Trade in Services Negotiations:

A Southern African Perspective

Nicolette Cattaneo

ICTSD

International Centre for Trade
and Sustainable Development

Issue Paper

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Published by

International Centre for Trade and Sustainable Development (ICTSD)
International Environment House 2
7 Chemin de Balexert, 1219 Geneva, Switzerland

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ictsd@ictsd.ch www.ictsd.org

Publisher and Chief Executive: Ricardo Meléndez-Ortiz
Managing Director: Deborah Vorhies
Programme Officers: Nicholas Frank and Kiranne Guddoy

Acknowledgements

This paper was produced under ICTSD's Programme on Inclusive Economic Transformation as part of a project focused on leveraging services to drive sustainable economic growth.

The author would like to thank Christophe Bellman of ICTSD for his comprehensive and insightful comments on a previous draft of this paper. Thanks are also extended to JB Cronjé, John Stuart, and Trudi Hartzenberg (Trade Law Centre, Stellenbosch), as well as Ambassador Faizel Ismail (University of Cape Town) for helpful discussions.

ICTSD is grateful for the generous support from its core donors including the UK Department for International Development (DFID); the Swedish International Development Cooperation Agency (SIDA); the Ministry of Foreign Affairs of Denmark (Danida); the Netherlands Directorate-General of Development Cooperation (DGIS); and the Ministry of Foreign Affairs of Norway.

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Citation: Cattaneo, Nicolette. 2017. *Trade in Services Negotiations: A Southern African Perspective.* Geneva: International Centre for Trade and Sustainable Development (ICTSD).

ISSN 1995-6940

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LIST OF ABBREVIATIONS

ACP	Africa, Caribbean and Pacific Group of States
AU	African Union
BIT	bilateral investment treaty
BRICS	Brazil, Russia, India, China, South Africa
CFTA	Continental Free Trade Area
CMA	Common Monetary Area
COMESA	Common Market for Eastern and Southern African States
CPC	UN Central Product Classification
DRC	Democratic Republic of the Congo
EAC	East African Community
EPA	Economic Partnership Agreement
ESA	eastern and southern Africa
EVAD	export value added database
FDI	foreign direct investment
FIRE	finance, insurance and real estate
FTA	free trade area
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GGDC	Groningen Growth and Development Centre
GTAP	Global Trade Analysis Project
GVC	global value chain
ILO	International Labour Office
IMF	International Monetary Fund
ITC	International Trade Centre
LCU	local currency unit
LDC	least developed country
LIC	low-income country
LMC	lower-middle-income country
M&As	mergers and acquisitions
MFN	most favoured nation
NOC	high-income non-OECD country
OAU	Organisation of African Unity
OECD	Organisation for Economic Co-operation and Development
OECD STRI	OECD Services Trade Restrictiveness Index
PTA	Preferential Trade Area for Eastern and Southern Africa
RCEP	Regional Comprehensive Economic Partnership
REC	regional economic community
SACU	Southern African Customs Union
SADC	Southern African Development Community
SADCC	Southern African Development Coordination Conference
SDG	Sustainable Development Goal
SPR	Services Policy Review
TiSA	Trade in Services Agreement
TFTA	Tripartite Free Trade Area
TPP	Trans-Pacific Partnership
TPR	Trade Policy Review
TTIP	Transatlantic Trade and Investment Partnership
UMC	upper-middle-income country
UNCTAD	United Nations Conference on Trade and Development
UNDESA	United Nations Department of Economic and Social Affairs
UNDIESA	United Nations Department of International Economic and Social Affairs
UNECA	United Nations Economic Commission for Africa
UNIDO	United Nations Industrial Development Organisation
WB STRI	World Bank Services Trade Restrictions Index
WTO	World Trade Organization

FOREWORD

Evidence suggests that the role of services in the economies of the world's poorest countries has expanded dramatically over the last several decades with services accounting for 50 percent of GDP in least developed countries (LDCs) and trade in services, as a proportion of GDP, reaching 14 percent according to the World Bank. At the same time, increasingly fast-paced economic globalisation, including expanded international trade rules and financial liberalisation, has fundamentally altered the policy space available to least developed and low-income countries (LICs).

Understanding the implications of services negotiations, at the multilateral, regional, and bilateral levels as well as in North-South and South-South arrangements, as well as how these negotiations should be approached strategically in order to maximise sustainable development objectives for LDCs and LICs is of critical importance in advancing sustainable development in the globe's most underdeveloped countries.

In this paper Nicolette Cattaneo, Rhodes University, explores the regional and international services negotiating landscape that impacts on the countries of the COMESA-EAC-SADC region and delves into the ways in which services negotiations can be harnessed to drive sustainable development outcomes for the region's LDCs and LICs. After highlighting current trends, the structure of negotiations, and challenges and opportunities for the region's LDCs and LICs, the paper recommends a set of strategic policy responses that could be applied at the multilateral, regional, and bilateral levels in order to enhance the utilisation of the services sector for developmental purposes.

This paper, the fourth in a series of publications related to services and the Sustainable Development Goals, is designed to both expand the body of knowledge in this area and to support positive and innovative service sector policy change in LDCs and LICs. We hope that this paper, as well as the companion pieces in the series, are useful to policymakers and researchers.

Ricardo Meléndez-Ortiz
Chief Executive, ICTSD

EXECUTIVE SUMMARY

Accelerated economic globalisation since the early 1990s has significantly altered the international context within which Africa's development strategies are evolving. Extensive trade, investment, and financial liberalisation, together with the reform and expansion of international trade rules to cover areas such as services, investment, intellectual property protection, and government procurement, have affected development policy space and increased the exposure of developing countries to volatile financial flows and external shocks. With the growing organisation of production and trade in global value chains and increasing financialisation, a challenging international environment has emerged for Africa's least developed (LDC) and low-income countries (LIC). The Doha Round of multilateral trade negotiations has stalled, and there is a trend towards plurilateral negotiations at the World Trade Organization (WTO) and a proliferation of North-South trade and investment agreements, as well as mega-regional trade negotiations from which African countries are presently excluded.

In this context, African countries need to develop innovative strategies for integrating different aspects of economic and social policy for catch-up and development. There has been renewed discussion of the importance of structural change on the continent, but less systematic analysis of the role of the services sector in facilitating growth and development-enhancing structural transformation in low-income and least developed African economies in particular.

This study examines the regional and international services negotiating landscape that impacts on the countries of the COMESA-EAC-SADC region and explores how these negotiations can be harnessed strategically to facilitate a developmental role for the services sector in the least developed and low-income countries of the region in particular. The study explores the growth and structure of the services sector in the region in both value added and employment terms, with a focus on the interaction between output, employment, and productivity growth and the implications for structural change. It then investigates the growth and structure of services trade and trade in value added, as well as the services trade balance in external trade, highlighting key sectors of interest for trade negotiations.

Given the challenging international environment which countries of eastern and southern Africa face, the development of strategic responses and a range of policy initiatives is of critical importance.

First, in order to develop a coherent and empirically grounded set of policy responses, improvements in the quality of services data and analysis is required. Improvements in sub-sectoral data are needed to analyse the impact of services on value addition and structural change adequately. In order to identify defensive interests, accurate intraregional services data is of critical importance, as a comparison of services subsectors in which there are trade surpluses and deficits in regional versus external trade would provide negotiators and policymakers with a clearer view of which interests should be prioritised in bilateral, regional, and international negotiations. Similarly, additional analysis of those services that act as inputs into gross exports at a country level is required as these services should be included in a country's grouping of offensive interests. Case study research should be used to overcome data deficiencies and to explore linkages of services sectors to the rest of the economy, examine the impact of the current regulatory and legislative environment, and identify stakeholders—all important elements in the preparation of services offers.

Second, the development of domestic regulatory frameworks and legislation is a vital antecedent of engagement in services negotiations. In a similar vein, before engaging in North-South agreements, it would benefit COMESA-EAC-SADC countries to develop regional regulatory frameworks. It is important that domestic regulatory frameworks and regional cooperative structures are developed before pursuing North-South agreements in new trade-related areas to avoid the outcome of such agreements excessively influencing domestic and regional development policy agendas. The CFTA should be prioritised and a manageable agenda, which finalises coherent regional and continental frameworks, should be pursued.

Third, as a means of ensuring that areas of significance to LDCs and LICs are addressed at the multilateral level, the Africa group at the WTO needs to be reunited, new alliances and relationships forged with other developing countries, and old alliances (such as the LDC group) reinvigorated. As the WTO membership, some more reluctantly than others, has moved away from a single undertaking approach and toward a single-issue system, the development of strategies to cope with this by the Africa group is necessary.

Fourth, in order to support the current developmental approach utilised by the COMESA-EAC-SADC region, with its focus on trade integration, infrastructure, and industrial development, regional industrial policy and enhanced cooperation between development banks and the BRICS New Development Bank is required.

1. INTRODUCTION

Since the early 1990s, accelerated economic globalisation, characterised by the reform and extension of international trade rules together with significant investment and financial liberalisation, has substantially altered the international context in which African plans for regional integration and economic development are being pursued. Seguino (2015) highlights some of the features of this wave of globalisation that have had important implications for developing countries' policy space. These include extensive trade liberalisation, the removal of limitations and restrictions on cross-border investment flows together with the emergence of a controversial international investor protection system, and financial liberalisation which has increased the exposure of developing countries to volatile financial flows and external shocks.

In this context, African countries need to be innovative in integrating different aspects of economic policy, including trade, industrial, technology, and regional integration policies, for catch-up and development. This is particularly the case in light of the broadening of international trade rules to services, investment, intellectual property protection, and government procurement, and the growing organisation of production and trade in global value chains (GVCs). A challenging international environment has developed with the impasse in the Doha Round of multilateral trade negotiations and the apparent neutralisation of the Round's development agenda. The global environment has been characterised by a tendency towards plurilateral negotiations at the WTO and a proliferation of North-South international trade and investment agreements. The recently stalled mega-regional trade negotiations, between countries which collectively have a significant share of world trade and investment, did not include any African countries. At the same time, Mauritius (an upper-middle-income economy) is at present the only African country that has expressed an interest in being involved in the plurilateral Trade in Services Agreement (TiSA) negotiations amongst a small group of (mostly OECD) WTO members.

Despite the challenging environment, the aftermath of the global financial crisis, together with accelerated growth on the back of the recent commodity boom, has arguably given African countries more space to experiment with a wider range of industrial and other developmental policies in recent years (Salazar-Xirinachs et al. 2014, 8-9).[1] There has been a broader questioning of traditional mainstream policy recommendations, as well as renewed discussion of the importance of structural change in catch-up and development.[2] Important questions to address in this context relate to the type of structural change that will be growth- and development-enhancing; the role and position of the services sector in such structural transformation; the nature and importance of linkages between economic sectors, traditionally defined (agriculture, manufacturing, services); and whether traditional categorisations retain the same relevance in an era of GVCs.

The position of the services sector in this regard has been under-researched in the Eastern and Southern African region, particularly in the case of LICs and LDCs.[3] While a developmental integration approach has been proposed for the Tripartite Free Trade Area (TFTA),[4]

1 Growth has decelerated markedly since the end of 2014 with the fall in commodity prices, but is expected to pick up again in 2017 (IMF 2016, 21).

2 See, for example, UNIDO (2013), ACET (2014), and UNECA (2015), as well as the African Union's Agenda 2063.

3 Annex 1 categorises the eastern and southern African countries by World Bank per capita income category and identifies countries that are also classified as least developed countries (LDCs) by the UN. Nearly all low-income countries (LICs) and lower-middle-income countries (LMCs) in the region are classified as LDCs by the UN (see table notes for the exceptions).

4 The TFTA is being negotiated between the member states of COMESA, the EAC, and SADC. Annex 1 indicates membership of the three regional groupings, as well as membership of SACU, the CMA, and the WTO.

which emphasises the three pillars of trade integration, infrastructure development, and industrialisation, the focus to date has still primarily been on trade in final products rather than on trade in intermediaries, services trade, and the development of regional value chains.

The need for a developmental trade strategy for the services sector is becoming more pressing, however, given the share of services in domestic and global value added and employment, growing trade in services, the significant proportion of FDI flowing to services sectors, and the role of the services sector in facilitating and supporting production and trade in other key sectors of the economy, particularly manufacturing (Cattaneo 2011). According to the World Bank (2016), services value added accounts for about 50 percent of GDP in LDCs and has been growing at average annual rates of between 5 and 7 percent per annum since 2000. Trade in services as a proportion of GDP in LDCs has reached 14 percent in the past decade, with some countries experiencing rapid growth in services trade since the mid-2000s in particular (World Bank 2016; ITC 2016). Furthermore, there is growing pressure on developing countries to liberalise their services sectors in North-South trade and investment agreements, often before domestic and regional frameworks have been sufficiently developed and in some cases before multilateral commitments have had to be made.

The important question for eastern and southern African LICs and LDCs is how services trade negotiations at different levels (multilateral, regional, bilateral, and in North-South versus South-South configurations) should be approached strategically in this context to advance these countries' development objectives. What is the potential impact of the various proposed services negotiations that have already been planned at the regional level in eastern and southern Africa? What are the implications for the services sectors of African LICs and LDCs of the exclusion of these countries from the mega-regional trade negotiations and plurilateral trade in services negotiations? How can the services sector be harnessed to promote development and structural transformation? These questions require a range of strategic responses at all levels from policymakers in the region.

The objective of this study is to examine the regional and international services negotiating landscape that impacts on the countries of the COMESA-EAC-SADC region (hereafter the TFTA region) and to explore how these negotiations can be harnessed strategically to facilitate a developmental role for the services sector in the least developed and low-income countries of the region in particular. The study is structured as follows. Section 2 maps out the growth and structure of the services sector in the region in both value added and employment terms, with a focus on the interaction between output, employment, and productivity growth and the implications for structural change. It then examines the growth and structure of services trade and trade in value added, as well as the services trade balance in external trade and, where data is available, within the region.

Section 3 examines the existing GATS commitments of the TFTA countries that are WTO member states. These commitments form the basis of a number of the regional negotiations currently underway. Section 4 explores the services negotiating landscape in the region, including the roadmap and proposed structure of negotiations under the SADC trade in services protocol, TFTA Phase II and CFTA Phase I negotiations, as well as the EPAs, with a focus on their coherence, sequencing, and relationship to existing GATS commitments. Section 5 investigates the current international trends in services negotiations and in particular the potential impact of the exclusion of African LICs and LDCs from mega-regional and plurilateral services trade negotiations. Section 6 concludes with an assessment of key challenges and opportunities and recommends a set of strategic policy responses at multilateral, regional, and domestic levels to harness the services sector for growth and development in African LICs and LDCs.

2. GROWTH, STRUCTURE, AND OPENNESS OF SERVICES SECTORS IN THE TFTA REGION

In Section 2.1, data from the World Bank are used to outline the contribution of the services sector in the aggregate to value added and employment in the countries of the region for which sufficient comparative data is available. This is supplemented by a more in-depth consideration in Section 2.2 of value added, employment, and productivity growth in selected countries for which more detailed data is available from the Groningen Growth and Development Centre (GGDC) ten-sector database (Timmer et al. 2014). In Section 2.3, the growth and structure of services trade and its contribution to foreign exchange earnings in the countries of the region, as well as the contribution of services to value added trade, are examined using data from the International Trade Centre (ITC) and existing case studies.

2.1 The Contribution of the Services Sector to Value Added, Employment, and FDI Stock, and Aggregate Growth in Services Value Added

Based on World Bank data, the services sector in the aggregate accounted for between 42 and 74 percent of domestic value added in most of the countries of the TFTA region in 2014 (Table 2.1).[5] The share was highest for the non-LDC countries of Mauritius, Seychelles, and South Africa at 73.6, 71.1, and 68.1 percent of GDP respectively. The share was lowest for the LDC states of Burundi, Ethiopia, and Tanzania at 42.4, 43.4, and 43.5 percent respectively, although most TFTA LDCs in the sample had services value added shares of over 50 percent. Data on the share of services in domestic employment is sparse from this World Bank source, but the available data in Table 2.2 suggest services employment shares of total employment ranging from 16.9 percent (for Madagascar) to 71.6 percent (for South Africa) in 2013. While a high services share of value added and employment in a developed economy is a sign of economic maturity in a high income context, it is important to note that a significant share of services in the case of low- and middle-income developing countries may signal premature deindustrialisation and tertiarisation (Palma 2008; di John 2004). It is therefore necessary to consider the interaction between output, employment, and productivity growth at a more disaggregated level to explore the nature of the structural change that has occurred and its implications for development.[6]

Table 2.1: Services value added as a share of GDP in TFTA countries

	1970	1975	1980	1985	1990	1995	2000	2005	2010	2012	2014
Angola				50.00	33.33	26.43	22.21				
Botswana		36.49	34.57	32.41	34.13	48.62	46.42	50.33	60.52	60.98	58.40
Burundi	19.20	20.85	25.13	25.46	25.16	32.61	35.01	37.05	42.85	42.53	42.43
Comoros			52.82	49.81	50.31	47.17	49.86	46.96	47.29	50.37	52.63
Congo, dem. Rep.	38.58	45.04	38.18	37.13	40.04	26.00	45.01	44.64	42.28	43.24	45.66
Djibouti					74.89	81.32	81.10	79.86			
Egypt, Arab Rep.	42.40	44.07	44.96	51.46	51.96	50.92	50.13	48.79	48.48	50.08	49.90
Eritrea						62.27	66.12	53.87			
Ethiopia				34.97	38.18	35.12	40.04	42.50	45.07	41.76	43.42
Kenya	46.87	45.60	46.56	48.33	51.44	52.85	50.72	53.71	51.38	50.20	50.37

5 The most recent figure for Djibouti was higher, at 79.9 percent in 2005.

6 See Section 2.2 below.

Table 2.1: *Continued*

	1970	1975	1980	1985	1990	1995	2000	2005	2010	2012	2014
Lesotho	40.84	43.51	48.86	46.03	41.13	41.85	57.41	57.90	59.72	60.82	60.14
Libya								22.19			
Madagascar	59.27	50.11	53.89	51.54	58.60	64.09	56.56	55.94	56.01	55.75	57.60
Malawi	38.56	42.43	33.72	35.18	26.11	49.95	42.54	49.62	50.81	49.93	49.65
Mauritius			60.66	53.99	54.36	57.59	62.06	66.38	70.29	71.80	73.64
Mozambique			28.49	39.30	44.47	51.68	53.92	53.51	51.53	53.25	53.69
Namibia			40.69	52.74	58.69	64.94	60.22	59.50	60.54	58.93	61.21
Rwanda	29.79	31.82	32.60	35.48	42.83	40.03	49.23	49.79	54.56	52.18	52.51
Seychelles			77.52	75.89	78.93	73.16	68.15	63.21	66.93	67.91	71.14
South Africa	54.66	51.16	45.43	51.19	55.27	61.27	64.82	67.06	67.21	67.88	68.05
Sudan	42.03	45.45	53.01	49.95	44.16	50.78	37.02	40.78	46.96	48.81	50.39
Swaziland	38.32	34.16	47.11	53.33	46.45	43.00	43.88	46.53	42.20	49.33	49.56
Tanzania					36.39	38.36	47.34	48.51	46.34	43.56	43.54
Uganda	32.52	19.66	23.48	37.38	32.36	36.32	47.72	48.26	52.24	48.78	50.80
Zambia	28.61	40.19	42.79	38.61	28.12	45.03	55.41	54.16	54.04	55.26	
Zimbabwe	51.80	48.30	55.31	49.28	50.42	55.69	57.14*	52.74	54.64	55.24	56.59
All LDCs			44.55	43.81	41.91	43.12	44.25	48.44	49.70	49.34	50.28

**1999 figure. No data for South Sudan.*
Source: World Bank (2016)

Table 2.2: Selected TFTA countries: Services employment as a percentage of total employment

	1985	1990	1995	2000	2005	2010	2013
Botswana	31.40		58.70	59.80	54.90	56.10	
Egypt, Arab Rep.	36.20	40.23	44.00	49.33	47.43	46.53	48.00
Ethiopia			7.60		50.60	68.40	45.10
Kenya					32.20		
Lesotho			30.70	18.30			
Libya	47.00						
Madagascar					14.60		16.90
Malawi							28.50
Mauritius		40.00	47.60	49.60	57.23	58.43	63.23
Namibia		36.60		56.10	55.10	53.85	56.45
Rwanda		6.70			16.40		16.20
Seychelles						78.20	
South Africa				57.60	57.70	67.50	71.57
Sudan						40.10	
Tanzania		11.70		15.30	20.30		26.60
Uganda					23.20	19.10	20.20
Zambia		20.80		22.60	20.60		38.30
Zimbabwe				28.10	15.30	25.00	

Source: Author's calculations from available data in World Bank (2016)
Note: Three year rolling averages due to the paucity of data from this source. For example, 1985 is the average for 1984-86. No services employment share data is available for Angola, Burundi, Comoros, Djibouti, DRC, Eritrea, Mozambique, South Sudan, and Swaziland in World Bank (2016).

Average annual growth rates of services value added in the aggregate (based on constant US dollar data from the World Bank) have fluctuated significantly over time and across the TFTA countries. Since the mid-1990s, aggregate services growth has been strongest in Ethiopia, Mozambique, Rwanda, Tanzania, Uganda, and Zambia (Table 2.3). Services growth in these African LDCs has largely been above the average for all LDCs in the period 2010-2014 and stronger than services growth in non-LDC TFTA countries (except Botswana). Aggregate services growth has been impressive since 2000 in the DRC and since the mid-2000s in the following non-LDC TFTA countries: Botswana, Namibia, Seychelles, and Zimbabwe. Growth has been consistently above 5.1 percent per annum since the mid-1980s in Mauritius, except for the most recent period shown in Table 2.3.

Table 2.3: Average annual growth rates of services value added in TFTA countries

	1970-75	1975-80	1980-85	1985-90	1990-95	1995-00	2000-05	2005-10	2010-14
Botswana	17.72	7.94	11.29	16.62	8.91	5.85	2.53	8.88	6.94
Burundi	-5.84	7.01	7.84	4.61	-0.77	-0.43	9.27	9.42	3.09
Comoros			4.59	1.92	-1.66	3.25	0.84	0.83	1.62
DRC	-4.20	4.94	-0.49	8.57	-4.39	-6.12	5.72	7.64	6.96
Djibouti					-1.41	-0.57	3.03		
Egypt	11.57	10.49	9.69	6.19	1.02	5.66	4.44	6.36	2.35
Eritrea						6.49	1.96		
Ethiopia				3.60	-0.18	7.35	7.17	15.28	8.87
Kenya	8.51	6.72	4.42	5.39	3.49	2.61	2.94	6.17	4.38
Lesotho	4.10	9.58	3.07	5.03	3.52	2.90	2.75	4.41	4.60
Libya									
Malawi	9.11	4.86	2.30	3.53	1.41	1.03	1.02	9.51	3.78
Mauritius			3.37	6.70	6.16	6.44	5.70	5.16	3.59
Mozambique				4.26	3.63	6.67	7.87	8.64	6.49
Namibia			1.34	2.18	3.32	3.73	4.81	5.83	5.08
Rwanda	-2.38	10.97	3.43	3.75	-8.61	10.55	4.61	11.09	6.74
Seychelles			-2.34	4.67	3.14	6.41	-1.80	5.58	5.52
South Africa	4.73	3.16	1.71	1.85	1.41	2.90	4.12	3.85	2.31
Sudan	6.55	6.23	0.97	6.53	4.93	-0.81	9.56	9.59	2.68
Swaziland		6.54	6.16	6.96	5.34	-1.77	3.11	5.09	2.93
Tanzania					1.62	4.19	7.86	6.24	5.93
Uganda				4.70	8.61	7.36	7.43	5.35	5.06
Zambia	0.74	1.82	-1.27	-0.25	-1.13	7.78	7.13	10.64	6.30
Zimbabwe	4.67	5.25	3.01	4.59	3.04	1.68	-5.67	7.70	6.19
All LDCs				3.99	2.23	3.67	6.02	7.19	5.07

Source: Own computations from World Bank (2016), based on constant 2005 US$ services value added.
No constant USD services value added data available from this source for Angola, Libya, Madagascar, and South Sudan.

The services sector accounted for 64 percent of inward FDI stock in developing countries as a group in 2014—the same proportion as for the world economy as a whole. For Africa, however, 51 percent of inward FDI stock was found in the services sector in 2014, compared to 20 percent in manufacturing and 28 percent in the primary sector (UNCTAD 2016, 13). The corresponding proportions for developing Asia were 70 percent in services, 26 percent in manufacturing, and just 2 percent in the primary sector. According to UNCTAD (2016) a shift has become evident since 2014 in the structural pattern of inward FDI to Africa following the recent collapse in commodity prices. This is most obvious in the case of mergers and acquisitions (M&As). Although the value of M&As increased fourfold between 2014 and 2015, M&A value fell in the primary and tertiary sectors while the value of M&As in manufacturing increased greatly from US$330 million to US$20,937 million. By contrast, while the overall value of Greenfield FDI projects announced for Africa decreased between 2014 and 2015, the proportion of Greenfield services projects by value increased from 42.5 percent to 51.2 percent of the total, driven primarily by increased investments in the electricity, gas, and water supply sector. Both the value and share of Greenfield projects in the primary and manufacturing sectors decreased between 2014 and 2015 (UNCTAD 2016, 39).

While the UNCTAD report highlights the importance of increased Greenfield investments in sectors such as electricity, gas, and water for the achievement of the UN sustainable development goals (SDGs), there has been much debate on the role and position of the services sector within a broader developmental strategy in both low and middle-income countries. On the one hand, it has been argued that the sector's contribution to GDP and employment and the rapid growth of trade in services provide a case for positioning the services sector at the centre of the development process. This rationale is frequently challenged, however, as the aggregate picture in terms of value added and employment conceals a range of activities and employment prospects that may include a significant degree of survivalist and precarious work.[7] Some proponents of a services-led growth path argue that competition in manufactured export markets has made it increasingly difficult for many low and middle-income countries to pursue export-oriented industrialisation.[8] Many argue, however, that the re-organisation of production and trade in GVCs offers new and easier opportunities for the integration of low and middle-income countries into the global economy through specialisation and trade in components and "tasks" (WTO 2014).[9] The role of ICT services in India's growth acceleration is often highlighted in arguments in favour of a services-led growth path, as is the sector's importance for the country's balance of payments. Others have questioned the sustainability of rapid economic growth based on a high rate of growth in services in a context of jobless growth in manufacturing and inadequate accompanying formal services employment growth.[10]

The manufacturing sector has long been considered as central to the development process, particularly in post-Keynesian, structuralist, and Schumpetarian traditions (Palma 2008). This perspective derives from the notion that a rise in manufacturing value added has a greater economy-wide growth-enhancing effect than a corresponding rise in agricultural or services value added. Manufacturing has particular growth-pulling effects due to the nature of inter-sectoral linkages with the rest of the economy, more significant external economies, increasing returns, learning by doing and technological diffusion to other sectors, as well as a key role in alleviating the balance of payments constraint (Palma 2008; Tregenna 2008; Cattaneo 2011). According to UNIDO (2013, 1-2), manufacturing provides developing countries with the best opportunity to enhance value added growth while maintaining employment and improving productivity. By contrast, "direct transition from agriculture to services, especially for low-income countries, [may provide] only the first objective, not the second" (UNIDO 2013, 2). Furthermore, better wages for a broader range of wage-earners are generally found in manufacturing which can in turn improve incomes and stimulate a larger domestic market.

7 SDG 8 explicitly calls for "decent work for all." See http://www.un.org/sustainabledevelopment/economic-growth/.

8 See, for example, Sheehan (2008).

9 For more detail, see the discussion in Cattaneo (2009, 529-531).

10 See, for example, the discussion in Singh (2009).

Sheehan (2008) argues that particular modern services sectors display many of the characteristics of manufacturing identified as important for growth and development. Furthermore, the role of the services sector as a supporter and facilitator of manufacturing production and trade needs greater recognition, particularly against the background of the re-organisation of production, trade, and investment in international production networks dominated by developed country multinationals. Trade in intermediaries and unfinished products has grown significantly in part because of the lower cost and greater reliability of the service links necessary to coordinate the different parts of the production process internationally (Cattaneo 2009). As Van Long et al. (2001, 1) emphasise, countries participating in GVCs need to have services sectors that can support and facilitate international production sharing. Dasgupta and Singh (2006) note that while the expansion of service activities such as retail and transportation may primarily depend on manufacturing sector growth, ICT-related service activities would in turn stimulate the expansion of manufacturing activity. From the perspective of low-income countries, a developmental services strategy could be harnessed to facilitate industrialisation and upgrading in South-South regional production networks (Haakonsson 2009) and directed towards new opportunities related to innovation and the green economy (Wade 2010).

However, the evidence suggests that an emphasis on the services sector to the exclusion of manufacturing will not be effective as a development strategy. As Tregenna (2008) explains, manufacturing is a significant source of demand for the services sector and the poor performance of manufacturing will adversely affect both services growth and that of the economy as a whole. Empirically, when looking at growth and structural change, it is important to separate out services value added and employment changes that are a consequence of inter-sectoral outsourcing from manufacturing to services (Tregenna 2008). This indicates the limitations of a focus on the services sector in isolation from the rest of the economy and the manufacturing sector in particular. The implication is not that particular services sub-sectors do not have the potential for propulsive growth, but rather that analysis at the sub-sectoral level, that places greater emphasis on linkages between sectors and explores output and employment multipliers, is required. Traditional categorisations of economic sectors have, in any event, become less pertinent in the face of technological developments across agriculture, services, and manufacturing.[11] This reinforces the need to situate a developmental strategy for the services sector within a broader development strategy encompassing industrial policy and other aspects of economic policy-making in LICs and LDCs.

Whatever shape a services sector strategy takes, an important part of its development at both domestic and regional levels is an assessment of the sectoral growth performance, structure, and openness of the region's services sectors. African countries are under pressure to open up their services markets multilaterally, and to an even greater extent in bilateral and regional trade agreements, often before appropriate domestic and regional regulatory frameworks are in place. In order to facilitate the development and orientation of these frameworks, the existing services landscape in the region needs to be examined. Such an exercise is limited by the lack of availability of reliable and consistent data, particularly for LICs and LDCs. A comprehensive discussion of the data issues, particularly with respect to the measurement of trade in services, is beyond the scope of this paper.[12] However, these limitations should be taken into consideration in the discussion that follows in the remainder of this section.

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11 For a critique of the traditional distinction between agriculture and industry, for example, see Cramer and Sender (2015). For further discussion on manufacturing and services, see UNIDO (2013).

12 For further discussion, see UN et al. (2010), Cattaneo (2011), OECD and WTO (2012), Stuart (2015), and Bellman and Frank (2016).

2.2 Sectoral Growth of Value Added, Employment, and Productivity in Selected TFTA Countries

Aggregate growth and employment figures mask the performance and relative importance of a wide range of activities and types of work. Data should be disaggregated beyond the broad sector level in order to provide a better picture of the nature and characteristics of structural change and the role of the services sector in this process. There has been increased emphasis in recent years on the study of structural change in Africa both at the broad sector level and within particular sectors, such as manufacturing and services.[13] Focusing on the linkages between sectors, studies have explored the interactions between output, employment, and productivity changes, distinguishing between adverse and growth-enhancing structural change. While a comprehensive review of this literature is beyond the scope of this paper, it is clear that structural change associated with a larger share of value added and employment in services needs to be carefully interrogated at the sub-sector level to explore its productivity and employment enhancing potentials.

For example, based on the GGDC ten-sector database (Timmer et al. 2014), the World Bank study by Enache et al. (2016, 18) identifies the wholesale and retail trade sector as having the potential for propulsive growth in the African LDC countries in the database due to "high productivity" and the sector's importance as "a destination for excess labor being shed from agriculture:"

> The wholesale retail & trade sector is highly absorbent of labor…with varying levels of productivity. Ghana, Kenya, and Senegal exhibit low productivity in the retail (*sic*) trade sector, while [the LDCs] Tanzania, Ethiopia, Malawi, and Zambia have a relatively productive trade sector in the 2000s (Enache et al. 2016, 15).

Two points are important here. Firstly, Enache et al. (2016, 4) identify wholesale and retail trade as *excluding* restaurants and hospitality in the GGDC ten-sector database, stating that restaurants, hospitality, etc. fall under the tenth sector which they call "other services." However, the GGDC ten-sector descriptions in Timmer et al. (2014) and Enache et al. (2016, A2) identify the activities under trade services as including "wholesale and retail trade; repair of motor vehicles, motorcycles and personal and household goods, hotels and restaurants" and those under the tenth sector as "other community, social and personal service activities, activities of private households." This indicates that the GGDC trade services sector is still highly aggregated in terms of the range of activities involved. Secondly, Tables A2.1 to A2.4 of the present paper suggest that, in the case of the LDCs Ethiopia, Malawi, Tanzania, and Zambia, productivity growth in the trade sector in 2000-10 was negative or negligible, with little improvement from 1990-2000 in most cases. These productivity figures accord with those in Enache et al. (2016, A9-15) for 2000-10 so it is not clear what the basis is for their conclusion about the productivity performance of the wholesale and retail trade sector in the specified LDCs.

This reinforces the importance of sub-sectoral analysis and case studies based on fieldwork in individual LDCs and LICs. The point can be further illustrated with reference to more disaggregated analyses undertaken by Tregenna (2009) and Cattaneo and Fryer (2014) in the case of South Africa (though of course a middle-income country). Tregenna (2009, 1) notes that "relatively high growth in services employment is driven by an expansion of employment of cleaners and security guards and an outsourcing-type reallocation of these activities from manufacturing and the public sector towards private services. These activities have limited scope for cumulative productivity increases." For sub-sectors to generate propulsive growth, value added growth should be accompanied by both employment and productivity growth. In Table

13 See, for example, Enache et al. (2016), UNECA (2015), Martins (2015), Cattaneo and Fryer (2014), McMillan et al. (2013), and Kucera and Roncolato (2012).

A2.5, the GGDC ten-sector category "FIRE and business services" depicts significant value added growth accompanied by healthy employment and productivity growth in the case of South Africa. However, Cattaneo and Fryer (2014) show that once FIRE and business services (as well as transport and communication) are disaggregated, the picture changes considerably at the sub-sectoral level. Two sub-sectors (business services and retail trade) show dramatic employment growth with very low productivity, while two *different* sub-sectors (FIRE and communication) show dramatic productivity growth with little employment growth (Cattaneo and Fryer 2014).

Notwithstanding the qualifications discussed above regarding the level of aggregation in the GGDC ten-sector database, a few general observations can be made. In absolute terms in the most recent years, the trade sector has tended to be important for both value added and employment across countries. While the construction sector is not in the top three sectors in terms of employment, it is growing rapidly in these terms off a very low base. Value added growth has been significant in this sector in the recent period.

2.3 Services Trade: Growth, Structure, and Contribution to Value Added Trade

As noted in Section 2.1, the growing tradability of many services has been an important factor in the global re-organisation of production and trade in recent decades. According to the WTO (2015), trade in commercial services accounted for about 21 percent of total global trade in 2014, with developing countries accounting for about 34 percent of this services trade (WTO 2015). Furthermore, services comprise an important component of trade in value added, which measures the domestic and foreign value added embodied in exports and distinguishes the sectoral composition of this value added. Services exports provide a source of foreign exchange earnings and potentially a less costly source of entry into export markets for small land-locked countries.

Table 2.4 depicts services exports, imports, and the services trade balance for individual TFTA countries based on nominal data from the ITC (2016). In absolute terms, the largest services exporters in recent years have been Egypt, South Africa, Kenya, and Tanzania, and the largest importers Angola, Egypt, South Africa, and Libya. The importance of services trade for the individual TFTA countries' balance of payments is also depicted in Table 2.4. Africa's trade deficit in services has worsened markedly since 2005. The deficit is greatest in absolute terms in 2014 in the LDC TFTA countries of Angola, Libya, Mozambique, and the DRC. The highest services trade surpluses were recorded in Egypt, Kenya, Mauritius, and Botswana. The only LDC TFTA countries with systematic services trade surpluses since 2005 have been Djibouti and Tanzania. When trade as a proportion of GDP is considered, based on World Bank (2016) data, Seychelles, Mauritius, and Djibouti had the highest shares of services trade as a proportion of GDP at 92, 46, and 36.8 percent respectively in 2013, followed closely by Comoros and Mozambique, while South Africa and Egypt had among the lowest at 12.1 and 9.5 percent respectively (Table 2.5).[14] It is not ideal to compute average annual growth rates on the basis of nominal services trade data, and the growth rates in Table 2.6 are relatively erratic across countries for the periods shown. However, Table 2.6 illustrates that, for Africa in the aggregate, growth in imports has exceeded growth in exports in the most recent period. This also applies to seven of the TFTA LDCs included in the table.

14 Kenya and Tanzania's shares of services trade in GDP were also comparatively low at 13.5 and 12.8 percent respectively.

Table 2.4: Total services exports, imports, and trade balance (US$ millions)

	Services exports				Services imports				Services balance				
	2005	2008*	2011	2014#	2005	2008*	2011	2014#	2005	2008*	2011	2014#	
Africa total	61490	92568	97587	101060	76809	150610	167583	179499	-15319	-58042	-69996	-78439	
Angola	177	329	732	1681	6791	22139	23670	24928	-6614	-21810	-22938	-23246	
Botswana	833	842	1228	1352	585	795	1088	774	248	48	139	578	+
Burundi	35	83	112	78	134	259	213	265	-99	-175	-101	-186	
Comoros	43	64	74	84	46	79	108	113	-3	-15	-34	-29	
Congo, Democratic Rep.	343	828	739	244	1169	2100	2889	3043	-826	-1271	-2150	-2799	
Djibouti	248	297	319	357	84	130	148	178	165	167	171	179	+
Egypt	14643	24912	19140	21898	10508	17615	14070	17510	4135	7297	5070	4388	+
Ethiopia	1012	1777	2786	2978	1194	2392	3322	4234	-182	-615	-536	-1255	
Kenya	1883	3262	4115	4935	1152	1924	2186	2934	731	1338	1928	2002	+
Lesotho	34	48	46	31	368	404	488	332	-334	-356	-442	-301	
Libya	534	208	40	79	2349	4344	4386	7988	-1815	-4137	-4346	-7909	
Madagascar	499	1296	1173	1306	657	1580	1302	1219	-158	-283	-129	87	
Malawi	67	74	86	100	159	159	250	269	-92	-85	-163	-168	
Mauritius	1618	2544	3261	3190	1198	1920	2470	2498	420	624	791	692	+
Mozambique	342	555	366	725	649	965	2251	3657	-307	-410	-1885	-2932	
Namibia	413	555	742	1034	369	585	783	1138	44	-31	-41	-104	
Rwanda	120	433	444	517	286	528	635	774	-166	-95	-192	-257	
Seychelles	370	464	466	834	240	243	266	503	129	221	200	330	+
South Africa	11829	13999	17346	16837	12151	17013	20866	17042	-322	-3014	-3520	-205	
Sudan (North + South)	147	417	833	1457	1503	2532	2338	2064	-1356	-2114	-1505	-607	
Swaziland	203	255	300	291	403	651	875	649	-200	-396	-575	-358	
Tanzania	1269	1999	2300	3392	1207	1662	2208	2669	62	337	92	724	+
Uganda	526	832	1779	2007	609	1257	2435	2729	-83	-425	-656	-722	
Zambia	549	619	665	851	412	835	1093	1644	137	-216	-428	-794	
Zimbabwe	362	231	390	387	636	550	1153	968	-273	-319	-763	-581	

Source: ITC (2016) (No data provided for Eritrea)
**2009 for Botswana*
#2013 for Djibouti and 2012 for Zimbabwe

Table 2.5: Trade in services as a percentage of GDP in TFTA countries

	2005	2008	2011	2013
Angola	18.85	25.38	22.01	17.46
Botswana	14.28	5.59	13.29	12.74
Burundi	15.11	21.23	13.78	13.46
Comoros	23.28	27.78	32.04	
Congo, Dem. Rep.	12.64	15.24	15.22	9.63
Djibouti	46.87	41.38	37.64	36.76
Egypt, Arab Rep.	28.04	26.12	14.07	12.12
Ethiopia	17.79	15.40	19.11	
Kenya	16.20	14.45	15.02	13.46
Lesotho	29.33	27.73	20.75	18.38
Libya	6.09	5.22	12.76	13.21
Madagascar	22.94	30.55	25.02	24.48
Malawi	8.23	5.46	4.71	
Mauritius	44.81	46.30	50.93	45.98
Mozambique	12.82	12.52	19.27	28.53
Namibia	10.76	13.43	12.29	14.38
Rwanda	15.72	20.14	16.92	16.14
Seychelles	66.36	73.17	68.63	91.96
South Africa	9.30	10.81	9.17	9.52
Sudan	6.22	5.41	4.71	4.95
Swaziland	23.47	30.00	23.67	20.47
Tanzania	14.63	13.38	13.31	12.76
Uganda	12.59	14.67	20.79	20.95
Zambia	11.54	8.11	7.41	9.60
Least developed countries	12.40	14.69	14.42	12.87
Low income	15.46	16.43	18.16	
Lower-middle-income	13.59	14.49	12.01	12.43
Middle-income	10.12	9.97	8.65	8.66
High income: non-OECD	19.64	19.02	19.21	20.96
Sub-Saharan Africa (developing only)	12.00	14.25	11.48	

Source: World Bank (2016)
No data available from this source for Eritrea, South Sudan, and Zimbabwe.

Table 2.6: Average annual growth rates of services trade in TFTA countries (%)

	Services exports			Services imports		
	2005-08	**2008-11***	**2011-14**	**2005-08**	**2008-11***	**2011-14**
Africa total	14.61	1.78	1.17	25.16	3.62	2.32
Angola	23.05	30.50	31.93	48.28	2.25	1.74
Botswana	0.37	13.37	3.27	10.76	11.05	-10.72
Burundi	33.79	10.26	-11.13	24.50	-6.30	7.55
Comoros	14.61	4.71	4.23	20.13	10.61	1.64
Congo, Democratic Rep.	34.13	-3.71	-30.88	21.55	11.23	1.75
Djibouti	6.13	2.39	5.84	15.62	4.50	9.78
Egypt	19.38	-8.41	4.59	18.79	-7.22	7.56
Ethiopia	20.63	16.18	2.25	26.06	11.57	8.42
Kenya	20.10	8.05	6.25	18.63	4.36	10.29
Lesotho	12.68	-1.67	-12.48	3.19	6.50	-12.04
Libya, State of	-27.00	-42.16	25.34	22.75	0.32	22.12
Madagascar	37.44	-3.28	3.66	33.98	-6.23	-2.17
Malawi	3.39	5.07	5.18	-0.06	16.24	2.47
Mauritius	16.28	8.63	-0.73	17.03	8.76	0.37
Mozambique	17.54	-12.97	25.58	14.18	32.60	17.57
Namibia	10.37	10.18	11.69	16.65	10.18	13.27
Rwanda	53.46	0.85	5.22	22.65	6.37	6.82
Seychelles	7.92	0.08	21.45	0.40	3.01	23.71
South Africa	5.78	7.41	-0.99	11.87	7.04	-6.53
Sudan (North + South)	41.61	25.88	20.49	18.98	-2.62	-4.07
Swaziland	7.85	5.52	-1.02	17.32	10.36	-9.49
Tanzania	16.35	4.80	13.82	11.24	9.94	6.52
Uganda	16.51	28.81	4.11	27.35	24.64	3.88
Zambia	4.03	2.46	8.54	26.51	9.40	14.58
Zimbabwe	-13.95	19.09	-0.77	-4.70	27.97	-16.08

Source: Author's calculations based on nominal trade data from ITC (2016)
**2009-11 for Botswana*
#2011-13 for Djibouti and 2011-12 for Zimbabwe

Intra-African services trade data are hard to come by. According to Stuart (2015, 4), based on GTAP data, intra-African services trade as a proportion of Africa's total services trade is less than 4 percent. Egypt and South Africa are identified as the main services trade hubs for intra-African services trade in the TFTA area. Among the most significant bilateral flows within the region are those between South Africa and Mozambique, South Africa and Botswana, South Africa and Egypt, and between Angola and the DRC and Egypt (Stuart 2015, 11).

Data on services value added trade from the World Bank export value added (EVAD) database provide an additional picture of services trade that takes account of the extent to which services are embodied in final exports of other goods and services.[15] Stuart (2015, 11) explains that the value of the contribution that a traded service makes to the final value of exported goods usually exceeds the value of the traded service itself. His preliminary work estimates how "forwardly-focused" a services sector is by computing the ratio of the value of the sector as an input into other traded sectors to the value of the sector that is directly exported (Stuart 2015, 4). The results suggest that on average, for Africa as a whole, services contribute just over four times more in value as inputs to other traded sectors than they contribute to exports directly. The contribution is highest in the case of distribution services, financial, ICT and business services, and communication services.

The systematic services trade deficits in many TFTA LDCs' external services trade needs further investigation at the sub-sectoral level. While a detailed discussion of the sectoral structure of services trade across the TFTA countries is beyond the scope of this paper, such an analysis is important for countries to undertake for a number of reasons. Firstly, in preparing for services trade negotiations at regional and bilateral levels, TFTA countries need to identify their offensive and defensive interests at the sub-sector level (tralac 2011). In this regard it would be interesting to compare the sectoral structure of intra-African services trade with that of African countries' external services trade. This would be of assistance in identifying sectors of importance in negotiations at the regional versus bilateral and multilateral levels. There may be particular services sectors that it would be advantageous to develop regionally to take advantage of scale economies and to facilitate the creation of regional regulatory frameworks.[16] In the absence of reliable data on the sectoral structure of intra-African services trade, case studies and sector by sector analysis is necessary to identify priority sectors for a regional focus.[17]

Secondly, an analysis of the current structure of services trade, value added, and employment relative to the commitments made in the GATS negotiations in the 1990s is long overdue. The ITC (2016) database provides detail on the sectoral structure of individual countries' services exports and imports based on the sixth edition of the IMF's Balance of Payments and International Investment Position Manual (BPM6) classification. The data are sparse for some TFTA countries but the following are important export sectors: personal travel, business travel, freight and passenger transport, other transport, technical, trade-related, and other business services, and reinsurance. On the import side, travel and transport services once again predominate, along with telecommunications, construction services and, in the case of South Africa, charges for the use of intellectual property (ITC 2016; Sandrey 2017). While formal data on the sectoral structure of intra-African services trade is not available, it is evident that transport, travel, and financial services are among the key sectors that are traded within the continent (Sandrey 2017).

An important comparative perspective on the openness of the services sectors of countries in the TFTA region can be obtained by exploring the GATS commitments undertaken by most of these countries in the Uruguay Round of trade

15 The OECD-WTO Trade in Value Added (TiVA) database is another source of value added trade data. However, South Africa and Tunisia are currently the only African countries included in the dataset.

16 For more discussion, see Cattaneo (2009, 538-539).

17 See AU (2015) for specific sector case studies from five African countries.

negotiations. It should be noted at the outset however that, with a lapse of over 20 years (in most cases) since the commitments reflected in the GATS schedules were undertaken, the domestic reality in many of these economies is generally far from what is reflected in the schedules. Miroudot and Pertel (2015) provide estimates of the difference between specific commitments of GATS member states and the existing services trade regimes in these countries (the so-called “water in the GATS”) for 40 member states across 15 services sectors using the OECD Services Trade Restrictiveness Index (OECD STRI). It is found that in general actual services regimes are a lot more open relative to what is reflected in country GATS schedules, even in unbound sectors, although with significant sectoral variations. However, the only TFTA country in the sample is South Africa.[18] It is also important to review the GATS commitments of TFTA WTO member states as they provide the basis, to date, for the services negotiations under way in SADC and the TFTA (Kruger 2011; tralac 2011). Accordingly, Section 3 begins by reviewing the GATS process and then considers existing scheduled commitments as a basis for understanding emerging frameworks for services trade negotiations at the regional and continental levels.

18 Interestingly, Miroudot and Pertel (2015, 16) find that South Africa is one of the few countries in the sample of 40 where there appears to be little difference between the prevailing services regime and the country’s scheduled GATS commitments.

3. SERVICES TRADE COMMITMENTS UNDER THE GATS

The General Agreement on Trade in Services (GATS) is the WTO Agreement governing services disciplines at the multilateral level, which entered into force on 1 January 1995 following the conclusion of the Uruguay Round of trade negotiations. The Agreement contains general obligations and disciplines, including most-favoured nation treatment and transparency, as well as specific commitments on market access and national treatment.[19] The latter apply to services sectors included in each country's schedule of commitments. A country's schedule need only specify those sectors in which that country is prepared to make commitments, adopting what is known as a positive list approach. This contrasts with the negative list approach adopted in many regional agreements (such as NAFTA) whereby treaty obligations apply to all sectors unless otherwise specified in a country's schedule. Low and Mattoo (2000) point out that in the GATS, more specifically, while a positive list approach is applied to indicate sectoral coverage with respect to market access and national treatment across the four modes of supply, a negative list approach is then adopted to stipulate limitations to market access and national treatment in the listed sectors.

The modes of supply refer to the four different ways in which services may be supplied across borders, as distinguished in Article I of the GATS. Mode 1 refers to cross-border supply of a service, whereby non-resident service providers supply services across the border into another WTO member's territory. Mode 2 refers to consumption abroad, where residents purchase services in another member country. Mode 3 indicates commercial presence: service suppliers from abroad establish, operate, or expand commercial presence (such as a branch or subsidiary) in a member's territory. Finally, Mode 4 refers to the presence of natural persons; in this case foreigners enter and temporarily stay in another member's territory in order to supply a service (Cattaneo 2011).[20]

In the GATS, services are classified into 12 main sectors and 155 sub-sectors for scheduling purposes as outlined in the services sectoral classification list (WTO 1991). The 12 main sectors are business services; communication services; construction and related engineering services; distribution services; educational services; environmental services; financial services; health related and social services; tourism and travel related services; recreational, cultural, and sporting services; transport services and other. For each sector or sub-sector entered in a country's schedule, the two columns headed "Limitations on market access" and "Limitations on national treatment" indicate any restrictions that the country applies to the disciplines of market access and national treatment under each of the four modes of supply. In addition to the sector-specific commitments in the schedule, a country may include a set of horizontal commitments that apply to all sectors included in that schedule. In the horizontal commitments section of the schedule, the columns headed "Limitations on market access" and "Limitations on national treatment" indicate any restrictions that apply across all sectors listed in the schedule (Cronjé 2016a; Cattaneo 2011; Kruger 2010).

At the time of entry into force of the GATS, countries were also permitted to submit an MFN exemption list which specifies exceptions to the basic MFN principle set out in the first paragraph of Article II of the GATS. Exemption lists form part of the Annex on Article II exemptions. Exceptions to the MFN clause may include, for example, preferences granted in particular services sectors in terms of regional accords existing at the date of entry into force

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19 See the WTO General Agreement on Trade in Services. [Online] Available at https://www.wto.org/english/docs_e/legal_e/26-gats.pdf.

20 In the more recent literature, "Mode 5" trade in services has been distinguished to capture the delivery of services embodied as inputs into traded goods. See, for example, Cernat (2015); Cernat and Kutlina-Dimitrova (2014).

of the GATS. A number of countries took part in further GATS negotiations on financial services and telecommunications in the mid to late 1990s. In the case of basic telecommunications, these took place between 1994 and 1997 and resulted in additional commitments by 69 countries and a reference paper setting out definitions and regulatory principles for the sector. The resulting post-Uruguay Round Basic Telecommunications Agreement (the GATS Fourth Protocol) came into force at the beginning of 1998. Two Protocols on Financial Services (the Second and Fifth GATS Protocols) came into force in 1996 and 1999, involving 29 and 70 member states respectively.[21] Commitments undertaken in these various negotiations appear as supplements to the original GATS schedules of these countries, with provisions that replace or supplement the original relevant sections of the schedule.

3.1 Least Developed Countries and the GATS

In the Uruguay Round negotiations there was no minimum requirement on the number of services sectors that member states had to commit. While all WTO members were required to have a GATS schedule, it was possible to commit just one sub-sector. Many LDCs, for example, made limited commitments only within the Tourism and Travel Services sector. As a result, a wide range of varying commitments was undertaken by developing countries (tralac 2011, 3). Article XIX of the GATS does, however, oblige countries to enter into successive rounds of services trade negotiations.[22] Although there has been little movement in the GATS negotiations since 2000, three developments should be noted with respect to the position of LDCs.

The first is that in 2003 the WTO Council for Trade in Services adopted modalities for the special treatment of LDC member states in future services trade negotiations (WTO 2003). This provided for flexibility for LDCs in negotiations on services going forward with respect to requests made by other member states. LDCs would be entitled to open “fewer sectors” and “extend market access in line with their development situation;” they would not be expected to provide full national treatment, nor make regulatory commitments that might exceed their “institutional, regulatory and administrative capacities.” In short, commitments could be “limited in terms of sectors, modes of supply and scope” (WTO 2003, 1). In addition, other member states should give priority in their offers to LDCs to sectors and modes of supply that LDCs identify as important for their development strategies.

The second development to note on the position of LDCs is contained in the WTO Ministerial Declaration of December 2005, which emphasises flexibility for developing countries in on-going services negotiations, but states explicitly that LDCs will not be expected to undertake any new services commitments going forward in the Doha Round (WTO 2005, 5).

Finally, at the 2011 Ministerial Conference, a Ministerial Decision was adopted on preferential treatment for services and service suppliers of LDCs in the form of a waiver on the MFN obligations of WTO member states with respect to LDCs. Member countries are entitled to grant preferential treatment to services and service suppliers of LDCs without having to extend these preferences to other WTO members (WTO 2011). This waiver was put in place for a period of 15 years from its date of adoption in December 2011. At the Bali Ministerial Conference in 2013 a decision was taken on the operationalisation of the waiver to encourage its use. The LDC Group at the WTO submitted a collective request identifying horizontal measures, sectors, and modes of supply of interest to LDCs in this regard. At the Nairobi Ministerial in 2015, the LDC services waiver was extended for another four years due to the slow progress in its implementation.[23]

21 For more detail see https://www.wto.org/english/tratop_e/serv_e/s_negs_posturuguay_e.htm.

22 See WTO General Agreement on Trade in Services. [Online] Available at https://www.wto.org/english/docs_e/legal_e/26-gats.pdf.

23 For more detail see the briefing note on LDCs released at the Nairobi WTO Ministerial Meeting. [Online] Available at: https://www.wto.org/english/thewto_e/minist_e/mc10_e/briefing_notes_e/brief_ldcs_e.htm.

3.2 GATS Commitments of Eastern and Southern African WTO Member States

Since existing GATS commitments are the starting point from which regional services negotiations are proceeding (tralac 2011; Kruger 2011), it is important to provide a clear picture of the diverse commitments made under the GATS by the countries in the TFTA region. All eastern and southern African countries listed in Annex 1 are WTO members, with the exception of Comoros, Eritrea, Ethiopia, Libya, South Sudan, and Sudan. Of the latter, all but Eritrea and South Sudan are observer countries and have begun the process of accession to the WTO. Seychelles is the TFTA country that most recently acceded to the WTO (in 2015), while the other WTO member states in the region all joined the organisation between 1 January 1995 and 1 January 1997.[24]

Table 3.1a provides information on the sector-specific GATS commitments of eastern and southern African WTO member states. The table, constructed from individual country GATS schedules and supplements, indicates in which of the 12 broad sectors sub-sectoral commitments have been made, as well as the proportion of sub-sectors out of the total of 155 that have some form of commitment. In broad sector terms, all 21 eastern and southern African WTO members have some kind of GATS commitment in the Tourism and Travel sector, except for Madagascar and Mozambique. The next most frequently committed sectors at the broad level are Business Services (13 countries), Communication Services (11 countries), Financial Services (10 countries), and Construction Services (8 countries). Few (five or less) countries have made GATS commitments in Educational, Environmental, Distribution, Health and Social, Transport, and Other Services (Table 3.1a). The country with the widest range of broad sectors covered in its schedule is the Seychelles, which acceded to the WTO in 2015, with 11 out of 12 broad sectors covered. This is followed by South Africa and Lesotho (each with 10 out of 12 broad sectors covered). At the other end of the spectrum, Madagascar, Mozambique, and Tanzania made GATS commitments in only one broad sub-sector, and Namibia and Uganda in two.

24 See https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm.

Table 3.1a: Sector-specific GATS commitments of TFTA WTO member states

	Sub-sectors	**Broad sectors within which sub-sectoral commitments have been made**											
Country#	% out of 155	Bus	Comm	Con & Eng	Dist	Educ	Env	Fin	Hea & Soc	Tou & Trav	Rec, Cult, Sp	Trans	Other
Angola	5.8							*		*	*		
Botswana	12.9	*	*							*			
Burundi	14.2	*		*	*				*	*			
Djibouti	15.5	*	*							*	*		
DRC	7.7	*	*	*		*				*	*		
Egypt	31.6		*	*				*		*		*	
Kenya	27.1		*					*		*		*	*
Lesotho	49.7	*	*	*	*	*	*	*		*		*	*
Madagascar	1.3	*											
Malawi	18.1	*		*				*	*	*			
Mauritius	16.1		*					*		*			
Mozambique	7.7							*					
Namibia	1.9	*								*			
Rwanda	6.5	*				*	*			*	*		
Seychelles##	60.0	*	*	*	*	*	*	*	*	*	*	*	
South Africa	54.8	*	*	*	*		*	*		*	*	*	*
Swaziland	5.8	*							*	*			
Tanzania	0.6									*			
Uganda	3.2		*							*			
Zambia	10.3	*		*					*	*			
Zimbabwe	12.2		*					*		*			

Source: Author's compilation from individual country GATS schedules and supplements
[Online] Available at https://www.wto.org/english/tratop_e/serv_e/serv_commitments_e.htm
Notes: #LDCs in bold; ##Seychelles joined the WTO in 2015

Sub-sector coverage is also highest for the Seychelles, at 60 percent, followed by South Africa and Lesotho at 54.8 and 49.7 percent respectively. Egypt and Kenya have 31.6 and 27.1 percent coverage at the sub-sectoral level respectively. The lowest proportion of sub-sectors covered out of 155 is found in Tanzania's schedule (0.6 percent), followed by Madagascar (1.3 percent), and Namibia (1.9 percent). With the exception of Lesotho, all the LDCs in the eastern and southern African WTO group have sub-sectoral coverage of less than 18.2 per cent, with most below 10.3 percent. It is evident that Lesotho made significantly more commitments in the GATS negotiations than other LDCs. Manduna (2005) suggests that a combination of factors account for this, including Lesotho's late entry into the negotiation process during the Uruguay Round. Trade and industry ministry officials in the country point to the limited success of an inter-ministerial committee set up at the time to coordinate inputs from relevant ministries and private stakeholders connected to the services sector. Services was also a new area of negotiation and not necessarily considered a priority in terms of the country's offensive interests. A lack of domestic technical and institutional capacity and financing for the services negotiations, combined with Lesotho's excessive dependence on aid-funded technical assistance and expertise with the dominance of donor-funded consultancies, could explain the wide-ranging commitments made by the country.[25] Attention has also been drawn to the similarity between South Africa and Lesotho's GATS schedules.

When discussing the sub-sectoral coverage of any individual country's GATS schedule, it is important to note that a count of sub-sector listings such as that provided in Table 3.1a does not provide an indication of the scope and depth of a country's commitments nor of the limitations placed by the country on those commitments in any given sub-sector (Kruger 2011; tralac 2011). However, a sub-sector's listing in the schedule reveals whether the sub-sector is committed fully, partially, or not at all in terms of market access and national treatment under each mode of supply. For example, one sub-sector may have no market access restrictions for Modes 1 to 3, but may have market access restrictions for Mode 4. In the meantime, another sub-sector may have no market access restrictions only for Mode 1, and limitations on market access for Modes 2 to 4. In other words, even if a sub-sector is listed in a country's GATS schedule, there is a wide range of underlying commitments and limitations that could be in place for that sub-sector. Simply counting the number of sub-sectors in a country's schedule does not therefore provide an adequate reflection of the openness of each sub-sector. Kruger (2011) distinguishes between full and partial commitments made on market access and national treatment by eastern and southern African WTO member states under each mode of supply for each committed sub-sector. A "full commitment" refers to a sub-sector listing where a commitment is made with no limitation for the given mode of supply. No limitation is denoted in the schedule by the inscription "none." A "partial commitment" refers to a sub-sector listing where there is a commitment with limitations.[26] Note that there may be no commitment on market access or national treatment in one or more of the modes of supply, even though the sub-sector is listed in the country's GATS schedule. In this instance the inscription in the schedule reads "unbound," meaning no commitment is made for that mode of supply in that sub-sector.

Kruger (2011, 4) provides an indication of the significance of the sector-specific GATS commitments made by the eastern and southern African WTO member countries by computing the number of full and partial commitments as a proportion of the total number of possible commitments that could be made across all sub-sectors and modes of supply in terms of both market access and national treatment. He finds that the proportion of total possible commitments made by South Africa was 45.6 percent and by Lesotho 38.4 percent using this measure.[27] The lowest proportion of commitments was made by Tanzania (0.47 percent), Madagascar (1.25 per cent), and Namibia (1.88 percent). All countries other than Botswana and Mauritius had many more "full commitments" without restrictions than "partial commitments." More detailed analysis of commitments is also possible by examining which particular modes of supply have no limitations on market access and national treatment in each sub-sector. For example, a commitment under Mode 2 permitting home country residents to consume abroad may be viewed as less significant than a commitment under Mode 4 permitting movement of natural persons into the home country. While such a detailed analysis of sector-specific GATS commitments is beyond the scope of the present paper, Table 3.1b compiles this information for the horizontal commitments of eastern and southern African WTO member states. As noted earlier, GATS schedules may include a set of horizontal commitments and limitations on market access or national treatment that apply to all sectors included in that schedule.

25 For more discussion, see Manduna (2005, 17-23).

26 Article XVI(2) of the GATS lists six market access limitations that may be entered in a member state's schedule, mostly related to the number of service suppliers, employees, or operations, and the value of the services activities involved. There is no such list of national treatment limitations. See https://www.wto.org/english/docs_e/legal_e/26-gats.pdf for more detail.

27 Seychelles was not included in the calculations as the country had not yet acceded to the WTO in 2011.

In Table 3.1b, "no listing" indicates that the country has a horizontal section but no entry is listed for that particular mode of supply. On the other hand, "none" denotes that the schedule has a horizontal section and there are no horizontal limitations for that mode of supply. Finally, "yes" indicates that there is a horizontal section in the schedule and there is at least one limitation for that mode of supply. The table suggests that horizontal limitations that apply across all sectors are most common under Mode 4 (movement of natural persons) which is the most sensitive mode of supply, followed by Mode 3 (commercial presence). Botswana, Burundi, and Seychelles have the greatest number of listed horizontal limitations. Lesotho, by contrast, has no horizontal limitations to national treatment under any mode of supply and no horizontal limitations to market access except under Modes 3 and 4.

Table 3.1b: Horizontal GATS commitments of TFTA WTO member states

Country	Limitations on market access				Limitations on national treatment			
	Mode 1	Mode 2	Mode 3	Mode 4	Mode 1	Mode 2	Mode 3	Mode 4
Angola	na	na	na	na	na	na	na	na
Botswana	none	none	yes	yes	yes	yes	yes	yes
Burundi	yes	yes	yes	yes	yes	yes	yes	yes
Djibouti	na	na	na	na	na	na	na	na
DRC	no listing	no listing	yes	yes	no listing	no listing	yes	yes
Egypt	no listing	no listing	none	yes	no listing	no listing	yes	none
Kenya	no listing	no listing	yes	yes	no listing	no listing	no listing	no listing
Lesotho	none	none	yes	yes	none	none	none	none
Madagascar	na	na	na	na	na	na	na	na
Malawi	no listing	no listing	no listing	yes	no listing	no listing	yes	yes
Mauritius	no listing	no listing	yes	yes	no listing	no listing	yes	yes
Mozambique	na	na	na	na	na	na	na	na
Namibia	no listing	no listing	yes	yes	no listing	no listing	no listing	no listing
Rwanda	na	na	na	na	na	na	na	na
Seychelles	no listing	no listing	no listing	yes	yes	yes	yes	yes
South Africa	no listing	no listing	no listing	yes	no listing	no listing	yes	yes
Swaziland	na	na	na	na	na	na	na	na
Tanzania	na	na	na	na	na	na	na	na
Uganda	na	na	na	na	na	na	na	na
Zambia	no listing	no listing	no listing	yes	no listing	no listing	yes	yes
Zimbabwe	no listing	no listing	yes	yes	no listing	no listing	no listing	yes

Source: Author's compilation from individual country GATS schedules and supplements [Online] Available at https://www.wto.org/english/tratop_e/serv_e/serv_commitments_e.htm

Notes: na = the country has no horizontal section in their schedule; no listing = the country has a horizontal section but no entry is listed for that particular mode of supply; none = the country has a horizontal section and there are no horizontal limitations for that mode of supply; yes = the country has a horizontal section and there is at least one limitation for that mode of supply

It was noted in Section 2 that the domestic reality in most TFTA countries is likely to differ significantly from what appears in the GATS schedules. More recent information on the openness of the services trade landscape in the TFTA countries can be found in the World Bank Services Trade Restrictions Database,[28] the WTO Trade Policy Reviews (TPRs) of member states, the Diagnostic Trade Integration Studies undertaken by LDCs as part of the Enhanced Integrated Framework,[29] and the UNCTAD Services Policy Reviews (SPRs), initiated in 2010. The World Bank Services Trade Restrictions Database covers 103 countries, five main services sectors (financial services, telecommunications, retail distribution, transport, and professional services) and 19 sub-sectors, across three modes of supply (Modes 1, 3, and 4).[30] The World Bank Services Trade Restrictions Index (WB STRI) provides an aggregate index of applied policy measures. In addition, the database provides more detailed information on key policies and restrictive measures in place by sub-sector and mode, as well as a broader category of all relevant policy measures. The data are based on surveys completed between 2008 and 2011 by domestic law firms with expertise on actual domestic laws and regulations in force in each country.[31] Table 3.2 shows the various WB STRIs for the available TFTA countries overall and for each of the five broad services sectors provided.

Table 3.2 indicates that the overall index was highest in Ethiopia, followed by Zimbabwe and Egypt, and lowest in Mauritius, Mozambique, and Madagascar for the survey period. At the broad sector level, the index is highest for professional services (due to measures affecting Mode 4) and telecommunications, and lowest for retail and financial services. However, there are numerous differences across countries and sub-sectors. Professional services are the only broad sector where Mode 4 measures are included in the index, contributing significantly to the high index levels in this sector. Care must be taken in interpreting aggregate indices such as the WB STRI. Although the index is based on an examination of actual laws and regulations (rather than being a perceptions index), it includes policy measures and regulations that are essential components of any domestic regulatory landscape. In addition, it includes public policy measures that are important for countries' domestic development objectives. Use of the database should go beyond just reporting the WB STRI to examine the nature of the key policy measures and restrictions in place at the time of the survey. In addition, users of the database should make it clear that the index and the information provided on key measures apply to the year in which the survey was done in any given country, namely between 2008 and 2011. The information would have to be updated to take account of changes in the policy and regulatory landscape in these countries since then.

According to UNCTAD (2014a), the Services Policy Review (SPR) initiative aims to identify services trade policy options that cohere with domestic development objectives. The idea is to develop a "services master plan" with sectoral strategies supported by an enabling institutional and regulatory environment and an emphasis on inter-sectoral linkages with the rest of the economy. The SPR process is intended to facilitate a review of domestic services sectors and provide recommendations regarding the development of "regulatory, institutional and trade policy regimes" (UNCTAD 2014a, 4). Three of the nine countries that have undertaken SPRs since 2010 are TFTA countries, namely Lesotho, Rwanda, and Uganda. Lesotho's SPR focuses on tourism, financial services, and professional medical

28 The World Bank Services Trade Restrictions Database should not to be confused with the OECD Services Trade Restrictiveness Index Database. The latter includes South Africa, but no other African countries.

29 The Enhanced Integrated Framework is a multi-donor initiative to promote LDC participation in the global trading system. There are six core partners: the WTO, IMF, ITC, World Bank, UNCTAD, and UNDP. For more information, see https://www.wto.org/english/tratop_e/devel_e/teccop_e/if_e.htm.

30 All TFTA countries except Angola, Comoros, Djibouti, Eritrea, Libya, Seychelles, Sudan, South Sudan, and Swaziland are included in the World Bank STR Database.

31 For more information see http://iresearch.worldbank.org/servicetrade/aboutData.htm.

Table 3.2: World Bank Services Trade Restrictiveness Index 2008-2010

	Overall STRI				Financial services			Telecommu-nications		Retail		Transportation			Professional services			
Country	**Over-all**	**Mode 1**	**Mode 3**	**Mode 4**	**Over-all**	**Mode 1**	**Mode 3**	**Over-all**	**Mode 3**	**Over-all**	**Mode 3**	**Over-all**	**Mode 1**	**Mode 3**	**Over-all**	**Mode 1**	**Mode 3**	**Mode 4**
Botswana	38.3	55.6	31.3	60.0	30.3	36.7	25.0	50.0	50.0	25.0	25.0	54.8	75.0	50.0	47.0	75.0	25.0	60.0
Burundi	20.2	11.8	18.9	50.0	39.0	0.0	45.9	0.0	0.0	0.0	0.0	10.5	37.5	0.0	40.0	16.7	35.0	50.0
DRC	51.7	8.5	54.9	45.0	39.5	6.5	54.1	50.0	50.0	75.0	75.0	55.4	37.5	58.3	35.5	0.0	30.0	45.0
Egypt	52.1	24.0	54.9	95.0	42.8	16.2	50.0	25.0	25.0	50.0	50.0	49.7	25.0	55.6	81.5	33.3	80.0	95.0
Ethiopia	88.2	84.9	93.2	80.0	89.7	87.1	100.0	100.0	100.0	100.0	100.0	72.9	37.5	87.5	84.0	100.0	80.0	80.0
Kenya	29.5	35.6	30.1	65.0	23.4	9.7	28.2	25.0	25.0	0.0	0.0	31.0	37.5	22.2	73.0	66.7	80.0	65.0
Lesotho	27.3	5.8	22.0	60.0	0.0	0.0	0.0	25.0	25.0	50.0	50.0	22.5	75.0	9.4	37.0	0.0	20.0	60.0
Madagascar	18.7	57.5	15.4	40.0	31.2	87.1	25.0	25.0	25.0	0.0	0.0	5.8	25.0	0.0	37.5	33.3	35.0	40.0
Malawi	34.2	53.5	26.4	60.0	35.2	70.6	25.0	50.0	50.0	25.0	25.0	31.8	50.0	31.8	38.0	33.3	15.0	60.0
Mauritius	16.9	30.4	14.6	40.0	9.0	25.9	9.7	0.0	0.0	0.0	0.0	30.5	37.5	20.0	42.0	33.3	40.0	40.0
Mozambique	18.6	36.0	10.8	55.0	17.2	34.7	15.3	75.0	75.0	0.0	0.0	5.8	25.0	0.0	30.0	41.7	0.0	55.0
Namibia	37.0	29.7	40.3	60.0	27.4	45.6	25.0	50.0	50.0	25.0	25.0	29.7	12.5	34.0	65.0	16.7	80.0	60.0
Rwanda	25.0	5.8	23.1	45.0	19.5	0.0	25.0	75.0	75.0	0.0	0.0	36.7	75.0	20.3	32.0	0.0	25.0	45.0
South Africa	34.5	1.8	37.1	75.0	19.5	0.0	25.0	25.0	25.0	25.0	25.0	40.6	12.5	47.9	62.0	0.0	60.0	75.0
Tanzania	30.7	10.0	29.7	65.0	22.7	9.7	25.0	25.0	25.0	25.0	25.0	29.4	37.5	23.6	51.5	0.0	50.0	65.0
Uganda	34.5	29.4	28.2	55.0	27.7	46.4	18.5	25.0	25.0	50.0	50.0	21.1	75.0	6.8	38.0	0.0	30.0	55.0
Zambia	21.0	13.7	21.3	50.0	8.4	19.4	9.7	75.0	75.0	0.0	0.0	9.5	50.0	0.0	44.0	0.0	50.0	50.0
Zimbabwe	64.2	73.1	60.6	65.0	55.5	75.0	50.0	62.5	62.5	75.0	75.0	68.2	50.0	68.2	60.0	75.0	50.0	65.0

Source: Author's compilation from the World Bank Services Trade Restrictions Database. [Online] Available at http://iresearch.worldbank.org/servicetrade/home.htm services and Rwanda's concentrates on tourism and ICT services (UNCTAD 2013, 2014b). Uganda has had the most comprehensive SPR of the three, with a first phase report in 2011 focused on insurance, legal, accounting, and construction and engineering services and a second phase report in 2014 with an emphasis on distribution services, ICT and computer-related services, and transport services (UNCTAD 2011, 2014c). The Diagnostic Trade Integration Studies prepared by individual LDCs under the Enhanced Integrated Framework also provide an important basis for identifying key sectors for LDCs in the TFTA region and the constraints they face.

While the sources outlined above contribute to a more recent picture of the services regimes in a number of TFTA countries, the GATS schedules of eastern and southern African WTO member states remain the crucial starting point for regional services negotiations on a number of fronts. In this regard, the wide range of GATS commitments undertaken by the eastern and southern African WTO member countries, together with the absence of GATS schedules as an initial reference point for TFTA countries that are not WTO members, will complicate regional negotiations going forward (Kruger 2011). In particular, the varied scope of existing GATS commitments and the unequal levels of development of the TFTA countries will make it harder to meet the provisions of GATS Article V governing services trade agreements. Article V(1) of the GATS provides that regional services agreements should have "substantial sectoral coverage" in terms of "number of sectors, volume of trade and modes of supply." In addition, agreements must provide for "the absence or elimination of substantially all discrimination" with respect to national treatment within a reasonable period of time, both through "the elimination of existing discriminatory measures" and "the prohibition of new or more discriminatory measures."[32] Article V(3) provides for "flexibility" in meeting the provisions of Article V(1) in the case of services agreements among developing countries, particularly with respect to "the elimination of substantially all discrimination" and the time frame permitted to do so. Article V(7a) requires prompt notification of the services agreement to the Council for Trade in Services, while Article V(7b) provides that services agreements implemented over a period of time should "report periodically" to the Council regarding progress in implementation.

An immediate problem is that there is no consensus on the interpretation of GATS Article V provisions particularly with respect to what constitutes "substantial sectoral coverage" and "substantially all discrimination."[33] Least developed countries, for example, which have generally made minimal GATS commitments and are not required to make any further commitments in the WTO Doha Round, could find themselves having to make substantial commitments in North-South services trade agreements in particular to meet the requirements of Article V(1). Furthermore, there is no clarity on what degree of "flexibility" is acceptable in the case of services agreements among developing countries. However, one potentially important flexibility for services agreements in which all parties are developing countries relates to a qualification, in Article V(3b), to the rules of origin set out in Article V(6). Article V(6) provides that WTO members who are not party to the regional services agreement but engage in "substantive business operations" in the territory of one of the parties should receive the preferences available in terms of the agreement. However, Article V(3b) qualifies this provision in the case of regional services agreements among developing countries. More specifically, preferences granted in terms of a developing country services agreement may be limited to service providers "owned or controlled by natural persons of the parties to such an agreement."[34] This could be useful

32 Article V(1) of the GATS. [Online] Available at https://www.wto.org/english/docs_e/legal_e/26-gats.pdf.

33 tralac (2011, 5) points out that there is no "Understanding on the Interpretation of GATS Article V" as there is in the case of GATT Article XXIV covering regional agreements on trade in goods.

34 Article V(3b) of the GATS. [Online] Available at https://www.wto.org/english/docs_e/legal_e/26-gats.pdf.

for eastern and southern African countries wishing to negotiate on the development of regional frameworks in particular services sectors before engaging in broader North-South services negotiations.

Although LDCs and other countries with minimal GATS commitments may have difficulty meeting the requirements of Article V(1) in terms of "substantial sectoral coverage," such countries would arguably have greater policy space and negotiating leverage in regional negotiations among developing countries (tralac 2011, 6; Kruger 2011, 9). By contrast, countries with extensive GATS commitments will find it harder to make GATS-plus offers at the regional-bilateral level compared to countries with fewer existing obligations. This may account for the reluctance to bind what is currently applied in the domestic services policy context in multilateral offers in the Doha Round since the mid-2000s (Cattaneo 2011, 15).

4. SERVICES TRADE NEGOTIATIONS AT THE REGIONAL AND CONTINENTAL LEVELS

The countries of eastern and southern Africa have committed to regional and bilateral services negotiations on a number of fronts. Apart from their own internal services negotiation processes, the regional economic communities (RECs) of SADC, COMESA, and the EAC have embarked on the Tripartite Free Trade Area (TFTA) negotiations with Phase II set to cover services, as well as the Continental Free Trade Area (CFTA) negotiations where both goods and services fall under Phase I of the negotiations. Furthermore, some countries in the region have agreed to negotiate on services in the various Economic Partnership Agreements (EPAs) with the EU. This section considers the coherence, sequencing, and interaction between the various negotiations and their relationship with existing GATS commitments.

4.1 The SADC Trade in Services Protocol

The Southern African Development Community (SADC)[35] was established in 1980 as the Southern African Development Co-ordination Conference (SADCC) to reduce the Frontline States' economic dependence particularly, but not only, on apartheid South Africa. It began as a loose organisation adopting a functional approach to economic integration[36] with a focus on sectoral and project co-operation in fields such as transport and communications, mining, energy, industry and trade, agriculture and food security, and tourism. The 1992 SADC Treaty transformed the grouping into the Southern African Development Community and provided for a move towards deeper economic integration. South Africa became a member in 1994, following the transition to democracy. The SADC Trade Protocol was signed in 1996 initiating the move towards an FTA (Cattaneo 1998, 13-15). The Trade Protocol was formally launched in September 2000, and the SADC FTA in August 2008. SADC's integration agenda is mapped out in the Regional Indicative Strategic Development Programme, recently revised to emphasise the re-prioritisation of regional industrial and infrastructure development by SADC member states (Mwanza 2015).

In 2000 negotiations began on a framework for a SADC agreement on trade in services. The Trade in Services Protocol was finally adopted at the SADC Summit in August 2012. The Protocol, which is similarly structured to the GATS, provides the framework for services trade negotiations within SADC, modelled on the GATS scheduling approach. Article 2 outlines the objectives of the Protocol as follows:

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

2. promote sustainable economic growth and development, thereby raising the standard and quality of life of the people of Southern Africa…;

3. enhance economic development, diversification, local, regional and foreign investment in the services economies of the Region;

4. ensure consistency between liberalisation of trade in services and the various Protocols in specific services sectors;

5. pursue services trade liberalisation, while fully preserving the right to regulate and to introduce new regulations; and

35 Current membership: Angola, Botswana, DRC, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe.

36 See Mutambara (2009) and Davies (1996) for more detail.

6. enhance the capacity and competitiveness of the services sectors of the State Parties.[37]

The first objective makes reference to the provision of Article V(1b) of the GATS, namely that regional agreements on trade in services should pursue the "elimination of substantially all discrimination" between parties to the agreement. The fourth objective draws attention to the need to ensure coherence between the Trade in Services Protocol and existing SADC Protocols on particular services sectors, a number of which emerged out of SADCC's earlier sectoral cooperation approach. Sectoral Protocols related to specific services sectors include, amongst others, those on Transport, Communications and Meteorology (1996), Energy (1996), Education and Training (1997), Tourism (1998), Movement of Persons (2005), and Finance and Investment (2006). The importance of taking account of relevant processes in related sectoral protocols is re-emphasised in Article 7 of the Services Trade Protocol on Mutual Recognition, Article 12 on Monopolies and Exclusive Service Suppliers, Article 18 on the Promotion of Trade and Investment in Services, Article 19 on Business Practices, and Article 24 on Institutional Arrangements. Sectoral annexes to the Trade in Services Protocol are being negotiated to align the Services Trade Protocol to the individual sector Protocols.

The fifth objective of the Trade in Services Protocol, like the preamble to the GATS, emphasises that parties not only preserve the right to regulate but also to "introduce new regulations." It is interesting that GATS Article V(1bii) on regional services agreements calls for the "prohibition of new or more discriminatory measures." The extent to which "new regulations" are seen as "new discriminatory measures" will of course depend on the nature and purpose of the regulations. However, this has the potential to cause controversy with respect to regulations that may be introduced to pursue domestic development objectives. Article 3 of the Services Trade Protocol defines the cross-border supply of services in accordance with the four GATS modes of supply. The general obligations of the Protocol provide for MFN treatment, but allow member states to maintain or enter into new services trade agreements with third parties and to liberalise further with particular SADC parties to the agreement provided that other SADC parties are given the opportunity to negotiate any preferences so granted on a reciprocal basis. Member states are also permitted to attach an MFN exemption list to the Protocol, as in the GATS, subject to periodic review.[38]

Other general obligations and disciplines cover transparency, domestic regulation, mutual recognition, monopolies and exclusive service suppliers, treatment of subsidies, general exceptions, and the exclusion of government procurement from the Protocol. While many of these general obligations are similar to those in the GATS, there are a number of differences related to the particular circumstances of SADC as a grouping of countries at highly unequal levels of development. These differences include a separate Article 5 in the SADC Protocol on the Right to Regulate which emphasises more strongly that "[i]n light of the asymmetry in terms of State Parties services regulation, particular flexibility shall be granted to State Parties which are at a disadvantage by reason of size, structure, vulnerability and level of development to use this right."[39] Assistance to and facilitation of the participation of LDCs and disadvantaged countries is also emphasised in Articles 7(3) (Mutual Recognition) and Article 8(3b) (Transparency). Article 11 of the SADC Protocol on the use of subsidies is more strongly worded than Article XV of the GATS, emphasising that

37 SADC Trade in Services Protocol, Article 2. [Online] Available at http://www.sadc.int/documents-publications/show/1933. See also Cronjé (2014).

38 SADC Trade in Services Protocol, Article 4. [Online] Available at http://www.sadc.int/documents-publications/show/1933.

39 SADC Trade in Services Protocol, Article 5(2). [Online] Available at http://www.sadc.int/documents-publications/show/1933.

"[n]othing in this Protocol shall be construed to prevent State Parties from using subsidies in relation to their development programmes." With respect to government procurement, there is no undertaking in the SADC Protocol that there will be future negotiations in this area, unlike in the GATS Article XIII.

Articles 14 and 15 of the SADC Services Trade Protocol provide for specific obligations on market access and national treatment that will apply to services sectors included in a member state's schedule of commitments. These obligations are phrased in a similar manner to those in the GATS. The Protocol also provides, in Article 16, for progressive trade liberalisation through successive negotiating rounds with each round commencing three years after the conclusion of the previous round. Article 16 stipulates that the first round of negotiations will cover six priority sectors, namely communication services, construction services, energy services, financial services, tourism and travel, and transport services. Future negotiations will cover all sectors, subject to the provisions of Article 3. While Article 16(5) states that Parties which are "disadvantaged by reason of size, structure, vulnerability and level of development of their economy shall benefit from flexibility for the implementation of the commitments negotiated under each round,"[40] such flexibility is not defined. SADC LDCs and vulnerable economies will be obliged to make some commitments, although negotiations will take place in accordance with "the principle of asymmetry reflecting individual State Parties' disadvantages."[41] It is arguable that LDCs may be more willing to extend existing commitments at the regional rather than the multilateral level. Ultimately, however, conformity with Article V of the GATS on substantial sectoral coverage and the removal of substantially all discrimination between Parties to the SADC Trade in Services Protocol will be required. By engaging in services liberalisation under a GATS-type scheduling approach, the SADC countries will be obliged to ensure conformity with Article V of the GATS, including Article V(7) requiring "prompt" notification of the regional trade in services agreement to the WTO Council for Trade in Services. On notification, a working party may be set up by the Council to examine whether the agreement complies with Article V of the GATS.[42]

It is noteworthy that four of the six priority sectors for the first round of SADC negotiations are also amongst the broad sectors in which most sub-sectoral commitments were made under the GATS (communication services, construction services, financial services, and tourism services) (see Table 3.1a). Five of the six priority sectors are covered by existing SADC sectoral protocols, the exception being construction services. Most of the priority sectors also feature as focus sectors in at least one of the UNCTAD SPRs undertaken for eastern and southern African countries to date. The COMESA services negotiations cover the same six priority sectors as the SADC negotiations plus business services.[43] The EAC negotiations, which are the most advanced, also cover seven sectors, but include education and distribution services, along with business, communication, financial, tourism, and transport services. Construction services are excluded, unlike in SADC and COMESA (Sawere 2016, 7).

In the case of SADC, negotiations on market access and national treatment commitments began in April 2012 following the approval of a set of negotiating and scheduling guidelines for the first round by the Trade Negotiating

40 SADC Trade in Services Protocol, Article 16(5). [Online] Available at http://www.sadc.int/documents-publications/show/1933.

41 SADC Trade in Services Protocol, Article 16(4). [Online] Available at http://www.sadc.int/documents-publications/show/1933. The majority of SADC member states are LDCs and vulnerable economies. Recall that LDCs are not expected to make further commitments on services in the Doha Round at the multilateral level.

42 Possible alternative negotiating approaches to regional services cooperation are explored in Section 4.4 below.

43 The COMESA negotiations began with four sectors: communication, financial, tourism, and transport services. Negotiations for business, construction, and energy services are to follow (see Section 4.2).

Forum-Services.[44] In terms of the scope of the negotiations, the six SADC priority services sectors for liberalisation, namely communications, construction, energy-related, financial, tourism, and transport services, are "deemed to cover the sub-sectors included in the [1991] WTO Services Sectoral Classification List" (SADC 2009, 1). A major limitation of the 1991 Services Sectoral Classification List, which is based on the UN's 1991 Provisional Central Product Classification (CPC), is that it has no broad sector with sub-categories specified for energy-related services. With a positive list approach, there will be limited sub-sectoral coverage of energy services in the SADC negotiations as a result, with only three sub-sectors (services incidental to mining, services incidental to energy distribution and pipeline transport, transportation of fuels) regarded as energy-related services sub-sectors. However, McKinnon (2013, 22) explains that horizontal commitments and MFN treatment will apply to all energy services, irrespective of whether they are specified in classification lists or not. He recommends that CPC Version 2 (2008) be used for energy services in the SADC schedules of commitment, rather than the Provisional CPC of 1991.[45]

The negotiating and scheduling guidelines state explicitly that the starting point for the first round of SADC negotiations will be the existing GATS commitments of member states and that the offer-request method of negotiation will be adopted (SADC 2009, 2). By the end of the first round of negotiations "some improvement" to existing GATS obligations should be offered by each party in each of the priority sectors. The extent of the additional commitments expected is, however, not specified. The negotiating guidelines re-emphasise the principle of asymmetry set out in the Trade in Services Protocol, stating that "[d]isadvantaged State Parties shall be granted the flexibility to open fewer sectors and liberalise fewer types of transactions" (SADC 2009, 2-3). The SADC Protocol on Trade in Services is seen as an important instrument for giving impetus to the implementation of the provisions of existing sectoral protocols in particular services sectors (tralac 2011, 11).

4.2 COMESA and EAC Services Negotiations

COMESA[46] began as the Preferential Trade Area for Eastern and Southern Africa (PTA), formed in 1983 as part of the OAU initiative towards an African common market. The initial objective was to facilitate intra-regional trade by gradually lowering tariff and other trade barriers, although the intention was always to develop into a deeper integration arrangement. In line with their longer term vision, member states signed a new treaty in December 1994, transforming the PTA into the Common Market for Eastern and Southern Africa (COMESA) (Cattaneo 1998, 17). A free trade area has been in place among a subset of member states since 2000. COMESA's integration agenda emphasises trade integration, infrastructure development, and investment promotion. There is a focus on science and technology development and cooperation in sectors such as transport, communication, energy, and agriculture. There has also been a strong emphasis on trade facilitation and the development of institutions such as the PTA Bank and the COMESA Clearing House.[47]

The Treaty Establishing the EAC[48] was signed in 1999 and entered into force in July 2000. The EAC

44 See SADC (2009).

45 CPC Version 2 (2008) has since been superseded by CPC Version 2.1 (2015). For more detail, see http://unstats.un.org/unsd/cr/registry/regct.asp?Lg=1.

46 Current membership: Burundi, Comoros, Djibouti, DRC, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, Zimbabwe. Overlapping membership between COMESA and SADC is significant: DRC, Madagascar, Malawi, Mauritius, Seychelles, Swaziland, Zambia and Zimbabwe belong to both groups.

47 For more detail see http://www.comesa.int/comesa-strategy/.

48 Current membership: Burundi, Kenya, Rwanda, Tanzania and Uganda. South Sudan is in the final stages of accession. All EAC member states belong to COMESA except for Tanzania, which is part of SADC.

is a revival of the 1967 East African Community between Kenya, Tanzania, and Uganda that dissolved in 1977. The member states of the original EAC entered into an agreement known as the East African Cooperation between 1993 and 2000 to resume a programme of regional cooperation and integration. The East African Cooperation Agreement was developed into the EAC Treaty between 1997 and 1999. By the beginning of 2005, the EAC Customs Union had been initiated. The Customs Union became fully operational at the beginning of 2010 and the EAC Common Market Protocol entered into force six months later. The EAC's integration agenda includes a move towards a common currency, with full monetary union within the next ten years.[49]

The COMESA Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence was adopted in June 1998. Article 10 of the Protocol provides that member states agree to remove barriers to services trade by 2004 in line with a liberalisation programme that would be adopted by the COMESA Council.[50] This target date was missed, but in 2009 the Council adopted the COMESA Regulations on Trade in Services to guide the negotiation process. The regulations provide, in Article 4, for the broadening and deepening of existing GATS commitments between COMESA member states using the offer-request method of negotiation and the same scheduling approach as the GATS and SADC services negotiations. In addition, Article 4 of the Regulations provides for conformity with Article V of the GATS, as well as the right to regulate, special and differential treatment, and variable geometry.[51] The guidelines are similarly structured to the SADC Trade in Services Protocol. As noted in Section 4.1, the COMESA negotiations cover the same six priority sectors as the SADC negotiations plus business services, but have begun with four of these sectors: communication, financial, tourism, and transport services. According to Sawere (2016, 7) ten out of 19 schedules of commitments had been finalised for these four sectors by early 2016. In addition, there have been sector meetings to explore the specificities of particular sub-sectors and a focus on the collection of services statistics for the four sectors (Sawere 2012, 16).

In the case of the EAC, Part F of the EAC Common Market Protocol[52] governs trade in services and provides for progressive liberalisation based on a positive list approach with schedules that are structured in a similar manner to the GATS schedules. The schedules also specify an elimination date by which time the stipulated measures should take effect (Kruger 2011, 14). One noteworthy aspect of Part F on Free Movement of Services that differs from SADC and COMESA is the lack of a separate article on market access provisions, despite the usual column on market access commitments appearing in the country schedules. However, commitments have already been scheduled by each country in all seven EAC priority sectors, including education and distribution services. Annex V of the EAC Common Market Protocol sets out each country's schedule of commitments.[53] According to Sawere (2016, 7), EAC member states are currently re-negotiating commitments in Mode 4 (presence of natural persons) and mutual recognition agreements are in place in accounting, architectural, and engineering services.

Approaches to the negotiation of trade in services appear to be similar in COMESA, the

49 See http://www.eac.int/about/EAC-history for further detail.

50 Article 10 of the COMESA Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence. [Online] Available at https://www.tralac.org/resources/by-region/comesa.html.

51 See Article 4 of the COMESA Regulations on Trade in Services. [Online] Available at https://www.tralac.org/resources/by-region/comesa.html. Variable geometry allows a subset of member countries to liberalise more rapidly if so desired. This is also provided for in the SADC services liberalisation process.

52 EAC Protocol on the Establishment of the East African Community Common Market. [Online] Available at https://www.tralac.org/wp-content/blogs.dir/12/files/2011/uploads/EAC_CM_Protocol.pdf.

53 See https://www.tralac.org/wp-content/blogs.dir/12/files/2011/uploads/Schedule_on_Trade_in_Services.pdf.

EAC and SADC, and follow the GATS scheduling approach discussed in detail in Section 3. All three processes build on existing GATS commitments and employ the offer-request method of negotiation. While the negotiations are at different stages, with the EAC negotiations the most advanced, the choice of priority sectors in the first phase has also been similar, with the exception of the EAC's inclusion of education and distribution services and exclusion of construction services. One important difference to the broad sectors commonly committed in the GATS schedules of these countries is energy services, highlighted by both SADC and COMESA. As noted in Section 4.1, there was no separate broad sector classification category for energy services at the time of the GATS negotiations. It has been suggested that the RECs use CPC Version 2 to classify energy services more systematically in their schedules of commitments (see Section 4.1). Other differences from the GATS relate to a stronger emphasis (in the case of SADC and COMESA in particular) on provisions that take account of the development positions of the member states.

4.3 EPA Services Negotiations

In June 2000, the Lomé Convention governing trade relations between the EU and the ACP countries was replaced by the Cotonou Agreement, as the EU sought to develop reciprocity in its trade relations with the ACP countries and move towards compliance with WTO rules.[54] A WTO waiver from MFN obligations for the Cotonou Agreement expired in 2007. For the past decade, eastern and southern African ACP states have been engaged in contentious Economic Partnership Agreement (EPA) negotiations with the EU. Three negotiating configurations exist in southern and eastern Africa, two of which cut across existing regional groupings. The SADC-EPA configuration includes all SACU[55] countries plus Angola and Mozambique, therefore conforming neither to SACU nor to SADC. The EAC-EPA grouping comprises the five EAC member states, Kenya, Tanzania, Uganda, Rwanda, and Burundi. The ESA-EPA group includes Comoros, Djibouti, Eritrea, Ethiopia, Madagascar, Malawi, Mauritius, Seychelles, Sudan, Zambia, and Zimbabwe (in other words, the remainder of COMESA less the DRC, Egypt, and Libya).

The SADC-EPA negotiations were concluded in July 2014 after discussions to resolve controversy over the MFN clause, the use of export taxes and a number of other long-standing issues. The EPA was signed in June 2016 by all the parties to the negotiations except Angola. However, EU pressure for more comprehensive EPAs covering investment, intellectual property rights, services, competition policy, and public procurement continues to be divisive. Articles 17 and 18 of the EU-SADC EPA provide for cooperation in public procurement and competition with the proviso that countries "may consider entering into negotiations" in these areas in future, and will endeavour to do so as a collective. The EPA further provides that any agreement in these areas should not inhibit the development of a regional (SADC) procurement or competition framework.[56] In the case of services, Article 73 stipulates that the parties "may negotiate trade in services to extend the scope of this Agreement" and notes that the EU has begun such negotiations with Botswana, Lesotho, Mozambique, and Swaziland. Article 74 states that the EU and these particular countries "agree to cooperate on investment" and "may in future consider negotiating an agreement on investment in economic sectors other than services." Any agreements reached in these areas should not, however, be incompatible

54 Under WTO rules, preferences granted by the EU to ACP countries should have effectively been extended to all developing countries.

55 SACU is the Southern African Customs Union between Botswana, Lesotho, Namibia, South Africa, and Swaziland.

56 Articles 17 and 18 of the EU-SADC EPA. [Online] Available at: http://ec.europa.eu/trade/policy/countries-and-regions/regions/sadc/.

with the development of a regional (SADC) services or investment framework.[57]

It is evident that while a cooperative approach has been adopted to new generation issues such as public procurement and competition, there are divisions within the SADC-EPA group over the way forward on services and investment. Davies (2014, 2) argues that services and investment negotiations between the EU and some SADC-EPA countries have the potential to foster new areas of "trade policy division" in SADC and SACU. Unlike in the case of public procurement and competition, where SADC-EPA states have expressed the intention of negotiating "as a collective," the situation with services and investment will make it difficult for common positions to be adopted and may complicate the development of regional (SADC) frameworks in these areas. Sequencing of negotiations will be important, and it seems advisable that regional processes should be concluded before negotiations on the newer issues advance significantly with the EU.

In the EU SADC EPA, the guiding principles in Article 73 on services trade negotiations are mostly straightforward. Article 73(2b) and 73(2f) suggest that negotiations will build on existing GATS commitments and follow a GATS-type scheduling approach. It should be noted, however, that Article 73(2f) does not mention existing GATS frameworks specifically, but states that "negotiations shall build on the relevant provisions of existing applicable legal frameworks."[58] In the case of negotiations that have begun with Botswana, Lesotho, Mozambique, and Swaziland, this would refer to existing GATS frameworks. However, if other SADC-EPA countries enter into negotiations with the EU after a SADC trade in services framework is in place, it is not clear whether the EU process would have to "build on" any GATS-plus SADC framework or not.

Although no target sectors are specified in Article 73, services liberalisation will be asymmetrical, taking into account the needs of developing countries, and may provide for special and differential treatment. Negotiations will also take place on regulatory matters, and liberalisation will be compliant with Article V of the GATS on services trade agreements. According to tralac (2011, 5), in the CARIFORUM-EU EPA negotiations it was expected that more developed economies would liberalise 75 per cent of subsectors while relatively less developed countries would liberalise 65 per cent of subsectors. Apart from the general shortcoming of counting subsectors to determine the extent of liberalisation (see Section 3.2), this approach does not consider coverage of modes of supply and volume of trade as required under Article V of the GATS. The proportion of sub-sectors to be liberalised in the case of the SADC-EPA services negotiations is not specified explicitly in Article 73 of the EPA. The division within the SADC-EPA group on negotiating a services trade agreement with the EU means that the grouping will be unable to approach the services negotiations as a collective. However, tralac (2011, 19-20) suggests that those SADC-EPA countries negotiating services with the EU need to present a more united front and be more proactive in pushing for the designation of priority sectors of interest, as well as examining EU offers in EPA negotiations with other ACP groupings and in the Doha Round negotiations.

The EU EPA negotiations with the EAC-EPA grouping were concluded in October 2014 and the EPA was expected to be ratified by October 2016.[59] The agreement covers trade in goods and development cooperation, with a rendezvous clause (Article 3) that states that the parties will undertake and *conclude* negotiations on trade in services as well as other new generation

57 Articles 73 and 74 of the EU-SADC EPA. [Online] Available at: http://ec.europa.eu/trade/policy/countries-and-regions/regions/sadc/.

58 Articles 73 and 74 of the EU-SADC EPA. [Online] Available at: http://ec.europa.eu/trade/policy/countries-and-regions/regions/sadc/.

59 By the end of 2016, however, some EAC member states had not yet signed the EPA and the process has been delayed.

issues such as investment, competition, intellectual property rights, and transparency in government procurement within five years of the entry into force of the EPA.[60] Finally, the EU has signed an interim EPA with a subset of countries from the third regional configuration, the ESA-EPA group. Madagascar, Mauritius, the Seychelles, and Zimbabwe signed the interim EPA in August 2009.[61] While the interim EPA also has a rendezvous clause providing for future negotiations on trade in services, investment and other new generation issues, the details of the processes involved and the deadlines for the negotiations are still under discussion.

Not only are the EPA services negotiations at different stages across the three negotiating configurations in southern and eastern Africa, but Davies (2014, 3) explains that each of the EPAs also has different tariff reduction commitments, exclusion lists and rules of origin, as well as different provisions on (among others) the use of instruments such as export taxes and on the MFN clause. This has implications for both the regional and broader African integration agendas. The need to sequence these processes carefully may in part account for the current impetus and momentum that is apparent in the Continental Free Trade Area (CFTA) negotiations. Ismail (2016, 3) notes that the prospect of Britain's exit from the European Union will add a further layer of concern to this complex set of negotiations.

4.4 TFTA and CFTA Processes

In October 2008, the Heads of State and Government of SADC, COMESA, and the EAC resolved to establish a tripartite free trade area (TFTA) between the three regional blocs. The process gained momentum as a way of working towards the resolution of overlapping membership and conflicting rules of origin in southern African regional groupings. A draft agreement emerged in November 2009 with 14 Annexes relating to matters such as customs cooperation, trade facilitation, rules of origin, trade remedies, non-tariff barriers, intellectual property rights, competition policy, services negotiations, movement of business persons, and dispute settlement. Annex 12 of the 2009 draft agreement dealt with guidelines for the negotiation of trade in services. A revised agreement with annexes appeared in December 2010, but without a revised annex on services.[62] Negotiations towards the TFTA were launched at the 2011 Summit. Phase I of the negotiations was to cover trade in goods and Phase II trade in services and other trade-related matters. It was agreed in 2014 that movement of business persons would be negotiated as part of Phase I. By mid-2015, the main TFTA Agreement and seven annexes had been finalised (Marishane 2015). Phase I discussions on tariff offers, trade remedies, and rules of origin are, however, still under way. Despite this, the final Agreement Establishing the TFTA was signed in June 2015 and the TFTA was launched at the 2015 Summit.

Article 45 of the TFTA Agreement, on Phase II negotiations, provides for the conclusion of protocols on trade in services and other trade-related areas within 24 months of the entry into force of the Agreement. As Kruger (2011, 1-2) points out, it is useful to examine Annex 12 of the 2009 draft TFTA Agreement as the guidelines in this Annex appear to be the only ones available regarding Phase II services negotiations. Annex 12 indicates that a GATS-type positive list approach will be adopted using the offer-request negotiation method to agree on schedules of specific commitments. This is the method that has been adopted in all three RECs. The Annex states that commitments will include those made at the REC level and, in addition, that parties will extend existing GATS commitments to TFTA countries that are not WTO member states. The Annex further states that requests may propose the scheduling of sub-

60 Article 3 of the EU-EAC EPA. [Online] Available at http://ec.europa.eu/trade/policy/countries-and-regions/regions/eac/.

61 See http://ec.europa.eu/trade/policy/countries-and-regions/regions/esa/.

62 The original (2009) and revised (December 2010) draft agreements and annexes, as well as the final TFTA Agreement, can be found at https://www.tralac.org/resources/by-region/comesa-eac-sadc-tripartite-fta.html.

sectors that have been unilaterally liberalised, as well as commitments in new sub-sectors or the reduction of restrictions in sectors and sub-sectors in which commitments already exist. While member states are "encouraged" to make commitments in all 12 broad services sectors, the Annex states that commitments *must* be made in the seven designated priority sectors. These are identical to the COMESA priority sectors, which are in turn the same as the six SADC priority sectors plus business services. Annex 12 also provides for a sanction: if members do not make commitments in each priority sector then they "shall not receive the preferential treatment available under the Regulations."[63] Furthermore, commitments in the priority sectors should as far as possible "not have limitations or restrictions."[64] Although this Annex is clearly a limited preliminary draft, some of these provisions appear to suggest that deeper initial commitments than those provided for in the SADC and COMESA processes are expected.

Since fuller and more recent guidelines on the TFTA Phase II services negotiations have not yet been published it seems likely that the original (2009) draft Annex 12 is undergoing substantial revision and further development. Kruger (2011, 7) suggests that the Tripartite Council would wish to wait for further progress in the individual REC negotiations on services, and for the TFTA Phase I negotiations to be concluded, before publishing the revised TFTA services negotiating guidelines. It is arguable that the focus in the TFTA services negotiations going forward will be on the consolidation, at the TFTA level, of what has been achieved in the SADC and COMESA services negotiations and ensuring its coherence with the more advanced state of affairs in the EAC services landscape. It seems likely that attention will shift to the Continental Free Trade Area (CFTA) process that appears to have gained some impetus since 2015, and the appropriate modalities for achieving a meaningful services trade agreement in the CFTA.

The decision to establish a CFTA was taken in 2012 at the 18th Summit of AU Heads of State and Government. The origins of the plan date back to the 1980 Lagos Plan of Action and the 1991 Abuja Treaty establishing the African Economic Community. The 2012 AU Summit also sanctioned the Action Plan on Boosting Intra Africa Trade (BIAT) which identifies seven focus areas: trade policy, trade facilitation, productive capacity, trade related infrastructure, trade finance, trade information, and factor market integration. The CFTA will cover 54 countries with a combined GDP of over USD3.4 trillion (AU 2014). The AU initiative emphasises a development integration approach focused on market integration, infrastructure, and the development of the continent's productive capacities. This includes an emphasis on the establishment of negotiating modalities that take account of the unequal levels of development of the participating member states. Phase I of the negotiations will cover trade in goods and services, while Phase II will cover other trade-related aspects such as investment, intellectual property rights, and competition policy. Negotiations were launched at the AU Summit in June 2015 with the target date for their finalisation in 2017.

With the current focus on the CFTA, more debate on possible alternative approaches to the basic GATS-plus scheduling method for future services negotiations has recently emerged.[65] Arguably, a limited expansion of existing GATS commitments at the REC level may be an inadequate approach to achieving a meaningful developmental services agreement, and more so at the broader TFTA or CFTA level.

One approach that seems to have developed further in some REC negotiations than in

63 Article 19 of the Draft (2009) TFTA Annex 12 on Guidelines for Negotiation of Trade in Services (on file with the author).

64 Article 18 of the Draft (2009) TFTA Annex 12 on Guidelines for Negotiation of Trade in Services (on file with the author).

65 See, for example, Sawere (2016), Cronjé (2016b, 2015), and tralac (2015).

the GATS has been to address horizontal or cross-cutting issues that affect all sectors in more comprehensive annexes to trade in services agreements, rather than simply in GATS-type horizontal sections of commitment schedules (Kruger 2011, 17-18). More detailed provisions and greater clarity can be given on cross-cutting issues in such annexes. These annexes can then be referred back to in the schedule inscriptions.[66] It has been suggested that horizontal disciplines across sectors include a standstill clause (to lock in current liberalisation at the domestic or REC level) and a ratchet clause (whereby any unilateral liberalisation becomes immediately bound). These two particular horizontal disciplines have been controversial in contexts such as TiSA (see Section 5.2) and are likely to be seen as constraining policy space in the context of a group of developing countries at highly unequal levels of development.

In addition to a framework services agreement with annexes addressing cross-cutting issues, sector-specific annexes have also been recommended, to facilitate cooperation on regulatory and competition issues that are specific to a given sector, such as financial or telecommunications services (tralac 2015). Negotiations could involve national, regional, and continental regulatory bodies, private sector actors and governments. Cronjé (2015) notes that sector-specific regulatory bodies at the REC and continental levels have already made good progress in regulatory cooperation and development. AU sectoral initiatives in this regards include the AU Reference Framework for Harmonisation of Telecom and ICT Policies and Regulations, the AU/NEPAD Tourism Action Plan, the Programme for Infrastructure Development in Africa (PIDA), and the Convention of the African Energy Commission (Sawere 2016, 10-11). These initiatives could be developed further and form the basis of a continental services trade agreement.

Sawere (2016, 11-12) assesses a number of potential starting points for the CFTA services negotiations. The first is to build further on the existing GATS schedules or on any GATS-plus commitments achieved at the REC level. This may have limited impact because of the number of countries involved in the CFTA, the significant differences in their levels of development and the involvement of a number of CFTA countries that have not gone through the GATS process (as they are not WTO members). Another option would be to begin with the existing state of liberalisation in the domestic economies of CFTA member states. There is, however, often a wish to preserve policy space and a (related) reluctance to bind what is currently applicable at the domestic level, particularly with the prospect of further multilateral and (North-South) bilateral services negotiations in the future. A third option would be to start with a sectoral regulatory cooperation approach, developing and building on, for example, AU and other REC sectoral initiatives.

Sawere (2016, 16-19) suggests that a CFTA services agreement could include two main elements. The first would be a framework agreement covering general matters such as the scope and aim of the agreement, market access and national treatment, MFN provisions, transparency, the right to regulate, and other usual provisions. The second would involve sectoral regulatory frameworks negotiated as annexes to the framework agreement. The sectoral annexes under development in the SADC trade in services negotiations that draw on the provisions of existing sectoral SADC protocols follow a similar approach. Sectoral regulatory cooperation would not aim to impose across-the-board harmonisation, but could involve mutual recognition of standards, qualifications, and licensing agreements, for example, and regional regulatory development that is carefully sequenced and furthers domestic development objectives.

66 An example of such an approach, highlighted by Kruger (2011, 17), is evident with respect to Annex II of the EAC Common Market Protocol, on the Free Movement of Workers, which is referred to in the EAC country schedules of commitments with respect to market access and national treatment under Mode 4.

Liberalisation of trade in services is more complex and sensitive than the liberalisation of trade in goods, due to the social nature of services and the involvement of factor movements. A sector-by-sector approach and appropriate sequencing are important to avoid unfavourable outcomes for the sector itself and the broader macroeconomy (Cattaneo 2011).

4.5 A Summary View of Regional and Continental Services Negotiations

As the discussion in Section 4 indicates, the three regional economic communities in the TFTA region have each initiated their own internal services negotiation processes that are at different stages of development, with the EAC process the most advanced. In addition to this, the RECs are set to negotiate services in Phase II of the TFTA negotiations and Phase I of the CFTA negotiations. Furthermore, some countries have signalled their intention to engage in services negotiations with the EU in the EPAs. While the TFTA negotiations seem set to consolidate what has been achieved in the SADC and COMESA processes,[67] there is much discussion at present about the most constructive trajectory for the CFTA negotiations. In particular, there is interest in exploring how the negotiating path adopted in the CFTA may improve upon the approach that has been followed regionally to date, which generally builds on the existing GATS commitments of TFTA WTO member states.

As noted in Section 4.2, the negotiating approach to trade in services appears to be similar in COMESA, the EAC, and SADC, with all three processes building on existing GATS commitments and adopting the offer-request method of negotiation. There is a greater emphasis, however, and in the case of SADC and COMESA in particular, on provisions that take account of the unequal levels of development of the member states. The choice of priority sectors has also been broadly similar in the three RECs, with the SADC and COMESA processes initially emphasising communication services, construction services, energy services, financial services, tourism and travel, and transport services. COMESA has additionally focused on business services. The more advanced EAC negotiations cover seven sectors, and include education and distribution services, along with business, communication, financial, tourism, and transport services. Interestingly, construction services have not been included in the EAC negotiations to date, although it is seen as a priority sector in SADC and COMESA.

The intention of some countries and regional groupings to pursue services negotiations in the EPAs may lend some impetus to the development of regional services frameworks and to the CFTA process. The countries involved in negotiations with the EU should be proactive in designating priority sectors of interest, drawing on trade data and case study analysis that assesses the prospects and potential benefits of regional versus external services trade liberalisation at the sub-sector level. At this stage, guidelines for the services negotiations in the TFTA and CFTA are not yet available. There is a view that a sectoral regulatory cooperation approach would be more beneficial than a GATS-type negotiating approach for the CFTA. Sectoral regulatory cooperation would build on existing sectoral protocols and AU initiatives and encompass mutual recognition agreements and regional regulatory development that is sensitive to domestic development goals and priorities.

67 As noted previously, the EAC process is further advanced.

5. CHALLENGES AND OPPORTUNITIES: THE POTENTIAL IMPACT OF EXCLUSION FROM MEGAREGIONAL AND PLURILATERAL SERVICES TRADE NEGOTIATIONS

The 2008 impasse in the Doha Round of trade negotiations followed what developing country trade negotiators have referred to as a steady erosion of the Round's development agenda since its launch in 2001. The lack of progress in negotiations on agriculture together with increasing pressure on emerging economies in particular to open markets in industry and services has signalled a divergence between larger developed countries and their emerging market counterparts regarding their respective obligations going forward. According to Ismail (2012), a number of reasons for the 2008 deadlock in the Doha Round can be identified. These include shifts in the balance of power in the negotiations as a result of successful coalitions such as the NAMA11 (Non-Agricultural Market Access) and G20 agricultural grouping that saw developing countries resist pressure from developed countries for greater market access beyond the 2008 texts. Furthermore, the attitude of US lobby groups and other constituencies that the Round has become irrelevant in the changing global environment provided little incentive for developed country negotiators to conclude the negotiations. This has been coupled with a shift away from a single undertaking approach, in which all issues have to be agreed upon, to a single issue approach, where deals on individual issues (such as trade facilitation) can be finalised without reaching agreement on other issues of concern (such as agriculture). In this vein, at the Bali Ministerial in 2013, the Trade Facilitation Agreement was concluded, together with a limited package on LDC issues (including operationalisation of the services waiver) and food security.

Alongside the shift away from the single undertaking, there has been a move towards plurilateral negotiations such as the Trade in Services Agreement (TiSA). According to Ismail (2016, 3), these changes have had an adverse impact on developing country coalitions and "fragmented the Africa group in the WTO." He suggests that differences on how to address these changes meant that it was harder for developing countries to make meaningful gains at the Bali and Nairobi Ministerial meetings. Ismail (2016, 3) argues that it will be important for the Africa group to re-unify and develop a strategic approach to the new environment at the WTO. For many African countries, non-participation in the TiSA plurilateral process is related to the view that a move towards single issue negotiations at the WTO will damage the prospects of meaningful progress in agriculture and other areas of particular interest to developing countries.

The new global environment following the Doha impasse has also been characterised by the emergence of mega-regional trade negotiations led mainly by the US and other large developed economies. Together with the move towards single issue plurilaterals, it has been argued that the mega-regional negotiations aim to provide a space for the conclusion of trade deals that focus on issues of interest to developed country multinational corporations operating in global value chains and to counter increasing competition from China. With the Doha impasse, it is in the context of these mega-regional and plurilateral trade negotiations, as well as in North-South trade agreements like the EPAs and international investment agreements, that some of the newer generation trade-related issues are being taken forward. However, the mega-regional negotiating landscape is changing rapidly and is in a state of uncertainty following the US Presidential election, the Brexit vote and other difficulties. Despite this uncertainty, it is important to consider the implications of these processes for services negotiations on the African continent.

5.1 Mega-Regional Trade Negotiations

The mega-regional trade negotiations include, among others, the Trans-Pacific Partnership Agreement (TPP), the Trans-Atlantic Trade and Investment Partnership (TTIP), and the Regional

Comprehensive Economic Partnership (RCEP).[68] The TPP Agreement involves Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam and, until recently, the US. The TTIP negotiations are taking place between the EU and the US, while the RCEP comprises 10 ASEAN countries as well as India, China, Japan, Korea, Australia, and New Zealand. While the TPP notably excludes China, RCEP includes both China and India, but not the US. Seven countries are involved in both the TPP and RCEP. There are no LDCs in the TPP but there are two LDCs in the RCEP formation (Cambodia and Myanmar). There are no African countries involved in the mega-regional trade negotiations. Despite the US withdrawal and the uncertain future of the TPP, the Agreement is interesting to consider as it includes both developed and developing countries and the text is publicly available. The TPP reflects an agenda for regulatory convergence that has a number of characteristics that go well beyond some of the WTO-plus provisions seen in, for example, the EPAs and international investment treaties. The potential impact of such trade deals on the African continent is important to consider.

After seven years of secretive negotiations, the TPP was signed in February 2016 by the 12 Parties to the agreement. It is currently awaiting ratification by the Parties which must take place within a period of two years. There was much controversy surrounding the Agreement in the US, as evidenced by the campaign on the US Trade Department's website, in place until the new administration took office in January 2017, to promote the Agreement and advertise its intended benefits to the US economy. Since the announcement of the US withdrawal from the TPP, this campaign has been replaced by a paragraph describing a new "America First Trade Policy".[69]

The TPP Agreement has 30 chapters plus a set of annexes and covers a wide range of areas from trade in goods and services to investment, intellectual property protection, government procurement, competition policy, labour, the environment and even the operation of state-owned enterprises. Since the TPP negotiations have been concluded and involve a mix of developed and developing economies, it is interesting to consider the services aspects of the Agreement and some of the arguments surrounding the potential impact such an agreement could have on African economies. In the services arena the TPP has separate chapters on cross-border services, financial services, temporary entry for business persons, e-commerce and telecommunications.

Chapter 10 of the TPP deals with cross-border trade in services and Chapter 11 with financial services.[70] The provisions of Chapters 10 and 11 do not apply to government procurement or subsidies. Article 10(5) on market access and Article 11(5) on market access for financial institutions list five of the same six measures as the GATS but omit the restriction in the GATS against imposing a percentage limitation on foreign shareholdings. Article 10(6) specifies that local presence or investment may not be stipulated as a requirement in order to supply a service across a border. Article 10(8) recognises the right to regulate and to introduce new regulations. The services provisions of the TPP adopt a negative list approach in contrast to

68 As noted in the introduction, mega-regional trade negotiations in this context refer to trade negotiations between countries which collectively have a significant share of world trade and investment. According to the WEF, the TPP and TTIP were the two most significant mega-regionals in this regard, although the US has now formally withdrawn from the TPP. If the US is included, the TPP and TTIP would each impact on over a quarter of global trade and investment (see https://www.weforum.org/agenda/2014/07/trade-what-are-megaregionals/). Furthermore, there is considerable overlap between the TPP and RCEP in terms of membership, with the notable exception of China.

69 See https://ustr.gov. The TPP text is still available on the USTR website "for reference purposes" (see https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership). Interestingly, a series of chapter summaries that strongly promote the Agreement from a US perspective can still be found with the text of the main agreement. The withdrawal letter can be found at https://ustr.gov/sites/default/files/files/Press/Releases/1-30-17%20USTR%20Letter%20to%20TPP%20Depositary.pdf.

70 See https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text.

the positive list approach of the GATS and the eastern and southern African RECs. Although a negative list approach is generally viewed as more transparent, it is more restrictive in terms of policy space and automatically subjects new services areas to the liberalisation provisions of the agreement even if such services did not exist at the time the agreement was negotiated. The country schedules specifying the exceptions to Chapter 10 services obligations distinguish between exceptions which may not be made more restrictive in future and those to which no such constraint applies. Article 11(11) of the financial services chapter, on exceptions, provides that no party will be prevented from "adopting or maintaining measures for prudential reasons."

In Chapter 11 of the TPP, which covers financial services, Article 11(9) on senior management and boards of directors, prohibits parties to the Agreement from requiring financial institutions of another party to impose employment requirements for local managerial or other essential personnel. Parties may also not require that "more than a minority of the board of directors of a financial institution of another Party be composed of nationals of the Party." These provisions would have implications for economic empowerment policies adopted in many developing countries. Freehills (2015) argues, nonetheless, that many of the trade in services provisions of the TPP are similar to those of the GATS. The TPP is, however, clearly intended to provide for more extensive services trade liberalisation than the GATS, both through particular provisions and the adoption of a negative list approach. The TPP also provides for an investor-state dispute settlement mechanism, in contrast to the GATS/WTO dispute settlement process. The investor-state dispute settlement system has generated much controversy in the context of international investment agreements (Cattaneo 2015). A comprehensive analysis of the TPP chapters on investment and the operation of state-owned enterprises is beyond the scope of this paper, but their close relationship to the services landscape makes them important areas for further scrutiny and research.

The deeper liberalisation and regulatory convergence within the TPP (and proposed for the TTIP) implies that excluded countries can expect to be affected in a number of ways. Draper and Ismail (2014) analyse a variety of issues that should be taken into account in an assessment of the impact on sub-Saharan African countries. Firstly, to the extent that common standards and regulatory convergence are achieved within the mega-regionals, the importance of these groupings in world trade will likely mean that outside countries will have to work towards adopting or conforming to these standards to avoid being locked out of these markets. A second aspect is whether the conclusion of the mega-regional deals will make it harder for African countries to participate in global value chains. Draper and Ismail (2014, 5) point out that the TPP, TTIP, and RCEP cover the main centres of GVC activity, namely North America, Europe, and East Asia. They argue that there may be "negative spillover effects" on investment and the development of productive capacity in sub-Saharan Africa as a consequence of the mega-regionals. Both of these aspects could have important implications for the services sectors of these countries.

One suggested response is to see the TTIP, for example, as an opportunity for the US and EU to improve their preference schemes in favour of African LICs and LDCs (Draper and Ismail 2014, 4). However, the EPA negotiations and the provisions of the 2015 AGOA Extension Act suggest that this view is unrealistic. If anything, the move is in the other direction, with demands for reciprocity coming from the US in the 2015 AGOA Act, following the lead of the EU in the EPAs (Ismail 2016, 3). According to Mevel (2016, 2), some degree of preference erosion and increased competition will be experienced by African countries in markets where mega-regional trade deals have been concluded. African countries will have to develop a set of strategic responses to counter the possible adverse effects of these deals.

Trade facilitation and reliance on the possibility of better preferences from developed countries, as well as on meaningful operationalisation of the LDC services waiver, will not be sufficient in terms of a strategic response to the mega-regional challenge. As Draper and Ismail (2014, 5) acknowledge, national and regional policy responses are also required. Furthermore, although a focus on infrastructure development and "backbone services" such as logistics, telecommunications, and transportation is critically important, the pressing question for African LICs and LDCs is how productive transformation policies, complemented by a developmental services strategy, can be made effective in a context of GVCs and mega-regional trade negotiations.[71] LICs and LDCs should not be trapped in the lower value added service segments of GVCs while the high value ends are "sewn up" by developed country multinationals. There must be scope for upgrading along the value chain for services firms from these countries. Mevel (2016, 2-3) argues that the implementation of the CFTA would be an important step in this environment, together with the development of regional value chains and an industrial development strategy.

A further important response would be to enhance South-South cooperation in trade and investment, including in services sectors. This is already happening on the continent to a significant extent with the expansive development of trade and investment relations with China and India. According to Mevel (2016, 3), consolidation of these trade relations will offset the trade diversion effects of the mega-regional trade deals. External trade creation due to increased demand from the mega-regional area as a result of higher incomes following its formation could also offset trade diversion from excluded countries (Putzhammer and Schoof 2016, 3). It will be important for African countries, however, to negotiate the terms of these relationships in such a way as to improve the balance and composition of trade with East and South Asian partners to support growth-enhancing structural transformation on the continent. From a services perspective, the nature of bilateral services trade and investment relations with these countries needs further examination, as does the importance of services in bilateral value added trade with partners in the South.

A number of recent studies have attempted to estimate the impact of mega-regional trade deals on excluded countries such as those on the African continent. These studies tend to evaluate the impact of the agreement as a whole, since they cover more than just services. Results have been mixed, as the following two quotations suggest:

> …[M]odern simulations show that the effect of mega-regionals on Africa will mostly be a positive one. Only a few countries should expect negative welfare impacts under the future mega-deals. While those negative effects are generally low, they might hit some of Africa's weakest economies, and since there is little data on the distribution of effects among the population, chances are that the poorest might have to carry this burden. On the brighter side, mega-regionals are expected to have positive effects on average for African countries (Putzhammer and Schoof 2016).

> Empirical evidence based on computable general equilibrium (CGE) analysis confirms that while the establishment of the three major MRTAs would create vast export opportunities for their members, especially in RCEP countries, African economies would be hurt by the trade reforms (Mevel 2016).

Numerous other studies could be quoted with similarly conflicting modelling results. This indicates the limitations of this kind of assessment which is highly dependent on underlying assumptions and the reliability of the data used in the model. In the case of CGE analysis related to the impact of the liberalisation of trade in services in particular, data availability and measurement issues are even more challenging, particularly in the case of LDCs and LICs (Cattaneo 2011).

71 For a useful discussion on power relations and productive transformation strategies in a context of global value chains see Milberg et al. (2014) and Kaplinsky and Morris (2014).

Complementary approaches should also be used in assessing the effects of trade regime changes, including case study analysis.

As Draper and Ismail (2016, 2) point out, the mega-regional trade negotiations are driven by the interests of developed country multinationals in the context of the re-organisation of production and trade in global production networks. In these agreements, disciplines in areas such as services, investment, intellectual property protection, trade facilitation, and competition policy appear to be designed to further these interests.[72] Issues of particular importance to LDCs are not a major part of the mega-regional landscape. It is therefore important for African LDCs and LICs to work at the level of the WTO, as well as at continental and regional levels to foster an international trading environment that takes account of their development imperatives.

5.2 Plurilateral Negotiations on Trade in Services

After the 2011 WTO Ministerial Conference, discussions on a plurilateral services agreement were initiated following calls by services sector groupings, particularly in the US and Australia, to move forward with negotiations in this area. Many developing countries argue that plurilateral agreements undermine the single undertaking by de-linking the negotiation process from agriculture and other Doha Development Agenda issues. Nonetheless, a number of developing countries have joined the Trade in Services Agreement (TiSA) negotiations, although Mauritius is the only African country currently participating. The following 23 WTO members are taking part in the negotiations: Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, the EU, Hong Kong China, Iceland, Israel, Japan, Korea, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, Switzerland, Turkey, and the US. None of the participating countries are LDCs.

According to Cronjé (2013), the TiSA parties seek to include more WTO members in the negotiations in the future, with a view to the eventual multilateralisation of the agreement, rather than the negotiation of a GATS Article V services integration arrangement. However, the TiSA negotiations have been criticised for being secretive as they are taking place outside of the ambit of the WTO, with neither the WTO Secretariat nor other WTO members permitted to attend as observers (Cronjé 2013). In response to some of the criticism, the EU has published a number of its own position documents related to the negotiations, including its initial 2013 offer and a proposal for a state to state dispute settlement mechanism.[73] According to the European Commission, TiSA is based on the GATS, with similar core disciplines on market access, national treatment, and exemptions.[74] The core text is being structured in such a way as to be compatible with the GATS in order to facilitate its extension to other WTO members. The impact on those outside of the TiSA process (most African countries, MERCOSUR, and the BRICS, for example) will depend on whether or not the agreement is multilateralised on an MFN basis.

Since June 2015, WikiLeaks has been releasing drafts of the TiSA core texts, chapters and annexes. The latest draft of the core text that is available dates from June 2016.[75] Kelsey (2016, 3) points out that while the market access provisions in the core text follow the GATS approach where commitments apply only to sectors listed in the schedules and are subject to specified limitations, the current national treatment clause is different. The national treatment provision does not limit such treatment to the sectors inscribed in

72 In the case of the TPP, for example, see the tone and content of the various chapter summaries available on the Office of the US Trade Representative website at https://ustr.gov/tpp/#text, with the opening invitation to “read the deal to see how it puts our workers, businesses and values first.”

73 See http://trade.ec.europa.eu/doclib/press/index.cfm?id=1133.

74 See http://ec.europa.eu/trade/policy/in-focus/tisa/.

75 See https://wikileaks.org/tisa/.

the schedules, suggesting that it applies to all services and modes of supply unless otherwise stated explicitly. In addition, new disciplines are provided for, such as those on domestic regulation and e-commerce. Kelsey (2016, 4-6) further explains that the development provisions of the GATS are so far absent in the TiSA draft text. Moreover, the exclusion in the text on government procurement of services is weaker than that in the GATS. She argues that the exclusion only applies to services procured by government that are not for re-sale, suggesting that the exclusion would not apply when government secures contracts to supply public services such as water and electricity, or social services.[76] Other commentators have raised concerns about the prospect of provisions that bind the status quo across sectors and automatically extend liberalisation to new services that may emerge (so-called standstill and ratchet provisions). From a developing country perspective, draft TiSA chapters on financial services and state owned enterprises in particular require detailed analysis to examine their implications for the right to regulate financial flows and financial institutions, as well their impact on the public policy role of SOEs.

Since most eastern and southern African countries are WTO members, if the TiSA text is multilateralised on an MFN basis it would mean that they would benefit from any concessions granted without undertaking new obligations. Another option would be for TiSA to be attached to the GATS as a non-MFN plurilateral agreement like the Government Procurement Agreement. This is unlikely since the negotiations have been taking place outside of the auspices of the WTO and, furthermore, that the broader WTO membership would have to approve such an action. The alternative that seems the most likely at this stage is that TiSA would have to be notified to the WTO as a GATS Article V services trade agreement. It is advisable for the CFTA countries to keep informed of the TiSA negotiations, particularly the development of annexes and chapters that go further than the GATS and REC negotiations and whether the texts remain as potentially limiting to developing country policy space. A particular issue is the current lack of provisions that consider the needs and imperatives of developing countries and the absence of special and differential treatment provisions for LDCs. It is unclear that the latter would change in the event that any LDCs decide to join the discussions.

76 See the ITUC, CSI, and IGB Global Unions statement of priorities for the 10th WTO Ministerial Conference (MC10) Nairobi, Kenya, 15-18 December 2015. [Online] Available at http://www.ituc-csi.org/global-union-statement-of?lang=en.

6. CONCLUSION: TOWARDS A DEVELOPMENTAL SERVICES STRATEGY

The services sector has the potential to occupy a significant position in the development strategies of low-income and least developed African countries. The re-organisation of production and trade in global and regional value chains highlights the importance of the services sector as a supporter and facilitator of manufacturing. At the same time, particular modern services sectors have the potential to generate both employment and value added growth and contribute to growth-enhancing structural change. The manufacturing sector provides an important source of demand for the services sector, and the centrality of manufacturing in the development process suggests that a focus on services alone to the detriment of manufacturing will not suffice as a development strategy. This reinforces the importance of analysing the linkages between manufacturing and services growth at both the sub-sectoral and sectoral levels.

The countries of the eastern and southern African region face a challenging international environment within which to shape and navigate the various regional and continental services trade negotiations currently under way. This environment includes mega-regional trade negotiations from which the continent is excluded, as well as single issue plurilateral negotiations that are de-linked from areas such as agriculture that are of particular interest to LDCs in the multilateral setting. The proliferation of North-South international trade and investment agreements and the reorganisation of production and trade in global value chains dominated by developed country multinationals are further features of the current global landscape. This environment requires a set of strategic policy responses at multilateral, regional, and domestic levels to harness the services sector and investment for growth and development in African LICs and LDCs. Strategies for the services sector and services trade negotiations should not be approached in isolation from African countries' broader development goals and policies. Industrial, agricultural, and technology policies, as well as social policy, are inextricably linked to services sector activities, particularly as the boundaries between traditional economic sectors become more indistinct.

In this context, a range of policy initiatives towards the promotion of a developmental services strategy should be considered. The development of domestic regulatory frameworks and legislation is an important precursor to participation in services trade negotiations. It can also be argued that the development of regional frameworks for cooperation in particular services sectors will be beneficial before embarking on services negotiations in North-South trade agreements.

Legal assessment of core texts, sector annexes, and relevant chapters of the TPP, TTIP, and TiSA will assist stakeholders and trade negotiators to navigate the emerging international services negotiations landscape and to prepare for changes such as Britain's exit from the European Union and pressure from the US to negotiate reciprocal FTAs with services and investment chapters. An assessment of existing and potential trade and investment relations with partner countries that are also outside of some of the developed country initiatives—particularly China, the rest of BRICS, and the Middle East—should be undertaken. As Ismail (2016, 6) suggests, the prospects for mutually beneficial partnerships with these countries in regional and global value chains should be explored.

South Africa's Trade Policy and Strategy Framework document makes reference to a policy of "strategic global integration" designed to participate in the world economy while preserving sufficient policy space to pursue domestic development objectives (DTI 2010). There are regional, bilateral, and multilateral aspects to this engagement. The analysis of ongoing negotiations at the REC level and proposed negotiations at the continental level in Section 5 above, together with a reading of key treaties and the AU development agenda, suggests that the idea of strategic global integration is embraced more broadly on the continent as well.

This suggests a number of ways forward on how to approach negotiations at different levels (multilateral, regional, and bilateral, and in North-South versus South-South configurations) in the current global environment. At the multilateral level, it is important for countries to re-unify the Africa group at the WTO, strengthen alliances such as the LDC group, and develop new alliances with other developing countries. Although there are divergent interests among developing countries in many areas, it is important to develop strategies on how to manage the shift away from a single undertaking approach to single issue negotiations at the WTO and to ensure that areas of importance to LDCs and LICs are addressed.

Another important response to the mega-regional landscape is to prioritise the CFTA negotiations with a manageable agenda and finalise coherent regional and continental frameworks in other trade-related areas. In the case of services, this is especially important for developing countries that are not WTO members and have therefore not had the GATS negotiating experience. The development of regional frameworks is an important step for future negotiations as it will include setting up collaborative structures with local and regional stakeholders. Where feasible, common positions at the regional level could be developed with respect to plurilateral negotiations, the mega-regionals, and international investment agreements.

The approach to regional integration currently highlighted by SADC, COMESA, and the TFTA, as well as at the continental level, is one of development integration, focusing on trade integration, infrastructure and industrial development, and making special provision for the highly unequal levels of development of the countries of the region. Regional industrial policy and cooperation between development banks and the BRICS-led New Development Bank are important aspects of this approach. As Ismail (2016, 6) suggests, development integration provides the most useful approach to regional development in terms of achieving the targets of the AU's Agenda 2063 as well as the UN Sustainable Development Goals. The services sector has a critical role to play in this regard.

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ANNEX 1. OVERVIEW OF TFTA COUNTRIES BY INCOME CATEGORY AND REGIONAL MEMBERSHIP

Table A1: TFTA Countries: Income Categories, LDC Status, Membership of Regional Groupings, and the WTO

	WB (UN) classification		COMESA	EAC	SADC	SACU	CMA	WTO
Angola	UMC (LDC)§	SSA			*			*
Botswana	UMC	SSA			*	*		*
Burundi	LIC (LDC)	SSA	*	*				*
Comoros	LIC (LDC)	SSA	*					
DRC	LIC (LDC)	SSA	*		*			*
Djibouti	LMC (LDC)	MENA	*					*
Egypt	LMC	MENA	*					*
Eritrea	LIC (LDC)	SSA	*					
Ethiopia	LIC (LDC)	SSA	*					
Kenya	LMC	SSA	*	*				*
Lesotho	LMC (LDC)	SSA			*	*	*	*
Libya	UMC	MENA	*					
Madagascar	LIC (LDC)	SSA	*		*			*
Malawi	LIC (LDC)	SSA	*		*			*
Mauritius	UMC	SSA	*		*			*
Mozambique	LIC (LDC)	SSA			*			*
Namibia	UMC	SSA			*	*	*	*
Rwanda	LIC (LDC)	SSA	*	*				*
Seychelles	NOC	SSA	*		*			*
South Africa	UMC	SSA			*	*	*	*
South Sudan§§	LIC (LDC)	SSA						
Sudan	LMC (LDC)	SSA	*					
Swaziland	LMC#	SSA	*		*	*	*	*
Tanzania	LIC (LDC)	SSA		*	*			*
Uganda	LIC (LDC)	SSA	*	*				*
Zambia	LMC (LDC)	SSA	*		*			*
Zimbabwe	LIC##	SSA	*		*			*

Source: Author's compilation from World Bank (2016), UNDESA (2016), SADC (2016), COMESA (2016), EAC (2016), WTO (2016)
Notes:
NOC=high income non-OECD, UMC=upper-middle-income country, LMC=lower-middle-income country, LIC=low-income country (World Bank 2016); LDC=least developed country (UNDESA 2016).
§Graduates from LDC status in 2021.
§§Accession to COMESA and EAC in progress.
#While other LMCs on this list appear to qualify as LDCs, Swaziland evidently does not.
##Qualifies as an LDC but evidently refuses the categorisation (UNDESA 2015, 10).

ANNEX 2. GROWTH RATES OF VALUE ADDED, EMPLOYMENT, AND PRODUCTIVITY IN SELECTED AFRICAN ECONOMIES

Table A2.1: Ethiopia: growth rates of value added (at constant prices), employment, and productivity

Percentages	VA	EMP	PROD	VA	EMP	PROD
	1990-2000			2000-2010		
Agriculture	0.7	2.1	-1.4	6.7	2.2	4.3
Mining	9.8	11.4	-1.5	8.7	10.3	-1.5
Manufacturing	5.3	8.7	-3.1	7.4	10.9	-3.1
Utilities	3.0	2.3	0.7	6.7	5.9	0.7
Construction	3.9	10.1	-5.6	12.0	18.6	-5.6
Trade, restaurants, hotels	4.5	5.3	-0.8	10.9	11.8	-0.8
Transport, storage, communications	5.1	1.5	3.5	10.8	7.0	3.5
FIRE, business services	8.1	7.5	0.6	12.2	15.3	-2.7
Government services	14.1	7.3	6.4	7.3	0.9	6.4
Community, social, personal	9.1	4.9	4.0	6.5	2.4	4.0
Total Economy	3.3	2.6	0.6	8.2	3.5	4.6

Source: Author's computations from Timmer et al. (2014)

Table A2.2: Malawi: growth rates of value added (at constant prices), employment, and productivity

Percentages	VA	EMP	PROD	VA	EMP	PROD
	1990-2000			2000-2010		
Agriculture	7.2	0.7	6.4	2.4	0.8	1.6
Mining	0.9	-9.8	11.8	20.2	13.3	6.1
Manufacturing	0.3	0.1	0.2	5.9	8.5	-2.4
Utilities	5.0	-0.6	5.6	6.5	9.2	-2.4
Construction	1.4	3.4	-1.9	7.6	12.5	-4.3
Trade, restaurants, hotels	0.1	7.1	-6.5	6.8	11.5	-4.2
Transport, storage, communications	1.3	1.8	-0.5	9.8	14.7	-4.2
FIRE, business services	3.1	5.0	-1.8	6.2	3.6	2.5
Government services	-1.9	4.2	-5.8	1.2	8.2	-6.5
Community, social, personal	0.7	-0.4	1.2	5.9	12.7	-6.1
Total Economy	2.5	1.2	1.3	5.0	3.2	1.8

Source: Author's computations from Timmer et al. (2014)

Table A2.3: Tanzania: growth rates of value added (at constant prices), employment, and productivity

Percentages	VA	EMP	PROD	VA	EMP	PROD
	1990-2000			2000-2010		
Agriculture	3.6	2.0	1.5	4.3	2.1	2.1
Mining	17.2	3.7	13.0	11.1	8.4	2.5
Manufacturing	4.4	4.4	0.0	8.3	10.8	-2.2
Utilities	4.5	13.4	-7.9	6.6	10.4	-3.5
Construction	-0.7	3.1	-3.7	10.3	9.3	1.0
Trade, restaurants, hotels	3.8	4.6	-0.8	7.6	7.6	0.0
Transport, storage, communications	3.2	1.8	1.4	8.9	13.6	-4.2
FIRE, business services	1.2	0.2	1.0	7.1	16.7	-8.3
Government services	1.4	2.9	-1.4	8.0	12.9	-4.4
Community, social, personal	4.5	5.8	-1.2	2.9	2.9	0.1

Source: Author's computations from Timmer et al. (2014)

Table A2.4: Zambia: growth rates of value added (at constant prices), employment, and productivity

Percentages	VA	EMP	PROD	VA	EMP	PROD
	1990-2000			2000-2010		
Agriculture	6.8	1.2	5.5	-1.6	3.0	-4.4
Mining	-7.7	-5.1	-2.7	20.3	9.6	9.8
Manufacturing	0.2	-1.9	2.1	5.2	4.8	0.4
Utilities	1.9	0.4	1.5	2.0	-1.1	3.1
Construction	-0.4	0.7	-1.0	11.7	3.9	7.5
Trade, restaurants, hotels	4.6	10.5	-5.3	7.2	7.5	-0.3
Transport, storage, communications	3.4	0.2	3.2	17.0	3.3	13.3
FIRE, business services	11.4	-2.5	14.2	5.7	3.5	2.1
Government services	2.8			12.0		
Community, social, personal	3.3	5.0	-1.7	11.8	-3.8	16.2
Total Economy	3.1	1.8	1.4	8.1	2.9	5.1

Source: Author's computations from Timmer et al. (2014)

Table A2.5: South Africa: growth rates of value added (at constant prices), employment, and productivity

Percentages	VA	EMP	PROD	VA	EMP	PROD
	1990-2000			2000-2010		
Agriculture	0.7	0.3	0.3	1.8	-1.3	3.1
Mining	-0.3	-7.2	7.4	0.0	-4.1	4.3
Manufacturing	1.3	1.0	0.3	2.4	-0.5	2.9
Utilities	2.4	-4.3	7.1	1.8	2.1	-0.2
Construction	-0.8	0.6	-1.4	8.1	4.7	3.3
Trade, restaurants, hotels	2.5	3.5	-0.9	3.4	0.5	2.8
Transport, storage, communications	4.9	2.4	2.5	5.0	0.8	4.1
FIRE, business services	4.6	6.4	-1.7	8.7	5.0	3.4
Government services	0.6	5.0	-4.3	2.7	1.5	1.2
Community, social, personal	4.1	2.0	2.1	3.2	1.5	1.7
Total Economy	1.9	1.8	0.1	3.7	0.9	2.8

Source: Author's computations from Timmer et al. (2014)

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