



Association of Professional Societies in East Africa (APSEA)

# **TRADE IN SERVICES, PROGRESS CHALLENGES AND LESSONS LEARNED**

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# PRESENTATION OUTLINE

1. Background to General Agreement on Tariffs and Trade (GATT), 1947
2. Scope and definition of trade in Services
3. List of 12 core Services sectors
4. General obligations and governance
5. Progress on Services trade in Kenya
6. Value of trade in Services for Kenya
7. EAC commitments on trade in Services (2015)
8. Challenges and lessons for future



# Background

- GATT 1947, General Agreement on Tariffs and Trade, post World War II
- Uruguay Round of trade negotiations (1986-1994).
- Subjects of trade concluded in Uruguay Round were Tariffs, non-tariff measures, rules, **SERVICES**, Intellectual property, dispute settlement, textile, agriculture, creation of World Trade Organization (WTO).
- Definition of services Trade and modes of supply GATS, Article 1
- Ministerial meeting in April 1994 at Marrakesh lead to formation of WTO.
- WTO Agreement in 1995; Trade in Goods, Services, Intellectual property (TRIPS), Dispute Settlement Understanding (DSU), Trade Policy Reviews (TPRM) and many more.



# SCOPE AND DEFINITION OF TRADE IN SERVICES

For purposes of GATS (General Agreement on Trade in Services) Article 1,

(2) (a-d) service is the supply of a service;

- a. From the territory of one Member into the territory of any other Member. (**Mode 1 – Cross border trade**)
- b. In the territory of one Member to the service consumer of any other Member (**Mode 2 - Consumption abroad**)
- c. By a service supplier of one Member through commercial presence in the territory of any other Member. (**Mode 3- commercial presence**)
- d. By a service supplier of one Member through the presence of natural persons of a Member in the territory of other Members  
(**Mode 4- Presence of natural persons**)



- *Examples of the modes of supply from the prospective of an “importing” Member A)*

**a. Mode 1- Cross border**

Users in A receive services from abroad through the telecommunications or postal network. Such suppliers may include consultancy or market advice, distance learning, training or architectural drawings

**b. Mode 2 – Consumption abroad**

- Nationals of A have moved abroad as tourists, students or patients to consume respective services



*Examples of the modes of supply from the prospective of an “importing” Member A)*

**c. Mode 3- Commercial presence**

The service is provided within A by a locally established affiliate, subsidiary or office of the foreign owned and controlled company (bank group, construction company etc)

**d. Mode 4- Movement of natural persons**

A foreign national provide services within A as an independent supplier (eg. Consultant, health worker) or as employee of a foreign service firm (eg consultancy hospital, construction company and many more).



# LIST OF SERVICES SECTORS

For purpose of negotiations on trade in services, WTO Members have adopted the following list of 12 Core Services Sectors.

These are available in (document MTN. GNS/W/120)

## Central Product Classification Code (CPC)

1. Business services (CPC 861)
2. Communication services (CPC 751)
3. Construction services (CPC 512)
4. Distribution services (CPC 621)
5. Education services (CPC 921)



## LIST OF SERVICES SECTOR CONTD'

- |  |               |
|--|---------------|
| 6. Environmental services                        | (CPC 940)     |
| 7. Financial services                            | (CPC 812)     |
| 8. Health and related services                   | (CPC 931)     |
| 9. Tourism and travel related services           | (CPC 41)      |
| 10. Recreational, cultural and sporting services | (CPC 961)     |
| 11. Transport services                           | (CPC 721)     |
| 12. Other services not included elsewhere        | (95+97+98+99) |





# GENERAL OBLIGATIONS AND GOVERNANCE

1. ***Most Favoured Nation (MFN)***; what you give one you give all.
2. ***Market access***- intended to minimize restrictions i.e. Article XVI or GATS
  - a. Number of service suppliers
  - b. Value of service transactions or assets
  - c. Number of operations or quantity
  - d. Number of natural persons supply a service
  - e. Type of legal entity or joint ventures
  - f. Participation of foreign capital
3. ***National Treatment (NT)*** refer to GATS (Article XVIII) which implies absence of all discriminatory measures that may modify the conditions for competition to the detriment of foreign services or service supplier.

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4. **Transparency-** under Article III, each member is required to publish promptly “*all relevant measures of general application*” that affect operation of the GATS Agreement.

5. **Domestic Regulations** Article VI:2 Members are committed to operating domestic mechanisms (“judicial, arbitral or administrative tribunals or procedures”) where an individual service suppliers may seek legal redress.



# PROGRESS

## 1. Business services

- Architectural Association of Kenya-AAK
- Geological Society of Kenya-GSK
- Institute of Certified Investment and Financial Analysts-ICIFA
- Institute of Certified Public Accountants of Kenya-ICPSK
- Institution of Surveyors of Kenya-ISK
- Kenya Institute of Management-KIM
- Kenya Institute of Supplies and Management-KISM
- Kenya Medical Association-KMA
- Kenya Veterinary Association-KVA
- Pharmaceutical Society of Kenya-PSK
- Society of Radiography in Kenya-SORK

## **2. Computer services**

- Data protection Act
- ICT policies

## **3. Research- KNBS, statistics Act 2006**

## **4. Education- Education Act Chapter 211**

- University Act 2012

- Commission of University Education

## **5. Environmental services – National Environmental Authority**

## **6. Communication services – Kenya Information and Communication Act Chapter 411A**



## 7. Financial services

- Baking Act Chapter 488
- Central Bank of Kenya Act Cap 491
- Insurance Act Cap 487
- Capital Markets Act Cap 485 A
- Savings and Credit, Sacco societies Act
- Nairobi Securities Exchange Regulation No. 14 of 2008
- Retirement Benefit Act Chapter 197

8. **Health** – Health Act no 21 of 2017

9. **Tourism** – Tourism Act 2011

10. **Recreational, cultural and sporting** services

11. **Transport** – Laws of Kenya Traffic Act Chapter 404

11. **Other services** not included elsewhere.



# VALUE OF TRADE IN SERVICES TO KENYA

1. Raise standard of living
2. Ensure increased employment
3. Assist in expansion of trade in goods
4. Increased value chain to SMES in Kenya



# KENYA BALANCE OF PAYMENT

Kenya balance of payment account 2019 is (negative)	Kshs. 566,993m
Goods export (f.o.b.)	Kshs. 598,764Mm
Goods import (f.o.b.)	Kshs. 1,688,325m
Services credit	Kshs.573,176m

*Source: (KNBS, Economic Survey, 2020)*



# Objectives of the East African Community (EAC) on trade in service supports:

- a) Attainment of growth and development of partner state.
- b) Strengthening cooperation in trade in service field.
- c) Promotion and sustainable utilization of natural resources in the reproduction (land, capital, labour, entrepreneurship).
- d) Promotion of people centred mutual development.
- e) Enhance and strengthening of partnerships with private sector and civil society.

These are to be achieved with respect to all 5 partner states.





On trade in services negotiations, Kenya has offered market access to EAC partner on National Treatment basis. The services sectors are:

- Business and professional services
- Communication services
- Distribution services
- Education services
- Financial services
- Tourism services
- Transport services



# Challenges and Lessons Learned

- Private sector, EAC secretariat to encourage more stakeholders meetings at the headquarters of partner states.
- Organize public-private sector dialogue to facilitate implementation of trade in service commitments.
- Expedite notification and transparency procedures.
- To facilitate cross border movements of providers of services trade under mode 3 and 4.



***Thank you***

***Any questions, interventions,  
contributions are welcome.***

