of credibility. Therefore, not only must Africa pass the relevant laws that will bring their IPR systems to the minimum standards, they must put in place mechanisms for implementation and enforcement.

- There is a need to translate the provisions of the agreement with respect to developed countries’ commitment to facilitate FDI and technology transfer to developing countries into concrete monitorable efforts and outcomes.

The one area in which TRIPS will have a direct impact is technology transfer. Both theoretical and empirical works conclude that irrespective of the method of transfers, firms are likely to transfer frontier technology with stronger IPRs. Past evidence suggests that, on account of the weak innovative ability of most African economies, access to frontier technology should not matter much in the case of Africa. The fact is that such technology was not essential in the previous development environment. Most firms produced to meet small domestic markets at low levels of sophistication. The result is that there is a wide technological gap between Africa and the rest of the world. In the emerging development paradigm, access to modern technology is a central component.

**TRIPS, Trade Flows, and Price Effects in Africa**

One of the main areas of concern for Africa with the implementation of the TRIPS agreement is its impact on the price of imports of patented products and the level of trade flows and their balance of payments implications. In theory, the effect of IPR regimes on prices and trade flows is ambiguous. The result depends on the relative importance of the market power and market expansion effects. Stronger IPR could lead to a larger effective market for patented products as the ability of local firms to imitate the product is reduced. There could also be a cost reducing effect if firms must devote fewer resources to discouraging imitation in the particular market. This market expansion effect could lead to an increase in exports to the market with stronger IPR.

On the other hand, stronger IPR could strengthen the market power of firms for their products in particular markets as competition is reduced. This market power effect could lead to lower exports to and higher prices of the patented product in the particular market, with considerable negative welfare implications. Moreover, for net technology importers, the rent transfers from consumers to suppliers may
be repatriated abroad. The net effect of TRIPs, therefore, on levels of prices and trade flows is an empirical one.

Available empirical evidence suggests that strengthening IPR may have a significantly positive, though small effect on the volume of trade in manufactures. Maskus and Penubarti, estimating bilateral trade flows between OECD countries and developing countries for 28 three-digit manufacturing sectors, found that increasing patent protection has a positive impact on bilateral manufacturing imports in both small and large developing economies. Twenty-one out of the fifty-six developing economies involved in their study were African countries.

The impact is stronger in larger countries and also varies according to whether the industry is patent sensitive. Smith, using more refined data, finds stronger effects. The results, however, also vary according to the size and threat-of-imitation of the country. The stronger patent rights required under the WTO agreement increase US exports to high threat markets. On the other hand, strengthening patent rights in countries that pose a weak threat-of-imitation reinforces monopoly power and reduces US exports to these markets.

All of Sub-Saharan Africa, except for Nigeria and South Africa, can be classified as small economies with weak threat-of-imitation. In such a situation, strengthening IPRs tends to lead to higher prices for imports of patented products. As noted above, the market power effect of strengthening IPRs will tend to prevail. This effect may be reinforced if the TRIPs agreement succeeds in forcing larger Southern countries, such as India, China, and Brazil, to move into producing more expensive patented products. Imports of cheaper substitutes from other developing countries have provided both a means of generating competition in the form of parallel imports and providing lower prices. Africa’s import bill for manufactured products could increase with effective implementation of TRIPs, as patented products gain in ascendency and generic substitutes from advanced Southern countries are eliminated. Where there are difficulties with financing these increased bills, both consumption and growth could suffer.

There has been no work done to indicate the extent of price increases and the balance of payments implications of such increases for Africa. Earlier work by Yeats examining the prices paid by Africa for her imports under conditions with elements of monopoly power indicates that the price premia can be quite substantial. Relative to average unit values for other developing country importers of French products, Yeats finds that the twenty African former French colonies paid a price premium of 20-30 percent on average for iron and steel imports from France.

The introduction of patents for pharmaceutical products together with the resulting market power that may be conferred on firms raises the question of the access of the poor in Africa to medicine and medical treatment. There are no estimates, in spite of the concern, of the expected impact of pharmaceutical product patents on prices in Africa. Some simulations for India suggest price ranges of between 9 to 76 percent. In the case of Africa, the loss of sources of parallel imports or generic substitutes as TRIPs becomes effective in other countries is important in determining the final price impact. Maskus suggests that on the basis of casual evidence for Taiwan and China prices could rise by a factor of three to four on average. The extent of increases may be smaller for African countries if regression results showing a positive relationship between pharmaceutical product prices and GDP are to be believed.

Addressing the downside risks associated with the abuse of monopolistic elements may involve the development of more open and competitive markets, and possibly the use of pro-competitive regulation. The small size of most African economies may imply difficulties in developing the infrastructure necessary for competitive markets. A regional approach involving several African countries through their regional integration efforts may reduce the handicaps associated with small economies in providing competitive structures. Secondly, and of critical importance, Africa will need policies to accelerate the pace of human capital development and to support technology and knowledge diffusion to overcome its limited technological capabilities.

Some Special Cases

TRIPS and Access to Drugs

The most effective drugs to treat society-threatening diseases like HIV/AIDS and tropical malaise such as malaria are covered by patents. While, as discussed earlier, these patents are necessary to allow drug
companies to recoup the large R&D costs involved in drug development, they drive up the costs of drugs. This raises questions about access to medicines for poor countries including most of Africa. In threatened societies, anxieties have led governments to desperate actions that have attracted international attention.

The TRIPs Agreement offers two main options to ease access to patented drugs. First, under emergency or threat to public health, the “compulsory licensing” provision allows countries either to manufacture or import copies of a drug without the patent holders’ approval, provided certain conditions such as payment of compensation to the patent holder are fulfilled. The second option is parallel importing, which allows countries to seek cheaper sources of a patented drug from abroad. This involves the exhaustion principle.

Both these options depend on individual country action, could attract retaliation, and may not be available to small poor countries with a limited industrial base for the manufacture of drugs and limited resources for sourcing internationally. For large countries with good industrial bases, such as South Africa and Nigeria, these options can be exploited. However, the experience of South Africa in exercising these options with respect to ARV for HIV/AIDS shows the resistance one can expect from pharmaceutical companies.

Discriminatory pricing, discussed under various headings as differential pricing, equity pricing, and tiered pricing, has been recommended in the sense that it “facilitates selling pharmaceutical products in less affluent markets at lower prices than would otherwise be charged, and it may make the difference between having the product available in the developing country market and not having it at all.” It can be shown that “when a large block of fixed costs must be recovered—in the case of new pharmaceutical products, the costs sunk for R&D, and chemical testing—setting prices lower in high elasticity markets (i.e. in low income nations) than in low elasticity markets confers the further advantage that those fixed costs can be recovered with minimal distortion to the efficiency of resource allocation.”

As with all discriminatory pricing systems, possibilities of international arbitrage, disparities in income distribution, and price controls within individual countries can undermine the efficacy of the system. International arbitrage through parallel importing could mean that drugs supplied at low discriminatory prices to LDCs could be re-exported to richer countries. The system of reference price control in some developed countries where the benchmark for setting pharmaceutical prices are based on lower prices charged in some other nation could adversely affect the behaviour of producers if the lower prices offered to LDCs are included. Dealing with these various issues will require an international accord that sets the ground rules.

Differential pricing is currently practiced under the Accelerating Access Initiative and the Boehringer Ingelheim’s Vivamune® Donation Program. Under the Accelerating Access Initiative, individual pharmaceutical companies have committed to make their drugs available at significantly more affordable prices compared to those in the industrialised countries. Under the Vivamune® Donation Program, Vivamune, which reduces transmission of HIV from mother to child during labour and the birth process, is offered free of charge for a period of five years starting July 2000. Experience with both of these programs suggests that while price is important in affecting access to such drug, investment to develop the health care delivery system is as important.

In the case of the Accelerating Access Initiative, the limited number of African countries involved (Senegal, Uganda, Rwanda, Ivory Coast, Cameroon, and Mali) and the experience of the more successful ones had led Wecker to conclude that “… the reality is that even with antiretroviral available at drastically reduced prices, today only a few thousand patients in Africa are actually receiving treatment.” Part of the problem has to do with political commitment and the lack of health care capacity.

Additional insights from a review of the Ugandan experience suggest that few HIV/AIDS individuals have the financial resources to purchase the drugs even at the drastically reduced prices and that public funding is required for the health care provider to further subsidise the costs of the drugs.

It appears that pharmaceutical companies find differential pricing for medicines in contexts such as HIV/AIDS acceptable. There is, however, a need to work out the practical details. From an African perspective, some recommendations may emerge:

- There is a need for differential pricing. It provides a way to pay R&D costs while assuring access for low-income countries.
• Parallel imports must be allowed but re-exports of such imports must be disallowed in this context of the price discrimination discussed.

• While richer individuals within LDCs should be expected to pay higher prices, such a practice will create leakages and supply problems across income groups.

• There is a need for external financial assistance beyond the differential that can be provided by the pharmaceutical companies.

• African governments need to commit to improving health care delivery systems.

TRIPs and Non-Traditional Exports (NTEs)—Ghana

One of the possible advantages of the TRIPs agreement is that it could be used to promote the development of culture-based NTEs. In more recent years, some of these products are beginning to develop niche markets for themselves. Table 1 provides data on the performance of culture-based non-traditional products in Ghana classified generally as handicrafts for the period 1995 to 2000. Over this period, the value of these exports increased considerably, peaking in 1999 before declining in 2000. These products are either produced by individual artisans/craftsmen or small-scale enterprises spread over the country. Thus, the multiplier effects of expansion in these types of exports can be tremendous.

Assorted handicrafts, consisting of assorted musical instruments, imitation jewellery, beads, and earthenware bowls, are the largest item in this group on average. These are followed by cane products, woodcarvings, batik, and kente products, in that order. It seemed that as batik exports increased, kente products exports declined.

Prior to the TRIPS agreement, designs and patterns of kente were classified under folklore and traditional knowledge. None of the existing IPR conventions provided protection for those designs. There were therefore serious imitations of these products. The consumer could not be assured of the quality of these products since no patent or indication of country of origin existed for these products. With the TRIPs agreement, protection can be provided for these products either under the geographical indications or industrial designs (textile designs). Even though the geographical indications have referred to spirits and wines, it could be extended to cover cultural products as well. Under proper promotion, national characteristics begin to emerge that will associate certain geographical locations with certain designs and quality.

There are two difficulties with respect to success in this direction. The first relates to the question of ownership. Traditional products are inherited through traditional knowledge that does not belong to the individual and may as well belong to more than one individual in a community within a country. The designs, patterns, and processes are all communally owned. At the same time, because of the similarity of cultural inheritances across countries as a result of historical immigration, the kente for instance can be produced in the Ivory Coast, Nigeria, Togo, Benin, and others across West Africa. These products may not be sufficiently differentiated to belong to any one country. While this may apply to traditional designs, new designs that are being developed by individuals can be protected. Indeed, the TRIPs agreement should provide the stimulus for the development of such new individual designs.

A second difficulty to be overcome is the question of standardisation. Products of different craftsmen of the same product tend to vary within the same community. Naturally, if these products become more variegated, it becomes difficult for the importer to be assured of consistently receiving the same product in terms of design and quality. Considerable national effort will be required to document, patent, and promote the various culture-based NTEs. The TRIPs agreement provides, at least, an opportunity for this to be done.

Plant Breeders Rights and Agriculture

PBRs is one of the areas of concern for African development as regards the provisions of the TRIPs agreement. Under the agreement, countries are obliged to either provide patents for new plant varieties or provide effective sui generis protection for inventors for minimum time periods. Patents would provide exclusive rights to inventors for the production, sale, and import of seeds and varieties.
Few, if any, African countries provide protection for plant varieties. Most research into varieties’ development and the development and marketing of seed varieties have been undertaken by the public sector. It could be argued that the provision of protection would serve as an incentive for private sector participation in this area. However, the high cost of entry into this industry may constrain private sector investment. The critical mass of scientists, physical facilities, and germplasm needed to undertake effective development may not be available.\(^{25}\) There are also issues about externalities and the inability to exclude non-paying farmers from the product that may discourage such investment and lead to monopoly in small markets, as characterises most African economies.

Considerable concern is expressed about the implications of this provision for the development of the agricultural sector, food security, and Africa’s efforts at poverty eradication. In theory, improved seed provides an effective means of raising productivity while making agricultural production systems more flexible and environmentally sustainable. To be effective, seeds must be available to farmers at affordable prices and must overcome the problems of poor yields, limited labour resources, pests, and diseases. It must yield a crop that has the quality and storage attributes preferred by farmers, consumers, and agricultural processors.\(^{26}\) In view of the high costs of entry, the provision of protection could serve as an incentive and be potentially beneficial to African agriculture. In practice, however, there are a number of considerations that may break this link between private incentives and the development of agriculture in Africa.

First, the seed industry in Africa is not developed. Compared with other developing countries, the seed industry in Africa is either undeveloped or partially developed both in terms of varietal development and the seed production and distribution network. For food crops, only 24 percent and 34 percent of African countries have advanced varietal development and seed production and distribution systems respectively. This contrasts with 60 percent and 40 percent for Asian countries and 90 percent in both areas for South American countries. The level of underdevelopment of the seed industry is worse for industrial crops, vegetables, and pasture.

In part, these low levels of seed development may be related to the high costs of the initial entry into this industry. There is a need for a critical mass of scientists, physical facilities, and germplasm to undertake the development programme. Private sector involvement has therefore been low and will continue to be low for a considerable period. In view of the importance of food crops for food security and industrial crops for African exports, varietal development as well as seed production and distribution systems had been dominated by the public sector as a matter of policy. One possible outcome of this low level of development is that, as with technology, African countries could become dependent on imported seed with dire consequences in terms of availability and the costs of seed.

Secondly, small-scale producers dominate African agriculture. This applies to both food production as well as export crop production. These groups of farmers rely on their own saved seeds for their needs. Between 65 percent to 99 percent of seed used for sorghum, beans, or cowpeas in Zimbabwe, Ethiopia, and Nigeria is what has been saved by the farmer.\(^{27}\) For many such farmers, complete dependence on the market for their seeds needs is too risky. For such farmers, their interests are best served by a seed system that can deliver small quantities of seed of new varieties. Moreover, such varieties must meet farmers’ ability to maintain these varieties and to produce adequate quality seed through their own efforts.

Seed technologies that will not allow for local reproduction or reproduction by farmers’ own efforts may be unsuitable. Seed technologies involving the terminator technology or genetically modified seed strains may be unsuitable for such a farming system. The dominance of African seed supply by foreign companies will compound the problem of agricultural development.

Currently, the level of foreign exchange requirements for agricultural development is low, as most inputs are produced locally. Patenting and increased use of imported seed will not only increase the cost of seed and make it unavailable to small-scale farmers, but the general availability of seed will be tied to the availability of foreign exchange.

**Some Implementation Issues**

For many African countries, TRIPs imply an extension of their IPR obligations. This arises from both the coverage of the agreement and the minimum standards of protection that must be provided. Thus, the
inclusion of integrated circuits, computer programs and computerised data, and obligations on individual
designs all represent additional obligations even for those countries with reasonably strong IPR regimes.

Apart from the extension of IPR obligations, the TRIPs agreement also imposes additional
obligation in terms of requirements on governments to provide procedures for enforcement and means of
dispute settlement. The agreement requires that a member provide civil as well as criminal remedies for
IPR infringements. They also require members to provide the means by which right-holders can obtain
the cooperation of customs authorities to prevent imports of infringing goods. Complying with these
obligations will require improvements in the IPR regulatory framework in several African countries. This
will involve drafting new laws, improving enforcement, developing enforcement capabilities, and
improving them in some cases. The costs of doing these will vary from country to country, depending on
the extent to which prevailing systems comply with the TRIPs agreement.

Finger and Schuler report estimates for drafting new laws and developing enforcement capability
for Tanzania of between US$1.0 million and US$1.5 million.28 To train staff administering IPR laws in
Egypt will require US$1.8 million. In addition to these development expenditures, one must contend with
increased annual budgetary provisions for running an enhanced IPR system. While some assistance may
be available through donor agencies, all such assistance relates to the development costs. The opportunity
costs of annual budgetary provisions can be substantial relative to health, education, and agricultural
budgets.

Conclusion

The TRIPs agreement has the potential to increase the price of African imports as well as the royalties
and fees to be paid for the use of technology. Both these effects could create balance of payments
difficulties for African economies, depending upon their magnitude. However, if implemented and
utilised effectively, it can also boost the transfer of frontier technology and FDI required for generating
competitiveness in production both within African economies and internationally.

To be effective, however, African governments need a number of policy initiatives. It is essential
to develop effective means of implementation of the agreement to impart credibility to other economic
reforms. Pro-competitive policies including further liberalisation may be necessary to reduce and
eliminate monopolistic practices that may come with stronger IPRs. In view of the smallness of most
African economies and the difficulties of providing the infrastructure to generate competition in such
small economies, a regional approach may be essential. Africa may need to improve its technological
capacity by increasing the levels and coverage of education and human capital development generally to
take advantage of the opportunities from TRIPs.

---

1 This chapter is based on a paper written for the World Bank Research and Capacity-Building Project,
“Preparing for the WTO 2000 Negotiations,” in collaboration with AERC.
2 See Bragga, Fink, and Sepulveda (1998) and Maskus (1997) for detailed discussion.
5 Maskus (1997).
6 UNCTAD (1999).
7 Collier and Gunning (1997).
8 Collier and Gunning (1999).
9 Ibid., page 20.
10 Maskus (1998b) and Bragga et al. (1999).
11 Bragga et al. (1999).
13 Smith (1999).
14 Risk associated with delayed payments could also produce similar results.
16 Bragga et al. (1999).
18 Low (1998).
19 Scherer (2001), page 1.
20 Ibid., page 2.
23 Ochola et al. (2001).
26 Ibid.
27 Ibid.
Deep reform in trade relations worldwide has led to significant trade expansion, except for many African and least developed countries. One reason is the fact that the playing field is not level. Development-focused negotiations must particularly change this situation, especially with a proper identification and correction of the constraints that weaker Members encounter in using the WTO framework to foster their development objectives. In so doing, they will need to push for negotiations to go beyond a narrow market access focus to also include, for example, issues of human and institutional capacity and the alleviation of other supply-side constraints that appear to be the principal bottlenecks to their participation in international services trade.

This chapter considers constraints faced by African countries in horizontal and sector-specific liberalisation, especially the extent of liberalisation already achieved and what is possible in a multilateral framework. The required efforts should pay attention simultaneously to the process and substance of the negotiations. On process, African countries and sectors are at very different levels of development and, as such, they face different challenges. Hence, different countries would normally require different levels of commitments. However, despite this heterogeneity, no single African country or region is large enough to make a difference in the WTO. Therefore, there is strong pressure on African negotiators to try to negotiate as groups of countries to increase leverage.

With respect to the substance and outcome of the negotiations, an important observation is that commitments made by African countries have lacked consistency; African policy-makers often did not fully understand the range of commitments they made during the Uruguay Round or in the unilateral liberalisation adopted under Structural Adjustment. They also did not fully understand the relationship between the two. Furthermore, without sufficient consultation especially with the business sector, policy-makers made many commitments with insufficient back-up studies. In short, African negotiators often failed to fully identify and strongly pursue market access and reform issues of direct benefits to their economies—in part because of a lack of appropriate information and a failure to build domestic support for such issues.

Another important issue is that during the Uruguay Round, African negotiators were not able to bring forward issues relating to the development of their supply-capacity that remain critical if they are to benefit from service trade liberalisation. A challenge for African negotiators is to properly identify their priorities and needs, and then to ensure that these are taken into account in the Agreements that will arise from the negotiations.

The issues raised in this chapter are compiled from several country and regional case studies. They include UEMOA, Kenya and Tanzania with a focus on EAC, Cameroon with a focus on CEMAC, Nigeria with a focus on ECOWAS, and Senegal, individually and also in the context of UEMOA. Although none of the chapters claim to represent official positions, each research team has consulted widely within and outside government. Several draft studies were discussed at national policy workshops on WTO negotiations that had been organised jointly with the national WTO inter-ministerial committees and attended by government officials, private sector operators, and representatives from civil society at large. We also take account of experiences of other non-African developing countries and regions. The rest of this chapter is in two parts, the first focusing on elements for increasing African participation in international services trade while the second part looks at efforts at selected sectoral negotiations.

Elements of a Development-Focused GATS Negotiation

The main elements of development-focused negotiations in services are also addressed in two chapters of this volume by Mattoo and Oyejide. Box I summarises some of these provisions identified either in the case studies or in submissions by developing countries in GATS negotiations. The attention here is limited to elements directly arising from the implementation experiences surveyed.

Proper Account of Special Needs of African Countries and Enhanced Market Access

A first step in ensuring development-focused GATS negotiations is to redress the systemic imbalances that prevent weak countries from benefiting from market openings. An instrument for accounting for unequal
capacity is the set of SDT provisions. Although SDT provisions are not the panacea for African trade performance, they contain the relevant framework for addressing the core problems of African countries. Two different routes might be taken in designing these provisions. One is to have a comprehensive set of SDT provisions, which would apply across all WTO Agreements. The other is to design agreement-specific provisions. In the case of services, SDT might mean preferential market access and/or national treatment in the form of limitations and conditions that are less demanding than those imposed on the rest of the WTO community, especially in sectors of export interest to African countries. It might also mean a more lenient treatment of certain exemptions taken by African countries or keeping those elements of GATS such as development compatibility, positive list approach, or safeguard provisions that provide enough space for African policy makers to pursue their development objectives.

Contrary to the case of goods trade for which market access restrictions are easier to define, the situation in the case of service transactions is quite complicated primarily because of the difficulty of distinguishing between producers and consumers. Box II summarises market access barriers facing African and other developing countries. These are further considered in the sections below. Enhanced market access conditions, particularly on sector of export interest to African countries, shall be a priority area of focus during the negotiations.

Adequate Regulatory Capacity

A major lesson from past liberalisation in Africa, as in other developing countries, is that successful liberalisation requires solid, enforceable regulatory structures. The case studies have all identified cases of delayed or failed privatisation or liberalisation due to missing or under-performing regulatory agencies. In virtually all cases, considered gains from liberalisation in the telecommunication sector have been limited as a result of insufficient regulatory capacity. Likewise, liberalisation in the financial sector often led to unstable markets due to the lack of sufficient regulatory oversight. Finding effective ways of enhancing regulatory capacity should be part of the agenda of negotiations. Article IV of GATS provides that developed country Members shall undertake specific commitments aiming at strengthening domestic services capacity, efficiency, and competitiveness of developing countries. It is crucial for African negotiators to ensure that specific measures are taken early in the negotiation on this point. One precondition is that they properly identify their national interests, which in turn depends on proper review of existing policy and regulatory frameworks and an establishment of an effective consultative mechanism to help define national objectives.

Building up regulatory capacity is obviously closely related to work that might be undertaken in the WTO on competition policy. Issues of competition are overwhelmingly service sector issues. So it is most important for African negotiators to be actively involved in the work of the Working Group on Trade and Competition Policies and subsequent efforts. Priority should probably be on setting up national and regional competition policy.

Increased Supply Capacity

While better regulatory capacity and enhanced market access may go a long way to improve the comparative advantage of African countries in global service markets, there is no guarantee that domestic supply capacity will expand. African trade negotiators and policy-makers need to identify and eliminate obstacles that continue to discourage their supply capacity. A selected list of supply constraints identified in the case studies and that are preconditions for building a competitive service sector is as follows:

- Human resource development and technological capacity-building to ensure that professional and quality standards are met and that the country can properly identify and take advantage of opportunities;
- A coherent pro-competitive regulatory framework for goods and services and trade and investment. This also should include incentives to enhance firms competitiveness;
- A broad-based strategy for the export of services, to raise the profile of services industries and exports within the country;
- Support for emergence of strong business associations, especially to introduce international professional standards and integration in dynamic market niches;
• Creation of a strong and performing infrastructure, especially telecommunication and information technology firms to promote the export of labour-intensive services through the cross-border mode of supply in various African regions; and

• The development of human and institutional capacity to exploit the opportunities offered by regional markets.

Proper Use of Regional Integration

African economies are small and often heterogeneous, with limited bargaining power in large-scale trade negotiations. For each African country, the most promising export markets for services are those of their neighbours. The regional market needs to be the primary focus for exports and preparation of firms for the more demanding international market. The failure to benefit from service trade liberalisation has been compounded by the inability of African negotiators to negotiate on the basis of clearly identified and shared economic interests and positions. Constraints to exports identified at the country level apply both on external and intra-African trade and should be handled at both levels. A strong case can be built around negotiation at sub-regional or regional levels, including concerted efforts at creating the basic institutions and infrastructures (e.g., in telecommunications and transport).

Unfortunately, constraints such as visa requirement, limitations on the movement of natural persons, mutual recognition of qualifications and standards are not lower between African countries or regions than with non-African partners. African negotiators need to ensure that their regional efforts are coordinated with their multilateral commitments, and adequate measures are taken to sustain progressive integration of African countries and regions before or in tandem with their integration in the multilateral system.

Most African countries failed to capitalise on their achievements in regional integration. For example, important efforts have been made to develop a single market in CEMAC and UEMOA and one would have expected some convergence in commitments made by members of these organisations. This was not the case. Also, the revised ECOWAS treaty does not contain substantive obligations or specific commitments, nor does it utilise or incorporate the flexibility provided by Article V of GATS.

Lack of consistency between domestic and regional policy reform and GATS commitments is a problem for most countries. For example, the asset holding requirements imposed by Nigeria on its insurance sector results in the total exclusion of foreign assets, which goes against the regional trend. Among UEMOA countries, reforms bound in the financial sector by member countries are not at the same level and in some cases even contradict each other.

Balanced Liberalisation of Labour and Capital

The low share of African services trade could be attributed to imbalances in the level of trade by mode of supply, especially asymmetries with respect to the mobility of labour and capital. The movement of natural persons faces many barriers including requirements of visa, quotas, residence permits, and work permits. Limitations often tend to be more onerous on low- or medium-skilled labour than they are on high-skilled labour. The main categories of commitments on movement of natural persons scheduled are limited to intra-corporate transferees, business visitors, and independent professionals, including those providing services under a service contract. Countries with higher skill level personnel linked to mode 3 on commercial presence have largely benefited from the GATS commitments on movement of natural persons. Unfortunately constraints to temporary export of labour prevail in Africa where the relatively wealthier countries often have more discriminatory treatment against African workers. For example, regional integration in the CEMAC region has been significantly constrained by disagreement on migration.5

The liberalisation of capital is another area that will require attention from African negotiators. Trade-related investment measures, as they affect investment in services, will need to be properly reviewed to ensure that the necessary environment to attract domestic and foreign investment in the service sectors is created.

Address the Data Needs

The GATS defines trade in services as the supply of a service through any of four modes of supply: cross border, consumption abroad, commercial presence, and the presence of natural persons. Each Member is expected to present its scheduled of commitments in individual sectors by mode of supply. This has raised some difficulties because of the paucity of statistics and lack of adequate understanding of these modes of supply. Data collection and analysis efforts in GATS, therefore, need to harmonise the understanding on the notion of trade and of the
conceptual differences between the modes of supply, in general and in individual service sectors. Then, the data collected should allow proper analysis of supply and demand characteristics of each sectors, the existing regulatory framework, and assessment of possible costs and benefits of liberalisation.6

Statistical information currently available suffers from three main shortcomings namely on coverage, level of disaggregation, and concordance across frameworks. Gaps in coverage are related to BOP statistics principles of registration of transactions between residents and non-residents that end up excluding transactions involving commercial presence and stay of natural persons for durations of more than one year. The level of disaggregation does not allow an explicit identification of what constitutes trade in services. The lack of concordance arises particularly when comparing the Group of Negotiations on Services (GNS) and the BOP classification. Foreign affiliates trade (FAT) statistics, when they are collected, are likely to follow activity classifications that, by their very nature, are not directly in conformity with a product classification such as the GNS. Finally, since the commitments under the GATS are specified according to the four modes of supply, trade statistics for each service sector should ideally also be available according to each of the modes of supply. The limitations of the existing statistical domains in providing information on trade by different modes of supply need to be addressed in the negotiations (see Table 1). It is intended that the new statistical domain of FAT statistics should remedy some of these deficiencies.

A critical aspect of the increase of African participation in service trade is a comprehensive data collection effort. For each sector two types of data need to be collected. The first type of data should deal with policies and market structure and should cover three broad areas: the conditions of competition in the sector, notably policy restrictions on entry; restrictions on ownership, private and foreign; and regulation, especially elements designed to achieve social objectives in competitive markets. The emphasis needs to be on policies affecting international trade and investment in services, rather than more general policies affecting the service sector. The second type of required data needs to deal with the performance of various services sectors, and should cover prices, quality indicators, and measures of access, especially for the poor.7

Using GATS More Productively

Mostly because of inadequate understanding of GATS commitments, African countries failed to use the GATS framework to their advantage. In particular, they did not use GATS to foster or consolidate their ongoing liberalisation programs. African countries have failed to attract sufficient investment to stimulate their production and trade. One of the main reasons is the perceived high risk associated with the region. An urgent policy instrument is a credible policy commitment mechanism that ensures current policies will last until an investment matures. The WTO, through multilaterally agreed commitments, provides an acceptable framework for buying credibility and attract the required investment. One usage of the GATS is to bind most of the unilaterally achieved liberalisation through commitments in GATS. Such commitments would protect potential investors against policy reversals. Also the GATS can be used to improve market access for exports that no specific African country can do, especially given its low market power. Furthermore the GATS could provide a framework for addressing anticompetitive practices in a way that no African country or region could obtain otherwise.

To productively use GATS, African countries would also need to increase their understanding of agreements. Selected cases identified by the case studies illustrate the lack of adequate understanding of the Agreements. The Nigerian case study identified an apparent mismatch between the country’s physical and economic size and the level of commitments it undertook in the GATS, both in horizontal and sector-specific bindings. Extremely limited commitments were made in core banking business and a number of securities and other financial services, especially when compared to tourism and travel-related services. Nigeria’s shipping policy, by placing limits on domestic capital held by foreign operators, the value or number of maritime transport services transactions by foreign operators, and the total number of foreign nationals, contradicts the nature of commitments made under commercial presence for maritime freight transportation by Nigeria. In that area, Nigeria places no limitations in its scheduled commitments. A similar situation is encountered in telecommunications where no limitations are placed on private investment but the government-owned provider is subject to a different set of discriminatory rules that, in effect, contradicts the GATS commitment on national treatment.

An obvious conclusion from this is the low level of understanding of GATS principles and commitments and their relationships with unilaterally undertaken liberalisation measures. Important capacity building efforts are required to fully appraise the constraints and opportunities of GATS and their implications on other unilaterally undertaken policy reform.
Sector-Specific Experiences and Proposals

Our sector-specific analysis is limited to financial, transportation, telecommunications, tourism, and professional services. The case studies have covered other sectors, including those with actual and potential trade and export interests. In all these services sectors, liberalisation has been primarily driven by their structural adjustment programs, with a key element being privatisation of previously state-controlled firms. While significant progress has been made in several countries, little progress has been achieved in terms of market access partly because of the weak institutional and regulatory base for sustaining both the privatisation and liberalisation process. This in turn has limited entry of new actors, domestic or foreign. As a result, a cross-sectoral issue is the overall domestic regulation and competition programs that can stimulate the sector-specific negotiations. Particular attention needs to be attached to the elimination of constraints that prevent African countries from taking advantage of further liberalisation.

Financial Services

The financial sector is one of the basic infrastructures of an economy and is essential for development. Market failure is an acute problem and could be attributed to asymmetries of information, and moral hazard arising from policies to prevent systemic risk and to provide safety nets. Although the content of financial sector regulation has been changing dramatically in recent years, several countries still feel the need for regulatory policies to correct perceived market failures and systemic externalities.

For most African countries, liberalisation of financial services has been primarily the result of unilateral liberalisation. However, most of them failed to capitalise on these achievements by using the WTO framework to lend credence to their reform. One exception is the case of Mauritius where the WTO played an important role. Cross-border supply (mode 1) by overseas insurers and the main financial services (life and non-life insurance, and acceptance of deposits) is restricted but auxiliary services are liberalised. Reinsurance, consultancy and actuarial services are allowed in the insurance segment. In banking, money transfer, guarantees, underwriting of securities, and financial data processing services are allowed. Mode 2 is highly liberalised. There are no restrictions for banking services. Insurance services are subject to the compulsory insurance of assets. With respect to mode 3, there are no restrictions on insurance services whereas for banking services a license or approval of the Bank of Mauritius is required. Entry is restricted by an ENT, the requirement that a foreign services supplier is to be employed only if it can be determined that, after sufficient publicity, no qualified resident or national of the country was found to take up the job, and that the employment level, wages, and other working conditions are the same as for nationals of the country.

In Nigeria, the reform in the structure and performance of the financial services sector, due largely to autonomous liberalisation, has not been properly coordinated and sequenced. Financial reforms induced a substantial number of new entries. Because of the weak regulatory and prudential framework, the reform led to financial crisis. A Financial Services Coordinating Committee (FSCC) was only formed in 1997 to improve the coordination, supervision, and regulation of the financial services sector. Subsequently, Nigeria placed restrictions on market access, mostly for cross-border supply, consumption abroad, and presence of natural persons. Difficulties such as the stability of the sector and inadequate capacity as well as jurisdictional problems continue to plague developments in the sector. In particular, weak operational and regulatory capacity (institutional and human resources) led to reversal of deregulation policy. Overall the Nigerian policy reform has been plagued by major credibility problems and finding an adequate agency of restraint is crucial. With proper regulatory capacity, the GATS framework could provide such policy lock-in mechanism.

In the CEMAC and UEMOA regions, the financial sector is relatively liberalised in most segments. Changes in recent years have included bank restructuring, the introduction of new prudential regulations, and reform of the legal framework. The banking system in both regions is supervised by two regional Central Banks that control the availability and allocation of financial resources. Bank supervision is done by regional banking commissions that supervise banking operations and ensures Members’ banks respect prudential requirements. A similar structure exists for the insurance sub-sector through a regional insurance market conference: CIMA (Conférence Internationale des Marchés des Assurances). Because of the regional nature of financial regulation, Senegal in its submission invoked the provisions of paragraph 2 (a) of the financial sector annex. Overall, the Senegalese schedule of commitments broadly reflects the regional reform. Had there been sufficient coordination, other member countries of BCEAO and even BEAC (Central Bank of Central African States) would have submitted similar schedules. There was no coordination aimed at consolidating achievements from unilateral or regional liberalisation in the multilateral framework.

The main constraints to financial service trade as listed by the case studies can be summarised as follows. Markets are small in size with low levels of competition and low capital bases to enter into mergers and
acquisition and to form strategic alliances. This is compounded by deficient technical skills, poor supervision of financial institutions, and poor quality of statistics and data collection, making it difficult to have adequate market valuation, assessment and/or forecast. Because of poor telecommunications, financial transactions are concentrated in major towns. Market access is restricted by both direct and indirect measures such as cumbersome licensing process. Several segments of the financial sector are missing in most countries. Developments of services with export potentials such as in insurance industry are constrained. For example, portability of insurance coverage across countries or regions is not possible. Also most countries do not have proper judicial systems, and this significantly restricts trade expansion.

Overall, the financial sector in Africa is relatively liberalised in many segments, especially when compared to the late 1980s. The main challenge might be on how to remove the remaining constraints. While the GATS multilateral framework could assist in enhancing credibility, most of the efforts are to be taken at the national and regional levels. The capital and institutional basis remains very fragile. Regional cooperation could be relied upon to deepen regulatory reforms. Countries with significant levels of openness achieved these unilaterally and might consider consolidating them through GATS. Given the savings-investment gaps in both banking and insurance in most African countries, mode 1 supply could be liberalised with bindings at current levels to begin with. Conditions on FDI (mode 3) could also be bound. The international community could help African countries in consolidating national and regional efforts at fostering competition, increasing the market size and progressively integrating the international market. Regional supervision of financial institutions such as those initiated in the CEMAC and UEMOA could be deepened and generalised to other regions.

Transport Services

Transport services are important because of their indirect multiplier effects on many other sectors of an economy. Transport services constitute a major input component in other sectors, to the point that enhanced efficiency in this sector has major multiplier effects on the overall economy. Some transportation sectors are quite capital-intensive, while others are an effective modality for job creation. The relevant market environment varies, with some segments still qualifying as public goods even in the liberalised environment. Negotiations in transportation services are carried out by sub-sectors.

Road Transport

Access to road transport markets has been liberalised with relatively simple entry requirements for operators in a large number of African countries. In Cameroon, for example, there is no restriction on ownership and effective control. There is a regional co-sharing agreement with Chad on the transport of goods in transit. There is an urgent need, however, for the establishment of an autonomous Board to set priorities for the development, utilisation, and management of the country’s road network.

The Kenyan road transportation sector has benefited from the Northern Corridor Transit Agreement that includes Kenya, Uganda, Rwanda, and Burundi. The agreement seeks to unify transportation rates and regulations, to facilitate easier passage of transporters through each other’s borders, and to establish a single basic customs declaration document. Altogether these measures are intended to reduce transaction cost and enhance competitiveness. Another regional undertaking is within COMESA and EAC, with coordination of national infrastructure planning and project financing for transport projects and the development of a regional support infrastructure of services such as freight forwarding agencies, provision of insurance, and flexible trade financing for intra-regional trade.

Senegal and other UEMOA countries have followed a similar route. They have adopted an inter-state road transport convention that considerably simplifies the formalities for inspection of goods carried by road to neighbouring states. As a result, Senegal has been able to consolidate its role as a transit country and as a trans-shipment terminal for landlocked countries. Also, the Senegalese government has devised a multi-pronged strategy including the building of the Dakar-Bamako trunk road and the renovation of the Dakar-Bamako railway as well as the construction of Senegalese warehouses in Mali. The decision creating a new company with private Malian and Senegalese capital will enable the link between the two countries to be managed more rationally and effectively.

Important constraints in this sub-sector include cumbersome border formalities and restricted entry into inter-state transport operations.

Rail Transport

This sector still faces major constraints in all countries considered. These constraints are primarily due to the small size and failed privatisation that limit possibilities of competition. The Nigerian Railway Corporation (NRC) is government-owned. No attempt has been made or policy established to open this transport segment to
domestic or international competition. The railway is privately operated in Cameroon and controlled by a multinational company through several affiliates that function as a cartel with a combined 72.1 percent of market share. This market concentration makes entry by other operators difficult despite the government’s willingness to promote free entry. The network is in urgent need of upgrading and modernisation.

The Kenyan railway sector is government-controlled. There is a long-metric single-track connection to Uganda and Northern Tanzania. The network is old, in bad condition, and inefficient despite its crucial role as transhipment point for neighbouring countries. Ongoing reform, involving tariff adjustments, privatisation, and termination of unprofitable services, is expected to improve the situation.

Maritime Transport
Maritime transport is highly capital-intensive and adequate policy framework is required to allow investor and other service providers to make the requisite long-term investment. In Senegal, foreign firms have dominated the sector for quite some time. Recent mergers, however, have allowed a few operators to strengthen their dominant position, unfortunately resulting in an increase in the cost of services. The private sector, especially foreign companies, has long dominated ocean shipping in Nigeria.

In Cameroon, significant reforms have been launched over the last five years to improve performance, especially to reduce services costs and transit time. A regulatory body has been created to remove government’s direct involvement and to limit political influence in the maritime sector. The application of the UN liner code had been abolished, although it is still in use in some neighbouring countries. Competitiveness is limited by inability to balance cargo flows and lack of alliance with a strategic partner. There is a need to give clear signals on the intention to liberalise modes 1 and 3 supply of services for these sectors. Only national companies can access the professions; foreign firm involvement is subject to the reciprocity principle and other specific international agreements between Cameroon and their registry country. Restrictions to market access include nationality requirements for ownership and registration, foreign equity ceiling, restrictions on door-to-door container and cargo-movement and delivery, and restrictions on inter-port maritime cargo trade. A regulatory body has been created but the Government maintains some control and roles. Cross-border entry into the sector is restricted for international shipping and cabotage. Access to port facilities remains discriminatory for foreign carriers.

The Port of Mombasa in Kenya is the busiest in East Africa, serving Uganda, Rwanda, Burundi, and parts of Sudan, Tanzania, and the Democratic Republic of Congo. Unfortunately, the high transaction cost has significantly eroded the competitiveness of products from these countries. Demand for Kenya’s maritime transport services is strongly influenced by the volume of regional imports and exports and the intensity of competition from Dar es Salaam (Tanzania). The international shipping companies, both the conference as well as independent shipping lines, handle most of the imports. The fact that the Kenya National Shipping Line (KNSL) does not have its own fleet of shipping vessels has meant that the country controls only a small share of imported cargo. There is, however, limited commercial presence of foreign suppliers with regard to the supply of most of the auxiliary services, which are dominated by small domestic enterprises. At present, the port is operating at only 40 percent capacity—a reflection of high costs, poor quality of facilities, and low quality of service as well as increasing competition. Recent announcement of a possible railway link between the port of Durban (South Africa) and Kampala (Uganda) has increased fears that Mombasa and Dar es Salaam ports could face even more serious challenges in the future. Hence a priority for Kenyan and other East African countries is to significantly reduce transaction costs at the Mombasa port.

Air Transport
The regulatory framework of air transport is dominated by the Chicago Open Sky Convention that covers the right of countries to regulate their airspace. Several bilateral agreements regulate routes, capacity, and tariffs. The trend in regulation is towards open skies, thus allowing foreign carriers to compete freely with domestic carriers on international routes to and from the country; this development will constitute a major challenge for non-competitive African airlines. Except in Southern Africa, the open skies agreement is currently limited to African airlines. Changes in recent years have centred on privatisation and formation of strategic alliances that, when properly done, can be a substitute to a shortage of foreign equity. Kenya Airways has become one of the fastest growing and well performing regional airlines. Originally a wholly state-owned airline, Kenya Airways was privatised when KLM acquired 26 percent of the shares and the airline was floated in the Nairobi Stock Exchange.

Cameroon’s air transport policy is quite liberal. Private and foreign ownership is allowed in the provision of air transport services and will be fully in force when its open sky agreement becomes effective in 2002. Access to the sector is discretionary but subject to a fast decision making process. There is no regulation of airfares and discounting is allowed. Still, measures are in place allowing the regulator to prevent abuse of
monopoly power through predatory pricing. The main law governing air transport sector in Cameroon is the CEMAC civil aviation code. It is in conformity with the Chicago Convention as well as CEMAC member’s bilateral and multilateral agreement on air transport.

The Tanzanian air sub-sector has been substantially reformed since the early 1990s. Because of its geographical size, railways and roads transport are more costly and difficult to develop than air transport. Private sector participation in the scheduled air market is allowed. Airfares are freely determined, which has led to increasing capacity and raising efficiency in the air service provision. The number of charter operations in major cities (Dar es Salaam and Zanzibar) has increased significantly; air charter services increased from 15 operations in 1992 to 29 in 1998. Since 1992, the Civil Aviation Board (CAB) has licensed new scheduled air operators. There has also been a growth in the number of passengers. The government’s decision in 1998 to make the Directorate of Civil Aviation (DCA) an autonomous agency culminated into forming Tanzania Civil Aviation Authority. They foresee and regulate air aviation in the country. By and large, Tanzania respects the Chicago Convention. Entry into the sector by the private sector is relatively easy.

The Nigerian air transport sub-sector has experienced substantial restructuring, encouraging increased private sector participation since the mid-1980s. The Federal Airport Authority of Nigeria is responsible for the maintenance of facilities at Nigeria’s airports and for upgrading the facilities to the international civil authority standards. It has signed agreements on procedures for provision of air traffic services within the country and the West African sub-region. The private sector operates actively on the domestic routes while Nigerian airways compete with foreign airlines on international routes.

Overview Issues in Transport

Overall, the transport sector in Africa is significantly constrained by lack of competition, poorly developed infrastructure, and various administrative and governance problems. Each transport mode is poorly developed because of small size and failure to design regional transport policies. Competition is limited because of natural monopolies and significant government interventions of various forms. As a result, the sector cannot attract the required investment. Cases such as that of Kenya Airways suggest that with willingness to open up, the situation can be improved.

In such areas as maritime transport, national or regional undertakings could be usefully complemented with the multilateral framework. In particular, given the crucial role of transportation services in enhancing competitiveness, most countries should consider using the GATS for attracting the necessary human and physical capital. Detailed studies might help determine issues for which remaining restrictions are required. Limitations on market access could be invoked with respect to the number of natural persons who may be employed and on the legal form of firms. In the case of commitments by mode of supply, the movement of natural persons might be made partly conditional upon investment in the human resources development of nationals. For commercial presence, the focus might be to guarantee that the technology (physical and otherwise) can allow the country to leapfrog and close its technological gap. Countries with sufficient policy harmonisation in this sector should gain from coordinated regional infrastructure investment programs in order to progressively create an efficient market size.

Several of the African case studies suggest that the effectiveness of reform in the transportation sector is too often stunted by residual inefficiencies in auxiliary support services, e.g., customs clearance, port management, airport management, infrastructure, etc. As pointed out in the UEMOA study, costs of trade facilitation are very high in comparison to most other developing regions, extracting a heavy toll on the competitiveness of African producers, importers, and exporters. The lesson is that for transportation reform to be truly effective, it must be deepened by also reforming support services. Some aspects of the problem might be addressed through unilateral reform; others may require negotiations with trading partners. Constraints that might feature at the negotiation table include customs clearance and transit formalities, liberalisation of harbour and airport services, and reform of freight forwarding and consolidating. Issues of trade facilitation that might be negotiated elsewhere in the WTO are of critical importance to service liberalisation in this area (e.g., Customs, PSI). African countries will also need to collaborate in infrastructure development to increase access to both hinterland and landlocked neighbouring markets.

It is useful to stress the limitation of these multilateral initiatives. In addition to the domestic reform that can lead to reduction of transportation costs, technical assistance and capacity building programs would be required to build the necessary infrastructure. Regional and sub-regional undertakings need particular attention. For example, port facilities serving landlocked countries (e.g., Abidjan, Dakar, Douala, or Mombasa) need to be properly opened for use by all regional partners countries and would need to be complemented by relevant efforts in other transportation modes. For example, some have suggested that these ports be privatised with neighbouring countries having the option to become shareholders. Such ideas could be supported by the international community.
Finally, these inefficiencies are not particular to African countries. Maritime transport negotiations collapsed in 1996 and are due for reopening in the current negotiations. No agreement has also so far reached on air transport. The terrorist attack on the US on September 11, 2001 showed how vulnerable is the air transport industry.

Telecommunications

Telecommunications reform in African countries points to the critical importance of building up an effective regulatory capacity as a *sine qua non* for successful liberalisation. Privatisation and liberalisation do not necessarily eliminate potentials for monopolistic practices.

Senegal invested early in telecommunications, including in modern infrastructure such as digital telephony (including in rural areas), as far back as 1986. This has facilitated the emergence of export data services such as the remote capture and processing of manually drawn architectural and industrial drawings using Computer Assisted Design (CAD) software. The State privatised the national telecommunication operator in 1995 through the selection of a strategic foreign partner. The current telecommunications code maintains the monopoly position of the incumbent operator until 2003, at which time the sector will be opened to other operators. Private tele-centers offer the main value-added services and have been effective for job creation and expansion, especially in rural areas. Senegal did not make any commitments on the cross-border provision of basic services that remain under the control of a monopolistic operator. The same applies to commercial presence for mobile cellular services.

In Tanzania, the sector has been liberalised with minimum entry barriers of new operators domestic or foreign. This in turn has led to rapid improvement in the quality and quantity of services. For instance, the number of telephone lines increased by 81 percent between 1991 and 1999. During the same period, exchange connection went up from 76,369 direct exchange lines to 126,515 lines (+66 percent). Public-operated phones as well as card phone services have increased. The liberalisation of the sectors, allowing more competition to cellular services, has improved performance for telecommunications service. The number of cellular operators has increased since 1992 when the sector was liberalised. The competition is intended to bring down tariffs of telecommunication services. Others benefits include reducing the time waiting for connection and increased frequency of telephone connections. In addition, the teledensity has increased.

Cameroon’s decision to liberalise has had a profound impact on telecommunication nationwide. Although concentrated in urban centres, the cellular telephone business is developing very quickly, with the market doubling every few months. The sector currently has three leading providers. A telecommunications regulatory body, created recently, performs a wide range of functions including licensing of operators, managing of spectrum, promoting competition, setting technical standards for equipment, and advising the government and the ministry of posts and telecommunication on policy issues. There are limited restrictions on foreign participation. A strategic partner is required to hold a share of at least 30 percent in a licensed company. Twenty-five percent of a board of directors needs to be Cameroonien.

Kenya was among the eight African countries that made commitments on telecommunications at the end of the Uruguay Round. By 1992, there were 60 automated telephone exchanges and 256 manual exchanges operating in the country. Both private and foreign ownerships are permitted. However, the maximum equity ownership by a foreign investor is limited to 40 percent. By the end of 2000, there were 50 licensed Internet service providers. Market access to Kenya’s fixed line telecommunication is restricted. The existing policy allows for entry of only one firm per region for local services and one firm each for long distance, international, and leased line telecommunications services. Foreign firms are allowed to provide services in these areas but through partnership with local firms, with maximum 40 percent ownership by foreign firms. There are also restrictions on the provision of basic telecommunication services through networks other than public switched network. For instance, the provision of Internet services can only be undertaken through Telkom (K) Ltd., which serves as the Internet backbone and has five-year exclusive rights in that service market. While third party domestic resale of lease line capacity is permitted, third party external resale is not allowed. The Communication Commission of Kenya (CCK) is the regulator. It is independent from government and its functions include licensing and regulation of retail tariffs for monopoly services. Setting of interconnection rates and regulation of retail tariffs for non-monopoly services are the responsibilities of the operator while the regulation of cable television is undertaken by the Ministry of Transport and Telecommunication Services. Kenya’s regulations allow private and foreign ownership in both analogue and digital mobile service. Full private ownership is allowed, but foreign ownership is limited to a maximum 40 percent of the shares. The number of operators is currently restricted to two for at least five years. Licenses for radio frequency are awarded with the service license.
In sum, autonomous liberalisation has been pursued in a number of African countries. Liberalisation has attracted a number of private operators, especially in mobile telecommunications and Internet services. The regulatory structure has often constrained cost reduction and spread of service by limiting access of new operators. Services providers are not allowed to build their own networks or to own or lease their own international data gateways. Teledensity remains low, especially in rural areas. The use of wireless technology remains limited. Charges for international calls remain excessively high, sometimes due to very high government taxes. The development of Internet remains constrained by lack of basic telecommunication infrastructure, the quality and availability of fixed lines, and limited accessibility to customers despite the presence of “cyber cafes.” There are problems with regulatory bodies given the low level of technical skills and poor quality of data.

Given the importance of telecommunication development for other sectors, African policy-makers must consider strengthening their commitments in telecommunications and using the WTO framework to complete and capitalise on recent achievements. At a minimum, countries should lock-in liberalisation achievements by binding in GATS at current levels of liberalisation; most likely, liberalisation needs to be far more aggressive and deeper. African governments do not have the resources to invest in modernizing and expanding the telecommunication system. Only private investment—domestic or foreign—will do that. The days when governments used the telecommunication system as a source of fiscal revenues (mostly through extremely high charges for international calls, Internet access, or other services) are over. Callback, Net-to-phone, and other technologies are killing these “cash-cows.” Low-cost, advanced telecommunications services are far too critical for the competitiveness of African businesses to allow African telecommunications to slip further behind through regressive regulation that discourage competition and new investment. However, given the opportunities existing in telecommunications, the international community could sustain these national efforts especially by assisting the recently created regulatory agencies to create the require liberalisation of the sector.

Tourism and Travel-Related Services In Africa

Tourism is the world’s fastest growing service activity. Being fairly labour-intensive, it is a major source of employment generation, particularly in remote and rural areas. Efficient tourism services depend significantly on the climate diversity. Main constraints include inadequate infrastructure and the lack of reliable air and sea connections, developed banking facilities, and efficient internal transport facilities. Key players are state-controlled, although state-controlled hotels are to be privatised in the near future. The private sector is very active in the sector and controls 95 percent of the 800 hotels currently registered. Cameroon made commitment for this sector in its last submission at the WTO but has been unable to attract new investment, except probably in the informal and least regulated sector.

In the EAC countries, tourism is an important service sector contributing an average of 3.9 percent of the GNP and accounting for 67.6 percent of the commercial service exports in the three countries in 1997. All three countries are among the top twenty tourist destinations in Africa, with Uganda being the fastest growing Eastern Africa destination both in terms of arrivals and receipts. The Ugandan government made commitments on hotel and restaurant services and travel agencies and tour operations. Commercial presence is restricted and subjected to government approval. There is no limitation on national treatment. In Tanzania, tourism is a major source of foreign exchange. Revenue from tourism increased by 31 percent in 1999. Tourism accounts for about 7.5 percent of GNP and about 25 percent of total export earnings. The number of tourists visiting Kenya per year reached 1 million in 1996, most of them from Western Europe. Tourist services include car hire services, tour operators, hotels and lodges, game viewing, and cultural activities. By the mid-1990’s, Kenya had about 600 foreign-owned tour operating firms.

The main constraints in the tourism activities include costly air travel, low performance of law enforcement and government ambivalence, restricted foreign entry, deficient infrastructure, the limited range of products, cumbersome license formalities, and insecurity. These constraints can be addressed by a combination
of efforts undertaken at the national, regional, bilateral, and multilateral levels. National efforts are primarily in the areas of deepened domestic judicial and regulatory reforms, and infrastructure development. These national efforts need to be harmonised at the regional levels. Foreign development partners and the GATS framework could assist by relevant technical assistance and capacity building in business networking and infrastructure development.

Professional Services

All countries surveyed have export potential in professional services, at least in the region, but they still face several constraints. For example, Cameroon’s legal professions are ruled and organised under specific decrees and laws that in effect restricts access. Entry in the profession is through a formal qualifying exam and specific academic requirements. Foreigners are admitted only if Cameroon has a reciprocity agreement with their home country. A foreign architect can practice in Cameroon only if accredited and subject to the existence of reciprocity agreements with his home country. Other legal forms of barriers include the requirement for joint venture with a local partner controlling more than 51 percent of the firm. The consultancy services are among the county’s main services import especially for technical assistance.

Cameroon also imposes various conditions on accountancy profession especially with respect to auditing. The profession is headed and regulated by a national body, ruled by a national law consistent with the UDEAC/CEMAC norms for the profession. The provision of this service by a foreigner is possible through a joint-venture company majority-owned financially and controlled by locally qualified Cameroonian accountants. National approval prior to accreditation at the CEMAC level is required. There are also educational (education titles, examinations successfully passed) and professional (registration by state authority and membership of private organisation) requirements. A compulsory insurance subscribed with National Insurance Company is required.

Kenya’s professional services sectors has developed due to large public outlays on higher education and sustained investment in key infrastructure facilities in the last three decades. Professional services are important to the economy. The overall employment of skilled and unskilled workers in activities related to the provision of professional services has grown at a faster rate than the growth of employment in the entire economy. In terms of employment, data processing and tabulating services is the most dynamic professional services sub-sector after veterinary services. Information technology and other professional services have potential to earn Kenya foreign exchange and generate employment. Others are business, professional and labour associations, social and related community services, booking and travel agencies, and accounting, auditing, and bookkeeping services.

The 1999 estimate of professionals working in Kenya was about 140,000, with most of them concentrated in the medical, teaching, and accounting and management professions. The country has, for the past two decades, been producing more skilled personnel in most professional categories than the absorptive capacity of the economy. Professions with excess include teaching, veterinary doctors, agricultural scientists, food technologists, engineering, architectural, accountancy, and legal professions. Kenyan professionals are today working in many countries, including South Africa, Botswana, Swaziland, Lesotho, Zambia, Malawi, Tanzania, Uganda, Namibia, UAE, and the USA as well as in other Middle Eastern and European countries. About 700 doctors work in South Africa alone.

Mauritius has no shortage of qualified accountants and can offer a whole range of specialised services currently provided by the accounting profession. The presence of an international network of accountants also allows free movement of specialised services, which may be in short supply in Mauritius. The country could consider making commitments for commercial presence, subject to the recognition of qualifications and restrictions or the legal structure of the professions. Since accounting and auditing normally require commercial presence, no commitments need to be taken for cross-border supply. Mauritius has a shortage of qualified and specialised personnel in computing and related services. One way of attracting scarce skills is to make commitments, especially for commercial presence.

The main constraints for professional services identified by the case studies include the following. Temporary migration of workers is highly controlled in many countries, usually through stringent requirements for work permits. The requirements for foreigners to acquire the country’s professional qualification are de facto barriers. The inadequate professional training leads to low professional skills and technical capacity, lack of professional culture, and inadequate promotion and poor pricing of services. Because of inadequate capacity for regional and international networking, there is insufficient access to essential market information. Furthermore, the weak base in process and information technology has adverse effects on quality of services provided. All these combine to yield poor work and business ethics, which impact negatively on competition.

For the way forward it is important that mutual recognition agreements (MRAs) can easily be established between countries with similar characteristics: education system, economic development, social values, and
business regulations and practices. One reason for this is the cost of observing the true professional skills. As such, African countries need to give priority to regional harmonisation and improvement of education and training curriculum, as well as their business regulations and practices. Current efforts between Francophone and Anglophone countries should be reviewed and harmonised. Simultaneously these efforts should ensure that international efforts are taken into account. In the GATS framework, it requires adequate reform and implementation of Article VII on mutual recognition.

Conclusion

The points raised in this chapter are only illustrative of what would need to be done by African countries to properly identify what they can request and/or offer in the GATS negotiations to serve their overall development objectives. The hard work is to further explore, test, and flesh out some of these ideas. Seven points emerge in particular.

First, as evidenced from the case studies, GATS are quite complex and are currently not sufficiently understood. We need to identify areas of comparative advantage, then ensure that all relevant stakeholders, including in particular the business community and other economic actors, have a good understanding of the substance of the associated GATS agreements and assist them to take full advantage of the opportunities that the Agreements provide, with minimum negative effects.

Second, in all sectors analysed, the market size could constitute a constraint; hence regional dimension has to play a major role. Priority needs to be attached to developing inter-linkages with regional and continental economic blocks, to create bigger markets and to co-ordinate economic policies over a large integrated market. There is also a need to ensure that the sub-regional process is coherent with the multilateral process. Adequate agencies of restraint are required to provide the necessary credibility and build the required institutions. We have pointed to cooperation ventures such as in CEMAC and UEMOA that need to be deepened and generalised in other regions. These regional institutions need to be used both to sustain domestic policy reform and build the required physical and human capacity.

Third, key negotiations objectives should focus on the liberalisation in modes of supply and export sectors of interest to African countries. We have pointed out the asymmetric liberalisation of labour and capital, with labour mobility more beneficial to African countries. The movement of natural persons faces many barriers and barrier-like formalities including quotas, ENT, and qualification requirements. Such qualifications and licensing requirements, as well as the regulations of professional services (e.g., lawyers, accountants, architects, engineers, medical practitioners) impede the entry of foreign services suppliers. In developed markets, these provisions will be used to keep away developing country professionals who are usually not highly qualified.

Fourth, African negotiators should focus on GATS provisions (e.g., Articles IV and XIX: 2) that are meant to promote their increased participation and that have not been fully operationalised or implemented. The objective of African countries in the negotiations could comprise effective implementation of such provisions. It would then entail (1) developed countries assist with the strengthening of the domestic services capacity, efficiency and competitiveness through access to technology; (2) improvement of the access to information networks; and (3) liberalisation in sectors of export interest. The negotiations shall, therefore, aim at eliminating a range of barriers against the movement of natural persons through enhanced commitments on ENT, mutual recognition of professional qualifications, and the non-discriminatory application of internationally established standards.

However, such discriminatory practices that African services providers face in developed markets are widely used to prevent movement of African professionals on the continent. African countries need to offer similar commitments, albeit taking into account their own national development policy objectives. In several African regional schemes, it has been difficult to have a protocol on labour mobility. Therefore, a phased-approach may be necessary. Above all, improvement in skills to international levels is necessary for taking advantage of opportunities offered by possible liberalisation of mode 4.

Fifth, efficiency and competitiveness also require actions in sectors where there is no direct export interest. In particular, it would make sense for African countries to offer commitments in those sectors and modes of supply that could assist in enhancing the efficiency and competitiveness of their domestic services capacity. Key among these are the services that are critical inputs into production and whose inefficient provision raises production costs and reduces competitive edge. Therefore, services sectors whose efficiency will improve the infrastructure and means of services delivery, such as basic telecommunications, energy supply, and air and maritime, transportation should be considered for commitments that lead to attraction of required investment.

Sixth, in making commitments in these areas, African countries should bear in mind that attaining efficiency is not just a matter of liberalisation of international trade barriers but also of instituting an appropriate
domestic regulatory framework. Competition is crucial for market contestability. Effective regulatory mechanisms and institutions are either lacking or grossly understaffed and under-funded. An important constraint in the sectors reviewed is the lack of competition and transparency. This imposes upon African countries the burden of deeper national domestic policies that have direct effects on transaction costs and international competitiveness. Given the relationship between domestic regulation and international trade in services, African countries need to factor into their domestic policy reform the international dimension. The case studies have shown that African domestic regulatory reform faces major challenges that should be addressed urgently.

Finally, the temptation is high to submit to multilateral rules those domestic policies and regulations with significant impact on international trade flows. The articulation and negotiation of these rules at the multilateral level pose difficult problems, given the difference in level of domestic policy reform of WTO Members. The key question is the extent to which national policies and domestic regulatory systems should be harmonised globally and how much domestic policy space should be left to national policies and regulatory standards in such a manner as to attract the desirable level and mix of international trade in goods and services. Where they are particularly significant, the trade-inhibiting impact of national policies and domestic regulations may need to be harmonised. In turn, African countries need to accept a minimum cross-border competition. As a building block to multilateral liberalisation, African countries could start by significantly liberalizing at the regional level and then move, after an acceptable timeframe, across African regions. Meaningful commitments in mode 3 and unilateral improvements in competition policies will keep issues such as investment and competition agreements out of the multilateral framework. A crucial complement of all the above is adequate technical assistance and capacity building that can be provided as binding commitments in the WTO.

1 Summaries of some of the case studies are included in this volume. Full-length chapters can be obtained from the specific authors or by contacting the AERC Secretariat at research@aercafrica.org. Some of the chapters draw from earlier research work conducted under the CAPAS program on trade in services.

2 These workshops, sponsored by the African Economic Research Consortium and other organisations, were held for the UEMOA countries in Dakar and in selected countries: Cameroon, Mauritius, Kenya, Nigeria, and Uganda.

3 See Chapter 2 on SDT by Ademola Oyejide.

4 See also Mashayeki (2000).

5 The movement of natural persons is particularly important for the liberalisation of professional services. Box III summarises the main issues as arising from African case studies.


7 This framework is being implemented in an effort pioneered by Aaditya Mattoo of the World Bank and covers several developing regions, including Africa.
CHAPTER 8

Service Sector Issues in Sub-Saharan Africa:
A Case Study of Kenya

Gerishon K. Ikiara

An Overview of Kenya’s Service Sector

The service sector has been the most important sector in the country’s economy for most of the second half of the 20th century. By 1970, the service sector accounted for 46 percent of the country’s GDP, compared with agriculture’s share of 37 percent and industry’s 17 percent (8 percent for manufacturing). In the same year, the services contribution to the country’s wage employment was 49.6 percent, relative to 12.7 percent for manufacturing and 31.7 percent for agriculture and forestry.

In the second half of 1990s, the share of services in Kenya’s GDP was around 54 percent, while its share in total wage employment was close to 62 percent; about 1.03 million people were employed in the sector by 1998.1 During this period, the contribution of the agricultural sector to GDP and wage employment had declined to less than 30 percent and 19 percent respectively, while that of the manufacturing sector had experienced minor growth to about 11 percent of GDP and 13 percent of total wage employment.

The Services also feature strongly in the country’s export sector, making the sector an important determinant of the country’s balance of payments position. For most of the period 1970s to early 1990s, export of services accounted, on average, for over 50 percent of foreign exchange inflows in Kenya’s current account and about 33 percent of the outflows. The following sections will review the structure, performance, and regulatory environment for selected services sectors.

Financial Services

Kenya’s financial sector has been one of the most dynamic service activities in the economy. By the end of 1999, the sector consisted of 53 commercial banks, 11 non-bank financial institutions, 4 building societies, 48 foreign exchange bureaux, 2 mortgage finance companies, and many banking outlets comprising branches, agencies, and mobile units of all banks and financial institutions countrywide.

Kenya’s banking industry continues to be dominated by two multi-national banks (Barclays and Standard Chartered) and two local banks (the Kenya Commercial Bank and the National Bank of Kenya). Together the large three banks (Barclays Banks, Kenya Commercial Bank, and the Standard Chartered Bank) account for about 60 percent of the deposits in the industry. In the early 1990s, the two multinational banks and the then fully government-owned Kenya Commercial Bank sold minority shares to the general public through the Nairobi Stock Exchange Market.

The 1985-86 banking crisis precipitated amendments to the 1968 Banking Act. The amendments increased the minimum capital required to start a new bank to Ksh 15 million (US$200,000) and for the first time created a Depositor’s Protection Fund (DPF) in 1986.2 Foreign incorporated financial institutions were required to have higher minimum paid-up capital before they could be licensed.

In the mid-1980s and early 1990s, the Government outlined reforms intended to strengthen market forces to create a more competitive environment, generate incentives, and allocate resources more efficiently in various sectors of the economy. The Capital Markets Authority (CMA) was thus established in 1990 to facilitate development of the market. These efforts gave more attention to the modernisation of the country’s stock exchange market, fostering of the public’s confidence in the market, and encouraging more companies to go public.

Kenya’s commercial banks have established links with other banks not only in Eastern and Southern Africa, but also in other parts of the world to facilitate trade and international financial transactions. However, while some links exist between Kenyan and other financial institutions in the region, they are relatively underdeveloped, weak, and rather insignificant. There are also no significant preferential arrangements in the monetary sector.
There are currently no policy restrictions on new entry of securities service providers in Kenya either in investment banking, stock brokerage, or mutual funds. However, in the case of stock brokerage, entry and participation of foreign investors is restricted mainly to avoid the stock market from being heavily dominated by foreigners and to give the local investors time to prepare themselves for effective competition with foreign investors. It is often argued that unrestricted entry and participation by foreigners could lead to takeover of some local public companies by foreign investors.

Both domestic and foreign securities firms are allowed to provide underwriting of new issues, securities dealing, stock brokerage, risk management, mergers and acquisitions and advisory services, mutual funds, and information services. However, foreign commercial or universal banks are not allowed to deal in domestic securities. Foreign-owned securities firms are also not obliged to use the services of domestic resident financial intermediaries in either the interbank, foreign exchange, stock, or derivative markets.

Cross-border trade in securities services is unrestricted. Foreign securities firms are allowed to provide services to domestic firms and residents relating to mergers and acquisitions advisory services, investment advisory services, and credit rating services. The only area that is currently not permitted for foreign firms cross-border trade in securities dealing in the domestic market.

Kenya has, over time, maintained a liberal policy with regard to ownership of securities service firms. Private ownership is allowed in investment banking and mutual funds with no maximum ceiling for both existing and new entrants into the sector. However, in the case of stock brokerage, foreign ownership is allowed up to a maximum of 51 percent of equity.

The CMA is Kenya’s securities regulator. Established in 1970, it had 25 professional staff by 2001. It finances its activities through two main sources—license and fees (75 percent) and budgetary allocation from the government (25 percent). While the CMA is officially under the Ministry of Finance and Economic Planning, it enjoys autonomy in its operations and decision-making.

Although the licensing mechanism does not restrict the number of securities providers, firms must satisfy a number of conditions before being licensed. These are payment of a license fee, presentation of a comprehensive business plan, and showing evidence of adequate start-up capital. While the EAC and COMESA—two regional integration bodies in which Kenya is a member—have created some rudimentary framework for monetary cooperation, they have not yet established any preferential arrangements with regard to securities services. Service providers from member states are treated like other foreign investors.

The 1990s witnessed important changes in Kenya’s securities services market, mainly in the form of strengthening the regulatory framework for a more disciplined transparent and competitive market. Some changes have taken place as part of the general liberalisation of the economy, especially in the context of the SAP, in which Kenya has been a participant since 1980. Some of the more notable changes include the creation of the CMA in 1990 as the regulatory authority, restructuring of the brokerage services in 1994 to create a more competitive market domestically, the privatisation of parastatals in the 1990s which expanded the activities in the Nairobi Stock exchange market, measures taken to reduce the degree of restriction of ownership and participation of foreign investors in Kenya’s stock exchange market, removal of foreign exchange controls in 1992, and the removal of controlled interest rate regime in the country.

**Insurance Services**

Like the banking industry, Kenya’s insurance industry has experienced impressive expansion over the last thirty years. By 1999, Kenya’s industry comprised 41 insurance companies, 2 reinsurance firms, 165 insurance brokers, 178 loss assessors and investigators, 16 loss adjusters, 26 insurance surveyors, 1 claims settling agent, 5 risk managers, and 763 insurance agents. Kenya is also currently the headquarters of the PTA Reinsurance Company.

Small indigenous insurance companies and brokers constitute two-thirds of the total number of existing companies in the industry although their capital contribution is less than 20 percent. The establishment of the PTA Reinsurance Company (Zep Re) in Nairobi in 1993 created the second

Due to relatively liberal economic and investment policies in the post-independence period, foreign investors have continued to play an important part in Kenya’s insurance industry. By the mid-1980s, about 45 percent of all insurance companies operating in the country had majority foreign shareholding.

The Government has had an active role in the growth of the insurance industry, having established the Kenya National Assurance Company soon after independence. Further public sector involvement came with the establishment of the Kenya Reinsurance Corporation (Kenya Re).

A major constraint that faced insurance firms in the 1990s was a restrictive legislation that was unresponsive to the changing economic situation in the country and the rest of the world. The Insurance Act (1984), passed by Parliament to replace the Insurance Company Act of 1961, was not effectively enforced until January 1987.

Legislative Framework and Regulatory Environment: For Insurance

The Commissioner of Insurance is the regulator of Kenya’s insurance. Established in 1978 by an Act of Parliament, it is fully funded by the government. The number of insurance providers is not restricted by policy. However, insurance firms are required to be licensed before they can operate in the country. The conditions required for licensing include payment of a license fee of Ksh 150,000 (US$2000) for insurance companies and Ksh 250,000 (US$3,350) for reinsurance firms. They must also present a detailed business plan and have in their employment a principal officer who meets the qualifications required. The firm must also be locally incorporated with at least a one-third shareholding by Kenyan citizens. Once a firm has been licensed, it is not required to obtain separate licenses for branches established in various parts of the country. Insurance prices are not controlled by the government for either state-owned, private, or foreign firms. However, all the insurance companies are required to cede 18 percent of the gross direct premiums as re-insurance to the state-owned reinsurance company.

With regard to prudential regulation, both private, state-owned insurance companies and foreign-owned subsidiaries must meet minimal capital requirements of Ksh 100 million (US$1.35 million) for general business and Ksh 50 million (US$670,000) for long-term business. There are currently no specified liquidity reserve requirements. Once an insurance firm is licensed to operate, it is required to publish its financial statement annually. There are also no insolvency guarantee schemes in any category of insurance companies.

Market Access, Market Structure, and Cross-border Trade

Kenya’s insurance services are thus provided in a fairly liberal environment, although there are a number of restrictions. Entry of an insurance provider into the direct life insurance, direct non-life insurance, and reinsurance are not restricted in terms of members for both domestic and foreign providers. However, foreign firms must be locally incorporated and have at least a one-third shareholding by Kenyan citizens. Insurance companies are also only allowed to establish subsidiaries in terms of legal forms of establishment. They are not allowed to establish branches or representative offices. Foreign insurance companies established in Kenya are required to hold 100 percent of their assets locally. Insurance companies are allowed to provide virtually all forms of insurance including re-insurance, life, property, cargo, medical, automobile, export credit, pension, and investment. This is applicable to both domestic and foreign insurance companies.

Cross-border insurance trade has a number of restrictions. Kenyan residents cannot purchase life insurance, medical insurance, or property insurance cross-border from a foreign insurance company. In the case of cargo insurance, Kenyan residents are allowed to purchase insurance cross-border only through a resident intermediary. Furthermore, cross-border insurance suppliers are not allowed to solicit business in Kenya through advertising.

With regard to ownership, private ownership in the provision of insurance services is not restricted in any way. Foreign ownership is allowed so long as it does not exceed two-thirds of the shareholding, with at least one-third of the Kenyan shareholding being mandatory in life, property, health, and reinsurance insurance services.
Transport Services

With a fairly well-developed transport infrastructure, the transport sector remains one of the key sectors of the Kenyan economy. Kenya’s transport sector has had strong linkages with both the domestic and international economies. The country’s export and import of both goods and services depend greatly on the efficiency and capacity of various sub-sectors of the transport activity—road, rail, shipping, and air transport.

Road Transport

Road transport has remained an important activity in Kenya’s transport sector. Its share of total sectoral output ranged between 24 percent and 45 percent between the mid-1970s and 1990s. There has been a steady development of the country’s road network in the last thirty years. By 2001, the country was served by a classified road network of over 55,000 kilometres, linking various parts of the country and sectors of the economy. Cargo haulage by trucks continues to be a challenging area in the country’s transport sector.

Effective linkage of member states in road transport has been one of the main objectives. Kenya and other countries are expected to benefit from a proposed network in the northeastern part of the COMESA region linking Djibouti, Ethiopia, Somali, and Kenya. Maritime transportation facilities were also to be developed by strengthening national shipping companies, such as those of Somalia, Mauritius, and Ethiopia, and through increased utilisation of such inland waters as Lakes Victoria, Tanganyika, and Malawi.

Rail Transport

Rail transport is the second most important mode of transport in Kenya. Kenya Railways plays a crucial role in Kenya’s main exports and imports as well as goods to and from Uganda and Northern Tanzania, and has great potential of exporting its services to neighbouring countries. A public corporation, Kenya Railways has a 2,050 km-long metric-gauge single track with connections to Uganda and Northern Tanzania. However, built between 1896 and 1910, the track is old and inefficient.

Freight carriage has always been the predominant business of Kenya Railways, contributing over 90 percent of its total revenue. The major part of the freight traffic is between Mombasa and Nairobi. During the colonial period, especially before effective development of road transport, that section carried not only all Kenya’s exports and imports but also virtually the whole of external trade of Uganda. Petroleum products have been the largest items of up-country traffic and are of great importance for the finances of the railway. Kenya Railways Corporation has, however, experienced a decline in its services, especially in the 1990s. The corporation is expected to benefit from an on-going structural adjustment programme, especially on tariff adjustments, privatisation of some untenable services, and termination of unprofitable services.

Aviation

Kenya’s aviation industry started to take shape about 70 years ago and today comprises the national airline Kenya Airways, over 15 foreign commercial airlines with regional offices in the country, and about 30 other airlines which regularly operate flights in the country. The industry is highly competitive. A large number of the airlines, such as British Airways, Air France, Royal Dutch, Swiss Airways, KLM, Alitalia, Lufthansa, SAS, Ethiopian Airlines, and South African Airways, operate in the country.

Kenya Airways is one of the fastest growing and well-performing regional airlines. It has recently established a subsidiary, the Flamingo Airline. Originally a wholly state-owned airline, Kenya Airways was privatised when KLM acquired 26 percent of the shares and the airline was floated in the Nairobi stock exchange. The airline has relied on partnership and bilateral agreements, especially in the region, to expand supply of its services. During the period, the number of passengers landing and embarking at the two international airports increased from 2.5 million to about 3.0 million.
Maritime Transport Services

Market Structure and Performance

Kenya is the second leading nation after South Africa in maritime facilities along the Indian Ocean Coast and Mombasa, the busiest port in East Africa, serving Uganda, Rwanda, Burundi, parts of Sudan, Tanzania, and Democratic Republic of Congo. The port is currently one of the most important foreign exchange earners and sources of government revenue and employment in Kenya. Maritime transport is one of the most important modes of transport for Kenya’s export and import firms. Recent studies show that about 72 percent of the export and import firms ranked maritime transport as either the most important or second most important mode of transport for their operations.3

In 1980, total wage employment in maritime and related services was 15,243, accounting for 1.5 percent of the country’s total wage employment. Most of this employment was in auxiliary services, which accounted for 84.4 percent of total employment in maritime and related services.

The demand for Kenya’s maritime transport services is strongly influenced by the volume of regional imports and exports and the level of competition from the Tanzanian port of Dar es Salaam. Analysis of the structure of the commodity trade through the port shows that a much larger proportion of the freight handled at the port consists of imports, accounting for between three-quarters of total freight handled at the port. Out of the total annual tonnage handled at the port in the last three decades, imported cargo has accounted for roughly 80 percent, with exports taking up the rest of the tonnage. There is thus a considerable imbalance between import and export cargo, with significant implications on the level of demand and pricing of shipping services. Most of the imports are handled by the international shipping companies, both the conference as well as independent shipping lines. The fact that the KNSL does not have its own fleet of shipping vessels has meant that the country controls only a small share of imported cargo.

The volume of business handled at Mombasa port has experienced considerable stagnation in the last decade, leading to low capacity utilisation. The port is currently operating at about 40 percent of its capacity. While the port has a capacity to handle about 22 million tonnes of cargo per year, the actual average annual tonnage handled during most of the 1990s has been around 8.5 tonnes. Some of the factors contributing to this problem include the political instability that has affected some of the countries in the region especially Rwanda and Burundi, and the poor state of the Mombasa-Nairobi highway along which a large proportion of the freight handled at the port is transported.4 The volume of traffic and freight handled at the port has also been adversely affected by growing inefficiency, delays, and corruption at the port, which have gradually eroded the port’s competitiveness.

While Kenya’s share of shipping of cargo handled at Mombasa is rather insignificant, the country has more interest in maritime services especially in terms of provision of port services, cargo handling services, and a wide range of other auxiliary services. The demand for auxiliary services related to maritime transport in Kenya is strongly dependent on the volume of external trade in the Great Lakes countries and the goods that are transported through the Northern Corridor. Mombasa is an important part of what is known as the ‘Northern Corridor,’ i.e. rail and road routes serving various countries of Eastern Africa. These routes originate from the Mombasa port and pass through Kenya mainland to various countries in the region.

Although the creation of the KNSL was aimed at enabling the country to increase its capacity to participate in shipping business, the objective has been realised. By mid-1990s, Kenya’s share of the freight traffic handled at the Mombasa port was about 10 percent.5 It had been hoped that Kenya could increase its share of shipping business by utilising its share as provided by the Code of Conduct Convention for Liner Conferences. However, although the Code entitles national shipping lines to control up to 40 percent of the traffic with any trading partner, the Kenya National Shipping Line handles only about 10 percent of the cargo traffic passing through Mombasa port. A number of factors made it difficult for KNSL to fully utilise its entitlement under the UN Code. The most serious constraint was KNSL’s limited capacity.

Market Access and Possible Requests Under GATS
Given the current structure of Kenya’s maritime services, the following could be some of the areas of interest for Kenya under GATS negotiations with regard to maritime services.

- For Kenya and other developing countries to penetrate the market, existing arrangements between the established shipping lines would need to be dismantled. The existing capacity sharing arrangements, vessel pooling, price fixing arrangements, and cargo reservation have significantly undermined free competition in the shipping industry. Kenya would therefore benefit if all the existing arrangements were dismantled to create a more competitive environment where the big actors are not allowed to design collusive arrangements, which effectively keep the small actors in a disadvantaged and marginalised position.

- If price-fixing, trade-sharing, and vessel-pooling arrangements are effectively dismantled, a more level playing field would be created, making it easier for the small shipping concerns to penetrate the market. Price-fixing practices should be abolished in maritime services to allow improved competition through a more effective bargaining process between shippers and the shipping lines.

- The on-going process by the global shipping lines to fully integrate their services by providing both cargo shipping services as well as auxiliary services on land, i.e. providing the whole range of services required from the freight originator to the client, is likely to reduce the participation of African countries even more by curtailing their share of auxiliary services. There is need for the GATS to discourage monopolisation of maritime transport services through this process of full integration of services by the international shipping lines.

- The on-going liberalisation of trade in services should ensure that mechanisms are in place to prohibit shipping lines from moving into the provision of auxiliary services on land in order to prevent formation of powerful cartels in maritime transport services.

Kenya stands to benefit from improved access in the labour market for both skilled and unskilled labour. This would enable the growing number of Kenyans with seafaring skills and experience to work for international shipping lines and allow more rapid transfer of shipping technology to Kenyans.

Possible Areas of GATS Commitment in Kenya’s Maritime Services

In view of the current situation in Kenya’s maritime transport services, there are some of the areas in which the country can make GAT commitments.

- In view of the country’s limited capacity to compete in cargo shipping, the activity has been largely liberalised, especially given the fact that there has been no effective enforcement mechanism for the UN Liner Conference Code on cargo sharing formula. Since Kenya’s share of the cargo shipped through Mombasa is small and is unlikely to experience much change in the near future, the country could gain by committing itself to full liberalisation of the activity. The increased competition would benefit users of the port in terms of reduced charges for various shipping services.

- Full global liberalisation of employment of labour in seafaring services is an area of significant interest in which Kenya can compete for available job opportunities worldwide.

- Cruise shipping services is an area where Kenya can make a full commitment. The commitment could include allowing free commercial presence of foreign suppliers willing to invest in the establishment of modern facilities that are needed today for competitive cruise shipping services.

- In the supply of auxiliary services, there is need for more selective commitment. In the case of auxiliary services that require extensive modernisation of equipment and technology, Kenya would benefit from full liberalisation to facilitate entry of investors with adequate technological and financial capacity through whose activities the Kenyan maritime service can become more
competitive. However, in those services where the country has adequate domestic capacity to supply, there will be need for more gradual approach to liberalisation to enable domestic suppliers to build their capacity to compete with external suppliers.

Telecommunications

Kenya’s telecommunications network has gone through considerable changes and modernisation in the last four decades. By the mid-1990s, there were 60 automatic telephone exchanges and 256 manual exchanges operating in the country. Other notable expansion includes telex services that, over the years, have experienced a rapid transition from manual to automatic exchanges. In the area of external communications, satellite communications has become an important mode of communication.

A number of policy changes in the last 15 years have considerably altered the character of Kenya telecommunication services. The first policy change towards liberalisation of this service sector was implemented in 1990 when the government liberalised the vending of customer terminal equipment. In the following year, further measures were taken affecting market access and ownership, as the government liberalised supply, installation, and maintenance of internal telephone, wiring, and customer premises equipment. In 1995, further policy changes were made with regard to licensing and registration of vendors and contractors in telecommunication services. In 1996, there were other changes affecting liberalisation of supply installation and maintenance of external wiring.

Other important changes in the sector include the tendering of the second GSM, upgrading of the sector policy to 60 percent and 40 percent shareholding for local and foreign investors respectively, and licensing of Kencell in 2000 as a mobile phone provider.

One of the main anticipated changes in the telecommunication services in Kenya is that by 2005 exclusivity arrangement will be terminated to usher in full competition as a result of the planned privatisation and liberalisation.

Internet Services

Kenya’s Internet services market is relatively new in the country. Efforts to create a more liberal environment have facilitated significant growth of Internet services. Both private and foreign ownership are permitted. However, the maximum equity ownership by a foreign investor is limited to 40 percent. By the end of 2000, there were 50 Internet service providers.

CCK is responsible for issuing licenses to Internet service providers. As in other telecommunication services in the country, foreign firms must satisfy different requirements revolving around limited equity shareholding and having local partners.

Internet Service Providers face a number of regulatory constraints with regard the expansion of their infrastructure. They are, for instance, neither allowed to build their networks or to own or lease own international data gateways.

Mobile Telephone Services

Mobile telephone services are also relatively new in Kenya. The growth of this service has been constrained by restricted entry into the Kenyan market. Currently there are two mobile telephone service providers. Both providers are joint ventures with a maximum of 40 percent foreign ownership according to the regulations.

Tourism

Tourism has occupied a special position in Kenya’s external trade in services for most of the last forty years. It has been one of the country’s main exports and is currently the top foreign exchange earning export. Kenya has a relatively well-developed tourist sector. Her share of world tourism increased from 0.17 percent in 1985 to 0.19 percent in 1990, while her share in African tourism rose from 4.7 percent to 5 percent over the same period. By the beginning of the year 2000, Kenya was the fifth most important tourist destination in Africa after South Africa, Morocco, Tunisia, and Mauritius.
The main challenges that will confront Kenya’s tourism in the coming decade include declining competitiveness due to poor infrastructure and insecurity, rising cost of air travel, and increasing regional competition, especially from South Africa, Tanzania, Mauritius, Seychelles, and Zimbabwe.

A relatively liberal investment environment is one of the factors that contributed to an impressive growth of the tourism industry in Kenya over the last three decades. Foreign investors have generally received open encouragement from the Government. Many large foreign-owned hotels operate in the country including a number of hotels that are part of international hotel chains. The support of overseas tour operators has also been substantial, handling approximately 80 percent of the visitors into the country.

While some efforts and arrangements have been made to promote regional cooperation in tourism, serious collaborative regional efforts have not been made so far although tourism is an industry that could benefit tremendously from effective cooperation among the neighbouring countries. However, the momentum of growth of the tourism industry has been slowed down by a number of constraints including negative publicity, poor infrastructure, rising environmental degradation in some of the national parks, and poor and inadequate marketing of the Kenya’s tourist facilities.

Professional Services Sector

Professional services are becoming increasingly important in Kenya’s economy as demonstrated by their contribution to the national wage employment. The overall employment of skilled and unskilled workers in activities related to the provision of professional services has grown at a faster rate since 1980 than the growth of employment in the entire economy. The country was estimated to have about 140,000 professionals in 1999, with most of them concentrated in the medical, teaching, accounting, and management professions. In terms of employment, data processing and tabulating services is the most dynamic professional services sub-sector, after veterinary services. The Development Plan 1997-2001 identifies information technology and other professional services as some of the services with large potential to earn Kenya foreign exchange and generate employment. Other fast-growing professional services include business, professional, and labour associations, social and related community services, booking and travel agencies, and accounting, auditing, and bookkeeping services.

There are indications that, in the last two decades, the country has been producing more skilled personnel in most professional categories than the absorptive capacity of the economy. Some of the categories where there is excess supply of professionals are teachers, veterinary doctors, agricultural scientists, and food technologists. The problem is, to some extent, being felt in the engineering, architectural, accountancy, and legal professions.

As a result of aggressive investment in general and specialised education in the last three decades, Kenya has acquired a competitive edge in the regional market for professional services. This is shown by the fact that Kenyan professionals are today working in many countries in the region, including South Africa, Botswana, Swaziland, Lesotho, Zambia, Malawi, Tanzania, Uganda, and Namibia, as well as in the Middle East, Europe, and the United States.

For most of the post-independence period, Kenya’s professional service sector has remained fairly open to foreigners. The most significant form of restriction on access to the professional services market is the citizenship requirement in the case of some professional services, such as legal services, and the general requirement of work permits for foreigners. Other barriers to the entry of foreign professionals in Kenya include the requirement for foreign professionals to acquire local professional qualifications as a condition for entry and the discretionary powers given to various registration boards with regard to the recognition of foreign qualifications. Firms recruiting foreigners are required to justify the move and demonstrate their inability to obtain the required skills locally before a work permit can be issued. Registration and licensing of professionals in Kenya is carried out by the relevant statutory boards, whose membership is drawn from the government and professional associations.

Kenyan professionals have identified the following as some of the impediments to enhanced competitiveness of the country’s professional services both in the regional and international markets:

- inadequate professional capacity-building leading to low professional skills and technical capacity, lack of professional culture, inadequate promotion, and poor pricing of services;
• inadequate capacity for regional and international networking, leading to insufficient access to essential market information;

• a weak base in process and information technology with adverse effects on quality of services provided;

• an adverse macro-economic environment, particularly the high interest rates and fluctuating exchange rates;

• poor work and business ethics which impact negatively on fair competition;

• failure of the government and professionals to take advantage of WTO’s transitional arrangements, such as the S&D rights meant for developing countries, as a result of inadequate awareness; and

• inadequate involvement of the private sector in the WTO activities.

Perspectives on GATS Liberalisation

Professionals in Kenya are generally opposed to the wholesale liberalisation of professional services under WTO. They would prefer a more gradual liberalisation process in order to protect the domestic professionals’ services from unfair competition from foreign professionals.

Most professionals hold the opinion that some regulation of the professional service sub-sectors is still desirable due to inequality in development levels among countries and to protect both consumers and the domestic providers of professional services. They also argue that since each profession is unique, a sectoral approach to liberalisation should be pursued and that MRAs should not be made without adequate consultation with all stakeholders in the country. Other misgivings voiced by professionals in Kenya over the liberalisation of professional services include blocked access into the developed countries’ markets via undefined “quality” requirements and consumer prejudice against services from developing countries, doubts about the enforceability of professional discipline on “absentee” partners on account of legal jurisdictional issues, and the eligibility of foreign professionals holding qualifications that are not recognised in the host country, to provide services in that host country.

The interests of the services producers and domestic consumers will need to be balanced as the country weighs its options. The benefits of liberalisation include a wider consumer choice and therefore higher living standards, enhanced efficiency among domestic producers, and faster economic growth as well as an attractive environment for foreign investment. This would, in turn, facilitate technology transfer and development of managerial skills.


2 At an exchange rate of Ksh 75 = US$1.

3 Ikiara et al. (1996).


Liberalisation of the Services Sector in Nigeria: Implications of Unilateral and Multilateral Approaches

T. Ademola Oyejide and Adiodun Bankole

The services sector has emerged as a dynamic sector whose importance continued to rise in most economies in the late 1980s and the 1990s. In the 1990s, the services sector witnessed an impressive expansion, contributing a large proportion to the GDP of several countries. The sector’s share of GDP amounted to 40 percent in Uganda, 50 percent in Zambia, over 60 percent in Korea and Brazil, and 80 percent in the US in the mid-1990s.

The GATS has had an important influence on a number of economies, and has created the opportunity for trading countries to recognise the rising profile of the services sector in economic growth. This opportunity arose from the need to articulate and understand the size, structure, and role of the services sector relative to agricultural and manufacturing, especially the contribution of services to these other sectors. Services provide complementary consumption, generate auxiliary outputs as inputs for the other sectors, and generally create more employment than any of the other sectors producing tangible goods. Despite these identified roles, services markets are highly regulated in most countries, leading to a distorted market condition where consumers’ choices are constrained by inappropriate and misapplied government interventionist policies.

In the context of trade in services, autonomous or unilateral liberalisation in Nigeria involves reforms, embodied in the SAP, directed at restructuring the services market. Regional reform mechanisms can be found in the relevant integration and cooperation arrangements such as the Revised ECOWAS Treaty of 1993, and the EU-ACP Economic Partnership Agreement. The GATS exemplifies the multilateral liberalisation framework. Services market liberalisation whether through unilateral, regional, or multilateral efforts, has the capacity to encourage improvement in quality, product, and process innovation, engender technological development, promote efficiency and competitiveness, broaden consumer choices, and lower prices.

Size, Structure, and Tradeability of Nigeria’s Services Sector

In constant factor cost, the services sector contributed about 30 percent to the GDP in 1985 and 31.7 percent in 1986, the year that the SAP was introduced. By 1990, the contribution of the services sector had declined to 25 percent and reached a low of 18.9 percent in 1992. After 1994, the share of the services sector in GDP stabilised at about 20 percent before rebounding to almost 27 percent in 1998. The rise of services share of GDP in 1993 is not reflected in the distribution of value added by services sub-sectors. Services share of value added (SVA) fell from 30 percent in 1986 to 18.7 percent in 1992 and reached a low point of 12.3 percent in 1998. The average SVA between 1990-1998 was 21.3 percent.

There are ten identified components in Nigeria’s services sectors: utilities, building and construction, transport, communication, wholesale and retailing business, hotel and restaurant, financial services, real estate, housing, and repairs and other services. Out of these, the utilities, financial, and communication sectors suffered the most from government intervention until the late 1980s when a general liberalisation/privatisation policy began to emerge and change their market structure. In most cases, except for wholesale and retail business, housing, and repairs, pre- and post-deregulation performance was poor.

One important feature of Nigeria’s services trade, which constrained the depth of analysis, is the inadequate disaggregation of data. Nonetheless, analysis shows that Nigeria’s share of services trade in Africa rose unsteadily from the late 1980s to 1998, but indicated greater dynamism than Africa’s share of world services trade. Transport, travel, and other services trade continued to increase up to 1998, therefore becoming more significant in Nigeria’s total trade. The country had a persistent services account deficit for most of 1989–1998.

Domestic and Regional Policy Reform in Services

During the late 1980s and 1990s, key policy reforms were introduced in Nigeria’s services sector. A general liberal investment environment was created with the promulgation of the Nigerian Investment Promotion Commission Decree No. 16 of 1995 and the Foreign Exchange [Monitoring and Miscellaneous Provisions] (FEMMP) Decree No 17 of 1995. The general liberal investment environment is however hampered by the continued existence of many sector-specific laws, bureaucracy, and the restrictive nature of Memoranda of Association of many companies listed for privatisation. These, and other factors, accounted for the slow pace of deregulation of many services sectors in
Nigeria. In the financial sector where deregulation had been accelerated, inadequate operational, institutional, regulatory and supervisory capacities to deal with the increased level of activities have caused substantial distress conditions despite the desired changed structure.

Financial Services

For commercial and merchant banks and insurance firms, the financial reforms of the late 1980s induced substantial new entry, with the number of participating firms growing by 80 percent, 220 percent, and 50 percent respectively. However, this was followed by a period of crisis in the financial sector in the early 1990s due to the weakness of the regulatory and prudential framework. Thus the number of firms fell precipitously between 1995 and 1998, just as the GATS commitments were coming into effect. Clearly the structure and performance of the financial services sector has been largely due to autonomous liberalisation and resulting complications.

Financial sector reforms commenced in 1987, with a package of interest rate liberalisation and easy entry conditions. These policies led to high lending rates, large number of financial firms, and the subsequent financial sector distress of the early 1990s. The distress necessitated a joint action by all regulatory government agencies in the sector. Thus in 1997, the FSCC was formed to improve the coordination, supervision, and regulation of the financial services sector.

Liberalisation measures in the financial services sector mainly include: interest rate deregulation; easing entry and exit conditions; strengthening of prudential guidelines induced by sector-wide reforms; strengthening the financial services sector by providing market alternatives; the free repatriation of profits or capital in the event of sale or liquidation; and the internationalisation of the Nigerian capital market. Most importantly, the financial services sector is not included on the “negative list.” Therefore, a foreign investor can set up financial services business in Nigeria with 100 percent ownership, in contrast to the earlier ownership limitation to 40 percent. This is a major step forward in the implementation of Nigeria’s GATS commitments.

The main difficulties faced in this sector are related to the stability of the financial services sector and inadequate capacity as well as jurisdictional problems. The easing of entry and exit conditions and the deregulation of interest rates following the introduction of SAP have created undesirable instability in terms of the number of new banks and distressed banks. Interest rates rose phenomenally, leading to the temporary reversal of deregulation policy in 1994 due to the perceived negative impact on investment. This instability is closely linked to inadequate operational and regulatory capacity. The sudden surge in the number of banks led to the use of unqualified staff, while the regulatory capacity was over-stretched. In addition, the regulatory framework required to forestall uncompetitive behaviour by private sector agents has been haphazardly applied in Nigeria. This stems from the frequency of jurisdictional changes that have occurred between the Nigerian Deposit Insurance Corporation (NDIC) and the Central Bank of Nigeria (CBN) in the effort to supervise banks and other financial institutions.

Telecommunications

Two market liberalisation policy episodes can be identified in the case of the telecommunication sector, in 1992 and 1997. Because the licenses granted to private operators in 1992 remained largely unutilised, the sector’s value added continued to fall. However, its value added rose significantly after the reforms of 1997.

The Nigerian Communications Commission Decree (NCCD) 75 of 1992 is the main legislation governing the telecommunications sector. The decree liberalised various aspects of telecommunications activities including: the installation of terminal or other equipment; provision and operation of public payphones; provision and operation of private network links employing cable, radio communication or satellite, exclusively within Nigeria; provision and operation of public mobile communication (GSM standard); provision of community telephones; provision and operation of value-added network services; repair and maintenance of telecommunications facilities; and cabling. The NCCD also set up the government regulatory agency in the telecommunications sector, the Nigerian Communications Commission (NCC).

Autonomous liberalisation efforts in the Nigerian telecommunications industry predate the GATS commitments of 1994. In 1992, several private operators were licensed to provide mobile telecommunications services using the VSAT technology among others. After 1994, a series of liberalisation measures were implemented in the sector. One such measure taken in 1997 was the agreement between NITEL and MCN that authorised the latter company to provide telephone services through the former’s national grid, breaking NITEL’s
monopoly in basic telecommunications. By 1998, the policy to allow private operators in the sector had been strengthened, culminating in the participation of six private operators and eight VSAT license holders in the basic telecommunications and mobile telecommunications sectors.

The main difficulties Nigeria faces in liberalising the relevant aspects of telecommunications services relate to the establishment of a regulatory framework under a competitive environment, the capacity to liberalise effectively, dealing with stakeholders’ interests in the sector, and the slow pace of privatisation of the state-owned provider of telecommunications services, NITEL.

The NCC is mandated to regulate the telecommunications services industry in terms of ensuring adequate supply, fair competition, and adequate technical standards as well as licensing private sector operators. Since 1992 when the NCC was established, it had succeeded in licensing a limited number of operators whose impact was felt mainly in the urban centres such as Lagos and Abuja because they have not been able to increase market supply sufficiently to lower prices and tariffs. The inadequacies in the operation of NCC have resulted in the high cost of landlines and mobile phone lines, thereby hampering access to users. These operational shortcomings suggest the lack of adequate capacity for effective liberalisation despite the influence of GATS commitments on the Commission. A related difficulty is the frequent changes in government since the Commission was established. There have been five different governments since 1992, implying that the Commission’s mandate might have been disrupted by the need to restructure the Board to reflect the disposition of the new governments.

Perhaps the most enduring difficulty in telecommunications sector liberalisation is the slow pace of privatisation of NITEL, induced by unhealthy stakeholders’ interests in the sector. In 1997, the Federal government decided to select a second national telecommunications carrier to provide long-distance and international services. In 1998, NITEL privatisation was announced. In 2000, the “guided privatisation” policy was strengthened, yet the process has yet to be satisfactorily concluded. It appears that government commitment to an irreversible transition of the sector is lacking. The management of NITEL was reported to have initiated a four-year investment plan totalling N468 billion (US$3.9 billion) to improve its services. The timing and purpose of the plan is viewed by some critics as an attempt to block its privatisation. Even if privatisation does proceed, there may be at least one explicit discriminatory aspect in that NITEL would not be subject to NCC license. Thus, it would not pay the fixed license fee or the additional operational fee of 2.5 percent on turnover less costs that is charged to private operators.

Transport

All of the sub-sectors in the transport sector are currently undergoing reforms to improve their performance through a combination of government support and increased private sector participation. In air transport, the private sector operates actively on domestic routes while Nigeria Airways competes with foreign airlines on international routes. In shipping, the Nigerian shipping policy decree was enacted in 1987 with the major objective of increasing the participation of domestically owned ships in international trade. The decree places a limit on the total value or number of maritime transport service transactions and the total number of foreign natural persons that may be employed in the maritime transport service sector. The decree provided indigenous shipping lines with the exclusive right to carry at least 40 percent of Nigeria’s sea-borne trade, in line with UNCTAD Code of Conduct for Liner Conferences. It also provides vessels carrying the Nigerian flag must lift at least 50 percent of Nigeria’s oil exports.

Prior to 1996, the ports were encumbered with many agents who levied multiple fees and charges at various stages of cargo discharge, 45 percent of which were judged unnecessary. This led the authorities to reduce the number of agents, clear the ports of unauthorised persons, and stop unnecessary fees. Foreign suppliers may now provide such ports and auxiliary services as container station and depot services, maritime freight forwarding, maritime cargo handling and repair of vessels in port areas, while they may also obtain licenses to utilise waterfront for commercial purposes.

In addition, the NIPC Decree abolished the 40 percent limit on foreign capital investment in shipping companies. However, the inadequate number of indigenous shipping lines impinges on the extent to which Nigeria can use its shipping rights, according to the UNCTAD Code of Conduct for Liner Conferences, to carry at least 40 percent of Nigeria’s sea-borne trade. Thus the number of Nigerian ships entering Nigerian ports in 1990 and 1994 represented about 14 percent and 17 percent respectively of total vessels.

Another problem is that Nigeria’s major ports are not as competitive as other ports on the West African Coast, leading to the diversion of imports to neighbouring ports. This has also led to increased smuggling activity,
especially for used vehicles, and has placed a limit on the realised quantity and value of services that can be rendered by foreign port firms.

Electricity and Water

Recent developments have seen the opening up of power generation to private power production companies while the distribution network is still the sole responsibility of the state. The water sector is currently under transformation aided by increasing private sector initiatives.

The GATS in Nigeria

Nigeria’s Commitments under GATS

Nigeria, in the horizontal commitments of its GATS schedule, notified certain market access measures affecting all sectors. In particular, commercial presence in all services sub-sectors requires local incorporation in accordance with relevant domestic legal provisions and regulations pertaining to land acquisition, lease rental, etc. The country undertook no commitment for the presence of natural persons, except for measures concerning the entry and temporary stay of personnel employed in senior management and expert jobs for the implementation of foreign investment.

Nigeria undertook sector specific commitments in telecommunications, financial, tourism, and transport services. Certain restrictions were placed on market access mostly in the case of cross-border supply, consumption abroad, and presence of natural persons. Nigeria made substantial liberal commitments in financial services. Maritime and rail transport are the only sectors featuring under transport service in Nigeria’s schedule of commitments. Sectors in which Nigeria undertook GATS commitments performed badly before and after the implementation period of the agreement. The slow pace of liberalisation, which in turn, was induced by the non-integration of GATS commitments into Nigeria’s national laws, has contributed to the dismal post-GATS performance. There are two implications. First, adequate and competition-inducing rules and regulations must be established to meet the country’s obligations as well as defend its acquired services trade rights. Second, an adequate institutional framework must be created to strengthen the operations of the sectors to reduce the risk of market failure. Both frameworks, to be embedded in domestic policies, must be compatible with GATS obligation.

Nigeria ranks 43rd among all the countries of the world that have undertaken commitments in service activities in the GATS. However, it ranks 25th among developing countries, falling behind such countries as Ghana, India, and Brazil, which rank 22nd, 20th, and 16th respectively. While the number of services in which Nigeria has commitments is 29, those of Ghana, India, and Brazil are 32, 33, and 43 respectively. In Sub-Sahara Africa, Nigeria takes the 3rd position, ranking better than Egypt, Kenya, Senegal, and Zimbabwe, among others, and falling behind Morocco and Ghana. Using Ghana’s commitments as a basis for Nigeria, there is apparently a mismatch between Nigeria’s physical and economic size and the level of commitments it undertook in the GATS.

The low level of commitments in core banking business, a number of securities and other financial services, and life and non-life insurance services as well as tourism and travel-related services are particularly notable when compared with those of other countries.

Consistency between Domestic and Regional Policy Reform and GATS Commitments

Some existing laws may limit the scope of benefits from Nigeria’s scheduled GATS commitments. One, the insurance decree, requires insurance companies to invest and hold in Nigeria assets at least equivalent to the amount of insurance business transacted in Nigeria. This results in the total exclusion of foreign assets.

Secondly, the Nigerian shipping policy decree enacted in 1987 has the objective of increasing the participation of domestically owned ships in international trade. This decree places a limit on the total value or number of maritime transport service transaction and the total number of foreign natural persons that may be employed in the maritime transport service sector. In addition, Nigerian vessels must lift at least 50 percent of Nigeria’s oil exports. These laws are at variance with the nature of commitments under commercial presence for maritime freight transportation for which Nigeria places no limitations in scheduled commitments.
Thirdly, the NCC licensed all operators with the exception of NITEL in 1998. The provisions of the license did not apply to NITEL. Though no limitation exists on private investment in the telecommunications service sector, except in certain specific areas that concern national security, subjecting NITEL to a different set of rules is discriminatory and does not conform to the GATS principle of national treatment.

Finally, the preferential credit and fiscal facilities that are planned for private tourism operators appear discriminatory, unless this preferential treatment satisfies the national treatment principle by being available to foreign suppliers as well. This provision may however be infeasible.

Article V of the GATS provides an exception to the general obligation of MFN treatment for countries that are members of regional trading arrangement. An analysis by UNCTAD has noted three important characteristics of African RTAs as presently constituted. Firstly, the majority of RTAs do not contain any substantive obligations or specific commitments on services, and hence do not raise any particular problem in respect of Article V.

Secondly, African RTAs have not utilised the flexibility provided by Article V between developing countries that allows room to exclude modes of delivery and sectors, as well as the maintenance of discriminatory measures with regard to national treatment. Currently, most RTAs among developing countries that do cover services incorporate, in principle, all sectors and modes of delivery, although excluding some sectors or modes of delivery in practice.

Thirdly, the facility of Paragraph 3(b) of Article V, which allows for the introduction or maintenance of discrimination on the basis of nationality (granting more favourable treatment to juridical persons owned or controlled by natural persons of the parties), has to date not been incorporated into different agreements among developing countries. The UNCTAD assessment concluded that the majority of RTAs containing provisions on services have not been notified to the WTO, and that those notified have not yet been assessed regarding their compatibility.

The far-reaching commitments set out by the Revised ECOWAS Treaty are anchored in the creation of a customs union. With regard to trade in services, the customs union will allow members to lower market access barriers among themselves while they jointly maintain barriers towards non-members. The Revised Treaty appears to have substantial coverage of services sectors and modes of delivery, because it does not specify which particular services are covered. To this extent, the Treaty conforms to the observation by UNCTAD that it neither contains substantive obligations or specific commitments, nor does it utilise or incorporate the flexibility provided by Article V.

Nigeria’s Future GATS Negotiating Agenda

Part of the understanding at the end of the Uruguay Round was the provision of assistance to developing and least developed countries to make their participation more effective. In terms of the GATS, developed countries were called upon to facilitate effective participation of developing countries by negotiating specific commitments to strengthen their domestic services capacity, efficiency, and competitiveness through enhanced access to technology, distribution channels, market information, and the liberalisation of markets in sectors and modes of supply of export interest to developing countries.

In particular, developed countries were expected to grant such assistance through the reservation of a specified portion of services import for government use from developing countries and through the relaxation of entry conditions for service providers from developing countries. These may continue to remain mere expectations, as developed countries’ promises of technical assistance in other aspects of the URA have in general not been fulfilled. Nigeria, as a developing country, requires technical assistance to bridge the gap in her services supply capacities relative to those of developed countries. An equally significant dimension to the technical assistance provision is the timely implementation of the provisions of Article 19(3) of the GATS that provides for an overall and sectoral assessment of trade in services. These provisions have not been implemented to the satisfaction of countries in Africa although the results of such assessment are intended to be used to establish future negotiating guidelines. In contrast, the assessment has been satisfactorily conducted for some developed countries.

The definition of the “presence of natural persons” in the GATS has important implication for a labour-surplus country like Nigeria. The presence of natural persons is interpreted as the admission of foreign nationals to another country to provide services there, in terms of commercial presence (employment of foreign managers/specialists) or individual service providers but does not cover seeking employment, citizenship, residence,
or employment requirements in another country. Apart from this, members may still regulate the entry and stay of natural persons by requiring visas.

Problems impinging on the successful implementation of Nigeria’s commitments in the GATS have earlier been identified to include inadequate regulatory and institutional capacities, jurisdictional problems, and unmet expectation arising from unfulfilled technical assistance promises by developed countries. These implementation problems need to be resolved before the commencement of new negotiations. However, some of these issues cannot be immediately resolved. At best, the mechanisms that will ensure appropriate channelling of technical assistance in the required volume and scope should be put in place before the start of new negotiations. The extent to which Nigeria will accept further liberalisation will however depend on the certainty of the timing and availability of technical assistance.

In the next round of GATS negotiations, Nigeria will be interested in an arrangement that will recognise her difficulty in accepting further commitments. Such an arrangement might, through special market access considerations, aim to provide special entry conditions especially in strategic government services imports. Together with commitments on technical assistance, this would facilitate the expansion of Nigeria’s negotiating agenda in the next round.

Nigeria’s interest in further liberalisation extends beyond such considerations, however. The extent of current autonomous liberalisation in the financial and telecommunications sectors suggests that it may well be ready to move on the social services sector, especially those concerning water and electricity services. There is a need to boost performance: domestic policy towards the sector is generally becoming more pro-competitive. Government aspirations to liberalise the sector can be supported by further GATS commitments which lock-in autonomous efforts.

While Nigeria is expected to make extensive concessions in these identified areas, developed countries will also be expected to move away from their “standstill commitments” and increase their commitments in those areas of export interest to Nigeria. Nigeria is a labour surplus country and would wish to export the services of both her skilled and unskilled labour. Increased liberalisation commitments in business and the recreational, cultural, and sporting service sectors by other countries will be favourable to Nigeria. While the majority of developed countries liberalised these sectors in the aggregate, few liberalised the effective movement of natural persons. They retain quotas, economic needs tests, and government institutions that are given broad discretionary powers to limit the entry and stay of foreign natural persons to supply services. These limitations apply to all services sectors since they are contained in the horizontal section of their national schedules. The existing imbalance in benefits accruing to Nigeria and other developing countries relative to developed countries will be reduced if developing countries accept further liberalisation in the movement of natural persons.

With the guided privatisation and commercialisation policy announced in the 1998 Budget Address, the domestic policy environment appears to be headed towards more unilateral liberalisation. The impact of these efforts remains to be seen but will be accelerated by further integrating the country into the WTO system and by the responses of other WTO members whose acquired trade rights are not respected by Nigeria. Delayed incorporation of national laws into WTO commitments impinges on the sustainability of unilateral reform policy measures that have been taken so far.

---

1 This chapter is based on a paper prepared for the Seminar on the Assistance in the Preparation of African Countries for the WTO Trade Negotiations, co-organised by AERC, UNECA, OAU, The World Bank, UNDESA, and UNCTAD, March 9, 2000, Geneva, Switzerland.
GATS 2000: As Seen From Senegal

Abdoulaye Ndiaye

For many years the marginalisation of Africa has been the subject of impassioned debate. While Africa has lost market share in the global trade in goods, it should learn from that experience so as not to miss the rapidly growing trade in services. Global trade in commercial services increased on average by 7.7 percent per year between 1980 and 1993; the increase in the trade in goods was 4.9 percent. The fall in the cost of information technology offers the developing countries an opportunity to explore new fields of comparative advantage. The countries in a position to exploit these opportunities will find that the internationalisation of services helps them to catch up economically with the high-income countries. It will be essential for developing countries to adopt a liberal trade and investment regime if they wish to derive the maximum advantages from the internationalisation of services.

Senegal’s Strategy with Regard to Commitments

Senegal was quick to realise its potential in the field of services, and it has declared its commitment to become a service-providing country on an international scale. Its attributes include: geographical location, which makes its port a transit point between Europe, Latin America, and Africa south of the Sahara; its international airport, which since colonial times has been among the best equipped; and its climate, coastal resorts, and culture, which constitute the basis of its tourism potential.

In order to play its full role as a service-providing country, Senegal invested early on in modern telecommunications infrastructure (e.g., fibre-optic cables) and undertook reforms to bring about a greater liberalisation of the economy by privatising the water- and electricity-distribution enterprises and the national telecommunication services that play a vital role in the Senegalese economy. The state has set up a wide range of arrangements to promote investment such as the ‘one-stop shop’ (“guichet unique”), which centralises all the administrative formalities and procedures for approval connected with Senegal’s Investment Code. Certain service activities, in particular production-support services, come under the Code.

The conditional offer of Senegal concerning its initial commitments in the field of services submitted in August 1993, on the eve of the closure of the Uruguay Round negotiations, was made subject to the satisfactory conclusion of negotiations to establish the GATS and on securing balanced overall results in the Uruguay Round negotiations. It covered seven broad sectors as described below.

Services to Enterprises

The offer by Senegal in the GATS relates to professional services (architecture and medical and dental services) and financial leasing services. In the field of architecture, the profession is well organised through the Council of the Order of Architects that monitors compliance with the rules of professional conduct among its members. Senegal has qualified human resources which made it possible, very early on, to export this service to other countries in the subregion. Thus, Senegalese architects carried out major construction projects (mainly buildings for professional use) in several African countries, often following international calls for tender. The artistic and cultural dimension, which Senegalese architects incorporate in their designs over and above the requirements of modern technical standards, has been highly appreciated by the export market. Architectural design practices have constantly been kept up to date by using the most modern computer tools and specialised software.

In its schedule of specific commitments, Senegal did not bind modes 1, 3 and 4 with respect to limitations on market access. No limitation was set on national treatment except for mode 4 (movement of natural persons) where Senegal retained the status quo. Senegal reserves the possibility to make bolder commitments in the future in the direction of greater liberalisation of the sector in conjunction with the
Council of the Order of Architects. From the outset, this sector has included foreign architects (in the form of overseas architectural design practices). These practices are members of the Order and enjoy the same prerogatives as national practices.

In the medical field, the faculty of medicine and pharmacy has, since colonial times, trained numerous African doctors and pharmacists, most of whom settled in Dakar after completing their studies. Senegal has opted to become a regional centre for the provision of medical services. In order to benefit from all the technologies that are developing at an increasing pace, the best strategy would be to liberalise the sector in order to attract capital, technology, and know-how. Already, the success that has been achieved in the creation of a number of clinics with sophisticated equipment (e.g., laser scanners) together with private national and foreign partners, is a sign of what could be achieved through the opening up of the sector.

In its offer on medical and dental services, Senegal’s commitments were dictated by prudence. Concerning market access, Senegal did not bind mode 1 while there is no limit for mode 2 (consumption abroad). Senegal thus wished to preserve, on the one hand, the possibility for nationals of the subregion to continue to come to Dakar for treatment and, on the other, the possibility of ensuring medical evacuation for nationals who can afford it to countries that are better equipped or more highly specialised in certain fields. Mode 3 (commercial presence) remains subject to authorisation. Mode 4 (presence of natural persons) is not bound, probably because of the fact that the profession is highly organised around the Order of Doctors, which safeguards both the interests of the profession and the observance of the rules of professional practice that protect patients.

Communication Services

In the field of postal services, the National Postal Company (Société Nationale des Postes), which is a state-owned company with managerial independence, once had a monopoly. However, with respect to express mail, the state has adopted a flexible and progressive liberalisation policy that has attracted the major worldwide express courier companies (such as DHL, UPS, Federal Express, and Airborne Express), which have air- and land-transport facilities of their own as well as highly sophisticated international logistics. The presence of these operators encouraged the Senegalese postal service to create its own express courier service (EMS) and, stimulated by the competition thus created, to offer services of higher quality than its other services had traditionally offered.

Senegal has always been at the forefront of investment in the telecommunications sector in Africa. The national telecommunication company, SONATEL, has since 1986 been implementing an investment program to provide all the regions of Senegal with modern infrastructure, including digital telephone exchanges, and to break the isolation of rural localities (rural telephone). Between 1986 and 1995, more than 150 villages were provided with modern telecommunication systems, which gave them access to the automatic network and to a large range of new services.

Senegal’s offer concerning communication services was made in two phases. The April 1994 schedule had simply retained the status quo in relation to existing regulations. At that time, SONATEL, whose capital was fully owned by the state, had a telecommunications monopoly. In the framework of the reforms of the telecommunications sector, the state announced in 1995 its policy to privatise the national operator. A strategic foreign partner was selected following an international call for tender. The state granted the partner about one third of the capital and kept the same proportion. The remaining shares were distributed among the staff of the enterprise and the public. During this process of privatisation, a Telecommunication Code was drafted that took into account the advent of new information and communication technologies and classified the activities of the sector into three categories: those that were a monopoly; those that were subject to authorisation; and those that had been liberalised. The state extended the monopoly element of the new structure until to at least 2003, at which time it will consider the possibility of opening up the sector to other operators.

The desire of SONATEL to relinquish part of the operation of the telephone network to private individuals dates back to 1992. A great deal is to be learned from the extraordinary success of the private telecenters. In addition to the telephone service, some of these communication centres also possess fax
machines and Minitel terminals (which give access to local and international data banks), Internet, photocopiers, and laptop computers with word-processing software. Telecenters were responsible for the creation of over 10,000 jobs between 1992 and 1998 and are widely available in rural areas.

During the same period, as soon as the Uruguay Round ended, WTO member governments agreed to continue negotiations in four areas, including basic telecommunications. They had not offered to make commitments during the Uruguay Round essentially because the privatisation of state monopolies had raised complex problems in many countries. Negotiations on basic telecommunications were completed in January 1997, and new national commitments were due to take effect in January 1998.

The schedule of Senegal’s specific commitments dates from April 1997. The part of the schedule concerning telecommunication services replaced the initial schedule of 1994. Senegal’s schedule took into account the outcome of the reform of the sector that had been institutionalised in the Telecommunication Code. As far as limitations on market access were concerned, Senegal did not make any commitment on the cross-border provision of basic local, intercity, or international services provided in the public telecommunication networks that still came under the monopoly of SONATEL. The same applied to commercial presence. Concerning mobile cellular services, Senegal had announced in its schedule the intention to launch an international call for tender for the selection of one or two operators. A second operator was selected and began its activities in April 1999.

Distribution Services

Immediately following independence, distribution was in the hands of Lebanese-Syrian enterprises. Senegalese nationals progressively became involved in the sector beginning at the retail level and then wholesale commerce, before embarking on the importation of goods. Better known as the informal sector, they became involved in all types of commerce and finished by dominating the distribution sector. However, during the last 15 years, Senegal has embarked on a policy of liberalisation that did away with the majority of the prior authorisations and import licenses. The opening up of the sector made it possible to attract major distribution chains such as Leader Price of the United States, which established a dynamic system of franchises, and the Korean LG (more specialised in the distribution of household electrical goods). Senegal’s offer is the confirmation of this desire to liberalise and to attract foreign investors to the distribution sector.

Services Relating to Tourism and Travel

Tourism is in second place after fisheries in the export earnings of Senegal, and ahead of groundnuts and phosphates. Tourism has always played a strategic role in the development of Senegal. The average bed-occupancy rate of tourist establishments was only 40 percent in 1998, which shows that more effort should be made to attract a larger number of tourists, particularly through the diversification of markets. The schedule of Senegal’s commitments covers hotels, tourist campsites and other commercial accommodation sites as one group, and restaurants, bars, and canteens as a second group. These commitments are fully in keeping with Senegal’s desire to promote direct foreign investment in the sector.

Recreational, Cultural, and Sports Services

Senegal has included recreational fishing under this heading. This activity is directly connected with tourism and travel to the extent that the target market is the same. The sport-fishing club of the multinational company, Air Afrique, has contributed substantially to the promotion of this activity, although a permit is nevertheless required to settle in Senegal for this purpose.

Transport Services

Negotiations on maritime transport were originally to have been completed in June 1996, but the WTO participants were unable to reach agreement on a set of commitments. Discussions will resume with the next
round of negotiations on services. Commitments have already been included in the schedules of certain countries covering the three main areas of this sector: access to port facilities; support services; and shipping on the high seas.

The schedule of Senegal’s commitments covers maritime-transport-support services, in particular shipping-agency services, handling and transit services, and ship chandlery. In its ninth development plan, Senegal identifies itself as a service-providing country one of whose focal points is the port of Dakar. A recent study (conducted by port management) shows that the port of Dakar remains highly competitive as compared with other ports on the West African coast, in spite of the scope that remains for improvement both with respect to costs and to the quality of services provided.

These sectors, which entail a major outlay of capital investment, were traditionally dominated by branches of foreign firms. Mergers have subsequently taken place between foreign companies, strengthening their dominant position and resulting in an increase in the cost of services. This situation partly accounts for the high cost of services in the handling sector in particular. Handling alone represents 38.7 percent of the cost of a ton of goods passing through the port of Dakar. Local enterprises had difficulty in gaining access to these sectors because of the high level of investment required and the requirement for prior authorisation from the Ministry of Finance, which emphasises good character and solvency checks, in particular in the field of transit and customs clearance.

The opening up of the shipping-services-support sector was to attract other operators from throughout the world and create a competitive environment, resulting in lower costs and enhancing the competitiveness of the port of Dakar. Unfortunately, Senegal’s offer has not yet had any effect. There have been few foreign investments. This may be due to the fact that the enterprises that had dominated the sector had been established for a long time (dating back to the colonial period), thereby making it difficult for newcomers to compete with them in an unfamiliar country, or because the conditions for a high standard of competitiveness had not yet been met, in particular due to cumbersome administrative procedures. These are questions that must be clarified in order to enable Senegal to receive more direct investment in the maritime sector.

In its schedule for exemption from Article II (MFN), Senegal included coastal trading as a means of stimulating trade and promoting regional economic integration. Similarly, the desire to comply with the resolutions of the Ministerial Conference of West and Central African States on Maritime Transport (MCWS) so as to give effect to the UNCTAD arrangement that provides for the sharing of 80 percent of liner trade flows with the national shipping company of the state of destination, induced Senegal to include shipping in its MFN waiver schedule. However, one may question the relevance of such a decision in the light of the fact that most of the attempts to create a national shipping company have failed. Moreover, the high level of investment makes it essential to turn to foreign investors, and that would restore the situation that provided the original motivation for such a decision.

**Financial Services**

The schedule of specific commitments by Senegal on financial services covers insurance and related services, and banking and other financial services. It must be noted that the policies relating to the financial sector, which are increasingly tending to be defined on a regional basis, together with the sensitivity of the sector, were among the factors that induced Senegal to invoke the provisions of paragraph 2 (a) of the annex, which provides that countries may take measures for prudential reasons, in particular for the protection of investors, depositors, and the holders of insurance policies, and to preserve the integrity and stability of the financial system.

As Senegal is a signatory of the CIMA Code (Conférence Internationale des Marchés des Assurances), it endeavours to safeguard the preferential treatment granted to signatory states under which insurance contracts applying to persons who have the status of resident or to property located in Senegal, as well as liability insurance, can only be taken out with bodies approved to conduct insurance business in Senegal. As the financial market of West Africa is in the process of being set up, the states justify the preferential treatment on grounds of the need to support the effort to harmonise national policies in the insurance sector with a view to achieving a competitive position worldwide.
At the level of banking services, Senegal is a member of WAMU (West African Monetary Union) and of WAEMU (West African Economic and Monetary Union), which provide the framework governing the monetary policies of the Member States. Senegal’s schedule merely reflects the banking regulations that apply uniformly to all the member countries of WAEMU. It relates to the acceptance of deposits and other reimbursable funds from the public, to loans of all types and to all settlement and cash transfer services, including credit cards, charge cards, etc., travellers checks and drafts. Only approved banks and financial establishments can carry out these activities in accordance with procedures that are clearly defined by banking legislation.

Service Sectors with Export Potential

Maritime Transport

Senegal has always wished to play a major role in ship repair in West Africa. The Dakar Marine shipyard enjoyed a golden age during the closure of the Sues Canal. Thereafter, a difficult period began during which demand was inadequate relative to the oversized capacity of the shipyard. In spite of various rescue attempts, the enterprise continued to be in difficulty. The state embarked on a process of privatisation that was only finally completed in 1999. The experience of the Portuguese partners in the field of maritime transport and the increase in the demand for services in this sector, in particular with the Asian financial crisis which included countries traditionally offering this kind of service, were to restore the position of Dakar as a centre for the provision of services to foreign shipping.

The West African coast is customarily served by regular shipping conference lines between Europe and Africa that regularly call only at certain ports. The idea of creating a coastal trading company arose from the need to transport the remaining cargo that was not handled by the major shipping companies. This coastal trading company, which is aimed at a niche market, will initially concentrate its activities on the portion of coastline between the port of Nouadhibou in Mauritania and that of Abidjan in Côte d’Ivoire.

The reforms of the port of Dakar and the projected investments are designed to make Dakar a hub in the sub-region. Indeed, Dakar could serve neighbouring countries such as Mauritania, Mali, Gambia and Guinea-Bissau on condition that it becomes a highly competitive port with modern equipment (e.g., gantry cranes, more advanced computerisation) and can offer prompt, high quality services.

Land Transport

In order to enhance its role as a transit country for goods bound for Mali, the Government of Senegal has devised a multi-pronged strategy entailing the building of the Dakar-Bamako trunk road and the re-launching of the Dakar-Bamako railway, as well as the construction of Senegalese warehouses in Mali. By adopting the Inter-State Road Transit Convention (ISRT)—which considerably simplifies the formalities for the inspection of goods carried by road to neighbouring states—Senegal has confirmed its chosen role as a transit country and as a transhipment terminal.

The Malian warehouse facilities in Dakar, which have been in existence for a very long time, have no equivalent in Bamako. Thus, in order to make the link more profitable, it is necessary to generate traffic in both directions. The construction of the Senegalese warehouses in Mali will contribute to improving the traffic along this link. Lastly, the decision by the Malian and Senegalese authorities to privatise the railway companies by creating, in particular, a new private company with private Malian and Senegalese capital will enable the link to be managed more rationally and effectively. Bearing in mind the level of investment required to rehabilitate the plant, however, a strategic foreign partner will probably be sought to provide the technology and financing.

Telecommunications
The quality of Senegalese telecommunication infrastructure, the quality of its human resources, and the trend toward outsourcing that has been taking place at the international level, open up many possibilities for the country in the field of tele-services. In view of the export potential of this sector, the Government is considering the following measures:

- The eligibility of tele-service enterprises to benefit from the regime that applies to duty-free export enterprises and confers fiscal and customs benefits on them. This is a significant advance in the taxation of services that are in the future to be on the same footing as industrial goods.
- Providing the Supreme Council of Industry with the financial and technical resources to facilitate the certification of tele-service enterprises under the standards of ISO 9000.
- Inducing SONATEL to set a standard rate for Internet connections on the basis of a rate lower than that in force for local calls. The standard rate would be the same throughout the territory.
- Setting up service incubators.
- Promoting electronic commerce.

Certain recently created private enterprises are already using telematics to export services, in particular through remote capture and the processing of manually drawn architectural plans using architectural design software, and industrial drawings for European clients. As far as the written press is concerned, certain daily newspapers are inputted and formatted every day in Dakar and then sent electronically for printing. Finally, one enterprise is trying to produce cartoons through computer-aided drawings for European clients. Senegal has computer engineers certified by the world leaders in software engineering and is therefore very well placed to participate in software development for the international market.

Education

Senegal has three universities (two public and one private) and many public and private vocational training establishments. A dozen higher education training institutes have been set up over the past ten years. In order to meet the growing demand, Senegal should not only increase the number of training places on offer but also decentralise training activities throughout the sub-region, either through travelling seminars or in partnership with local training facilities in each country. At the level of general and vocational education, Senegal has since 1972 provided Gabon with teachers through both technical cooperation agreements and private arrangements. There are today 250 of them, including 150 with expatriate contracts and 100 with local contracts. Other African countries have followed the example of Gabon, in particular the Central African Republic, the Comoros, and Djibouti.

Certain Professional Services

Senegalese accountancy firms and consultants (freelance or established practices) customarily work in other African countries in order to support them in their development process. Accountancy as a profession developed very soon after independence because of the presence of offices representing the major international groups. Although most of the Senegalese accountants are trained in Europe, training colleges offering courses leading to an accountancy qualification have enabled many managers to join the profession. They have international standing because of the international practices to which they are affiliated, and they carry out numerous audit missions commissioned by development agencies in the sub-region.

Managers in both the public and the private sector are increasingly tending to leave their employment to become consultants. As a result of their availability, bilateral and multilateral cooperation bodies have
begun to seek local expertise to take part in joint missions with international experts. The quality of the services offered on the international market has prompted the same clients to involve them in the sub-region. In the field of construction, Senegalese manpower has always been much in demand in Africa and the Middle East. Toward the end of the 1960s, Gabon, which was at that time a country fully engaged in construction, called for qualified Senegalese manpower in the building trades and public works. Every year, several hundred Senegalese workers have gone to Gabon on an official basis. Kuwait, in its reconstruction phase after the war, also called on Senegalese workers in various trades. On a more sporadic basis, qualified Senegalese workers are recruited by construction firms working in Saudi Arabia.

As can be seen, the services linked to the expertise of Senegalese human resources have a great deal of export potential. But rather than responding to this world-wide demand on an official but piecemeal basis, or on an unofficial or undeclared basis, Senegal could devise a real strategy for the export of the services of its qualified human resources, for example by means of a data bank on opportunities for appointment abroad that would be widely publicised among Senegalese manpower and among enterprises specialising in the recruitment and placement of qualified workers.

**Fields in Which Senegal Might Relax Its Restrictions**

**Land Transport**

Public transport in Dakar and its suburbs was once provided by a state company, SOTRAC. However, it had managerial problems and difficulties connected with the replacement of its fleet of vehicles and, as a result, the Government closed the company down. This sector is a case in which the lifting of certain constraints, such as the requirement to obtain operating permits, might attract foreign investors with adequate capital and expertise in transport logistics. It is also necessary to emphasise the need to improve the transport environment: to combat the anarchy of black-market carriers; to repair the roads; and to improve road signs and signals, and traffic flow.

**Maritime Transport Support Services**

Certain activities such as the piloting of ships into the harbour of Dakar might be progressively liberalised in order to enable other investors to enter the sector, thus bringing the charges for such services down to a more competitive level. At present, ships arriving at the port have no choice with respect to the tariff charged by the towing company. Moreover, the diversification and increased availability of handling facilities should promote the creation of a more open market and therefore lead to more competitive pricing.

**Audiovisual**

The progressive liberalisation of radio broadcasting has enabled many private stations to establish themselves in Dakar and the regions. The increase in the number of programs available has led to more varied program content, has resulted in more competitive rates and, above all, has made it possible to target the concerns of the public more effectively. As far as television is concerned, RTS (the national company) still has a monopoly on certain programs such as news bulletins, although foreign channels are authorised to broadcast in Senegalese territory. The lifting of restrictions in the audiovisual field would enable private television channels to emerge with all the attendant advantages of a competitive environment.

**Basic Telecommunication Services**

The agreement between the state and SONATEL confers on the latter a monopoly over basic telecommunications until 2003. Thereafter, the state may either extend the monopoly or partially open it up. In the spirit of the changes that are taking place internationally, the state might authorise the access of a second operator to the sector, thus enhancing competition and paving the way for a reduction in the charges for local
and international telephone communications to international levels. Senegal has all the advantages that would enable it to play the role of a hub in the sub-region and to gain new markets if it were to offer rates closer to those charged on the international scene.

The advent of a second mobile telephone operator has had the immediate result of cutting the cost of communications and multiplying the range of facilities offered by the two competitors, thus giving consumers greater choice. However, the costs of acquiring and using a mobile telephone are still high, and it remains the preserve of an elite. Senegal might have opted for the broader use of this new technology, for which the cost of extending geographical coverage is much lower than that of a wire-based network. This approach would enable it to become a tool of mass communication. Such an extension of the market might attract other operators, a step that would enrich the competitive environment, thus creating a virtuous circle of tariff cuts and increases in the size of the market and in the volume of consumption.

Telecommunication Services

The Telecommunication Code defines the services that are subject to prior authorisation, such as radio messaging and the establishment of radio broadcasting stations of all types. The Code provides for the creation of a regulatory agency for telecommunications to monitor all operators, including SONATEL, thus ensuring greater transparency of the rules of competition. No decision has yet been taken to make the agency operational. Thus, SONATEL continues to grant approvals to private enterprises that wish to offer certain telecommunication services. The procedures for the approval of private tele-centers have therefore been entirely defined by SONATEL. The same applies to the requirements to set up as an Internet access provider, in particular with respect to charging.

Fields in Which It Would Be Possible to Develop a Joint Position with the Countries of the Sub-Region

Insurance Services

At the regional level, states are signatories to the CIMA (CICARE) agreements and those of the OAU (AFRICARE), which regulate reinsurance companies. The ideas put forward within CIMA include:

- Repealing legislation obliging any importer of goods to take out an insurance policy with a company established in the country of residence;

- Enabling foreign companies to operate in the African market without being required to establish a branch there; and

- Reviewing certain provisions of the CIMA Code, which provide that risks must be insured with a company having its head office in a member country.

Banking Services

Through the WAEMU Treaty, member countries may develop a common position on banking and other financial services such as the acceptance of deposits and other reimbursable funds from the public, loans of all types, including consumer credit, mortgage credit, factoring, and the financing of commercial transactions, settlement, and cash transfer services (such as credit cards and charge cards), travellers checks, and drafts. The member countries may address the question of the best arrangements to make in order to attract banks and financial establishments specialising in the medium- and long-term funding of enterprises.

Maritime Transport Services
The WAEMU countries have also set up bodies dealing with maritime transport and are therefore in a position to decide on joint positions which meet their concern to increase the frequency of lines on the West African coast and to reduce freight costs. The ECOWAS member countries have always said that they were interested in cooperating in the transit of goods.

Air Transport Services

The air transport sector in the WAEMU countries has been dominated by the multinational company, Air Afrique. However, in an agreement reached in Yamoussoukro, Côte d’Ivoire in November 1999, they agreed to remove its monopoly rights. In fact, with most other African governments also in attendance, it was agreed to liberalise air transport across Africa. This should help the African members of the WTO reach a joint position and participate in the GATS negotiations with a coordinated and well-developed strategy. It also offers the opportunity for Senegal and the rest of Africa to lock in this important yet difficult decision and reassure local and foreign investors of its durability.

Conclusion

Senegal’s government has been able to develop an expertise that is aware of what is at stake in the GATS negotiations and understands the process, but the private sector has always felt itself to be remote from those negotiations. CAPAS has helped to involve the various actors in a process of preparation based on in-depth sectoral research in the field of services over several years. One key element has been the establishment of a national committee to prepare for the WTO multilateral trade negotiations, comprising the various stakeholders in the public sector (ministries, public bodies) and the private sector (employers’ organisations, experts). The committee considers the various service sectors, together with agriculture, with a view to participating more actively in the forthcoming negotiations. At the regional level, coordination with the other countries of WAEMU with a view to finalising joint positions on issues of regional or sub-regional scope will give greater weight to each member in the negotiations.

1 This chapter is based on a paper prepared for the Seminar on the Assistance in the Preparation of African Countries for the WTO Trade Negotiations, co-organised by AERC, UNECA, OAU, The World Bank, UNDESA, and UNCTAD, March 9, 2000, Geneva, Switzerland.
CHAPTER 11

Liberalisation of Trade in Services: The Case of Mauritius

Beeralasinghe Dabee

Services make a significant contribution to output and employment in Mauritius, and recent years have seen the expansion of trade in services. The structure of this trade and its salient features are examined in Section 2 of this chapter. As we argue below, the current data on trade in services do not correspond to the four modes of supply that are of significance in the context of the GATS. This makes meaningful analysis of trade data a bit difficult. Section 3 moves on to consider the extent to which trade in services has been liberalised. Market access conditions in the three sectors where GATS commitments were taken by Mauritius are examined: tourism and travel-related services, financial services, and telecommunication services. After an analysis of the restrictions on each of the four modes of supply, this section concludes that liberalisation is still limited. However, this may not be inconsistent with the development objectives of the economy. Finally, Section 4 provides some suggestions for additional liberalisation that may be required in the context of the forthcoming negotiations on trade in services. It proposes additional liberalisation in the tourism and travel-related services sector and two new sectors where Mauritius may have some competitive advantage.

This chapter draws on the significant amount of information put together on trade in services in Mauritius for the UNCTAD/CAPAS study.1

The Importance of Services in Mauritius

The Mauritian economy has undergone a marked structural transformation over the past three decades, with the relative importance of agriculture declining significantly and that of manufacturing increasingly considerably. The share of the services sector in GDP has been fairly stable since the early 1980s. In fact, services make the largest contribution to GDP and to total employment. There has also been an important increase in trade in services.

Contribution to Output and Employment

With the rapid expansion of the Mauritian Export Processing Zone (MEPZ) in the 1970s and especially in the 1980s, the share of manufacturing in GDP increased from 6.5 percent in the early 1970s to stabilise around 23 percent in the late 1980s, as shown in Table 1. At the same time, the relative share of agriculture declined rapidly from 34 percent in the early 1970s to 9.2 percent in the late 1990s. This decline has been partly offset by the services sector contribution, which has been stabilised at around 66 percent since the early 1980s. The production of services, therefore, has consistently outweighed the production of goods in the Mauritian economy since the 1970s.

A closer look at the services sector shows that its three largest subsectors are: (a) wholesale and retail trade, restaurants, and hotels; (b) financing, insurance, real estate, and business services; and (c) transport, storage, and communication. These three subsectors contributed 17 percent, 15.9 percent, and 11.2 percent, respectively, to GDP over the period 1990-1998. The ranking of the first subsector reflects the high level of importance of tourism in Mauritius. The other two subsectors consist of producer services, and their ranking indicates the importance of a whole range of complementary services required to support economic growth and development.

The services sector also offered more employment opportunities than either agriculture or manufacturing. Table 2 shows that over the period 1970-1998, services provided 43 to 51 percent of total employment in large establishments. As expected, the contribution of agriculture declined significantly whereas that of manufacturing increased considerably.

Whereas in the 1970s and 1980s, the manufacturing sector contributed significant increases to total employment, there has been a slowdown in employment creation in this sector in the 1990s. The average growth rate of manufacturing employment was only 0.5 percent during 1990-1998. Agricultural employment declined over this period as well. The services sector, however, emerged as the most
dynamic sector with an average growth rate of 3.3 percent per annum. The three subsectors with the highest growth rates are wholesale, retail trade, restaurants, and hotels; financing, insurance, real estate, and business services; and transport, storage, and communication. These are also among the subsectors with the highest growth rates of value added.

Trade in Services

With the rapid expansion of the MEPZ in the 1970s and early 1980s, total exports of goods increased significantly. Imports of raw materials and machinery, required to support the expansion of the manufacturing sector, also increased. Total trade in goods (exports plus imports) in fact grew much faster than total trade in services in spite of the rapid expansion of the tourist sector. However, this trend has been reversed as from the early 1990s, as shown Table 3.

Table 4 gives the breakdown, though still highly aggregated, of trade in services in the 1990s. As far as exports of services are concerned, the table confirms the importance of tourism to the Mauritian economy. The receipts from tourism (that is, expenditures made by tourists shown as a credit entry for the travel item) and from passenger transport services account for about 60 percent of the exports of services. The remaining 40 percent comes mainly from other business services (merchanting and trade related services) and transfers.

On the import side, the most important international service Mauritius has to purchase is transportation. This refers mainly to freight charges for the import of goods. It also includes air travel expenses of Mauritians who are increasingly engaging in tourism, as shown by the debit entry for the travel item. In fact, Mauritians use up the equivalent of one third of the country’s tourism earnings for purposes of outward tourism. Transport services and travel constitute a little over 50 percent of the import of services. The remaining 50 percent is made up of other business services, other current transfers, and other investment income. Other current transfers would normally include remittances from foreign workers.

A meaningful analysis of trade in services would normally require that the data allow us to understand changes occurring in the four modes of supply that are of significance in GATS. These refer to cross border supply (mode 1), consumption abroad (mode 2), commercial presence (mode 3), and the presence of natural persons (mode 4). However, as we have often been reminded current trade statistics do not correspond to the GATS modes.2 The available data on trade in services in fact refer to mode 1 and to mode 2 to some extent. We have little or no information about mode 3 and mode 4.

The foregoing comments apply to the data on trade in services available for Mauritius. A glance at Table 4 confirms that the data in fact refer to mode 1 (supply of transport services, insurance and other business services). The data on travel capture part of mode 2 transactions. But the table does not show the significant expenditures on overseas education and health services undertaken by Mauritians. As for mode 3, the limited outflow of undistributed profits shown in Table 4 only hints at commercial presence. Yet mode 3 is very important in Mauritius. Foreign companies are well established in a whole range of service sectors, especially insurance, banking, financial services, tourism, and travel-related services. As for mode 4, in the case of Mauritius this refers essentially to services provided by highly qualified personnel. The current trade figures, however, do not include payments and receipts by such personnel. The data also fail to reveal an important trend related to mode 4. The MEPZ has been witnessing shortages of labour since the late 1980s and has had to rely on an inflow of foreign workers. The number of these workers has been increasing steadily from 600 in 1990 to 14,678 in September 2000 when they represented 16.3 percent of the total workforce of the MEPZ. The increasing importance of these foreign workers to the Mauritian economy is not captured by the balance of payments data, which do not currently report remittances of workers separately.

Liberalisation Policies

Like many other African countries, Mauritius made progress with the liberalisation of some of its services trade in the context of GATS. It made specific commitments in tourism and travel-related services, telecommunication services, and financial services. It can be argued that the commitments made for tourism and travel-related services simply reflected the measures and policies already in force and therefore did not imply any improvements in market access. However, it is generally agreed that binding
existing rules and policies for a sector makes conditions for trade and investment more transparent for that sector. This in itself may lead to an increase in trade and investment. As for commitments in telecommunication services and financial services, these were clearly influenced by the agenda at the WTO. In the case of financial services, it can also be argued that the commitments simply reflected prevailing policies and did not amount to an improvement in market access. But, as argued for tourism and travel-related services, this can have a positive effect. It is in the case of telecommunication services that the commitments really amounted to the opening up of that sector. The most important measure is the end of monopoly rights in all basic telecommunication services by December 2004.

The rest of this section analyses the extent of liberalisation for each mode of supply, as implied by the commitments taken in the three sectors mentioned above. The aim is to highlight measures that act as barriers to market access. We then examine more recent changes in policies and institutions that have influenced entry conditions in these three sectors.

Current Market Access Conditions

The specific commitments show that mode 2 is the most liberalised mode, with market access conditions becoming more restrictive as we move from mode 1 to modes 3 and 4. Mode 3 is subject to both horizontal and sectoral limitations.

Mode 1 – Cross-Border Supply
This mode of supply is either subject to restrictions or is prohibited to foreign suppliers. In the tourism and travel-related services sector, overseas hotels and restaurants cannot use this mode of supply as they are required to set up business in Mauritius. Travel-related services (e.g., tour operators, tourist guides, car rental for tourists, yacht chartering, and duty-free shops) cannot be supplied by foreigners. In the financial services sector, we also find that overseas insurers and banks cannot provide their main services (life and non-life insurance, and acceptance of deposits) but auxiliary services can be supplied. Thus, insurance companies can provide reinsurance as well as consultancy and actuarial services. Similarly, financial institutions can provide money transmission services, guarantees, underwriting of securities, and financial data processing services. In the telecommunication services sector, the provision of telephone, telex, telegraph, and private-leased circuit services is reserved for the domestic monopoly, and the question of cross-border supply does not arise. Even call back and refile are not allowed for telephone services.

Mode 2 – Consumption Abroad
As already suggested, this mode is highly liberalised. In the tourism and travel-related services sector, there are absolutely no restrictions on the purchase of services overseas. In the financial services sector, there are no restrictions in banking services whereas insurance services are subject to one restriction—the insurance of assets and other insurances that are compulsory in Mauritius. In the telecommunication services sector, all services listed can be purchased overseas.

Mode 3 – Commercial Presence
This mode of supply is subject to horizontal and sector specific restrictions. The horizontal commitments indicate that for commercial presence, the following are required:

- Submission of authorised copies of certificates of incorporation and articles of association, a list of directors, the location of the registered office in Mauritius.
- Authorisation to own or hold property, including shares in a company or partnership.
- Payment of income tax on all incomes derived from Mauritius at current rates. In some cases, however, lower rates of tax may be charged. Free repatriation of capital, profits and dividends is allowed.
- Monitoring of banking facilities by the Bank of Mauritius, which may, for example, issue instructions for the type and amount of security on loans.
In addition, there are other sectoral limitations. In the tourism and travel-related services sector, we have already indicated that services cannot be supplied by foreigners. Thus, the question of commercial presence does not arise. However, investment in hotels is permitted if they have more than 100 rooms; otherwise, foreign participation is limited to 49 percent. This policy is in keeping with the objective of encouraging up-market tourism. Similarly, foreign restaurant operators are not allowed where investment is less than Rs10 million. In the financial services sector, there are no restrictions on insurance services, whereas for banking services a licence or approval of the Bank of Mauritius is required. However, it must be added that entry into the financial services sector may not be easy as it is conditional on an ENT. In the telecommunication services sector, telephone, telex, telegraph, and private-leased circuit services are to be provided by the domestic supplier, who has exclusive monopoly in these services up to December 2004. After that date, overseas suppliers may enter the market, after obtaining the necessary licences.

**Mode 4 – Presence of Natural Persons**

There are no sector specific commitments for mode 4. All sectors are subject to horizontal commitments that make provision for the temporary stay of highly qualified personnel. The latter must obtain a residence permit and a work permit, and their incomes are liable to income tax.

**The Extent of Liberalisation**

The limitations indicated above seem to indicate that there are still important barriers to entry in the three sectors. However, it may be argued that this limited liberalisation is consistent with the development objectives of the economy. In the tourism sector, the limitations on hotels and restaurants are in keeping with the objective of maintaining up-market tourism. These limitations have in fact encouraged the construction of world-class hotels and the establishment of restaurants offering a more diversified and high quality cuisine. This larger number of hotels and restaurants tends to increase the efficiency of the tourism industry as it encourages more competition. In the financial services sector, as the commitments were finalised during periods of financial crises, highly precautionary measures were taken. Given the vulnerability of fully liberalised financial systems, especially for small economies, such a precautionary approach may help to ensure a smoother development of the sector. In addition, in the telecommunication services sector, the commitment to fully liberalise basic telecommunications by December 2004 has provided an incentive for the sole supplier to provide a wider range of services and for greater efficiency in the domestic market. It may also have encouraged the domestic supplier to enter into profitable ventures in the region where there has also been some liberalisation of the telecommunication sector.

**Suggestions for Further Liberalisation**

While GATS provides for successive rounds of negotiations aimed at achieving higher levels of liberalisation, it also clearly states that due consideration must be given to national objectives and to the level of development of a country. In particular, developing countries have the flexibility of opening fewer sectors and of a more gradual increase in market access. This means that Mauritius has considerable leeway in deciding which services sectors it may wish to liberalise. However, any decision will normally be made in the much wider context of the next round of WTO negotiations where a complex range of issues is likely to be discussed. If we limit our discussion to the choice of which services sectors Mauritius should liberalise, we must realise that it is quite difficult to make such a choice. It ideally requires an assessment of all the service sectors. However, the technical expertise for such an exercise may not be available. The choice of sectors to be liberalised turns out therefore to be a far from perfect exercise.

Even though Mauritius has flexibility in the choice of services sectors to liberalise, it must be added that the selection of some important sectors may be influenced by the larger or more advanced member countries at the level of the WTO. For example, it may be argued that the multilateral agreements on basic telecommunications and financial services were largely influenced by the interests of developed countries. Other sectors where negotiations are still underway at the WTO include maritime transport services, professional services, movement of natural persons (for supplying services), trade in services,
and the environment. It is important for Mauritius to participate in those negotiations and, with the support of other developing countries, help shape the nature of forthcoming multilateral agreements.

Existing Services Commitments

Given that it may take a considerable amount of time for the WTO to finalise multilateral agreements, a country may decide to liberalise its services sectors at any time by improving existing commitments already made at the WTO and making commitments in additional sectors where an assessment of the potential gains from liberalisation has been made. It is along these lines that can a few suggestions can be made.

During the UNCTAD/CAPAS study on Mauritius, discussions with selected agents involved on the supply side of the sectors where commitments have already been made tended to suggest that these commitments might be quite sufficient and that there might not be any need for improving them. Such an argument may be valid for basic telecommunications and financial services given that the multilateral agreements for these sectors came into effect only very recently—in February 1998 and March 1999, respectively.

However, there may be some scope for improvement in the tourism and related services sector. Some fears were expressed by operators in the sector that greater liberalisation will bring in too many operators and will harm the up-market image of Mauritius. But it must be pointed out that this up-market image is safeguarded by the current limitations on the commercial presence of hotel operators. At the moment, full foreign participation is allowed only in hotels of more than 100 rooms and it is restricted to 49 percent in hotels of fewer than 100 rooms. Additional regulations setting high limits on investment requirements per room encourage the construction of high quality hotels. The commitments made for hotel operators can, therefore, be maintained. For other operators, however, some of the restrictions may be relaxed, the objective being to attract skills and expertise that are scarce in Mauritius. In fact, commitments made by Mauritius for the other operators seem to be among the most restrictive in the Southern Africa Development Community (SADC) region, where tourism is generally encouraged.

Some suggestions are listed below:

- For restaurant operators, foreign participation is restricted to projects of at least Rs10 million or about US$375,000 at current exchange rates. This figure may be lowered (and expressed in US dollars) in the case of joint projects. It will help to attract restaurant services not presently available in Mauritius, leading to a more diversified cuisine.

- For tourist guide services, cross-border supply is limited to Mauritian nationals but an exception is made for languages not spoken by Mauritians. Commercial presence is also restricted to linguistic scarcity areas. As any language not spoken by Mauritians is likely to be picked up very quickly if there is a demand for it (Mauritians have not only learned German and Italian but also Japanese), these restrictions on cross-border supply and commercial presence may amount to a ban on foreign tourist guide services. These restrictions may be relaxed so as to allow specialised services not currently available in Mauritius to be provided by overseas operators.

- At present, foreign operators cannot offer their yacht chartering or cruising services as cross-border supply, and commercial presence are limited to Mauritians. The commercial presence restriction may be relaxed in order to encourage joint projects.

New Commitments

As for new commitments, the UNCTAD/CAPAS study has considered one new service subsector—computer and related services—and one new service from the 11 types of services listed in the professional services subsector—accountancy services. Some suggestions can be made for these two sets of services.
**Computer and Related Services**

These services are broken down into five categories: (a) consultancy services related to the installation of hardware, (b) software implementation services, (c) data processing services, (d) database services, and (e) other services. At the moment, Mauritius has a shortage of qualified and specialised personnel required for categories (a) and (b) although it has some expertise for the latter category. The level of skill and expertise required for categories (c) and (d) are easily accessible to the information technology (IT) sector in Mauritius. On balance, Mauritius must still acquire higher skill levels for the computer and related services sector. One of the ways of attracting scarce skills is to make commitments, especially for commercial presence for categories (a) to (d). This will in fact encourage Mauritian IT firms to intensify their presence in the SADC region.

**Accountancy Services**

Mauritius has no shortage of qualified accountants and can offer a whole range of specialised services currently provided by the accounting profession. The presence of an international network of accountants also allows free movement of specialised services that may be in short supply in Mauritius. Commitments may be made for commercial presence, subject to the recognition of qualifications and restrictions on the legal structure of the profession. This is likely to increase the flow of accounting services, with beneficial effects on the consumers of these services. Since accounting and auditing normally require commercial presence, no commitments need to be taken for cross-border supply.

This chapter is based on a paper prepared for the Seminar on the Assistance in the Preparation of African Countries for the WTO Trade Negotiations, co-organised by AERC, UNECA, OAU, The World Bank, UNDESA, and UNCTAD, March 9, 2000, Geneva, Switzerland.

---

1 See Dabee et al. (2000).
2 See, for example, WTO (1999).
3 See, for example, Mashayeki (2000).
4 See Dabee et al. (2000).
CHAPTER 12

Services at the Millennium Round of Trade Negotiations: The Case of Cameroon

Godfroy Mballa and Dominique Njinkeu

One special feature of the Uruguay Round of trade negotiations was the introduction of the GATS. Services sectors, unlike the manufactured goods that dominated earlier rounds, have been considered strategic for a long time for various economic and non-economic reasons. As a result, the standard competitive market framework does not apply. Therefore multilateral liberalisation needs to be conceived simultaneously with domestic reforms. The major challenges rest with the ability of governments to engage in complicated reforms from a weak human and institutional capacity and low capital base.

The GATS negotiations offer numerous opportunities, including the possibility of using the trade negotiations to formulate a coherent development programme that can provide a lasting solution to the core problems of marginalisation and increasing poverty. For that, Cameroon needs to carefully identify its strengths and weaknesses and negotiate accordingly to ensure that the round effectively focuses on the country’s priorities. Two crosscutting issues are capacity to effectively participate and the need for consistent special and differentiated treatment that can ensure smooth integration in the world trading system.

Like the GATT, GATS aims to progressively reduce barriers to trade in services and to open domestic markets to competition. Governments are allowed to provide exemptions, in a specified time frame, provided they explicitly identify the sectors concerned. Unlike GATT, however, where market access is explicitly defined and can be monitored, GATS followed a positive list approach through which the limitations to market access are spelled out. Commitments apply either horizontally to all the service sectors included in the schedule, or they are sector-specific and thus applicable to the specific sectors or activities where they are made. A Member may choose from among three options: absence of restriction or limitation in the case the country wants to fully bind; “unbound” if the intention is not to restrict; and “limited” entry for cases where some conditions are attached. The obligations of the service negotiations also include general and specific commitments. The general obligations require that the member does not discriminate among suppliers from different countries through MFN treatment. There are also provisions for regional integration schemes offering better than MFN treatment.

The GATS negotiations focus on four modes of supply: mode 1 is relevant when the services can be transported through communications to the consumer and would correspond to the balance of payments definition. Services covered by cross-border trade include international telephone calls, international transports, and postal services. Mode 2, consumption abroad, entails the movement of consumers. Activities are usually recorded in the balance of payments statistics under “travel.” Mode 3, commercial presence, covers such entities as corporations, joint ventures, and partnerships. As mode 3 is a relationship between an affiliate and a parent firm, it therefore involves some flow of capital in the form of FDI. Mode 4, movement of natural persons, pertains to measures affecting natural persons who provide services to a Member and natural persons of Members employed by service providers. Activities include consultancy, music, or migration of labour, but not individuals seeking access to the labour market or citizenship of another Member.

Cameroon’s Trade in Services

It has been estimated that all trade in services worldwide in 1997 represented US$2,170 billion, of which 41.0 percent represents mode 1, 19.8 percent mode 2, 37.8 percent mode 3 and 1.4 percent mode 4. The cumulative share of services in total GDP was 7.6 percent with 3.1 percent, 1.5 percent, 2.9 percent, and 0.1 percent for the respective modes of supply. Sub-Saharan Africa (SSA) is the only region in the developing world whose share of service exports worldwide fell between 1985 and 1997. Yet, while African countries are unable to sell more service overseas, their markets are increasingly seen as a profitable destination. Nevertheless, the share of Africa in imports fell by 50 percent between 1985 and 1997 while the share of the more open Asian economies increased by 30 percent. At the country level,
Cameroon follows the African overall trend, with a fall of 0.24 percent in exports and an increase of 4.18 percent in imports share. In the case of Cameroon, in all but one subsector, exports fell short of imports.

It is useful to situate Cameroon in the context of other SSA countries, particularly its regional partners. Both Cameroon and Senegal, for example, are members of the Franc Zone and had a major devaluation in January 1994. Given the low level of tourism activities in Cameroon, the share of mode 2 exports fell by 1 percent between 1993 and 1995, when it increased by 86.74 percent in Senegal. The import of mode 2 services decreased in Cameroon and increased in Senegal where the variations in the share of import vis-à-vis GDP are −0.4 percent in Cameroon and 48.4 percent in Senegal. The indicator is 10.8 percent in Senegal and 16.5 and 18.3 in Kenya and Mauritius respectively, two other countries that experienced a boom over the period.

The trend in the trade associated with commercial presence is best described by the flow of FDI. On this ground also, the performance of Cameroon is not good, with a specialisation ratio of 0.35 percent, which was the lowest value in a sample comprising Côte d’Ivoire, Kenya, Mauritius, Nigeria, and Senegal. The indicator of specialisation for these is, respectively, 4.9, 1.1, 0.8, 8.7 and 2.04 percent. Cameroon is also among the least performing countries with respect to mode 4. The indicator of specialisation is 0.09 percent.

CEMAC countries did not use the GATS framework sufficiently to foster their liberalisation programmes. Cameroon committed in professional and tourism and travel related services only. These sectors are not important on either the import or the export sides. Nor are they those in which significant efforts were made in the unilateral liberalisation programme. A similar pattern prevails for other CEMAC partners. Combined they have made 13 out of 48 possible commitments. Furthermore, these countries do not seem to have capitalised on their joint efforts toward regional integration. One possible conclusion from this is that countries committed or failed to commit without fully understanding the implications of their actions. A comprehensive programme, from explaining the basic concepts to formulating the strategy for GATS negotiations, needs to be an important part of the objectives of the negotiations.

**Transportation Services**

Transportation services trade is by far the most important in Cameroon. Export and imports in 1995 represented, respectively, US$112 and 172 million. This level of transactions is related to the countries’ privileged position in CEMAC. Moreover, the Douala port is the gateway for international trade of the Central African Republic and Chad; this has a direct effect on trade in road and rail transport. In air transport, despite the difficulties of Cameroon Airlines, the country remains a leader in the region. Unfortunately, Cameroon has not taken full advantage of existing opportunities. Both imports and exports have declined in recent years, with a drop of 13 percent and 3.4 percent, respectively, between 1993 and 1995. A development challenge for the country is to properly identify the constraints and use the WTO framework to address some of them.

**Land Transport**

The interdependent, downstream nature of land transport is complicated by increased complexity of modern production methods in terms of the geographic location of activities and firms. Passenger transport is primarily done by car, an aspect not covered by GATS, except in the case of transport by taxi. In general, road transport is short-haul, therefore concentrating most of the activities within the country; hence, mode 3 of GATS is the most important modality. Cross-border supply (i.e. GATS mode 1) primarily concerns interstate transit, particularly involving landlocked and countries without port facilities. In the case of Cameroon this includes traffic with Chad and the CAR.

**Rail Transport**

The railways sector is under a 20-year concession scheme. It is privately operated by CAMRAIL and controlled by the BOLLORE Group through its Cameroon based affiliates, namely SAGA and SDV with a combined 72.1 percent market share. The government’s share is 8.3 percent, but it is the owner of the sector’s infrastructure while CAMRAIL ensures their exploitation, upgrading, and financing. The concession agreement includes no formal barriers to entry in the sector since it provides for the possibility for other operators in the railways network either at the government initiative or CAMRAIL itself. This,
in practice, could become an obstacle to access given BOLLORE’s dominant position. The CAMRAIL fleet includes 66 locomotives, 76 passenger wagons, and 1,359 cargo wagons, out of which 145 are owned by private operators including ALUCAM and other private Cameroonian firms. The line is about 1,000 km long and one of the oldest in Central Africa. No major improvement has been carried out on the network since the early 1980s and the quality of infrastructures is low.

Road Transport
Cameroon currently has 74,300 km of road network with many problems. The Ministry of Transport has overall responsibility for road transport policy. However, the road network is divided between the Ministry of Public Works, the local authorities, and the road users union and association. This diversity in decision-making has resulted in a fragmented policy and administration of road transport. Overall Cameroon’s land transport infrastructure remains poorly developed, and this is the major limiting factor to access to both the interior and landlocked neighbouring country markets.

Maritime Transport
Maritime transport activities are covered in a special annex to the GATS, as well as a ministerial decision of 1996 mandating the continuation of discussions in the negotiating group on maritime transport services and their inclusion in the comprehensive 2000 GATS negotiations.

The Douala Port Authority (PAD), with 95 percent of the country’s maritime traffic, is the focal point for the subsector. Reforms have included structural changes aimed at improving performances, especially in reducing service costs and transit time. The privatisation and concession process is proceeding well. A regulatory body, the Autorité Portuaire Nationale (APN), has been created to remove government’s direct involvement and limit political influence on the maritime sector. The government maintains some control and roles such as regulation and strategic planning, performances monitoring, security and safety norms implementation, licensing of port activities, and design of privatisation policy and framework. The overall reform in the maritime transport activities needs to be made, keeping in mind that these activities are extremely capital intensive and an adequate policy framework is required to allow investor and other service providers make the requisite long-term investment.

Air Transport
Air transport is covered in only a small part of GATS, including: (a) traffic rights, however granted; (b) services directly related to the exercise of traffic rights; (c) repair and maintenance services; (d) the selling and marketing of air transport services; and (e) computer reservation system (CRS) services. Air transport, compared with other sectors, relies more on a positive list hence requires clear definitions.

Cameroon is fully involved in the multilateral open skies agreement, as are all CEMAC members. By 2002, air transport liberalisation will lead to a totally free access market with no frequency or capacity control. The right of airline traffic will be free on the Cameroon sky. Private and foreign ownership is allowed in the provision of air transport services and will be fully in force when the open skies agreement becomes effective in 2002.

Transport Sector Recommendations
Given the level of liberalisation in almost all transportation subsectors, Cameroon could commit to bind at the current level of liberalisation transportation services for air, maritime, and rail. In these subsectors, it should not commit to the rental of commercial vehicles or apparel. Maintenance and repair should be restricted in rail and air, with supporting services further restricted for rail. Other services would be restricted only for isolated cases to be determined. The limitations on market access that would be required are primarily on the number of natural persons who may be employed and on the legal form of firms. In some cases such as road transport, especially urban transport, some limitation would be required on the number of foreigners and level of foreign equity participation. In case of commitments by mode of supply it is important that cross-border supply be conditioned by some form of FDI and that movement of natural persons be conditional upon investment in human resources development to the benefit of nationals. For commercial presence, the focus of the country should be the guarantee that the technology
(physical and otherwise) is as up-to-date as possible. Cameroon would win by a concerted CEMAC-wide MFN exemption on most aspects of the transportation services and make the region a real single investment and trade zone.

Telecommunications

The importance of telecommunications in world trade has increased substantially in recent years, with a high correlation between the level of economic development and telecommunication activities. Africa’s share of world revenue in telecommunications was only 1.5 percent in 1997. The gap between the richest and emerging regions is reducing, while the least developed countries are lagging behind. The telecommunications negotiations cover basic services provided on an infrastructure basis and what is usually referred to as value-added services, which depend on public telecommunications transport networks that use computer processing applications including electronic and voice mail, on-line information, and data retrieval, processing, and exchange. Commitments include market access through border crossing and commercial presence.

Cameroon’s Basic Telecommunication Sector

Telecommunications in Cameroon faces several challenges. At present only one carrier serves the whole country. The country’s teledensity is just under 1 percent (0.83 percent) and cellular penetration is approximately 0.68 percent. The latest privatisation operation has been finalised with the takeover of 51 percent shares and the control of the fixed line operations company by a CAMTEL’s consortium made up of TELECEL–Korea Telecom–Republic of Cameroon. The government’s decision to liberalise the sector has had a profound impact on telecommunication nationwide. In the last two years, the emerging private business sector has demonstrated a growing demand for high quality communications services, which has led to a rapid development of the sector. Services such as cellular phone and the Internet have become primary beneficiaries of this trend.

The fast growth of all market segments was stimulated by the launch of the first private cellular phone operator in January 1999: Société Camerounaise de Mobiles (SCM), a subsidiary of France TELECOM, followed a few months latter by the buy-out of the state owned cellular operations CAMTEL Mobiles by the South African Group MTN (Mobile Telephone Network).

Value-Added Telecommunication Services

The Internet market is structured around six major players, concentrated in Douala 70 percent and Yaounde 30 percent. With 200 to 300 percent, the activity growth is one of the fastest in the sector, despite the lack of basic telecommunication infrastructures that would sustain the expansion of the network. This has been seen as the most limiting factor. The second limiting factor is fixed lines availability and quality. The Internet is also about massive value shifts and is predominately the domain of young people, who are actually the master of that digital economy in Cameroon—70-80 percent of those connected are 20 to 35 years old. The appropriate response to this imbalance is not to impede the digitalisation but to bridge its divide by increasing educational, technical, and material opportunities for every citizen to avoid an accelerated social exclusion of groups of people.

Telecommunications Sector Recommendations

Given the level of liberalisation achieved in the sector and its importance, Cameroon should consider making important commitments and use this possibility to complete and capitalise on recent achievements. With respect to cross-border mode of supply, the country could commit and bind at current level of liberalisation but conditional upon commercial presence in the case of basic telecommunications. Mode 2 supply, consumption abroad, needs no commitment at this time for either basic or value-added services. Given the dynamism of the local private sector in value added services no commitment is required in either mode 3 or mode 4. In the case of basic telecommunications, subject to limited cases the country could commit to almost total liberalisation for modes 3 and 4.
Except for members of CEMAC, with which advanced liberalisation should be pursued at the regional level, there is no need for the moment to accord national treatment in telecommunication services in the country. MFN exemptions should be claimed for CEMAC and potentially for the EU pending the negotiation of the trade chapter of the Cotonou Partnership Agreement.

**Tourism**

The tourism service sector at the WTO includes hotels and restaurants (including catering), travel agencies and tour operators, tourist guides, and other residual services.

**Tourism in Cameroon**

Cameroon attracted 130,000 tourists in the calendar year 2000. Although all the WTO services are supplied in Cameroon, the sector is rather underdeveloped despite the potential associated with the climatic diversity. Infrastructure facilities like telecommunication, regular power and water supplies, reliable air and sea connections, developed banking facilities, well-located industrial sites, and efficient internal transport facilities are important prerequisites that the country badly needs. The regulatory framework in Cameroon is not sufficiently transparent to allow a potential investor to know what incentives and facilities he will be entitled to if he goes into the tourism industry. The low performance on law enforcement adds to the problems. There is no discrimination against foreigners, although entry procedures remain cumbersome, mostly unrelated to tourism per se.

**Tourism Sector Recommendations**

Further opening of the sector in the WTO should be conditioned upon adequate solution to this problem. In addition, it should be noted that this sector is closely related to the performance of others, including transportation and financial services. The country had committed to liberalise this sector in its last submission at the WTO but not much has occurred except probably in the informal/least-regulated sector.

**Financial Services**

GATS negotiations on financial services cover such activities as insurance, reinsurance and other insurance related activities, banking, and other financial services. The commitments are basically in four areas: (a) improvements in the number of licenses available for the establishment of foreign operators; (b) guaranteed levels of foreign equity participation of branches, subsidiaries or affiliates of banks and insurance companies; (c) removal or liberalisation of national or residence requirements for members of board of institutions; and (d) participation of foreign-owned banks in check clearing and settlement systems.

**The Financial Sector in Cameroon**

Cameroon’s financial services sector has moved since the late 1980s from a highly controlled to a more open market, with important structural changes including bank restructuring, introduction of new prudential regulations and other changes in the legal framework. The country’s banking system is supervised by the BEAC, a supranational financial institution that controls the availability and allocation of financial resources (credits and deposits). The regional banking commission, Commission Bancaire d’Afrique Centrale (COBAC), supervises banking operations and ensures the country members’ banks respect prudential requirements. A similar structure exists for the insurance subsector through the regulatory body, CIMA. The insurance regional commission CRCA (Commission Régionale de Contrôle des Assurances), started in 1995, is a supra-national public body independent from any member country and has financial autonomy.

Obstacles to Cameroon’s financial sector abound, although tighter prudential supervision has reduced some barriers to its efficiency and openness. Some concerns remain about the market structure and access conditions, which still include the use of government bailouts as a form of safety net. The remaining key area is to create an enabling environment for trade in finance services to make the access
to the market more transparent and efficient. Regulatory bodies (COBAC, CRCA, and Ministry of Finance) should make provisions for sufficient financial resources to develop its own supervision and compliance capacity. The BEAC should consider a shift from traditional means of communication and financial transaction to electronic banking system to allow faster and more accurate dealing and to ease the entry of other operators in the market.

Financial Sector Recommendations

The financial sector in Cameroon is relatively liberalised in most segments. The main challenge to Cameroon is how to use the negotiations to remove the constraints that have been identified. Since the country did not make commitments in this sector, the first recommendation is that this be done. In both the banking and insurance subsectors, mode 1 supply should be liberalised with binding at current levels, with condition of a FDI requirement. The movement of natural person should be allowed only with specific investment requirement and human resource development of nationals. The current national treatment possibility should be allowed only if used to obtain credit for unilateral liberalisation. Immediately applicable MFN exemptions should be claimed for CEMAC countries; conditional upon reciprocal preference, MFN exemption could be requested for the West African member countries of the Franc Zone given the level of policy harmonisation in the two groups of countries. Pending the outcome of the negotiation of the trade chapter of the Cotonou Agreement, an MFN exemption could also be required with the EU.

Business Services

The business services covered by GATS include professional, computer and related services, research and development, real estate, rental and leasing without operators, and other business services.

Business Services in Cameroon

Our focus is limited to the professional services that are most important in Cameroon’s economy:

- Legal professions are ruled and organised under specific decrees and laws (Lawyers Law N°90/059 of December, 19, 1990, Notary decree N°95/034 of February, 24, 1985, sheriff bailiff decree N° 85/238 of February 22, 1985.) These laws and decrees are the most conservative of those of professional organisations in the country.

- Architects are ruled by a professional body, created in April 2, 1962 by decree N° 62/25/COR. The Ordre National des Architectes du Cameroon (ONAC) lacks means to assess its present status and is ill tooled to address the necessary review of its rules and regulations so as to enact a revision process consistent with the current expectations of the new trading system in services.

- Consultancy services are among the country’s main services imports and involve considerable amounts of money in the government and corporate budget. Information gathered from the sector clearly indicates the availability of substantial and skilled pools of national expertise in the management and advisory services. Their willingness to offer and supply their services either locally or in the CEMAC region is strongly expressed and could certainly lead to great savings of resources for the states members of CEMAC.

- Accounting and auditing services in Cameroon, as many other countries, are controlled by various conditions especially on judicial auditing of corporate bodies, partnership joint ventures, and other forms of service provision. The profession is headed and regulated by a national body, ONECCA, ruled by law N° 90/38 of August 10, 1990, under the UDEAC -133 Act 4/70, which organises the profession.

Business Services Recommendations
The trade in business services in Cameroon must overcome many shortfalls both in organisational and legal structures of professional associations, among which information and know-how are the major constraints. Most of their legal structures are inappropriate for transnational operations. An action should be taken to ensure their right condition for the sector better development in the supply of professional and business related services.

The step forward is to obtain a preferential treatment in service trade a regional level. The fifth article of GATS, which deals with regional trade agreements, permits it. This will request the CEMAC country to quickly and effectively address the removal of residency and nationality requirement as well as the persuasive legal barrier in trade of most services.

In the WTO, negotiations should make commitments in cross-border, commercial presence, and movement of natural persons mode of supply but with some limitations. For cross-border supply, the limitation should be associated with some investment levels whereby. Commercial presence should be conditional to training contribution to national human resource development and a share of executive staff. The movement of natural persons should be an important priority. An MFN exemption should be claimed for the CEMAC region, effective immediately. The country should support intra-regional mobility across various African regions, as this would open a significant market for its nationals.

Summary Recommendations for Cameroon’s Negotiating Position

A priority for Cameroon and other countries at the same level of development is to properly define the negotiation objectives. This will require a comprehensive review of each sector in order to determine the extent of market access and national treatment. These should guarantee adequate integration into the world trading system and enhance the transparency in restrictions, especially those related to movement of natural persons, in order to bring at par the movement of capital and labour. The following points should be fundamental to the considerations:

Enhance and enforce regional integration
In all sectors analysed, the regional dimension played a major role. The GATS negotiations will succeed in stimulating economic development if consistent with efforts being undertaken in the area of regional integration. For it to be effective and achieve the intended result, regional integration needs to go beyond the CEMAC member countries and provide a mechanism that forces members to honour their commitment.

Enhance regional competition policy
The need for competition-related discussions in the WTO arises from the increasing use of anti-competitive measures as surrogates for direct protection. The Agreement should be amended to provide more flexibility to developing countries, especially in situations where the domestic industry is characterised by a large number of small producers. Once the CEMAC region is given the appropriate legal status in the WTO, there would be a need to significantly enhance competition.

Recognise the need to account for implementation capacity
Services liberalisation is closely related to domestic policy reform, some of which falls in the framework of structural adjustment initiatives. It is crucial that the WTO-institutional reform includes coherence between policy recommendations of Bretton Woods and other institutions involved in policy formulation and implementation on the continent. GATS has so far failed to promote the development of services in developing countries in general and Cameroon in particular. This is partly due to imbalance in design in favour of sectors of primary importance or where developed Members of WTO have comparative advantage, namely the capital intensive and high technology sectors. Capital mobility is secured whenever needed but movement of labour category abundant in developing countries is restricted by such measures as visa and licensing requirements. The imbalance between mobility of labour and capital should be redressed.

Negotiate within the framework of ongoing economic liberalisation
The suggested modus operandi is the “request and offer,” eventually coupled with alternative “crossecting” approaches that take into account the interest of all members, especially the treatment of
liberalisation commitments undertaken autonomously. Given the low capacity of Cameroon and other African countries, the outcome will improve economic performances if negotiations are conducted within the existing architecture of the GATS and with a focus on the promotion of the interests of all participants on a mutually advantageous basis. A single undertaking would not be appropriate for Cameroon and other African countries, given their negotiating capacity and the current knowledge of the problems and potentials of service sectors.

Work to ensure special treatment for Cameroon and other countries at the same level of development
Developed countries should be willing to accommodate the market access interests of weaker partners through enough flexibility to ensure that the guidelines reflect the general obligation of facilitating and increasing the participation of African and other developing countries. It is important for Cameroon to coordinate with other countries at the same level of development in order to ensure a technical assistance package is provided that truly takes account of their needs.

1 This chapter is based on a paper prepared for the Seminar on the Assistance in Preparation of African Countries for the WTO Trade Negotiations, co-organised by AERC, UNECA, OAU, The World Bank, UNDESA, and UNCTAD, 9 March 2000, Geneva, Switzerland.