

Scoping study on:

Special and Differential Treatment in post-Cotonou Services Negotiations

Executive summary

Introduction

This scoping report highlights the issue of post-Cotonou negotiations on services. The Cotonou Partnership Agreement (CPA), signed in 2000 and ratified in 2003 by a sufficient number of states, allows Economic Partnership Agreements (EPAs) between the European Union (EU) and African, Caribbean and Pacific (ACP) countries to be extended to services. The agreement provides for applying special and differential treatment (S&D) in services negotiations in order to benefit the ACP and this report discusses how that might be done.

The three objectives (terms of reference) of this report are to:

1. identify the provisions on services in existing agreements and assessment of the pros and cons of these provisions;
2. provide an overview of possible benefits to ACP countries (if possible with differentiation between regions) of EU liberalisation sectors, regulations and modes of supply;
3. conduct a stocktaking of the possibilities for S&D for the ACP countries in the framework of the General Agreement of Trade in Services (GATS) and assess options for incorporating S&D in services in Cotonou over and above the level in the GATS.

To examine these objectives this report combines S&D in GATS, Provisions in Regional Services Agreements, and Services Provisions in the Cotonou Partnership Agreement, with an analysis of ACP services export capacity and current EU GATS commitments.

GATS and Special and Differential Treatment

Chapter 2 introduces GATS and the concept of S&D as applied to services negotiations. This is relevant as it can provide a template for the structure (including S&D options) of possible regional services negotiations and also a background against which regional negotiations take place (at least for ACP countries that are also WTO members). There are several S&D provisions in the GATS:

- Provisions aimed at increasing participation of developing country members in world trade, with specific attention to least-developed countries.
- Provisions under which WTO members should safeguard the interests of developing country members by carrying out assessment studies and establishing negotiating guidelines.
- Provisions that allow flexibility of commitments by developing countries, flexibility of action with regard to establishment of enquiry points and use of policy instruments, and flexibility to developing countries with respect to services commitments in economic integration arrangements.
- Provisions specifying the use of technical assistance in developing countries.

S&D in GATS is difficult to measure, not yet fully operational and often not mandatory. Negotiations on emergency safeguard measures are also ongoing. The ACP group will be interested in the development of S&D in GATS, as it will inform their negotiations with the EU on a possible services agreement under Cotonou. However, this does not preclude thinking on how S&D can be applied in Cotonou, before S&D negotiations in GATS have finally finished.

Services provisions in Regional Trade Agreements (RTAs)

Chapter 3 examines in more detail services provisions in RTAs such as NAFTA, CARICOM, MERCOSUR, ANDEAN, ASEAN, COMESA and SADC. It highlights a number of aspects relevant to post-Cotonou negotiations on services. The main conclusion is that RTAs differ with respect to coverage, liberalising principles and depth of commitments, and this also applies to recent EU RTAs with developing countries (South Africa, Chile, Mexico etc.). In particular, we highlighted:

- depth of commitments;
- general provisions related to cross-border supply of services and consumption abroad (modes 1 & 2);
- treatment of investment (mode 3);
- treatment of movement of natural persons (mode 4);
- government procurement of services.

Importantly, therefore, the elements of post-Cotonou negotiations on services and its strategy are, in principle, negotiable. The differing approaches to services provisions in regional trade agreements reflect a range of factors, including cultural and historical ties, the degree of geographical proximity of the parties, similarities in their levels of development and interests with countries or sectors to push items on the agenda. There is one further unresolved complication in that all EU agreements (with exception of ongoing EU-MERCOSUR negotiations) are based on agreements between the EU and a single developing country, unlike expected EPAs.

Services provisions and post-Cotonou negotiations

Chapter 4 reviews the provisions in the Cotonou Partnership Agreement relevant for planned EPA negotiations on services. In principle the ACP is not obliged to start negotiations, but the EU and the ACP agree to extend their partnership to encompass the liberalisation of services in accordance with the provisions of GATS. There are separate provisions for maritime services, information and communication technologies, and information society, and tourism. The CPA incorporates a reaffirmation of GATS commitments and underlines the need for S&D for ACP suppliers of services, such as through consideration to the ACP states' priorities in the EC schedule and through strengthening the ACP supply capacity, especially in labour, business, distribution, finance, tourism, culture and construction and related engineering services.

Phase 1 negotiations started in September 2002, and the outcome of phase 1 ACP EU negotiations was made public in October 2003. Phase 2 negotiations have now been launched in several African EPA regions (ECOWAS, CEMAC, ESA) and are expected elsewhere. Phase 1 negotiations 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 to 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 which can be used flexibly and rapidly (ACP) as opposed to no additional (EU) beyond existing EDF commitments. Finally, while the EU argues for a WTO-plus agreement, the ACP group is unlikely to want to go (significantly) beyond commitments in the WTO.

WTO compatibility of S&D in EPAs on services

Chapter 5 discusses which GATS provisions allow services negotiations in RTAs and shows the flexibility that is available for the ACP in WTO compatible services EPAs. It concludes that there are provisions that relate to developing-developed country arrangements, including EPAs between the EU and ACP regions, which would allow flexibility (or S&D) for developing countries in EPAs in terms of coverage and removal of discrimination, while the EU would liberalise more/substantially all sectors and modes to ACP regions (while not doing the same to other WTO members).

ACP exports of services to the EU: performance and barriers

Chapter 6 provides an overview of the performance of ACP exports and the barriers they face in the EU at present. An analysis of the data on services (which unfortunately are not of high quality) finds that:

- The average share of services in GDP is 50 percent for the ACP but varies widely across countries; the share of services in total exports ranges from over 75 percent for a number of Caribbean countries (typically high because of tourism) to under 5 percent for several African countries.
- Despite strong growth in the value of ACP exports of services (US\$8 billion in 1980 to US\$20.8 billion in 2000), the world share of the ACP dropped from 2.4 percent in 1980 to 1.5 percent in 2000.
- In 2000, the largest eight exporters of services in the ACP group accounted for more than half of total ACP services exports. These include the Dominican Republic, Bahamas, Jamaica, Mauritius and Barbados (owing to exports of tourism services) as well as Kenya, Zimbabwe (owing to exports of transport) and Nigeria (owing to exports of business services).
- For the ACP group of countries the largest export sector is travel, which accounts for more than half of all ACP services exports, followed by transport, business services and government services.
- Almost three-quarters of recorded African ACP exports of services have gone to the EU. Seven percent of extra-EU trade in services is with the ACP. Exports of services account for one-third of all ACP exports of goods and services to the EU.

Benefits of EC liberalisation by mode of delivery, sector and regulation

The chapter then discusses in general terms possible benefits of removing EC barriers to ACP exports in a two stage procedure:

- Identify EU barriers to ACP exports in services (sectors, modes, and specific regulations) to be liberalised, using consolidated EU GATS schedules

- Identify the supply response of the ACP to EU liberalisation (by mode, sector, country and region), in other words, whether ACP countries are sufficiently competitive and have the domestic capacity to supply services to the EU.

The present study is a scoping study, and thus provides only preliminary answers. Strengths of services exports in many ACP countries are through modes 1, 2 and 4. Mode 4 is by definition labour intensive, and, vis-à-vis the EU, the ACP has a comparative advantage in labour due to relative labour abundance (though not necessarily in highly skilled services). However, mode 4 delivery is seriously hampered by the current EU trade regime in the form of economic-needs tests and diploma and nationality requirements, as well as outright restrictions on movement of less-skilled workers or short-term workers for ACP companies. Linking mode 4 delivery to commercial presence (mode 3), or cross-border delivery (mode 1) delivery to mode 3, constitutes another barrier to the ACP, because the ACP has a comparative disadvantage in setting up a commercial presence.

Mode 1 delivery has become more important over time owing to technical improvements in telecommunications and information networks. Bound commitments in mode 1 by the EC would safeguard cross-border ACP exports of services, but there are several unbound mode 1 commitments. Most back office service sectors have been fully committed by the EC (e.g. computer-related services CPC 84), but not all, e.g. collection, telephone answering and duplicating services. Mode 2 is the main mode of ACP supply of services (tourism) and features few barriers. An exception may apply to coverage of national health insurance for EU nationals outside the EU.

It is also possible to review benefits of EU liberalisation to the ACP by sector and type of regulation. We would need to consider EU-wide (where services have been liberalised internally) and country-specific regulations. In business services, many individual member states include requirements for a university degree, professional qualifications and several years' professional experience, for accountants, lawyers, etc. In the case of medical and dental services, access can be restricted to natural persons and often includes economic-needs testing and a residence requirement. Removing these restrictions would benefit countries with a relevant supply capacity. The inclusion of postal, courier and audiovisual services (many of which are uncommitted) could also benefit ACP exporters with relevant export capacity (ranging from high to low: Jamaica, Dominican Republic, Guyana, Côte d'Ivoire, Barbados, Tanzania, Kenya, Ethiopia, Mauritius). For construction and related engineering services, there are EC member state nationality requirements in market access under mode 3 and qualification requirements in mode 4 (e.g. degree and professional experience in the Netherlands), while mode 1 is largely unbound (though France has an economic-needs test). Removing these restrictions would benefit

those ACP countries with a relevant export capacity (ranging from Tanzania, Madagascar, Cameroon, Ethiopia, Mauritius, Côte d'Ivoire, Barbados). Removing residence requirements in distribution services (e.g. wholesale trade) could benefit ACP countries. Removing nationality conditions in France, Denmark and Ireland could help ACP exports of education services (e.g. Caribbean and African universities).

Removal of a nationality or residence requirement in mode 4 of financial services in Austria, Denmark, Spain and Italy could lead to benefits for ACP countries, but these are not expected to be big. Countries with reported export values in insurance service, ranking from high to low, are: Barbados, Mauritius, Trinidad and Tobago, Côte d'Ivoire, Antigua and Barbuda, Cameroon, Tanzania, Bahamas, Jamaica and Botswana. But there is a question whether ACP insurance firms can compete on the EU market. ACP banks and financial institutions may not be able to withstand competition in EU markets, but there may be exceptions, e.g. Trinidad and Tobago. Obstacles more difficult to overcome (for reasons of prudence) relate to depository assets and transparency requirements for offshore banking (resulting in blacklisting of certain ACP countries). On the other hand, labour-intensive financial services such as data processing and call centres could be done more cheaply in the labour abundant countries. For this, safeguards regarding mode 1 in the EU would be effective (although many such services would fall under business services).

The potential for ACP exports of health services is significant. Removing restrictions in health services in modes 3 and 4 (economic-needs tests) or including it as committed sectors (as many EU health sectors are unbound, or uncommitted) should help such exports significantly. There are also EU-wide and member state-specific regulations relating to health tourism and cutting waiting lists that would fall under government procurement and hence not under business services negotiations. But it is clear that ACP health operations can be more competitive than EU operations.

The main source of exports of tourism and travel related services is in mode 2. This is already relatively free of restrictions. Removing restrictions (esp. in Southern European countries) on tourist guides (mode 4) could give marginal benefits to ACP countries. Anecdotes suggest that removing mode 4 restrictions in recreational, cultural and sporting services, including economic-needs tests (Italy), main profession (Austria), employment contract with authorised enterprise (France), and others would facilitate ACP exports of services, including entertainment groups.

Many transport service sub-sectors have been excluded from commitments. New commitments e.g. in maritime shipping could benefit ACP countries (e.g. Kenya). There are also various unbound transport sub-sectors. Only road-transport services include commitments, subject to limitations such as economic-needs tests (mode 3 and 4). However, the removal of

mode 3 restrictions does not seem of major interest to the ACP due to capital requirement.

Finally, it would be of interest to examine more closely which regions are expected to gain from EU liberalisation and which countries within regions. For instance, CEMAC and ECOWAS did not report high increases in exports of services since the 1980s, while EAC, SADC and COMESA did. It is also clear that specific countries within regions are expected to gain, depending on sectoral composition and other issues, such as cultural and linguistic links with the export market.

Special and Differential Treatment in post-Cotonou Negotiations

Chapter 7 “scopes in” 10 possible options for the inclusion of S&D in post-Cotonou negotiations on services (detailed case studies should assess relative importance):

1. Financial support for services export capacity building.
2. Facilitation of the recognition of professional credentials between the EU and the ACP by setting up one-stop shops in ACP countries (e.g. establish an ACPASS initiative similar to a recently announced EUROPASS initiative).
3. Information centres for ACP exporters of services.
4. Increase in technology transfer to the ACP services sectors using “home country measures” (e.g. PROINVEST, EIB Investment Facility).
5. Full credit for autonomous ACP liberalisation of services.
6. Fewer or no services commitments by ACP/LDC countries (affirming GATS commitments).
7. EU commitments over and above GATS. This should cover more liberal mode 4 conditions (e.g. an ACP business travel card), safeguarding mode 1 supplies, and removal of restrictions in mode 3 and mode 4 in specific sectors such as business services, construction and related services, health and education services, recreational, cultural and sporting services, and tourism services. Lifting of some restrictions can be achieved more easily at ACP level than in the GATS, but EPAs should be formed under GATS article V (on Economic Integration).
8. Inclusion of (parts of) EU government procurement (e.g. health and IT).
9. Operationalise Emergency Safeguards Measures for the ACP.
10. Flexible implementation time period (this could apply to mutual recognition of qualifications and inventories of restrictions).

After resolving general issues, such as agreeing on who will negotiate EPAs (see chapter 4 on ACP groupings), we suggest at least four ways forward:

1. No services agreement or new resources.
2. No services agreement, with some S&D options such as additional resources.

3. A limited services agreement. No ACP commitments beyond GATS, but (significant) new EU commitments and inclusion of several S&D options.
4. Advanced services agreement, with both the ACP and EU committing more than under GATS. There would need to be regional coordination of services commitments within ACP regions before engaging with the EU, and further discussion of liberalising principles and rules, as we argued before that these are in principle negotiable, and inclusion of S&D.

Conclusions and areas for further work

Chapter 8 concludes with areas for further research required to assess the importance of services negotiations within the CPA at a more detailed level. The need for more detailed research will depend on which negotiating option will be chosen. We highlight a few options below and suggest to begin with ESA and CARICOM regions as both have expressed an interest in thinking further about services negotiations:

- For each EPA region, identify the country and sector specific effects of financial resources on ACP services productivity and export capacity.
- For each EPA region, identify at the country/sector level, the effectiveness of the above 10 S&D options.
- Initiate public-private dialogue to examine which trade barriers should be lifted by the EU to trigger a supply response in the ACP.
- Initiate a mode 4 study to examine feasibility and effects of a possible ACP business travel card.

It should be noted that in order to obtain at least modest gains from a services agreement, the ACP would need to table specific S&D options: requests for the lifting of certain barriers in the EU, for EDF resources in specific areas, etc. Now is the time to consider which specific options are likely to be most effective, as this process may be lengthy. It is not possible to wait until current GATS 2000 negotiations have been finalised, as different requests (for the lifting of barriers, or other S&D options) can be made under Cotonou whereas GATS 2000 negotiations may not have finished by 2005, with Cotonou services negotiations possibly starting in 2006.

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We are grateful to the Netherlands Ministry of Foreign Affairs for support and comments. The opinions expressed are those of the authors alone.