

# The Problem with Services in EPAs

*Myriam vander Stichele, Amsterdam, June 2007*

During the final stages of the negotiations for Economic Partnership Agreements (EPAs) between the European Union (EU, 27 countries), and 6 regions of the African, Caribbean and Pacific countries (ACP), the EU is pushing hard to get African countries to agree on texts and commitments to open up African markets for European investments and services (e.g. European banks, hotels, telecom companies, etc.).

## EU has no development approach

In October 2006, the European Commission (EC), who negotiates for the EU, has introduced a new trade strategy "EU Global Europe" which clearly identifies liberalisation of services as the sector in which it will pursue its own "offensive" interests because EU services companies operating world wide can make most profit out of it, and the services provides most jobs in Europe.

Frustrated with the lack of progress in the WTO negotiations, the EU will pursue its interests through bilateral negotiations with many other developing countries other than the ACP. For this, the EC has prepared its negotiation position with demands for liberalisation of services in a model text, a chapter called "Establishment, Trade in Services and E-commerce". However, the Commission is already presenting this model chapter, that does not contain any development friendly consideration, to the 76 ACP countries involved in the ongoing EPA negotiations, 39 of which are Least Developed Countries! This contradicts the EU's statements that that EPAs are meant to be "instruments for development" and that it has "no offensive interests" in the EPA negotiations<sup>1</sup>.

The inclusion of a services liberalisation agreement in the EPAs, makes little sense as most ACP countries and most ACP regions:

- do not have well established services regulations and national or regional policies yet;
- have little experience in services negotiations nor adequate statistics to make informed choices;
- have few competitive services industries so that no balanced deal with the EU is possible while ACP service providers will be out competed;
- risk ending up with accepting EPA rules that will limit their abilities to design policies that meet their

development objectives and needs; and that will have negative effects on access to certain services or on other sectors such as agriculture;

while the EU:

- is not offering much more to ACP countries than what it has already offered in the GATS negotiations at the WTO on an MFN basis;
- is not ready to meet the ACP demands regarding the "temporary movement of natural persons" (or "Mode 4")
- leaves the ACP countries with only a few months to properly prepare and conduct such complex negotiations;
- insists on substantive liberalisation through market opening commitments and EPA rules.

## No services mandate for EPAs

It is important to note that, formally ACP countries still have a choice. In contrast to the trade in goods, there is therefore no WTO requirement to include trade in services in the context of EPAs.

The Cotonou Agreement, which is the overarching EU-ACP association and cooperation agreement however, recognises the importance of services for the sustainable development of the ACP countries.

The Cotonou Agreement contains a great number of the articles mentioning services. Almost all of these are about the need to strengthen EU-ACP cooperation to build and improve services and to increase their accessibility (articles 21, 22, 23, 24, 25, 27, 30, 31, 33, 43, 51, 61, 69, 71 and 76). The Cotonou Agreement also mentions liberalisation of the trade in services, but does not contain an obligation to negotiate this, except for maritime transport (Art.42.2-3) which can be dealt with outside EPAs. It only says that such liberalisation can be encompassed in the partnership after some experience has been acquired in applying the Most Favoured Nation (MFN) treatment under GATS (art 41). Most ACP countries insist that the cooperation programme contained in the Cotonou Agreement needs to be implemented before any liberalisation is attempted in EPAs. African Trade Ministers have declared (Nairobi, April 2006) that they do not wish to open up their services markets more than they agree to do in the GATS agreement of the WTO.

<sup>1</sup> In recent Conclusions, adopted on 15 May, the EU Council, after lengthy discussions preferred to use the phrase "the EU does not have particular offensive interests" (emphasis added).

## WTO rules for services negotiations

Entering into services negotiations would lead the ACP countries to very extensive liberalisation. Even if the WTO does not require the EPAs to contain services, WTO rules do apply once the ACP countries would agree to negotiate services. GATS art. 5 requires bilateral services agreements to have “substantial sectoral coverage” and to eliminate of substantially all discrimination against foreign services companies. Although GATS art. 5 allows developing countries to liberalise less than the developed countries who are party to a bilateral agreement, it is still not possible for ACP regions to negotiate just only one or two services sector that are in their interest.

## The EU approach

The EU Commission has clear ideas about which services sectors the EPAs should liberalise: all business services (which include such services as computer and related services, services incidental to fishing, mining, agriculture, energy distribution) and all “infrastructure services”, including transport, communication, environmental services such as water distribution, and financial services such as banks.

While these are indeed essential services to have, they are also the services that EU is most competitive and most interested in. By insisting that ACP countries must open up these services in EPAs so-called in the interest of the ACP economies, the EU will make these liberalisations very difficult to reverse, even if the experience goes wrong. At the same time, the EU defends those services in which it fears negative impacts and does itself not want to liberalise much of health, education, audio-visual and cultural services, nor certain air transport services.

The above mentioned model chapter on “Establishment, trade in services and E-commerce” which the EU has proposed to most ACP regions is a completely novel approach. While some parts are copied from the GATS, other parts have not yet agreed in the GATS and all of them apply to investment outside the services sector (referred to as “establishment”).

- The EU will restrict the way governments and parliaments they can regulate national (!) as well as foreign services companies, for instance they cannot impose limitations on the number of operations of (foreign) service companies or on the value of their operations.
- Foreign services companies have to be treated in the same way as national service companies who can thus not receive priority treatment, even if they are much smaller than foreign services companies.

Only if ACP countries include exceptions in the annex (format for listing or “scheduling”) to that chapter can they

keep some of their authority to regulate sectors they wish to liberalise.

The chapter proposed by the EU even contains rules on how ACP governments are obliged to regulate and supervise certain services (e.g. computer, postal, courier, communication and financial services): this goes well beyond GATS agreed levels and need substantial financial and human resources.

The EU sees its development approach, as the EU already proposed to the Caribbean, among others by its willingness to offer transition periods before the ACP need to liberalise the committed sectors,.

## Services liberalisation dangers

Negotiating the liberalisation of services according to the EU proposals holds a number of risks for the ACP countries. Services liberalisation is brought about by changing national regulation in the services sectors, which will result in less tools for governments to direct services towards serving the needs of the poor or local development. Foreign more competitive and larger companies will easily drive out local services, leaving less space for domestic or regional services to develop.

The EU proposals push regions towards free trade and investment for EU services companies, with little exceptions in favour of the countries in the region. This undermines a gradual development of regional trade and investment in services.

The profit orientation of foreign service companies have already shown that they keep employment to a minimum and in some sectors worsen working conditions. Services to poorer customers are often been abandoned (e.g. banks that retreat from rural areas or do not offer small loans). Liberalisation of some sectors can negatively affect other productive sectors (e.g. liberalisation in the distribution sector leads to the establishment of supermarkets that drive down producer prices).

## How to put development first?

The EU proposals on services have no development relevance as they do not allow proper sequencing and careful preparation nor to build institutional capacities to develop national or regional services industries as well as regulation e and supervision. They should not be included in the current EPA negotiations. Other negotiations and cooperation is needed.

<sup>2</sup> For information see: [www.somo.nl](http://www.somo.nl), [www.southcentre.org](http://www.southcentre.org), [www.erodocs.org](http://www.erodocs.org);  
Contact: [m.vander.stichele@somo.nl](mailto:m.vander.stichele@somo.nl) or [Marc.Maes@11.be](mailto:Marc.Maes@11.be)  
(11.11.11, Belgium)