

Regional  
Integration  
of Trade in  
Professional  
Services

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# Table of Contents

Abbreviations	2
Foreword	3
Preface	4
<b>1. Background</b>	<b>6</b>
1.1 Introduction	6
1.2 Process	8
<b>2. Summary and Synopsis of Papers Presented and Discussions</b>	<b>9</b>
2.1 The Case for Regional Integration in Professional Services	9
2.2 GATS Rules and Regulations affecting Professional Services and the Doha Agenda	12
2.3 Supporting Development of Capacity and Competence for Global Competitiveness In Professional Services Trade	15
2.4 Overcoming Barriers to Regional Integration in Professional Services Trade	17
2.5 Integration of Professional Services: The European Union Experience	18
<b>3. Workshop Resolutions, Outcomes and the Way Forward</b>	<b>21</b>
Appendix 1: Papers Presented at the workshop	24
Appendix 2: List of Participants	25

# Abbreviations

<b>APC</b>	African Caribbean Pacific
<b>APSEA</b>	Association of Professional Societies in East Africa
<b>COMESA</b>	Common Market for East and Southern Africa
<b>EA</b>	East Africa
<b>EAC</b>	East African Community
<b>EACT</b>	East African Community Treaty
<b>ECJ</b>	European Court of Justice
<b>ENG.</b>	Engineer
<b>EU</b>	European Union
<b>FES</b>	Friedrich Ebert Stiftung
<b>FDI</b>	Foreign Direct Investment
<b>GATT</b>	General Agreement on Trade and Tariffs
<b>GATS</b>	General Agreement on Trade in Services
<b>ITC</b>	International Trade Centre
<b>JITAP</b>	Joint Integrated Technical Assistance to Less Developed Countries.
<b>LDC</b>	Least developed Countries
<b>NCWTO</b>	National Committee World Trade Organization (Kenya)
<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>USA</b>	United States of America
<b>WTO</b>	World Trade Organization

# Foreword

*This publication is as a result of collaboration between the Friedrich Ebert Stiftung (FES) and the Association of Professional Societies of East Africa (APSEA). Recent and ongoing developments in regional and multilateral trade indicate a consistent movement towards integration. Having recognized that regional integration is the essential first step towards multilateral integration and following consultations, FES and APSEA thought it timely to hold a workshop on regional integration of professional services trade.*

*Participants were drawn from professional bodies, the academia and governments of Kenya, Uganda and Tanzania while presenters were representatives from WTO, EAC, EU and UNCTAD. Discussants drawn from the three EA countries helped put the presentations made in a local context.*

*The main purpose of the workshop was to provide a forum for professionals in all disciplines in the region to assess their current status in relation to the global liberalization agenda. Ideas and experiences were freely shared and expert opinion and advice rendered by the presenters.*

*It is the organizers' hope that as a result of the workshop, professionals in the region will be more enlightened on the multilateral trading system so that they can be able to better take advantage of the opportunities created thereby while at the same time minimizing any adverse effects that may accompany such opportunities.*

*FES and APSEA wish to sincerely thank the ITC, UNCTAD and WTO without whose additional support (through the JITAP Programme accessed through the Ministry of Trade and Industry, Kenya) the success of the workshop would not have been realized, the presenters, discussants and delegates for their presence and contributions as well as the secretariat and rapporteurs for the logistical support and recording of proceedings respectively.*

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# Preface

The new world economic order is characterized by trade in not only goods but also services. Services are currently the fastest growing component of trade and Foreign Direct Investment (FDI) accounting for nearly twenty per cent of world trade and three fifths of FDI flows. Sadly, developing countries account for only 2.2 % of the trade.

The General Agreement for Trade in Services (GATS), an agreement that came into force in 1995 after negotiations by member countries of the World Trade Organization (WTO) creates the international regime for trade in services. GATS recognizes the need for an orderly and gradual liberalization of trade in services. Under GATS therefore, countries have an opportunity to organize some smooth shift from an essentially controlled trading regime to a liberalized framework.

Global trade is currently mainly driven by private sector with the dominant players being large firms (Transnational Corporations) from the developed world. Service providers from the developing world are in the periphery of the global scene. This is true for all service sectors, professional services included. The process of globalization requires that for a country to be recognized internationally, they must be competitive. It is therefore important that local professionals develop their capacity and competence in order to compete effectively in the global professional services market.

Regional integration between and among developing countries is the essential first step in building capacity for global competition. Its role as a vehicle for progressive liberalization of trade in services in line with the provisions of GATS cannot, therefore, be overemphasized. In deed, the coming into effect of the Treaty for the establishment of the East African Community (EACT) on November 30, 1999, set in motion the strategies for achieving the goal of economic integration in the partner states of Kenya, Uganda and Tanzania.

However, whereas great strides have been made in creating a regional common market for trade in goods, regrettably, trade in services, professional services included, is yet to be negotiated. There is therefore an urgent need to ensure that key issues in liberalization of professional services are given due consideration.

It is with this in mind that APSEA and the Friedrich Ebert Stiftung Foundation, among other donors, organized a workshop under the theme: **Regional Integration of Trade in Professional Services**. The objectives of the workshop were to: gain an understanding of the multilateral rules governing trade in services; identify legal and administrative barriers to regional integration in professional services; create an agenda for capacity and competence development for regional professional services providers; identify viable strategies for a regional approach to global negotiations in professional services trade in the context of WTO mandate; and develop viable strategic action plans to address the constraints and to take advantage of the opportunities so identified so as to advance the agenda for regional integration in professional services trade.

With over 60 participants drawn from professional bodies, the academia, governments (of Kenya Uganda and Tanzania), the WTO and UNCTAD, the workshop deliberated at length the issues raised by the workshop objectives with a view to defining the way forward and suggesting strategies to make regional integration of trade in professional services a reality.

This publication is a synthesis of the papers presented, plenary discussions and resolutions of the workshop. It is hoped that the reader shall derive insight to the issues of multilateral and regional trade in professional services.

# I: Background

## 1.1 Introduction

The global trading system was developed through a series of trade negotiations or rounds held under the General Agreement on Trade and Tariffs (GATT). The last round (1986- 1994) was the Uruguay round that led to the signing of the agreement establishing the WTO on 1<sup>st</sup> January 1995.

WTO is the only global international organization dealing with the rules of trade between nations and at its heart are the agreements negotiated and signed by the bulk of the world's trading nations.<sup>1</sup> GATS is one of the most important of these agreements.

GATS came into force in January 1995. It is the first and only set of multilateral rules covering international trade in services and has two parts: Framework Agreement containing the general rules and disciplines; and National Schedules which list individual countries' specific commitments on access to their domestic markets by foreign suppliers.

GATS covers all commercially traded services in any service sector except those supplied in the exercise of governmental authority. Services are classified into twelve (12) broad sectors within which are many sub-sectors. Professional services are a sub sector under business services.

Under GATS, WTO member States are required to allow the supply of services in four (4) modes: (a) from the territory of one country to another (cross-border); in the territory of one country to service consumers of another country (consumption abroad); by a service supplier of one country through commercial presence in the territory of another country; and by a service supplier of one country through presence of natural persons of a country in the territory of another country.

Upon its inception, GATS itself required WTO Member States to engage in negotiations for progressive liberalization within five years of the signing thereof.

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<sup>1</sup> *WTO membership stood at 144 countries as of 1st January, 2002*

In this regard, at the fourth Ministerial Conference held in Doha, Qatar, in November, 2001, WTO Member States agreed to begin a new comprehensive round of negotiations.

Most importantly, the Doha Agreement, (also referred to as Doha Ministerial Declaration or Doha Agenda) specified the dates for various stages of the negotiations and the date by which the final negotiations must be completed. According to paragraph 15 thereof, WTO Member States are to submit their initial 'requests' for specific commitments to other countries by June 30, 2002, initial 'offers' of specific commitments (liberalization) by March 15, 2003 and the final round of negotiations is to be completed no later than January 1, 2005.

In the regional arena, the legal framework for liberalization of trade in services within the EA region is established by article 104 of the Treaty for the establishment of the East African Community (EAC) which mandates partner states to adopt measures to achieve the free movement of persons, labour and services and to ensure the enjoyment of the right of establishment and residence of their citizens within the community.

There are benefits of regional integration in professional services trade among them improved (good) governance of institutions, increased regional professional services market and enhancement of economies of scale and competition in the professional services delivery leading to a cost effective professional services sector, and hence improved social and economic development. Crucially, increasing access to regional professional services market is the essential first step in building capacity for global competitiveness.

The benefits notwithstanding, there exist barriers to regional integration of trade in professional services. These are both legal and administrative and include licensing requirements, visa requirements, expensive administrative procedures, lack of mutual recognition for professional certification and bias in favor of western foreign professional services providers. Since regional integration between and among developing countries is the essential first step in building capacity for global competition, it is imperative that measures be put in place to eliminate these barriers.

The three East African countries have made international commitments to

liberalize their markets for trade in services under the GATS. As a result of both the regional and global developments on liberalization, it is very important that professionals in East Africa understand that the trade representatives from their respective countries will be engaged in negotiations on liberalization of the professional service sectors in which they are engaged.

Consequently, since the negotiators are usually not professionals but government bureaucrats, it is imperative that the professionals be actively engaged in and seek to influence the negotiation process. To facilitate this, the professionals must first gain an understanding of the multilateral trading system as governed by the WTO. The workshop therefore provided an appropriate forum for the East African professionals to exchange views, discuss and propose strategies for streamlining the liberalization process.

## 1.2 Process

The Workshop formally got underway at 9.14 a.m. on Thursday, 25<sup>th</sup> April 2002 with the Executive Director, APSEA calling the meeting to order. The Chairman of the workshop Organizing Committee then acknowledged the organizations represented at the workshop and called upon the FES representative, to address the workshop. On behalf of FES, Dr. Schwartz, the Resident Director in Kenya welcomed the participants, commended APSEA for organizing the workshop in a professional manner and wished the participants fruitful deliberations.

While giving the welcome address, the chairman of APSEA explained the background of the workshop and said the purpose thereof was to provide an opportunity for professionals to assess their current status in relation to the global liberalization agenda and in the context of the mandate of World Trade Organization (WTO). The advantages of a regional approach to liberalization in professional services trade were underscored and the objectives of the workshop stated.

The workshop was then officially opened by Hon. K.N.K. Biwott, EGH, MP, Minister for Trade and Industry, Kenya whose speech was read on his behalf by Hon. A.A.A. Ekirapa, an Assistant Minister in the same Ministry. Mr. Biwott challenged professionals to be proactive in matters that affect them.

During the four sessions that followed, presentations were made. These were then put in context by discussants before opening up the floor for plenary discussions during which participants gave their comments and asked questions. In the penultimate session, the workshop broke out into three groups. Each was assigned specific topics to deliberate. The group findings were reported back during the last session whereat the workshop resolutions were also arrived at.

## II: Summary and synopsis of papers presented and discussions

### 2.1 The Case for Regional Integration in Professional Services<sup>2</sup>

The Treaty for the establishment of the East African Community (EACT) establishes the requisite legal framework for regional integration. Articles 127 – 129 thereof stipulate that the regional integration and development in East Africa is to be people centered and private sector driven with the role of the governments being that of creating an enabling environment for the private sector to thrive and the people to benefit by improving their living standards.

In this regard, EAC has held various dialogue sessions with the private sector in order to develop an all-inclusive strategy for private sector development in the East African region. The objectives of the strategy are:

- (a) to put in place mechanisms for implementing the concept of private sector-led integration process and
- (b) to put in place a strategy to manage policies to encourage a pro-active private sector which would be able to take advantage of the opportunities created by the globalization process.

In the process of globalization, for a country to be recognized globally, they must be globally competitive. The challenge the EA countries face today is therefore

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<sup>2</sup> *Paper presented by Mushega A.N.*

to gain international competitiveness while at the same time tackling other development challenges. Individually, the task is difficult, thus the formation of the EAC. The fundamental basis for the creation of EAC is the pooling together of the economic, social, human and natural resources available in the region with a view to not only addressing the development challenges but also increasing the region's international competitiveness. This makes a very strong case on the benefits of regional integration.

The shared objectives for pulling together for regional integration would be: trade creation, production efficiency, economies of scale, efficiency gains through policy harmonization and coordination; reduced vulnerability from external shocks and instability induced by uncertainties in the rest of the world; developing common infrastructure necessary for enhancing rapid economic growth and development; creating a single and viable investment area for both domestic and foreign investment and; creating opportunities and higher incomes which ensure that the people afford to utilize professional services.

In the long run, efficient regional integration will ensure that the Partner States increase their external trade, improve their competitiveness and attract FDI while at the same time strengthening the ability of the EA countries to integrate into the global economy through exchange of goods, services and financial assets.

Regional integration whether in goods or professional services requires that the private sector in the region should brace itself to face the challenges of competition. Evidently, both private sector and professional services traders in the region are weak due to various factors. There is therefore urgent need for APSEA as an umbrella professional body to formulate strategic plans that would guide its vision and mission in order for it to play its role in the process of regional integration.

A private sector driven integration process poses a challenge to APSEA to develop mechanisms for closer regional integration and greater regional participation. In this respect, APSEA must establish data on:

- ▶ The actual/potential number of professionals in each partner state and the trades/ sectors they are engaged in;
- ▶ The sectors with either surplus or imbalances of professional service providers;

- ▶ Areas of comparative advantage and how they can be tapped for the benefit of the people;
- ▶ The modes of supply to be given preference- commercial presence or presence of natural persons;
- ▶ The professions which are ready and willing to take the lead in championing regional integration.

East Africa has lost a lot of professionals to the Southern African region, the EU and USA as a result of which a lot of strain has been experienced in the delivery of essential services. Although highly trained with scarce resources from the states, these professionals are however not able to establish a commercial presence in the states where they work but are rather in the employment of the Governments and Government institutions. There is need to create linkages and strategic alliances with these professionals outside the EAC borders.

In order to facilitate the process of regional integration for the private sector and professional services development, EAC has provided the forum to negotiate on harmonization of: the educational curriculum, examinations and standards; fiscal and monetary policies; procedures for issuance of work permits, charges and right of establishment and residency; employment policies and labour laws; and facilitation of free movement of persons, labor, capital, goods and services.

The integration model with its costs and benefits has, for example, not been fully marketed to the private sector and therefore, many private sector organizations are yet to fully appreciate the importance of regional integration and the benefits to be derived from it. This together with other challenges including low capitalization and industrialization, inadequate infrastructure, poor management skills, questionable ethics, low international competitiveness and inadequate financial discipline stand in the way of regional integration. The challenges notwithstanding, the task is manageable since there is political will among the heads of states.

There is need to focus on capacity to ensure that diversity is a source of strength. The ultimate goal of integration will be the improvement of the living conditions of the people of EA, free movement and interaction in trade or professional services in fulfillment of their dreams and ambitions.

During the plenary session that followed, it was established that the process of integration was taking a long time because of the different levels of development. The one at the very rear cannot be pushed too fast and the process of integration must therefore move at a comfortable pace for all the partners. Integration is a give and take process and the issue of compensation for those who lose out because of integration is even being considered.

## 2.2 GATS Rules and Regulations Affecting Professional Services and the Doha Agenda<sup>3</sup>

During the Uruguay round of negotiations, Agreement on Trade in Services was not concluded but was merely stated to be 'work in progress.' GATS' Article XIX clearly spells this out. In the minds of the members of WTO however, further talks on services were supposed to start immediately after the Uruguay round and indeed, GATS came into force in 2000.

The Doha Agenda does not create a new mandate as the same was already there in Article XIX of GATS. Doha declaration merely endorses the work already done, re-affirms the negotiating guidelines and procedures but goes a step further to set out guidelines and procedures for negotiations. Crucially, it sets out key dates for negotiations on services. This is an important role as under the Uruguay round, there was no time frame. Without time frame, there can never be results in negotiations. Doha deadlines are:

- March 2001- negotiations on guidelines and procedures
- 30<sup>th</sup> June 2002- request for market access on whatever areas/ services in particular markets.
- 31<sup>st</sup> March 2003- initial offers of market access- offers may not be 100% of request. The offers should lead to negotiations.
- 5<sup>th</sup> Ministerial meeting in 2003- stock taking.
- 1<sup>st</sup> January 2005- deadline for a single undertaking.

There is a higher level of regional integration of trade in goods than there is in the area of trade in services. However, the principles applicable to services are the same as those applicable to goods. GATS Article V makes provision for 'services

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<sup>3</sup> Paper presented by Chatsika W.

and Regional Integration'. Although GATS agreement is aimed at progressive integration of trade in services globally, it permits greater regional integration. For greater regional integration to be valid however, the following WTO rules must be complied with:

- i. **Substantial sectional coverage:** you cannot have greater integration in only one sector.
- ii **Elimination of substantially all discriminations** for example requirements of a local partner
- iii **Consideration to wider economic integration of the members in question:** there should be wider economic integration.

Where parties are developing countries, Article V gives flexibility on the conditions especially in the area of elimination of discrimination. Integration arrangements should not however be designed to raise overall barriers with respect to trade in services with other members. This means barriers cannot be raised beyond what they were before integration. Consequently, you can lower but not raise them.

Trade barriers and domestic regulation

1. **Market access:** Article XVI calls for all WTO members to give market access to all WTO members by eliminating all quantitative restrictions. A member however has to commit itself to opening up a particular sector in order to be bound. There is therefore no absolute requirement to open up under the WTO, just encouragement.

GATS provides only the regulatory framework. If a country commits itself to opening up, then it becomes bound by the following rules:

- **Market access** to all services suppliers from all WTO members with respect to the services opened up.
  - **Most Favored Nation rule** which requires to be given only in respect to the opened up sectors.
  - **Generalized National Treatment rule** which requires that a country cannot discriminate between domestic and foreign services suppliers
2. **Domestic regulation:** Under Article VI, domestic power to regulate is not lost once a sector has been opened up. Certain principles must however

apply among them the requirement that the rules must be reasonable, objective and impartial.

The GATS distinguishes between four modes of supplying services: cross-border trade, consumption abroad, commercial presence, and presence of natural persons.

- ▶ **Cross-border trade** is defined to cover services flows from the territory of one Member into the territory of another Member (e.g. banking or architectural services transmitted via telecommunications or mail);
- ▶ **Consumption abroad** refers to situations where a service consumer (e.g. tourist or patient) moves into another Member's territory to obtain a service;
- ▶ **Commercial presence** implies that a service supplier of one Member establishes a territorial presence, including through ownership or lease of premises, in another Member's territory to provide a service (e.g. domestic subsidiaries of foreign insurance companies or hotel chains); and
- ▶ **Presence of natural persons** consists of persons of one Member entering the territory of another Member to supply a service (e.g. accountants, doctors or teachers). Members however remain free to operate measures regarding citizenship, residence or access to the employment market on a permanent basis.

The services sector is fast growing than the goods and industry sector because it needs less capital to set up and also that implementation of WTO rules required countries to enact WTO rules-compliant legislation.

During plenary discussions, a concern was raised regarding monitoring implementation of Article XIX GATS on the ground that whereas there may be non-discriminatory laws, people still have a choice to buy or not buy and may therefore be discriminatory in their consumption choices. It was clarified that GATS' non –discrimination only applies to national laws. This is the only area that WTO can regulate as it has no jurisdiction when it comes to other forms of discrimination.

Regarding failure to meet the Doha Declaration deadlines, it was explained that unless the same are extended, if a country misses the deadline, they will be completely shut out. Countries should avoid this because they might be forced to offer market access to others whereas they cannot access others' markets.

## 2.3 Supporting Development of Capacity and Competence for Global Competitiveness in Professional Services Trade<sup>4</sup>

The relevant facts and features of professional services include human capital, diversity and interdisciplinary nature thereof, knowledge intensity, high regulation, the paramount importance of these services to public policy objectives and development concern of nations, and increasing trade across countries by different delivery systems, modalities and business techniques. Consequently, the main issues on professional services trade should include: internationalization of professional services; increase of the economic contribution and performance of professional services in more open economic environments; liberalization of professional services; supporting development capacities and competitiveness; and the challenges facing developing countries.

When considering the issue of how to strengthen competitiveness and level of performance in developing countries both the **national** and **international dimensions** should be addressed. At the national level, both the best and the riskiest formulas to foster an economically and socially sustainable liberalization of professional services must be identified and assessed. This can be done by strengthening and implementing policy reforms to capitalize growth trends of the global economy, putting in place new systems of education to upgrade Human Resources in order to support the delivery of professional services in an open competitive environment, implementing enabling export policies and liberalizing business ownership so as to maximize resource endowment and competitive advantages.

At the international level, the trade policy framework and strategies must be identified and implemented. This calls for a national regulatory regime that is compatible with multilateral obligations, especially the GATS, conclusion of sub-regional trade integration agreements and partnership agreements with other trading blocks for example the European Union.

On the issue of multilateral liberalization, the ongoing round of negotiations under the GATS offers an opportunity for WTO members to improve the scope, coverage and level of their commitments of professional services. The negotiations are therefore particularly important for developing countries to make effective

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<sup>4</sup> Paper presented by Benavides D.D.

domestic provisions of GATS' in an attempt to strengthen their domestic services capacity and better utilization of their competitive advantages. In this regard, a **development friendly** outcome of the GATS negotiations would therefore be one that ensures: effective implementation of GATS; negotiating proposals are made by African countries; movement of natural persons; and dismantling of barriers to trade in the professional services sub-sectors of interest to developing countries.

The most important barriers to be dismantled are those impeding cross- border supplies, consumption abroad, and establishment of commercial presence in another country and movement of persons. When preparing negotiation positions, developing countries should consider certain key elements which must include assessment of both **qualitative** and **quantitative** indicators. In particular, the following two must be seriously considered:

- To what extent the implementation of the GATS contributes to achieving the **development goals** of the country or the sub-regional integration scheme;
- To what extent the implementation of the GATS contributes to the country's **export goals** in the area of services.

To facilitate integration, professional groups should first do the groundwork on sector-by-sector basis as the main problem lies in mutual recognition of professional qualifications. This is because professional societies are very protectionist. There is a paradox: whereas many people have studied in the west (developing countries spend a lot of money sending their people to study there) there is however a problem when it comes to recognizing their professional qualification for purposes of working there. Partnership with government is also needed but usually, there is a problem with the flow of information. The private sector is not well informed and this impacts on their capacity to negotiate. There is therefore need for strategic partnerships in various areas for example between communities of professional associations and academic institutions, the professionals and government et cetera.

Plenary discussions established that the East African countries have not actually been restrictive and thus there has been no deliberate attempt to restrict entry.

Indeed, local associations of professionals have been affiliated to International Professional Societies and have had to conform to international standards which mandate, among other things, removal of barriers to entry. Therefore, whereas East African Countries were under no strict obligation to liberalize, there was already de facto liberalization.

## 2.4 Overcoming Barriers to Regional Integration in Professional Services Trade<sup>5</sup>

The pertinent issue here is the profile and status of trade in professional Services regionally. Although there has been some liberalization in professional services in the region, the area is little studied compared to trade in goods. Trade in services would therefore be rightly described as a second generation matter as compared to trade in goods while trade in professional services would be said to be a third generation matter. Most trade agreements therefore naturally focus on goods and economic services such as insurance, banking, capital market and tourism. They are rarely on professional services. The challenge therefore is how to make professional services have a higher profile.

Barriers to integration in the East African context include: nationality and residency requirements; professional registration requirements; local licensing requirements; taxation for cross-national practices; competitiveness and; Nationalistic sentiments. These barriers can be overcome by adopting the following measures:

- (a) **Nationality and residence requirements:** National laws in East Africa should be amended to give equal status to all East African citizens in all aspects of commercial and criminal law.
- (b) **Professional registration:** Each other's registration and licensing requirements should be recognized so that any professional registered in one country is able to practice in another.
- (c) **Local licensing:** once all East Africans are equal before the law, local licensing authorities should then treat them as if they are nationals.
- (d) **Taxation:** one should pay the local pay roll, V.A.T and local licensing fees but be allowed to include these when paying final taxes in the country of origin.

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<sup>5</sup> Paper presented by Mwale S.M.

- (e) **Nationalistic sentiments:** we should think of ourselves as East Africans first, be treated equally and also allowed free movement.
- (f) **Competitiveness:** economies of scale, cost competitiveness et cetera should be factored in.

On the other hand, greater integration can be achieved in East Africa by: making the ‘East African’ a reality- both people and legal entities; mutual recognition of credentials; removal of legal and administrative barriers; advocacy- the profile of professional services should be raised to the same level with that of trade in traditional services.

During the plenary session, a participant wondered why political barriers had not been included in the list of barriers highlighted by the presenter whereupon it was clarified that there was a lot of political will to integrate noting that while there may still be a political hangover from the past, efforts are now geared towards minimizing this. Regarding advocacy, although this is not explicitly provided for in the EACT, the assumption is that it is to be there. With pluralism, market economy has come to be accepted as the norm and civil society is seen as a vital aspect of the larger society. It is up to the market however to emphasize and lobby relevant issues.

## 2.5 Integration of Professional Services: The European Union Experience<sup>6</sup>

The Treaty of Rome signed in 1957, provides for the creation of a common market based upon free movement of goods, persons, services and capital. Integration of professional services within the EU is therefore an important aspect of free movement of persons and of services, which, together with the free movement of goods and of capital form the foundation of the EU’s single market.

Access to employment in another member state is a fundamental aspect of the free movement of persons within the EU as a wide area of mobility presents a large number of opportunities for workers to find a job and for employers to find people with adequate skills, thereby enhancing employment and economic growth.

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<sup>6</sup> Paper presented by Quince G.

The right to free movement of workers has been made possible by establishment of a system to ensure the mutual recognition of professional services, among other factors.

Services represent the fastest growing sector of modern economies and in the EU, the service sector is now more than double the size of the manufacturing sector and the trend is expected to continue. For the internal market to function efficiently however, a regulatory environment that facilitates freedom of movement would be imperative.

The steps taken to set up the internal market were: the creation of a customs Union on 1st July, 1968; publication in 1985 of a White paper on the completion of the internal market wherein was identified 279 legislative measures that were needed to remove obstacles to trade within the community and a schedule for the creation of the single European Market by 31<sup>st</sup> December, 1992 was put forward; and finally, the setting up of the internal market within the community by 1<sup>st</sup> December, 1993.

In the EU, the foundations of free movement, encompasses the following aspects:

- (i) **The principle of non-discrimination** which requires that imported goods should not be treated differently to domestic goods. At the instigation of the European Court of Justice (ECJ), the principle has been adapted to other circumstances.
- (ii) **Mutual recognition:** this principle establishes that the legislation of another member state is equivalent in its effects to domestic legislation. Though it applies chiefly to products, it has had an impact on performance of services where it underlies the concept of mutual recognition of professional qualifications.
- (iii) **Community legislation:** directives have been adopted to harmonize national rules on foundations which engender mutual confidence between the member states.

The Four Freedoms.

1. **Freedom of movement of goods:** follows from the abolition of customs duties and charges having equivalent effects, elimination of all barriers still impeding free movement, (these were defined with the assistance of the

ECJ) and ultimately, the 1985 White Paper allowed the community to eliminate physical barriers (border checks and customs formalities).

2. **Freedoms of movement of capital:** the Treaty prohibits all restrictions on capital movements (investments) and all restrictions on payments (for goods or services). States may however lay down procedures for declaring capital movements for administrative or statistical information purposes, measures associated with public policy and security. The measures and procedures must not be means of arbitrary discrimination or a disguised restriction on the free movement of capital and payment.
3. **Freedoms of movement of persons:** This derives from the provisions on the European Citizenship' which provides that all citizens of the Union have the right to move and reside freely within the territory of the member states, subject to the limitations laid down by the EC Treaty and the provisions taken for its implementation.
4. **Freedoms of movement of services:** this concept is closely linked to the right of establishment. In both cases, the non-national individual or business must be given national treatment. In this regard, the conditions applied must not be different from those applied to nationals or national businesses. Whereas the freedom to perform services allows individuals or businesses to provide services in another member state, Community businesses to set up and perform their activity in another member state. Services linked to the Civil Service are excluded. This is justified on the grounds of public policy, public security and public health.

#### Global Liberalization of Services: The EU Position

Within the WTO framework, the EU is also leading the drive to liberalize trade in services worldwide. Since 1995, world trade in services has come under the General Agreement on trade in services (GATS), one of the fruits of the Uruguay round. Whereas the basic rules and principles for the liberalization of trade in services have been agreed and implementation is on-going, much however remains to be done. EU is convinced that the comprehensive New Round agreed at Doha will give a significant boost to services liberalization.

Professional services trade is an important prerequisite for economic growth. For developing countries, granting liberal market access for these services is indispensable for attracting Foreign Direct Investment, and for promoting the transfer of knowledge. EU's proposals in this area therefore aim at reducing unnecessary trade barriers without affecting the quality of services, protection of consumers, public safety, as well as safeguarding the rule of law.

During plenary discussions, it was established that freedom of movement only applies to EU nationals and businesses. Non EU persons cannot invoke freedom of movement, even those trained within the EU. Similarly, EU nationals trained outside the EU cannot also invoke the non-discrimination principle. This is however gradually breaking down because of the decisions of the European Court of Justice.

Mutual recognition of diplomas and certificates would not necessarily guarantee competence. As a first step in addressing this, EU students are treated as national students in all member states. Indeed, many EU students now spend a year in another country as a part of their degree. The major barrier to movement in the EU is however language. There are 12 languages in EU and this explains why many people still live and work in their countries. Professional competence is however a matter for national professional bodies. It is also an issue of trust so that if one has qualified in one country, this should be accepted in another. There are national boards that assess competence, paper qualifications aside.

On the issue of distribution, whereas there are many programs in the EU, this is however largely determined by the market rules of demand and supply. Civil service is however excluded and many areas thereof are still in the hands of states. Most states are not even willing to give them up as they want to remain sovereign.

### 3. Recommendations, Outcomes and Way Forward

The penultimate session comprised of group discussions on two broad topics: developing appropriate legal and institutional framework for effective regional trade in professional services and strategies; and action plans for promotion of

regional integration in professional services trade. The findings were reported to the workshop during the last session which, together with general conclusions drawn from the presentations made, discussant views and open space discussions formed the basis of the recommendations, outcomes, resolutions and the proposed way forward. The same were as follows:

- (i). There is urgent need to promote regional integration in professional services trade as the essential first step in building capacity for global competition;
- (ii). Legal and administrative barriers to regional integration in professional services trade do exist and therefore, there is need to develop an appropriate legal & institutional framework for effective regional trade in professional services. The barriers and possible solutions thereto include:

Barrier	Proposed Solution
i. Nationality and residency requirements	Evaluation of national treatment status
ii. Registration requirement	Mutual recognition of professional qualifications and with time, harmonization of registration systems
iii. Local licensing requirement	Equal treatment of all nationals in the eyes of the law
iv. Local Partner requirement	Should be removed where it is in existence
v. Taxation for cross-national practices	Harmonization of tax laws and implementation of double taxation rule
vi. Competitiveness	Building adequate capacity
vii. Nationalistic sentiments	Sensitization of people/ public awareness
viii. Lack of effective leadership from APSEA	Steering committee to be formed to look into revitalization and restructuring of APSEA.
ix. Political barriers	Cultivation of political will

- (iii). It is imperative that capacity and competence be built in order to support development of professional trade in the region by identifying and employing viable strategies as well as conceiving and implementing an appropriate action plan. Building capacity means strengthening performance of professionals on national, regional and at international levels. **Strategies** that could be employed towards this end include: embracing information technology to improve performance; seeking direct support from willing bilateral or multilateral donors; increasing margin of national preference for local professional services; exchange programs to train current and upcoming professions on negotiating skills and better understanding of the regional and international business environment; and strengthening lobbying mechanisms available to professionals in the region.

An **Action Plan** for promotion of regional integration in professional services trade would include: institution building for example the creation of one E.A Federation of Professional Services providers with national chapters; intensive training to prepare new labor force, upgrading skills and also create better understanding of global business dynamics; sharing experiences by different countries and professionals; creating modalities for partnership among private sector in order to strengthen lobbying mechanisms and; networking with other associations.

- (iv). The governments of the region be urged to further integrate professionals in their countries in all multilateral trade negotiations and to ensure that trade in professional services is mainstreamed in all future negotiations.
- (v). To facilitate regional integration in professional services trade, APSEA should be restructured to be an inclusive regional umbrella professional organization. In this respect, two representatives each from Uganda and Tanzania were included in a steering committee to be set up at APSEA.
- (vi). In view of the need to create regional professional capacity and competence for global competition, the restructured APSEA was mandated to approach EAC, COMESA, ITC, UNCTAD, WTO and other donors for technical and financial assistance, capacity building and empowerment for purposes of effectively negotiating and dealing with the rest of the world.

# Appendix 1:

## Papers Presented at the workshop

1. **Benavides D.D.,**  
“Supporting Development of Capacity and Competence in LDC for Global Competitiveness in Professional Services Trade”<sup>4</sup>
2. **Chatsika W.,**  
“Professional Services and the GATS: Impact of the WTO multilateral Liberalization of Trade in Services on Professional Services”<sup>3</sup>
3. **Mushega A. N.**  
“The Case for Regional Integration in Professional Services Trade”<sup>2</sup>
4. **Mwale S.M.,**  
“Overcoming Barriers to Regional Integration in Professional Services Trade”<sup>5</sup>
5. **Quince G.,**  
“Integration of Professional Services Trade- the European Union Experience”<sup>6</sup>

# Appendix 2:

## List of Participants:

### Tanzania

Dr. Samuel M. Nyantahe,	<b>Director</b>	Daima Associates.
Dr. Joseph Kahamba	<b>President</b>	Medical Association of Tanzania.
Bubelwa E. Kaiza	<b>Executive Director</b>	FORDIA.
Abraham Marress	<b>Registrar</b>	Architecture and Quantity Surveyors Board.
Prof. B.L.M Mwamila	<b>Chairman</b>	FARB.
Peter Kalambo	<b>Research Teacher</b>	..
Elizabeth Shekalaghe	..	Pharmacy Board.
Ali O. Makamba	..	Engineering Registration Board.

### Uganda

Jackson Muhwezi	..	Uganda Society of Architects.
Dr. Frank Mwesigye	..	Uganda Medical Association.
Ruth Nansanje Kirinda	..	Federation of Ugandan Consultants.
David Ssebirumbi	<b>Administrative Secretary</b>	Uganda Insurers Association.
Gerald Mbalire Kisanya	<b>Chief Executive</b>	Institute of Accountants.
Geoffrey Bakunda	<b>Vice Chairman</b>	Uganda Services Exporters Association.
George W. Katatumba	<b>Chairman</b>	Professional Centre of Uganda.
J. Semuyabi		Uganda Law Society.
Bategana Laurea B.	..	Ministry of Tourism, Trade and Industry.

### Kenya

Edward Mbugua Kamau	<b>M.D.</b>	KENFIT Limited.
G.K Ikiara	<b>Lecturer, I.D.IS</b>	University of Nairobi.
Ratna Hirani	<b>Engineer</b>	P.D.E.C APSEA.
Job Kihumba	<b>Executive Director</b>	APSEA.
Jones Ochola	<b>Executive Officer</b>	
J.E.R Oduol	<b>Vice Chairman</b>	Institute of Surveyors of Kenya.
Esther Kiragu	..	NNAK.
R.G Mwai	<b>Chairman</b>	APSEA.
Rosemary W. Njogu	..	ICPSK.
Vincent Oluoch	<b>Member</b>	APSEA.
Wilson Oluoch	..	I.S.K
Dr. Moses Ikiara	<b>Policy Analyst</b>	KIPPRA.

## Appendix 2 continued

S.M. Kamau	<b>Trade Officer</b>	Ministry of Trade and Industry.
L.M. Ndeeri	..	Department of External Trade.
R.K Kosgei	<b>Chairman</b>	ACEK.
Mwabu	<b>Treasurer</b>	GSK.
S.C.M. Wafula	<b>Vice Chairman</b>	APSEA.
Roland Schwartz	<b>Executive Director</b>	FES.
Collins Odote	<b>Programme Officer</b>	FES.
Jamila Mohammed		Chartered Institute of Accountants.
Joshua Wambua	<b>Chief Executive Officer</b>	ICPSK.
John Kamau	<b>Chairman</b>	K.A.R.
Margaret Njuwe	<b>Treasurer</b>	K.A.R.
Camisius Kirugara	<b>Council Member</b>	Chartered Institute of Arbitrators
Joseph K. Chege	<b>Hon. Treasurer</b>	APSEA.
Joseph Manyala	<b>Chief Public Relations Officer</b>	Ministry of Trade and Industry.
Prof. N. Opiyo Akech	<b>Chairman</b>	Geological Society of Kenya
B.A. Rabuku Omalla	<b>Secretary</b>	ALSK.
E.T. Gaturu	<b>Council Member</b>	L.S.K.
Jasper A.Okelo	..	University of Nairobi.
Theodora Aicho	<b>Chief Nurse</b>	Kenyatta National Hospital.
George M.Muli	..	K.S.P.
Dr. Mwangi J.G.	..	P.S.K.
Mr. P.M. Kamau	<b>Senior Economist</b>	Ministry of Trade and Industry.
George Mugenyu	<b>Vice Chairman</b>	Association of Licensed Surveyors.
Dr.Tom Ocholla	<b>Vice Chairman</b>	K.D.A.
Dr. Bernina Kisumbi	<b>Council Member</b>	K.D.A.
Faith Gichu	..	APSEA
Nyaga Jackline	..	APSEA
John Mogambi	..	APSEA
Kisiangani Emmanuel N.	..	APSEA
Wanjiru Rubia	..	APSEA
<b>International Agencies</b>		
Willie Chatsika	<b>Legal Officer</b>	WTO
Dr. David Diaz	..	UNCTAD