

TRADE IN SERVICES IN THE AfCFTA

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Introduction

Services play an important role in economic growth and development. They contribute directly and significantly to the creation of income and jobs, and provide essential inputs to other sectors of the economy. The literature on development emphasises that financial services can have an impact on growth by facilitating capital accumulation and fostering innovation. Transportation services (road, sea, rail and air, including associated logistics services) affect the cost of shipping goods and the movement of workers within and between countries. Business services (accounting, engineering, legal, IT, etc.) are essential for facilitating exchanges and transmitting business process innovations from one company or sector to another. Tourism is the source of major demand for inputs from other sectors and a major supplier (input) for other sectors. If services are expensive or of low quality, the competitiveness and job-creation potential of downstream firms / industries will be reduced.

Trade is a means by which businesses can improve their access to services, through lower prices or with more choice (more variety). For example, policies that restrict trade in services are a factor affecting the competitiveness of firms. In the case of services, tariffs are not a problem. Instead of tariffs, there is a prevalence of generally applied regulatory policies and policies that explicitly limit, or even prohibit, the access of foreign to domestic markets. These policies affect the prices, quality and variety of services supplied to businesses and households.

In on contribution, Beverelli et al. (2016)² use sectoral data to analyse the relationship between levels of trade barriers in services and productivity performance at the firm level in a 58-country sample. They find that the effects of services trade policies on company productivity depend on the quality of the national regulatory institutions and policies, i.e. "good governance".

The African Continental Free Trade Area (AfCFTA) has included financial services, transport services, business services and tourism services in the scope of its Protocol on Trade in Services (non-exhaustive list). This protocol provides for obligations on conditional market access and national treatment to be assumed by each member of the African Union (AU) with respect to other members of the AU. It also provides for general obligations relating to transparency and "good governance". In parallel with the AfCFTA Protocol on Trade in Services, the AU Service Sector Development Programme (ASDP), currently under development, focuses on measures to promote the liberalisation of services by AU Member States, either unilaterally through the Regional Economic Communities (RECs), or through the Continental Free Trade Area (CFTA) negotiations, and on strengthening regulatory frameworks for the main service sectors. This briefing note begins with a review of the opportunities and challenges facing services in the CAFTA for women entrepreneurs and producers. It then describes what the AfCFTA actually means in services and finally offers a conclusion.

¹ The author thanks Judith Fessehaie, Anahita Vasudevan and the women entrepreneurs who participated in the AfCFTA Workshops for their useful discussion.

² Beverelli, C., M. Fiorini, and B. Hoekman. 2016. "Services Trade Restrictiveness and Manufacturing Productivity: The Role of Institutions," *Journal of International Economics*.

Challenges and opportunities for women entrepreneurs and producers

The World Bank's business surveys over the past five years show that women are present as owners or managers in formal service enterprises and formal manufacturing firms in Africa (Table 1). They are therefore impacted by the opportunities in the services sector offered by the AfCFTA: (i) those who control or direct service firms will be able to increase their profitability due to the expansion of production and exports in services, (ii) those who control or direct manufacturing firms may see their profitability increase due to lower services inputs costs through imports.

Table 1: Gender, Property and Management in Various African Countries, 2015-2018

	Sector	Percentage of establishments with female participation in ownership	Percentage of establishments with female majority in ownership	Percentage of establishments directed by women
Benin (2016)	Manufacturing	23.2	7.6	4.7
	Services	39.8	24.4	30.8
Cameroon (2016)	Manufacturing	34.7	23.6	18.7
	Services	41.8	34.2	24.7
Ivory Coast (2016)	Manufacturing	19.9	13.5	13.6
	Services	25.8	12.8	14.5
Egypt (2016)	Manufacturing	14.8	1.9	3.7
	Services	20	2.7	5.8
Eswatini (2016)	Manufacturing	44.5	23.2	26.9
	Services	34.2	15.6	27.5
Ethiopia (2015)	Manufacturing	31.1	5.3	6.4
	Services	37	18.3	4.2
Gambia (2018)	Manufacturing	15.1	11.1	7.5
	Services	17.9	13.1	10.8
Guinea (2016)	Manufacturing	4.3	4.3	2.2
	Services	9.4	5.4	6
Kenya (2018)	Manufacturing	56.4	15.6	18.4
	Services	45.8	12.8	18.1
Lesotho (2016)	Manufacturing	53.2	43	46.5
	Services	36.5	22.2	34.4
Liberia (2017)	Manufacturing	27.2	10.3	13.5
	Services	42.5	18.3	23.9
Mali (2016)	Manufacturing	13.3	7.4	3.5
	Services	16.1	9.9	14.9
Mozambique (2018)	Manufacturing	23.4	13.1	8.9
	Services	29.6	18.6	17.3
Niger (2017)	Manufacturing	9	7.4	8.4
	Services	15.7	9.3	11.1
Sierra Leone (2017)	Manufacturing	14.5	12.7	11
	Services	21.8	19.7	19.4
Chad (2018)	Manufacturing	7.4	4.1	3.3
	Services	15.4	11	15.6
Togo (2016)	Manufacturing	23.6	2.1	2
	Services	25.8	13.4	14.5
Zimbabwe (2016)	Manufacturing	47.1	14.7	9.7
	Services	41.1	13.7	18.3

Source : <https://www.enterprisesurveys.org/>

The challenges ahead are significant given the pervasiveness of the potential barriers, either to exporting or to making services available and cheaper in the country through imports (Table 2).

Table 2: A selection of regulatory concerns that are to be taken into account in order to trade in services

Challenges	Financial services	Transport services	Business services	Tourism services
A. Regulatory authority		Often not independent of the parent ministry	Often not independent of suppliers in professional services	Often not independent of the parent ministry
B. Conditions on cross-border supply	Risks in a country are often managed only by the companies present in the country	A bilateral or reciprocity agreement is often required	The supply of services is often prohibited from abroad in professional services	
C. Conditions on commercial presence	Commercial presence as a branch is often not authorised	A bilateral or reciprocity agreement is often required	The presence of foreign commercial entities is often limited to joint ventures with minority participation in professional services	
D. Conditions on the presence of natural persons	Executive positions can sometimes be reserved for nationals only in banking services	Work permits can sometimes be of limited duration with only one entry (for international transport)	The supply of services is often prohibited by independent foreign professionals and contract service providers in professional services	The tourist agent services market is often closed to foreign agents
E1. Other market conditions affecting the supply of services	There are often restrictions on the granting of loans or on accepting deposits of foreign currency	There is often an obligation to use handlers installed at ports or at stations		Existence of obligations in public services (tourism development fund)
E2. Conditions applicable to the award of public contracts	There are often national or regional preferences			
E3. Competition Policy		Anti-competitive practices are often present (access to essential facilities)		The margins of local providers are low compared to international tour operators
E4. Administrative procedures and regulatory transparency	The criteria for granting approvals are often published, rejections of applications are often motivated, but the granting of approvals is rarely automatic once the criteria are met.			

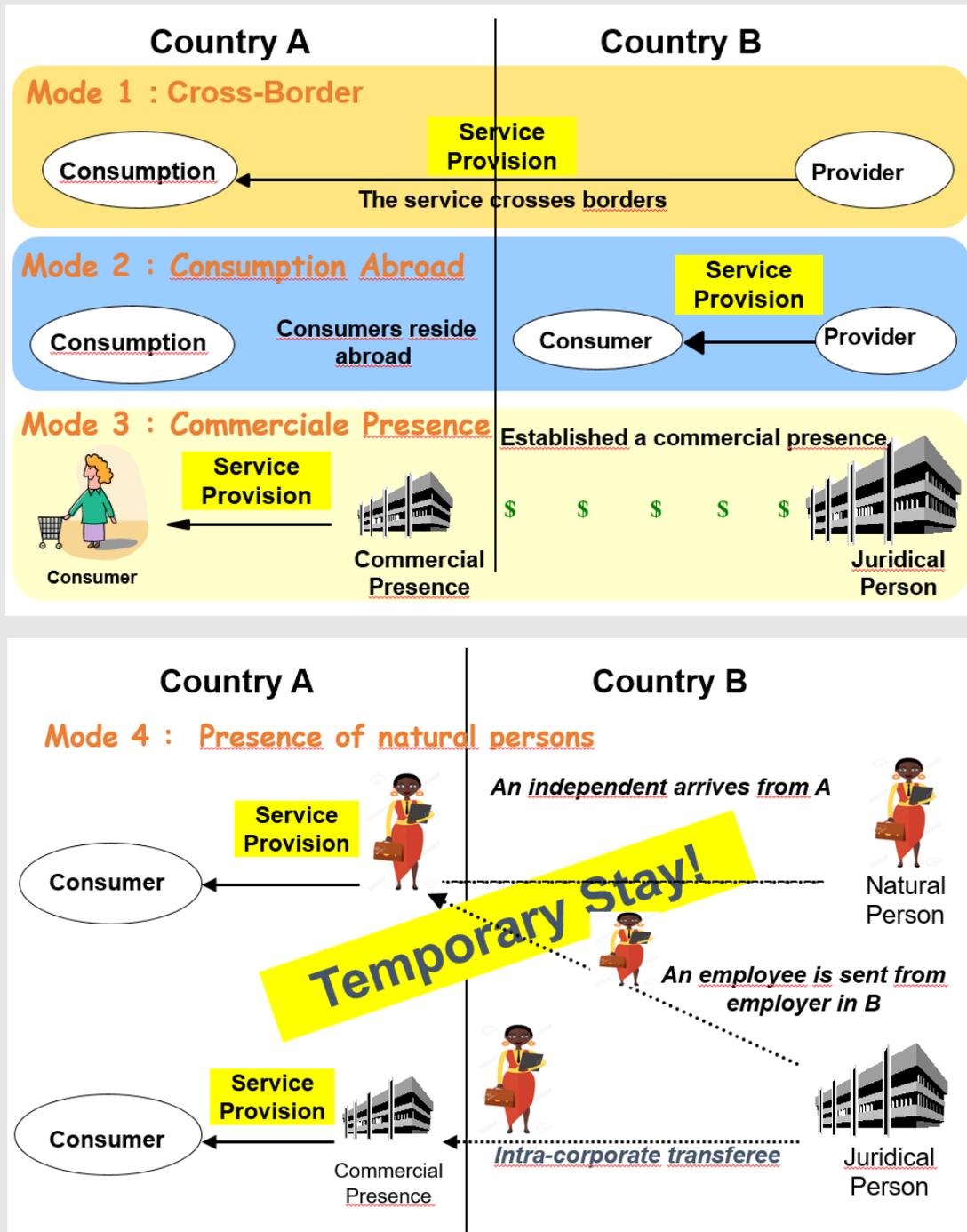
Source: compiled by the author from regulatory audits on services in Africa

Not all the barriers mentioned above are necessary, even if they are intended to achieve certain national policy objectives. It is possible that national targets can be achieved with fewer regulatory measures that restrict trade. The overall priorities for women entrepreneurs and producers should take account of the elimination of unnecessary barriers to trade in services within the AfCFTA.

What does the AfCFTA in services mean for a company?

The definition of trade in services under the AfCFTA Trade in Services Protocol (TSP) is based on four priorities, depending on the national presence of the firm (supplier) and the consumer at the time of the transactions (Article 1p) (figure 1).

Figure1: How are the services exchanged between AfCFTA countries?



The AfCFTA TSP applies to the measures of its members that affect trade in services (Article 2.1). It does not matter, in this context, whether a measure is taken by central, regional or local governments or by non-government bodies exercising delegated powers (Article 2.3). The relevant definition covers any measure - a law, regulation, rule, procedure, administrative decision, or any other measure affecting services (Article 1.f).

The presence or absence of regulation in country A of the continent (Figure 1) can often be an obstacle to the exports of a company from country B of the continent. For example, an airport or port terminal whose operation is entrusted to a management company. For reasons of economy of scale, the State often entrusts the management of the terminal to a single company (monopoly) in the form of concessions. Many foreign or domestic service providers may want to provide terminal services: ground support services for aircraft (passenger tickets, catering, etc.), handling services for ships, etc. In the absence of a regulation in the specifications between the terminal management company and the service providers in the terminal, the latter find it difficult to enter the market if the management company behaves in an anti-competitive way, and provides services similar to their services. This example related to the case of lack of regulation. The next example involves a case in which regulation does exist. In financial services or professional services, consumers (businesses, individuals) are often not very well informed about the quality of service providers. To protect consumers, the State of Country A imposes ex ante legitimate qualification requirements that service providers (domestic and foreign) must meet before entering the market. But it could happen that the requirements imposed by country A are too burdensome for service providers from country B, especially if these providers have already met the requirements of their own country B. Table 3 and the following explanations illustrate how the AfCFTA TSP attempted to address these issues.

Table3: What is the reason for the rules of the AfCFTA Trade in Services Protocol?

Imperfect national markets	Example of affected sectors	National policy responses	Trade issues related to national responses	Current approaches of the AfCFTA Trade in Services Protocol
I. Monopoly / Oligopoly	Transport	Allow historic businesses to hinder the entry of and competition from new businesses in order to exploit increasing returns or economies of scale.	Lack of pro-competitive regulation in importing countries can become a barrier to trade for ensuring equitable access to essential facilities.	Transparency (Articles 5 and 9) No discrimination (Article 4 and 20) No quantitative restrictions (Article 19) Rules on monopolies and exclusive service providers (Article 11) Business practices (Article 12)
II. Information problems	Professional services including medical, legal, accounting, etc. Financial services	Impose a system of licences, permits, qualifications and other requirements	The presence of prudential regulations in the importing country can create unnecessary costs for foreign suppliers	Transparency (Articles 5 and 9) No discrimination (Article 4 and 20) No quantitative restrictions (Article 19)
III. External factors	Transport, tourism			

For a company, the AfCFTA on services refers to transparency

It is expected that members will promptly publish any measures that affect or target the operation of the protocol on trade in services (Article 5.1). The protocol also provides that each Member is required to ensure that, in sectors where specific commitments have been made, measures to be applied generally are administered in an impartial, reasonable and objective manner (Article 9.1). Service providers in all sectors must be able to use national courts or court proceedings to challenge administrative decisions that affect trade in services (Article 9.2).

For a company, the AfCFTA on services refers to the absence of discrimination

Non-discrimination aims first of all to put an end to the frictions and distortions of bilateral policies. Thus, access conditions granted to one country must be automatically granted to all other countries on the continent (Article 4.1) subject to certain waivers (economic integration and exemptions). Non-discrimination also means the absence of any measures likely to change competition conditions to the detriment of foreign services or service providers. However, limitations may be indicated to cover incompatible measures (Article 20), for example, subsidies and discriminatory tax measures, residency requirements, etc.

For a company, the AfCFTA on services refers to the absence of quantitative restrictions

The TSP's provisions on market access, set out in Article 19, cover six types of restrictions that should not be maintained in the absence of limitations. These restrictions, sometimes "unnecessary", relate to:

- The number of service providers
- The value of transactions or assets related to services
- The number of service transactions or the quantity of services produced
- The number of natural persons providing a service
- The type of legal entity or joint venture
- The participation of foreign capital

For a company, the AfCFTA on services refers to fair competition

Members must ensure that monopolies or exclusive suppliers do not act in a manner inconsistent with the obligation and commitments regarding Most Favoured Nation treatment (Article 11.1). Article 12 addresses business practices other than those covered by the provisions of Article 11 relating to monopolies which restrict competition and therefore trade. It requires that each Member, at the request of any other member, take part in consultations with a view to eliminating such practices.

Future outlook and recommendations

For the implementation of the AfCFTA in services, the current responses of the AfCFTA TSP need to be supplemented. Article 28 stipulates that Member States will develop annexes on specific commitment lists, most favoured nation (MFN) treatment exemptions, air transport services, the regulatory cooperation framework document, etc.

Women entrepreneurs' participation in the preparation of schedules of specific commitments is important, as it would ensure that specific requests are put forward by women in sectors where they can easily promote their export interests: hairdressing services, midwifery services, conference organisation services, hotel and restaurant (including catering) services, travel agency and tourism organisation services, etc.. Women entrepreneurs could also be interested in commitments in sectors where they have import interests, such as the liberalisation of bank loans and payment methods services (bank cards, virtual currency, ...).

The annexes to the regulatory cooperation framework document are to be justified by the fact that the current rules negotiated under the TSP are insufficient to restrict regulatory protectionism:

- The obligations of National Treatment (Article 20) and MFN Treatment (Article 4) apply to *similar* services and service providers, but they have limited force if the similarity is to be assessed by the regulator.
- The market access obligation (Article 19) prohibits *de jure quotas* but not *de facto quotas* that may be applied

They may also be justified by the idea that the magnitude of the impact of market opening depends on the quality of policies and regulators.

In this context, the implementation of the AfCFTA on services can draw on the experiences of Regional Economic Communities (RECs) that have developed annexes on the regulatory cooperation framework in support of market opening. This is notably the case of the SADC and the East African Community. There remain challenges to be overcome, however, because of the greater number of participants in the AU than in the RECs.

Other important implementation areas may include (i) setting up a network or alliance / coalition to map the regulations affecting trade in services in the States, for dissemination to them service providers, (ii) the establishment of an early warning system for barriers to trade in services, similar to the existing West African alert systems for trade in goods, whose platforms are managed by ITC.

Domains	Recommendations (BIAT and others)	Objectives	Impact on women	Actors involved
Negotiating market-access rules	Increasing the participation of women in the national committees and working groups on trade in services	To better defend the interests of women who export and import services	Identifies the key institutions and the contact persons (ministry of trade, AfCFTA focal points for services, etc.) and collective assessment of interests	Women entrepreneurs and Women's Business Associations, AU Member States, AU Commissions, RECs, ITC and donors
Implementation mechanisms	Training and strengthening women entrepreneurs' capacity on trade in services under the AfCFTA protocol	To improve women entrepreneurs' knowledge on trade in services rules in place on the continent	Identifies the women entrepreneurs to be trained, and the training and awareness-raising opportunities	Women entrepreneurs and Women's Business Associations, AU Member States, AU Commissions, RECs
Introduction of RECs' good practices into the AfCFTA	Introducing measures that enable the free movement of people at the intra-continental level	To accompany the liberalisation of mode 4 by enabling the free movement of people	Identifies the key institutions and the contact persons (ministry of trade, AfCFTA focal points for services, etc.)	Women entrepreneurs and Women's Business Associations
	Negotiating mutual recognition agreements in service sectors relevant to women	To accompany the liberalisation of service sectors relevant to women by recognising qualifications and	Women entrepreneurs have more information on obstacles to intra-African trade in services	Women entrepreneurs and Women's Business Associations, AU Member States, AU

		experience acquired in African countries		Commissions, RECs, ITC
	Establishing a national or regional information network on trade in services	To identify the barriers to and opportunities of trade in services	Women entrepreneurs have more information pertaining to barriers to intra-African trade in services	AU Member States, AU Commissions, RECs, ITC and donors
	Establishing a warning system on barriers to trade in services	To find answers to the barriers to trade in services	Identifies the institutions from which the barriers to trade originate	Women entrepreneurs and Women's Business Associations, AU Member States, AU Commissions, RECs, ITC and donors
Inclusion of gender-specific approaches in the BIAT action plan and in the SSDP	Formulating norms and supporting the upgrading of the services sector	To reinforce consumers' trust in transactions with women entrepreneurs in services	Identifying the key institutions and the contact persons (service sector ministries, standardisation bodies, etc.)	Women entrepreneurs, Women's Business Associations, national upgrading and standardisation bodies
	Implementing quotas for women entrepreneurs in the services procurement market	To encourage women entrepreneurs' participation in service companies	Identifying the sectors relevant to the implementation of quotas for women in services procurement	Women entrepreneurs, Women's Business Associations, Public Procurement Regulatory Authority