



trade hot topics

Integrating Development into EPAs: The Case of Services

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Background

As of December 2008, thirty-five of the 79 members of the African, Caribbean and Pacific Group of States (ACP) had initialled/signed Economic Partnership Agreements (EPAs) with the European Union. These EPAs are to replace the non-reciprocal preferential trading regimes that have existed under the Lomé/Cotonou Agreements since 1975. Under the Cotonou Partnership Agreement, the ACP and EU member states had agreed to negotiate World Trade Organization (WTO) compatible new trading arrangements that would enter into force at the end of the WTO waiver on 1 January 2008. However, until now only the CARIFORUM region has signed a 'full EPA', incorporating trade in both goods and services along with commitments on other trade-related areas. Of the remaining ACP countries, 21 have initialled Interim 'Goods-only' EPAs with commitments to move towards negotiation of 'full EPAs'.

The EU-ACP economic and trading relationship in services is a hugely asymmetrical one in terms of size and levels of development of the partners. Services comprise the backbone of the EU member economies. The average share of services in the EU is nearly 80 per cent as compared with around 50 per cent for the ACP states. And, while the EU is the largest services exporter in the world, for most ACP countries (with the exception of the Caribbean),

services comprise very little of their external trade. The ACP share in total EU services trade (imports and exports combined) is only around 5 per cent. This asymmetry carries over into the available statistical data on services, the sophistication of regulatory structures, the knowledge of services industries, and the international comparative advantage in services – all of which are severely lacking in most ACP economies.

However, it would be a mistake to think that the importance of services for economic development depends upon size or upon the importance of services in GDP or in trade. Having more efficient services sectors is crucial to economic growth as they provide inputs to all aspects of production. Many ACP countries are currently less efficient because they do not have efficient infrastructure services or because their markets are closed to service import opportunities, which, in turn, inhibits exporting opportunities. Thus liberalisation of trade in services, allowing for this access in a development friendly manner, is generally considered to be positive in terms of benefiting consumers and improving competitiveness. Notwithstanding, the asymmetrical nature of services trade and the level of sophistication and competitiveness in services between the EU and its ACP partners imply that the EPAs negotiated between the EU and the ACP

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regions must reflect this asymmetry in the services/ investment area. The example of the CARIFORUM region is instructive in this regard. However, as there are marked differences in levels of development and sophistication of the services sector between the Caribbean region and the African and Pacific regions, this issue of Commonwealth Trade Hot Topics closely examines the provisions of the CARIFORUM EPAs in services and sees in which ways they might be tailored to suit the interests and priorities of non-Caribbean ACP countries.

Main Issues in Services Trade Liberalisation within an Economic Integration Arrangement

One key objective in negotiating services trade liberalisation within an economic integration arrangement is to make all such agreements compatible with WTO provisions, namely, General Agreement on Tariffs and Trade (GATT) Article XXIV for goods and General Agreement on Trade in Services (GATS) Article V for services. The requirements of the latter are set out in paragraph 1 and are well known in terms of the need for the agreement to have “... (a) substantial sectoral coverage (understood in terms of number of sectors, volume of trade affected and modes of supply)” and “(b) to provide for the absence or elimination of substantially all discrimination, ... between or among the parties, in the sectors covered (by the agreement) in terms of the (i) ... elimination of existing discriminatory measures, and/or (ii) prohibition of new or more discriminatory measures” (GATS Article V, para. 1 (a) and (b)).

The main issues to be determined by the parties negotiating trade in services liberalisation commitments within economic integration agreements are as follows:

- (i) Scope: Coverage of services in the arrangement (i.e. number of sectors/modes to be included/ liberalised)¹.
- (ii) Modality for liberalisation: The GATS positive list allows greater flexibility for developing members than the negative list approach (e.g. national treatment can be conditional). The EPAs are to be negotiated following this approach.
- (iii) Depth of disciplines: Issues that need to be decided include:
 - (a) Should commitments be binding at the level of the status quo (as they are in the CARIFORUM EPA) or should this not be a requirement?
 - (b) Should there be a standstill provision for services trade measures?
 - (c) Should there be disciplines on domestic regulation?

- (d) What type of regulatory disciplines (e.g. specific regulatory disciplines on service sectors such as telecoms, maritime transport, etc.) should be included in the agreement?
- (e) Should there be a requirement for future liberalisation (as there is in the CARIFORUM EPA)?
- (iv) Promoting development: Measures to be included to promote services development (such as, the provision of funding, technical assistance, training programmes, and access to information).

There is no requirement under the GATS for economic integration agreements concluded under Article V to be accompanied by any particular type of provisions to promote economic development; however, such agreements when concluded with developing countries (such as the EPAs) are to ensure that “... flexibility is provided for regarding the conditions set out in paragraph 1, particularly with reference to subparagraph (b) thereof, in accordance with the level of development of the countries concerned, both overall and in individual sectors and subsectors” (GATS Article V, para. 3(a)).

That is, the extent of services liberalisation expected by developing members should not be as great as that for developed members, with the nuances to be determined in the negotiations and subsequently evaluated by WTO members.

How can EPAs be development friendly?

For EPAs to be development friendly, they must help to address the serious constraints on services development and services trade that exist at present in the African and Pacific ACP regions, namely, the limited human resources, the general absence of infrastructure, and the inadequacy of regulations and financial resources. Also, the EPAs must offer significant service opportunities to ACP regions, well beyond the EU’s current offer in the Doha Development Agenda (DDA) in areas that are important to ACP states.

The services component of an EPA must be associated with concrete provisions to make Article IV, paragraph 1, of the GATS a reality, namely measures to:

- i) strengthen the domestic services capacity (of developing countries), its efficiency and competitiveness, inter alia through access to technology on a commercial basis;
- ii) improve access (of developing countries) to

¹ Note that there is no rule for how many sectors and modes fulfil this requirement.

distribution channels and information networks;
and

- iii) liberalise market access in sectors and modes of supply of export interest to them (developing countries).

The EPAs must provide market access opportunities in areas in which ACP service suppliers (existing or nascent) may have or develop competitive advantages, including in Mode 1 (cross-border trade) as well as in Mode 4 (i.e. the temporary movement of natural persons) for significant categories of workers from ACP states without quota restrictions for professional service suppliers in a number of sectors. And critically, the EPAs must include the allocation of specific funds to ACP regions and states for the improvement of their services regulatory frameworks and to increase the number of trained personnel and technical experts. Shaping the content of the services/investment component of the EPAs in this manner so that they will be development friendly is the challenge in front of ACP negotiators.

Trade options for ACP negotiators and consequences for negotiating with the EU

ACP states are not required by the WTO to sign EPAs on either goods or services, though the waiver coverage under the WTO for the non-reciprocal preferences with the EU under the Cotonou Agreement has come to an end (December 2007). ACP governments have options other than the negotiation of binding EPAs or reciprocal trade agreements. They can revert back to the generalised system of preferences (GSP) schemes of the EU for their trade relations with Europe, with the least developed countries among them opting for the 'everything but arms' GSP duty-free arrangement, and the other, ACP non-LDCs opting for the basic European Union GSP scheme or the GSP+ scheme, which comes with conditional requirements to sign on to and observe certain international conventions for the promotion of democracy and human rights.

However, all GSP schemes are unilaterally applied, time-bound, subject to renewal and conditionality (for many of them) and vary in their product coverage over time. Most importantly, the GSP scheme and the GSP+ scheme of the EU do not cover services but only goods. Thus, reverting to the GSP scheme will not be of use for the development and promotion of ACP service sectors. Given the critical nature of services for economic development and the need to attract investment into domestic services markets, the ACP states will not be served by this course of

action. And, eventually, many of the ACP states will most likely have an interest in promoting their services exports, and the GSP schemes will not be the vehicle for achieving this in EU markets.

Also, for those ACP states which wish to avail themselves of development assistance as an integral part of services regulatory reform for the promotion and development of their service sectors, including their movement of service personnel, the contractual EPA channel is the option that serves them best in the long run.

Development dimensions of signed EPA texts

The EPA concluded by the CARIFORUM countries is quite innovative as concerns the services and investment components, which in some respects goes well beyond the WTO. The CARIFORUM EPA contains certain development dimensions that are important for the ACP members and are highlighted below.

The market access opening for services trade is asymmetrical. ACP countries have included fewer sectors in the final agreement (94 per cent for the EU, 75 per cent for middle-income countries in CARIFORUM, 65 per cent for LDCs) in terms of share of the sectors subject to scheduled commitments.

The EU has included commitments of importance to developing states in the Caribbean, such as removal of nationality requirements, some residency requirements, and limitations on juridical form.

The EU has included improved commitments in commercial presence in the health sector and in private education services.

The EU has provided greater opening in Mode 4 through increased quotas for professional service providers, which goes beyond the current offer under the WTO negotiations.

To promote trade in professional services from Caribbean providers, the CARIFORUM accords priority to recognition efforts in four sectors – accountancy, architecture, engineering and tourism – and mandates governments to encourage professional bodies to negotiate Mutual Recognition Agreements (MRAs) in these areas three years after the agreement's entry into force.

The EPA creates sector-specific frameworks for regulatory co-operation in the following areas: computer services, courier services, telecoms, financial services, international maritime transport services, and tourism services. These frameworks comprise an integral part of the agreement.

In the important sector of tourism, distinct development co-operation provisions have been included in areas requested by CARIFORUM in order to promote tourism and make tourist services more efficient in the Caribbean.

Specific disciplines have been included for maritime transport to guarantee national treatment and to implement competition policy measures (for example, cargo sharing arrangements are forbidden) that fill in gaps in the WTO and respond to the Cotonou Agreement, which had specifically earmarked this sector for liberalisation.

The CARIFORUM EPA includes a significant commitment for development assistance, as is commented upon below.

The CARIFORUM includes a Protocol on Cultural Co-operation, which although a framework for co-operation, goes beyond the WTO in its attempt to facilitate the temporary entry of ACP artists, performers, etc.

CARIFORUM states have maintained several restrictions on Mode 3 on the type of commercial presence and investment; they have also maintained restrictions on Mode 4 through allowing only key personnel and graduates not available locally to enter their markets, and have retained some discriminatory licensing and registration requirements, thus constituting an asymmetrical obligation as compared with the EU commitments on Mode 4.

CARIFORUM members are allowed to inscribe any non-conforming measures that existed at the time of the concluded EPA within two years of signature of agreement.

The signing of the EPA has not necessarily meant considerable market opening by CARIFORUM members. While the scope of CARIFORUM commitments expanded beyond their GATS schedules, the actual degree of liberalisation of previously existing commitments is limited.

In the CARIFORUM, development/technical assistance is an integral part of the agreement and the implementation process. The EU has set aside the amount of €165 million to fund projects and technical assistance efforts within the EPA once it has entered into force, in accordance with the priorities set out in the Regional Indicative Plan prepared by the CARIFORUM ACP members. Thus, the funds will be spent specifically on implementation of the EPA in areas requested by

CARIFORUM governments who may also be able to access 'incentive amounts'. Individual EU member states have indicated that additional amounts will be given to implement Aid for Trade programmes, including for EPA implementation.

The cost of implementing EPA provisions in services and investment for CARIFORUM states has been estimated at €15.6 million, which means that the EU funds available can more than cover the region's implementation needs.

Challenges currently faced in EPA negotiations

In the current EPA negotiations it appears that there are four major challenges or factors creating divergences between the parties. These are:

Different perceptions on degree of ambition required in services area: Although this should be guided by GATS Article V requirements in general, there are no firm guidelines in terms of required coverage in terms of specific number of sectors or modes of supply by sector. Nor is there a requirement that specific accompanying disciplines (such as competition policy and government procurement) be included in regional integration agreements, leaving this choice to governments.

Uneven knowledge of services sectors at national level: There is an uneven knowledge of the importance of services for economic development as well as knowledge of specific service sectors as between the EU and the ACP states. This makes definition of national policy positions more challenging for the latter, but absolutely imperative if the EPA negotiations are going to conclude satisfactorily for all parties.

Inadequate regulatory structures for services in ACP states: The level of regulatory sophistication as between the EU and the ACP states is very different. While EU members have a well developed jurisprudence on services as well as some EU-wide general competition policy provisions for network services (telecoms, transport, etc.), this is not the case for Africa or the Pacific. Without adequate regulation, opening services markets too soon can be counter-productive. Developing and implementing appropriate regulations takes time, resources and expertise.

Fragmentation of negotiating positions within ACP regional groupings: Within the ACP regional groupings in Africa and the Pacific, there has been a fragmentation of negotiating positions, with some members having signed Interim EPAs on services/

investment and others choosing not to do so. This has complicated negotiations from a regional perspective but should not make them impossible if a nucleus of states exists in each EPA region that wishes to move forward. Other states can then join these EPAs in the future.

Addressing and/or reconciling these divergences

The outstanding EPA negotiations may need an injection of a greater degree of flexibility. While the Caribbean states presented fairly well developed services economies, this is not the case with the large majority of ACP states in Africa and the Pacific. Thus EPA obligations in services by ACP partners may need to be less demanding and phased in over time.

While certain ACP states may be able to immediately take on contractual obligations to liberalise, others may only be in a position to do this after a period of preparation and awareness-building. In the latter case, binding commitments for access to EU development support for capacity- and awareness-building should also be made available in the EPA.

Preparatory Phase (immediately): for those ACP economies not in a position to liberalise trade in services or to finalise a list of services commitments for an EPA immediately, technical assistance would be provided. This time would be devoted to heightening awareness and knowledge of service sectors and to training services officials as well as to identifying possible export interests in services.

Phase 1 (at signing of agreement): immediate inclusion in the schedule of commitments of 50 per cent of services sectors (at choice) which would not necessarily involve liberalisation of such sectors but could involve commitments with limitations on market access and national treatment as long as the binding of the commitment is at the level of regulatory application; simultaneous provision of development support to help with the training of services experts and the design of appropriate services regulatory reforms.

Phase 2 (at a future date): inclusion of infrastructure service sectors when the national regulatory framework is adequate (i.e. laws are in place, regulatory agencies established and regulators trained). Among the sectors to be included in the EPA should be the infrastructure services, namely, telecommunications, financial services, maritime transport, distribution, and energy. In general, services markets should be opened for those services characterised by tendency to monopoly (network

services such as telecoms, energy, transport) or imperfect knowledge (financial services, professional services) only when the regulatory framework is adequate to prevent abuse of power, price discrimination and other forms of market abuse.

Phase 3 (depending upon evolution of ACP economies): requirement to increase number of service sectors in the EPA to 60 per cent (for example) for low-income ACP states once the importance of services reaches a certain level (say, two-thirds of GDP) and the percentage of services exports surpasses 10 per cent of total exports. The evaluation of “substantial sectoral coverage” required by GATS Article V would only be applied at the end of the three phases.

Although it is preferable to negotiate on a regional basis, it may also be necessary to approach this aspect as well with greater flexibility and negotiate under a variable geometry, allowing those ACP states that are ready to take on services commitments to finalise EPAs.

Conclusions

Services liberalisation should serve to promote greater economic efficiency in services. The developmental impact on ACP states of liberalising trade in services within the EPAs will depend, to a great extent, on the level of market-openings agreed and the subsequent reflection and implementation of these commitments within their domestic regulations.

Improving their services sectors can have tremendously beneficial impacts for ACP countries, particularly when market opening is accompanied by regulatory strengthening and/or reform, depending upon the sector in question. Making sure that technical assistance for regulatory reform and co-operation are integral parts of the agreement is fundamental. The CARIFORUM EPA contains many development-friendly provisions that could serve as useful examples for the negotiation of other EPAs, though these should be adapted as necessary.

EPAs should be viewed by the ACP states as tools to help foster the development of their services sectors and their economies, presenting opportunities to improve their regulatory frameworks and help promote the increased efficiency of services sectors through long-term stable market access and technical assistance to accompany services commitments and market opening measures.

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This Trade Hot Topic is brought out by the International Trade and Regional Co-operation (ITRC) Section of the Economic Affairs Division (EAD) of the Commonwealth Secretariat, which is the main intergovernmental agency of the Commonwealth - an association of 53 independent states, comprising large and small, developed and developing, landlocked and island economies - facilitating consultation and co-operation among member governments and countries in the common interest of their peoples and in the promotion of international consensus-building.

ITRC is entrusted with the responsibilities of undertaking policy-oriented research and analysis on trade and development issues and providing informed inputs into the related discourses involving Commonwealth members. The ITRC approach is to scan the trade and development landscape for areas where orthodox approaches are ineffective or where there are public policy failures or gaps, and to seek heterodox approaches to address those. Its work plan is flexible to enable quick response to emerging issues in the international trading environment that impact particularly on two highly vulnerable Commonwealth constituencies - least developed countries (LDCs) and small states.

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ITRC undertakes activities principally in three broad areas:

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ITRC's most recent activities focus on assisting member states in the WTO Doha Round and the Economic Partnership Agreement (EPA) negotiations involving the African, Caribbean and Pacific countries (ACP) and the European Union (EU), undertaking analytical work on a range of trade policy and development issues, and supporting workshops/dialogues for facilitating consensus-building on issues of Commonwealth members' interest, exchange of ideas, and disseminating results from informed analysis.

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27 January 2009: ACP-EU High Level Political Meeting on EPAs, London, UK

8-10 October 2008: African Workshop on Economic Partnership Agreements - Reaping the Benefits on the EPAs, held in Addis Ababa, Ethiopia

9-10 September 2008: Meeting on Private Enterprises and EPAs, held in Addis Ababa, Ethiopia

2-3 September 2008: Regional Meeting on Climate Change and Trade, held in Port Louis, Mauritius

28-30 August 2008: 1st South Asian Economic Summit, held in Colombo, Sri Lanka

28-29 August 2008: Regional Dialogue on ACP-EU Fisheries Relations, held in Windhoek, Namibia

12-13 August 2008: Global Partnership for Development, held in New Delhi, India

4-5 August 2008: Business Implications of EPA Negotiations for the East African Community (EAC), held in Kigali, Rwanda

25 July 2008: Seminar on Commonwealth Trade Policy Activities, held in London, UK

8 July 2008: Meeting of Geneva Group of Commonwealth Ambassadors, held in Geneva, Switzerland

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