

LIBERALIZATION OF INVESTMENT AND SERVICES IN EPA NEGOTIATIONS: Options and Dangers

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Recent free trade agreements (FTAs) cover more and more liberalization of trade in services as well as liberalization of investment and protection of foreign (service) investors. Indeed, trade and investment have become complementary as trade liberalization makes imports of inputs for investors' operations easier and cheaper, and makes it easier for investors to export their products or services to other countries. The EU argues that reciprocity in trade relations, as envisaged by the Economic Partnership Agreements (EPAs), will attract investment and increase productivity¹.

It should be noted that "trade in services" in FTAs includes foreign investment in services, i.e. foreign establishment by starting new services operations or buying up local service operators. This is also the case in the WTO agreement on Trade in Services (GATS).

A main argument in favour of investment liberalization and protection measures is that they create conditions which attract "much needed" foreign investment. However, no study has been able to give evidence that investment agreements have resulted in more or better foreign direct investment (FDI)².

African, Caribbean and Pacific (ACP) countries are exporting little services (1.5% of world exports in 2000³) nor do they have many investors abroad. This means that EPAs provides

¹ European Commission, Economic partnership Agreements Means and objectives, (viewed on 18 November at http://europa.eu.int/comm/trade/issues/bilateral/regions/acp/index_en.htm)

² S. Szepesi, Comparing EU free trade agreements: Investment, ECDPM InBrief 6D, Maastricht, 2004, p. 2

³ D. W. te Velde, Special and differential treatment in Post-Cotonou Services negotiations, Trade Negotiations Insights, ECDPM, May 2004, p. 4-5.

much less potential export benefits to the ACP than the EU who is the world's major exporter and importer of services⁴ and a major investor. The largest 8 ACP exporters, representing more than half of ACP services exports are Dominican Republic, Bahamas, Barbados, Jamaica, Kenya, Mauritius, Nigeria and Zimbabwe. The largest export sectors are travel, transport, business services and government services⁵. The ACP might have a potential in exports of health services and services personnel ("mode 4") in other services. However, the 'export' of experienced personnel needs to be weighed against the needs of the country and loss of expertise.

Liberalization of services and importing new services is a complex issue that needs to be accompanied with the necessary measures and regulations to reap the possible benefits and avoid the current problems of foreign services and their providers in developing countries. Problems of foreign service providers to be dealt with are for instance: the focus on rich clients and neglect of poor consumers (e.g. in water, health and financial services), domination of the market and resulting abuses, focus on short term profits and repatriation of profits.

By indicating the options and dangers the ACP countries and their populations might face when negotiating services and investment liberalization in future EPAs, and by highlighting which provisions should be incorporated in EPAs for such negotiations to be of benefit to the ACP, this paper hopes to contribute to civil society discussions about EPAs and provide some advice to avoid the worst case scenario.

A. Possible outcomes of epa negotiations on services and investment

It is not clear yet in what liberalization of services and investment the EPA negotiations might result. In order to have an insight in the possible outcome of the EPA negotiations as they are currently under way, this paper looks at:

1. what the EU, the strongest negotiator, wants to achieve as incorporated in its mandate to the European Commission (EC) who is the EU negotiator;
2. what GATS rules say about regional agreements that liberalize trade in services;
3. what kind of liberalization of investment and trade in services has been achieved in FTAs which the EU signed with other countries or regions;
4. what was agreed so far between the EU and the ACP.

⁴ WTO, World Trade Report 2004, p. 21 (Appendix Tabel IA.2)

⁵ D. W. te Velde, Special and differential treatment in Post-Cotonou Services negotiations, Trade Negotiations Insights, ECDPM, May 2004, p. 5.

1. The EU mandate⁶

The EU wants the **negotiations on trade in services** to aim at:

- enhancing cooperation in all trade areas
- an asymmetrical liberalization process by which ACP countries will be allowed a certain level of 'flexibility' depending on their level of development
- consistency with the relevant WTO and GATS rules
- a transition period: no more than 10 years for the EU liberalisation commitments; flexible period for ACP countries, taking into account the constraints and development level;
- at least the same arrangements between ACP countries as the ACP countries apply to the EU;
- liberalization of maritime transport, unrestricted access to the international maritime transport market, non-discriminatory treatment of the parties' ships, and support the ACP States' efforts to develop and promote cost-effective and efficient maritime transport services (Article 42 of the Cotonou Agreement);
- exceptions for audiovisual services;
- progress in liberalizing of procurement of goods en services by governments through full transparency in procurement rules and seeking to negotiate progressive liberalisation and prohibition of discriminatory measures of procurement markets (provision on government procurement might also include measures on how governments have to buy services, including foreign services).

The EU wants the **negotiation process on trade in services** to be conducted as follows:

- The negotiations should start early enough to be concluded by the end of the preparatory period, or should start in 2006 at the latest if negotiations are postponed justified by particular economic, social and environmental constraints by the ACP countries. Due preparations should proceed the negotiations.
- No new or more discriminatory measures against foreign services and service providers should be introduced by either party after the beginning of the negotiations between the regional grouping and the EC.

The EU mandate (art. 6.2.) to negotiate **investment liberalization** aims at:

- A regulatory framework for foreign investors based on principles of non-discrimination, openness, transparency and stability, and general principles of protection of foreign

⁶ adopted by the Council on 17 June 2002; to be viewed at:
<http://www.epawatch.net/general/text.php?itemID=71&menuID=24>

investors as far reaching as already agreed in the competent international fora or bilaterally.

- Enhancing and stimulating mutually beneficial sustainable investment between the parties of an EPA "in accordance with the objective of 'reducing and eventually eradicating poverty' ".
- Respecting the respective competencies of the EU and its Member States who have the competence of negotiating more far reaching negotiate investment agreements as reflected in bilateral investment agreements (BITS).
- Seeking to negotiate further opening of the capital market and liberalization of capital flows beyond those linked to direct foreign investment, taking into account the need to develop an appropriate regulatory framework.
- Coherence between capital market obligations made within the framework of EPAs and other relevant agreements, including commitments under the GATS.

2. GATS possibilities for differential treatment of developing countries

The GATS agreement (Art. V) has provisions that discipline agreements to liberalize services between two or more parties. Such agreements should liberalize services sectors substantially and eliminate existing and future measures that discriminate, especially between domestic and foreign services. However, the conditions for liberalization by developing countries that are parties such free trade agreements on services can be more 'flexible'. This means that not all services sectors need to be covered by the free trade agreement and that particularly the prohibition of discriminatory measures can be done in accordance with the level of development of the countries concerned. Developing countries are allowed to provide among themselves more favourable treatment to services providers owned by "natural persons" (GATS Art. V.2.b. and V.6) - which would be applicable among ACP parties to EPAs.

Discussions are taking place at the WTO in the context of the current GATS negotiations to interpret GATS Art. V. Some proposals want to ensure that free trade agreements that include services do not exclude many sectors while eliminating substantially all discrimination against foreign services and their providers⁷. One of the points of discussions is how to interpret a "reasonable time-frame" to eliminate discriminatory measures: does this mean 10 years or more? When liberalization of certain services sectors does not take place at the time the agreement enters into force but will be covered by future talks, does this mean Art. V is adhered to?

These discussions indicate that some WTO members might not be keen in allowing much flexibility under Art. V, and that the level of asymmetrical liberalization allowed in services liberalizations under EPAs, as envisaged by the EU mandate, is not well defined. This might

⁷ Interview on 3 November 2004 with the C. Dominguez of the Permanent Mission of Chile to the WTO, Geneva.

put pressure on the EPA negotiations to try and make quite some liberalization commitments. In addition the GATS Council for Trade can scrutinize the implementation of such free trade agreements (GATS Art. 7).

3. EU FTA's achieve different levels of liberalization services, investment and capital flows⁸

The EU has so far signed FTAs with different degrees of liberalization of services and investment. The Trade, Development and Cooperation Agreement with South-Africa (TDCA, signed in 1999) and the Euro-Mediterranean Association Agreements (MED agreements signed with individual countries between 1995 and 2002) do not have provisions that lead to direct liberalization of investments and services. They contain clauses that allow such liberalization under the agreement in the future. These FTAs contain provisions to promote investment flows between the parties of the FTA, including through simplifying procedures and technical assistance.

However, these FTAs provide that capital flows related to investment (e.g. profit repatriation) should not be restricted as is foreseen in the GATS agreement (Art. XI) and commitments by IMF members. In the long run these FTA aims at full liberalization of capital movements (also non-FDI related)!

The FTAs which the EU signed with Mexico (in 1997) and Chili (in 2002) are much more far reaching. In addition to provisions of free movement of payments and capital, they provide market access and protection measures for foreign services and foreign service, mostly similar to those in GATS. Exceptionally, the EU - Chile FTA also grants full national treatment to EU investors in the agricultural and manufacturing sectors.

The FTAs concluded by the EU generally do not have so much far reaching provisions about protection of investors as BITs. More comprehensive BITs are concluded by the member states who, so far, wanted to retain their power to negotiate BITs and did not want the EC to have such power/competence.

In some regional or bilateral FTAs, reference is made that BITs can be negotiated with EU member states to provide for further protection of foreign investment.

⁸ Most information from this paragraph is mentioned in: S. Szepesi, Comparing EU free trade agreements: Investment, ECDPM InBrief 6D, Maastricht, 2004; H. Ullrich, Comparing EU free trade agreements: Services, ECDPM Inbrief 6C, Maastricht, [2004].

4. Directions already taken in the EPA negotiations and options left

Box: Options and decisions by the EU and ACP to negotiate liberalisation of services (1)

While ACP countries are in principle not obliged to start negotiations, the EU and the ACP did agree to extend their partnership to encompass the liberalization of services in accordance with the provisions of GATS (Cotonou Partnership Agreement/CPA articles 41-43). There are further provisions for maritime services, information and communication technologies, information society, and tourism.

The CPA also incorporates a reaffirmation of GATS commitments and emphasises the need for S&D [special and differential treatment] for ACP suppliers of services, such as through consideration to the ACP states' priorities in the European Community (EC) schedule and through strengthening the ACP supply capacity.

The all-ACP phase 1 of EPA negotiations, which began in September 2002, concluded that ***services liberalisation in an EPA should be progressive, based on a positive list, adapted to the level of ACP countries and their sectors and specific constraints, and underpinned by principles of S&D, asymmetry and positive regional discrimination.***

The EC agreed to discuss liberalisation in mode 4 (temporary movement of natural persons) in the context of EPA negotiations. This issue is sensitive for the EU but crucial for the ACP. The EU and the ACP also agreed that support for the development of services sectors should be provided to ACP countries within the context of EPAs, but there is disagreement over the need for additional funds that can be used flexibly and rapidly (as requested by the ACP) as opposed to no additional funds (the position of the EU) beyond existing European Development Funds (EDF) commitments.

Finally, ***while the EU argues for a GATS-plus agreement, the ACP group is unlikely to want to proceed (significantly) beyond commitments in the GATS.***

Options for negotiating services under EPAs...

There appear to be four ways forward for EPA services negotiations:

1. No services agreement or new resources.
2. No services agreement but some S&D options, such as additional resources for the development of the ACP services sector or ACP services exports.
3. A limited services agreement. No ACP commitments beyond GATS but new EU commitments and inclusion of several S&D options.
4. Advanced services agreement, with both the ACP and the EU committing beyond GATS.

(1) Author: Dirk Willem te Velde, "Special and Differential Treatment in Post-Cotonou Services Negotiations", in Trade Negotiation Insights (published by ECDPM and ICTSD), May 2004, p 4-5 (viewed at: http://www.ictsd.org/tni/tni_english/TNI_EN_3-3.pdf); ***emphasis added***

The EU and ACP have thus agreed to use asymmetrical liberalization process of trade in services between the EU and ACP as allowed by GATS. It seems that the parties might want to exclude quite some services sectors the liberalization process and that provisions for further liberalization and elimination of discriminatory measures in the future might be integrated. The EU and ACP, however, go beyond the much weaker formula of liberalization as contained in the EU-South Africa TDCA agreement. The road maps, as described in the next paragraphs, provide some more insight. However, much needs to be clarified and worked out, including what pressure to liberalize might come from Art. V of GATS. Also, the road maps indicate that many national impact assessments on trade in services are still taking place. It remains to be seen how these assessments will influence the negotiations as planned.

→ **The road maps cover trade in services and investments, but to different degrees**

In the "road maps"⁹ that set out the negotiation issues and time schedules between the different ACP regions and the EU, the issues of trade in services and investment promotion and protection are a recurring feature:

- The Central African region will undertake technical work on trade in services and on all trade related issues, including on policy objectives related to investment. These issues constitute two of the three areas for negotiations within the perspective of regional integration and will be dealt with between February 2005 and July 2005 after impact assessments in 2004¹⁰. Between September 2005 and July 2006, options to liberalize trade in services will be analyzed and integrated the first draft text of the EPA agreement.
- The Western African region¹¹ decided that, of the three technical sessions between September 2004 and September 2005 to set the EPA framework, the second session will make assessments of trade in services, and the third session will define the objectives and procedures related to investments (as well as competition and intellectual property rights). Market access negotiations in trade in services will be prepared between September 2005 and September 2006, and negotiated from September 2006 onwards up to the signing of the EPA at the end of 2007. The EPA discussions will also cover promoting inflow of foreign capital through "transparent, stable and feasible conditions"¹².

⁹ Information based on: Joint Report on the state of play of regional EPA negotiations, 10 November 2004; and the road maps viewed at http://europa.eu.int/comm/trade/issues/bilateral/regions/acp/regneg_en.htm

¹⁰ Feuille de route des négociations des Accords de Partenariat Economique (APE) entre l'Afrique Centrale et l'Union Européenne, 16 July 2004.

¹¹ Road Map for Economic Partnership Agreement Negotiations between West Africa and the European Community, 4 August 2004.

¹² Ibidem, p. 4, paragraph 22.

- The Eastern and Southern Africa (ESA) region¹³ integrated trade in services and investment issues in their work programme as two of the six negotiation clusters, and as potential regional priority areas for capacity building and negotiations. The negotiations should take place until December 2005 and continued up to end 2007.
- The Caribbean region¹⁴ decided that technical and high-level negotiation meetings, from November 2004 to September 2005, will include a cluster on services and investments.
- The Southern African (SADC) region¹⁵ identified trade in services and trade related issues (which normally relate to investment, competition and intellectual property rights issues) as potential areas for setting priorities and substantive negotiations from January 2005 onwards.
- The Pacific region is still in a process of identifying important issues for the negotiations, especially related to regional integration. The few examples given about the potential to be integrated in the EPAs issues include investment, services and tourism¹⁶. In order to prepare the negotiation positions cooperation on investment issues will be sought with the OECD. The OECD is currently building consensus on a Policy Framework for Investment, i.e. non-binding guidelines ("a non prescriptive operational guide") for developing countries on what policies they have to implement to attract foreign direct investment¹⁷.

The 'road map' of the Central African region¹⁸ provides the most detailed insight of what technical work will be done on trade in services and is very similar to the road map of the West African region¹⁹. On 15-18 February 2005, trade in services will be evaluated, potential exports from the region defined and support measures identified. The technical people present will include specialists on financial services, electronic commerce, cultural services and intellectual property rights, and immigration. Between March 2006 and June 2006, conditions and modalities for liberalizing trade in services will be proposed and a draft text for the EPA agreement will be finalized.

The services areas that will be looked at from a perspective of improving competitiveness are transport, water, electricity and telecommunications because they reduce costs of

¹³ Negotiations of an EPA with East and Southern Africa: Joint Roadmap, 7 February 2004.

¹⁴ EU-ACPs: EU and Caribbean progress in initial phase of EPA negotiations

Brussels, 16 July 2004, viewed at http://europa.eu.int/comm/trade/issues/bilateral/regions/acp/regneg_en.htm

¹⁵ SADC- EC Joint Road Map for the Economic Partnership Agreement Negotiations, 15 July 2004.

¹⁶ European Commission, Pacific ACP-EC EPA negotiations - Joint Road Map, 15 September 2004.

¹⁷ The main issues identified all relate to protection of investment and are problematic, see the OECD document of 24 May 2004: DAFE/IME/TF (2004)1 at www.oecd.org.

¹⁸ Feuille de route des négociations des Accords de Partenariat Economique (APE) entre l'Afrique Centrale et l'Union Européenne, 16 July 2004.

¹⁹ Road Map for Economic Partnership Agreement Negotiations between West Africa and the European Community, 4 August 2004.

production. Political reforms, public-private partnerships, and financing of these, are envisaged. Capacity building in the financial sector, which has an impact on financing investments, is a priority area. The same paragraphs appear in the road map of West Africa²⁰.

Based on monitoring the EU's trade negotiations, it seems that EU will be interested liberalization of infrastructure services (including water and telecom), maritime transport, tourism and financial services, which poses many challenges for ACP governments²¹.

On **investments**, the 'road map' of the Central African region²² indicates that the work to be done relates to replacing national investment rules by those of the Investment Charter of the Economic and Monetary Union of Central Africa.

Relating to investment provisions, the road maps are geared towards regional regulations to eliminate discrimination and lack of transparency in national investment regulations²³, i.e. to protect and promote foreign direct investment. This means that the EPA negotiations might discuss and negotiate investment issues which the ACP rejected in the current WTO Doha round of negotiations. It is also worrying that the EU mandate does not include particular cooperation measures to promote sustainable investment in ACP countries, which is reflected in the road maps.

B. What epas need to avoid

Some of the FTAs signed by the EU contain far reaching liberalization measures of investment and services trade which might have negative impacts on developing countries and which should be avoided in EPAs. These measures include:

- A **broad definition of investment**, including investment in real estate and short term portfolio investment (in securities such as bonds and shares/stock);
- requirements for **preferential progressive and reciprocal liberalization** of trade in services, which does not respect Art. V of GATS that allows non-reciprocity for developing countries and taking into account the level of development;

²⁰ Road Map for Economic Partnership Agreement Negotiations between West Africa and the European Community, 4 August 2004.

²¹ see for instance: www.gatswatch.org; M. Vander Stichele, Critical Issues in the Financial Industry, March 2004, chapter 6, at www.somo.nl.

²² Feuille de route des négociations des Accords de Partenariat Economique (APE) entre l'Afrique Centrale et l'Union Européenne, 16 July 2004.

²³ See for instance: European Commission, EPA Negotiations: Rules related issues, viewed at http://europa.eu.int/comm/trade/issues/bilateral/regions/acp/rules_en.htm

- liberalization according to GATS rules and extensive list of sectors to be liberalized as such;
- measures to protect foreign (services) investors and trade in services through principles of non-discrimination such as **(1)** national treatment i.e. foreign companies should not be treated "less favourable" (!) than national ones (in GATS, the national treatment principles only applies for sectors listed for liberalization and with no exemptions made), and **(2)** equal treatment of all foreign investment or services (Most Favoured Nation/MFN principle). The latter principle is dangerous if a country has signed an agreement with more favourable treatment of investors and services through another agreement and does not exclude such treatment in a new agreement it signs. In GATS, the MFN principle applies to all services sectors, whether liberalized through listing in the country's "schedule" or not;
- **limiting the host government to regulate and set conditions** to foreign services and investors to enter its market once sectors are listed in the agreement to be liberalized. Governmental measures which could be prohibited are for instance restrictions on number of service suppliers or service operations in a country, on the amount of foreign capital that can be invested in domestic firms (i.e. full take-over should be made possible and no obligation to engage in a joint-venture), etc. These reflect the prohibition on governmental measures in the GATS article on market access (Art. XVI). In general, most obstacles to foreign services and investors are seen as coming from opaque regulations and standards or qualification requirements which hinder entry, operations and profit making of investors or services providers. Measures in FTAs aim that regulatory restrictions should not result in unnecessary barriers to trade.
 - Agreeing to negotiate mutual recognition of each countries' authorization or operational requirements such as qualifications and standards can also undermine countries stringent measures or evolution to prioritize more sustainable services;
- covering sectors which are not so much liberalized under GATS such as maritime transport and financial services;
- **capital movement requirements and liberalization**, which can have an impact on financial stability if the exception to the measures below are not well designed:
 - liberalization of investment related payments and capital movements, including profit repatriation;
 - a standstill on any new restrictions on payments abroad;
 - progressive elimination of restrictions on payments;
 - international payments can be made in freely convertible currency;
 - aiming at liberalising all capital flows²⁴: this could lead to unstable capital flows and depletion of reserves in foreign exchange, which ultimately could lead to devaluation and economic difficulties. The Asian financial crisis in 1997-98 was amongst others a result of full liberalization of capital flows.
- liberalization of **government procurement**;

²⁴ See for instance art. 33.2. of the TDCA between the EU and South Africa

- provisions to decide or negotiate on **progressive liberalization of investment, services and capital flows in the future**. This is done by different formulas stated in the agreements such as:
 - further consultations to facilitating eventual full liberalisation, without a specific timetable or specific conditions;
 - further investment protection measures are to be negotiated in BITs with individual EU states, including on compensation for expropriation
 - setting a date (e.g. "no later than 3 years" after the agreement entered into force) for seeking additional liberalisation, e.g. for the liberalisation of the movement of natural persons²⁵
 - a Council, e.g. a "Cooperation Council"²⁶, and committees are set up by the FTA to make recommendations or decide on starting or expanding the liberalisation of services, the schedules of services sectors to be liberalised, better treatment of investors, in the future. The problem with such with such joint bodies is that there might be little awareness about their decisions and timetable and thus little accountability of additional liberalisation processes that take place far from public and parliamentary scrutiny;
 - reviewing within a particular time frame the legal framework for investment and investment flows;
 - regularly reviewing the implementation of the services provisions;
 - ensuring consistency with investment agreements agreed in other international fora and observance of the GATS agreement. This means that compliance what is continuously agreed in multilateral negotiations also is being reinforced by regional agreements;
 - later incorporating what has been agreed in other fora such as the WTO;
- **special provisions to liberalize financial services** (e.g. banks, insurance companies, securities dealers, pension fund management) which can influence the stability of the financial system of a small host country²⁷:
 - allowing the other party financial services to offer new services; this reflects the far-reaching GATS Understanding on Commitment in Financial Services and disregards the need to assess new products for their impact on financial stability of the host country and the benefit to (poor) consumers;
 - national treatment (= not less favourable treatment) when a financial investor enters a country and when the financial investor is already established, included for activities such as acquisition (mergers) and sale of commercial operations (=disinvestment);
 - the provisions for prudential measures to avoid financial crises, problems for consumers or investors, etc. are based on those of the GATS and should not be

²⁵ See art. 101 of the EU-Chile Agreement.

²⁶ In the case of the TDCA between the EU and South Africa: this Cooperation Council has to make recommendations to include further liberalisation of services under the TDCA by January 2005 (art. 30)

²⁷ See chapter 6 in M. Vander Stichele, Critical issues in the financial industry, SOMO, March 2004 (see www.somo.nl)

- “more burdensome than necessary”, be made public and be according to international standards; this might limit the freedom of financial supervisors;
- a special Committee on Financial Services in the EU-Mexico Global Agreement (Art. 23, 24), consisting of financial services officials from the European Commission, individual EU Member States and Mexico, has once a year to oversee the implementation of the Financial Services Chapter and assist the Joint Council in decisions on further liberalization of financial services.

C. Positive provisions that could make epas more beneficial

In the FTAs which the EU concluded, some provisions could have a positive effect or avoid a worst case scenario, such as:

- **cooperation** on particular services sectors such as telecommunication, postal services, energy, transport, tourism, financial services, audiovisual services, through for instance: support for a sustainable development of the sector (environmentally friendly, respect for local communities), improve access of inhabitants to affordable and reliable services, training and information exchange including on accounting, supervision and regulation of financial services²⁸, promoting the diversification of productivity in the services sector;
- investment promotion en cooperation such as: information-sharing about investment legislation and investment opportunities, stimulating investment by or for small and medium-sized enterprises, technical assistance;
- cooperation to protect the interests of consumers such as information exchange on dangerous or prohibited products and better provision of information to consumers on prices or characteristics of services offered²⁹;
- **reviewing the impact of the FTA** on improvement of services, sustainability, anti-poverty;
- **positive listing of sectors** to be subject of liberalization of trade in services or investment: only those sectors explicitly mentioned in a schedule can be liberalized, the schedule allows exemptions to be made of specific provisions in the FTA;
- **retaining freedom to regulate and introduce new laws** on investment and restriction of capital movements, ownership of land, rights granted to indigenous people, and to retain Central Bank autonomy (see EU-Chile FTA). Chile has a legislation that taxes FDI related capital that leaves the country before a certain time-frame (e.g. one year), which is praised by financial experts for its positive effect on financial stability but is attacked by trade and investment negotiators aiming at free movement of capital.

²⁸ See for instance art.55, 56,57 59,60, 63 of the TDCA between the EU and South Africa

²⁹ See for instance art. 64 of the TDCA between the EU and South Africa

- if free movement of capital flows is aimed at, clear exemptions for situations of difficulties in exchange-rate or monetary policy, and balance of payments; conditions to do so should not be too stringent nor limited in time;
- **support for regulation of financial services**, cooperation between supervisors of financial services;
- if national treatment (NT) is included in EPAs, sectors should be excluded so that NT does not apply to those sectors, such as excluding foreign ownership of public companies or newly privatized companies, agriculture, financial services, news agencies or audiovisual services (see EU-Jordan en EU-Chile agreement); however, what is less positive is that these exemptions are to be reviewed at a certain time set by the FTA and that attempts will then be made to reduce the exemptions.
- **the dispute settlement mechanism does not contain arrangements whereby the investor can take the government to an international and unaccountable tribunal;**
- if disputes are to be settled through setting up an arbitration panel, provisions³⁰ should be made to ensure fair treatment en due timing, independent arbiters, and fair procedures for implementation; transparency of the procedures and disclosure of the arbitration discussions before the decision of the arbitration panel is not yet included in FTAs which goes against recent small progresses made in BITs where one hearing in could be monitored by the public and WTO arbitration has been open to accept amicus curiae briefs (letters with opinions and advice of NGOs);
- disputes on financial services and investors should be done by arbiters who are experts in financial services and are appointed when the FTA starts operating;
- **setting up contact points** where services providers from the FTA countries can make enquiries;
- **promotion of services development and regulation** (not only promotion of export of services as foreseen in GATS);
- the right to regulate and specifying the government's universal **access obligations**: such provisions exist in the GATS Telecommunication Reference paper but are limited by conditions (in art. 3) that such measures should be administered in a "transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member".

D. Going beyond gats

While GATS allows non-reciprocal liberalization of services in regional agreements, a far reaching implementation of this principle could mean that least developing countries should not liberalize their services (and investments) and that the EU would liberalize their services beyond what they committed under GATS, for instance on mode 4 as they seem to have initially agreed upon (see box above).

³⁰ See for instance articles 37-43 and annex 43 and appendix 1 of the additional decision of the EU-Mexico Joint Council on 27 February 2001 to the EU-Mexico Global Agreement

An important aspect for supporting the development of the ACP services sector is whether additional financial resources might be provided to do so. In the GATS, the few articles in favour of supporting ACP services in the light of improving their export capacities (see for instance GATS Art. IV) are difficult to apply and non-binding or not enforceable. To have easy to use mechanisms and financial resources to support the sustainable development of ACP services will require to go beyond GATS provisions and make available extra funds. Imports of new services and presence of foreign service providers also request additional funds for new regulations and supervision, e.g. in the financial industry sector (banks, insurance including health insurance, pension funds).

So far the GATS failed to negotiate a protection mechanism against the harmful surge of services imports, an emergency safeguard clause, which the EU is so far opposing in the current GATS negotiations. In order to protect against negative aspects of EU services imports after liberalization, EPAs could at least develop an easy to use emergency safeguard mechanisms.

E. Conclusion

Different options for the negotiations are still possible, from refusal to negotiate on services and investments to including or excluding some of the FTA measures described above. There is an urgent need for the planned impact assessments to explore the effects of those different options, not only based on economic criteria but also social and environmental criteria. Such assessment cannot take place without inputs from different stakeholders and improved transparency of the negotiations and setting up information provision mechanisms for parliamentarians, civil society and small producers. Most of all, such comprehensive assessments should be taken into account during the discussions and negotiations.

As long as the wider impact of EPA provisions on liberalization of services and investment is not assessed and publicly discussed, they should be excluded from EPAs. Once liberalization of services are included in an EPA, Art. V of GATS applies and it might become difficult to exclude many services sectors from the EPA liberalization process.

Other options and alternatives to services and investment liberalization should be explored and identified to guarantee that foreign and domestic investments, development of services and trade in services contribute to sustainable development, better access by the poor, the needs of the economy and society of the host countries, and improvement of quality.

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