

# **VI**

## **Services**

## The Development Dimension of Services Negotiations in the Cotonou Partnership Agreement

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### Introduction

This chapter reviews the development dimension of services negotiations in the Cotonou Partnership Agreement (CPA) between EU and ACP states. The CPA differs from its immediate predecessor, the Lomé IV bis agreement for 1995–2000, as it allows for the first time for the negotiation of reciprocal services agreements between the EU and African, Caribbean and Pacific (ACP) regions.

The importance of services to the development of ACP states is not new to EU–ACP relations. For example, the Lomé IV bis Convention, Title IX ‘Development of Services’, includes four chapters on services. Article 114.3 states that the:

*‘object is to ensure that the ACP States derive maximum benefit from the provisions of this Convention, at national and regional level, and to enable them to e.g. participate under the most favourable conditions in community, domestic, regional and international markets by diversifying the range and increasing the value and volume of ACP States’ trade in goods and services’.*

Other articles discussed services that support economic development, tourism, transport, communications and information technology. So provisions to support services have long existed in EU–ACP relations.

So what exactly is new then? The main difference lies in the expectation (1) that the EU and ACP regions will negotiate reciprocal trade agreements to be WTO consistent after the waiver for EU–ACP preferences runs out in 2008; and (2) that such negotiations may cover trade in services. The CPA also pays additional attention to the special

needs of the ACP economies, e.g. by including a provision for the need to develop supply capacity in ACP suppliers.

An important question for the ACP regions is whether to regard services as an integral part of EPAs or not? And if so, how this should be done? This chapter focuses on what ACP countries may want to ask for in services negotiations; it is not discussing in detail services liberalisation in ACP countries themselves, though clearly this will also be an important discussion (if only that services liberalisation can lead to significant welfare increases in ACP countries when the conditions are right), and should be looked at under a more general GATS heading, rather than an EPA heading alone. In fact, much will depend on the outcomes of current services negotiations in the Doha Round.

The structure of this chapter is as follows. The second section will discuss the export services capacity of the ACP on the basis of available data, followed by a review of the services provisions in the CPA with a development dimension, such as provisions for special and differential treatment (SDT) for ACP suppliers of services. It will also discuss possible broad objectives for the ACP with respect to the development dimension. Two further sections will discuss the scope and possibilities of including SDT measures (new to the EU–ACP relations) and capacity building needs and resources for CARIFORUM service suppliers.

### ACP export-services capacity

There are significant data limitations when it comes to the analysis of trade in services in ACP countries. In particular, data on bilateral trade flows are of

notoriously bad quality and are frequently not published in detail. It would be desirable to get a more detailed picture of bilateral services trade data, and we will present some limited data. However, in the absence of adequate data, more emphasis should be placed on collecting data.

It is important to distinguish between sectors of services and modes of delivery. There are around 165 sub-service sectors defined under GATS, which can be grouped as:

- infrastructure services: communications, financial services, transport services, energy services ; social services: education, health;
- business type services: distribution, professional, tourism, construction, engineering, environmental; and
- other services: recreational, cultural.

Unfortunately, published data are not available in this sectoral format. Roughly speaking, developing countries have a strong capacity in tourism and transport services, medium-level capacity in such services as financial and cultural services, and weak capacity in capital-intensive services such as communications (except countries such as South Africa).

Services can be delivered in four ways or modes:

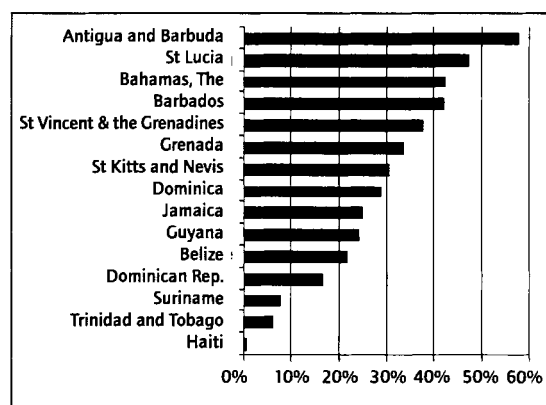
- **Mode 1.** Cross-border supply: when a service crosses a national border. An example is the purchase online of insurance or software by a consumer from a producer abroad. This is measured on a Balance of Payments (BoP) basis; world trade in this mode amounted to US\$1,000 billion in 2000.
- **Mode 2.** Consumption abroad: when a consumer travels abroad to consume from the service supplier, such as in tourism, education, or health services. This is measured on a BoP basis; world trade in this mode amounted to \$500 billion in 2000.
- **Mode 3.** Commercial presence: when a foreign-owned company sells services (e.g. foreign branches of banks). This is not included in BoP data but sometimes in so-called FATS (foreign affiliate trade in services) statistics; world trade in this mode estimated to be \$2,000 billion in 2000.

- **Mode 4.** Temporary movement of natural persons: when independent service providers or employees of a multinational firm temporarily move to another country to provide the services. This is not captured by trade data, but is often proxied by compensation of employees and remittances in BoP statistics. World trade in this mode estimated to be \$2000 billion in 2000.

Generally speaking, developing countries will have a comparative advantage in (low-skill) labour and hence Mode 4 delivery, and of course Mode 2 (tourism). They will have a competitive disadvantage in Mode 3 because this Mode requires a commercial presence abroad which is capital intensive. Mode 1 delivery would require good-quality telecommunications, which is also capital intensive.

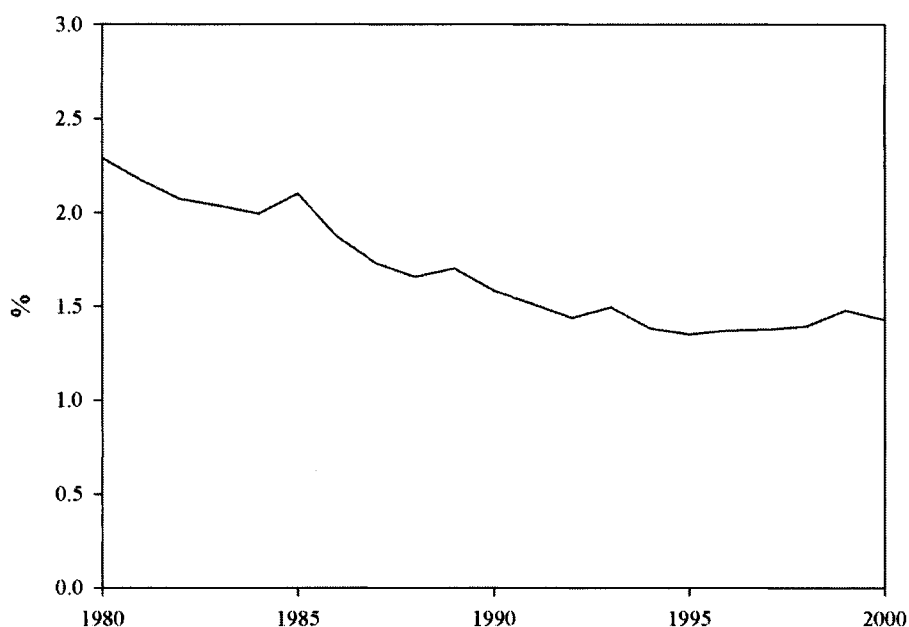
According to WTO data, the value of trade in commercial services has quadrupled from 1980 to 2002, and the share of services on world trade in goods and services has increased from 16% in 1980 to 20% in 2002, so clearly services are growing in world trade. The share of services in GDP in low and middle-income countries has increased from a little over 40% in 1980 to close to 55% currently. Services are important in some countries but not all. At one extreme, the importance of services trade in GDP in most Caribbean countries is well known (see Chart 1). On the other hand, some African countries have a very low share of services in GDP, despite the importance of tourism services.

**Chart 1. Services exports of Caribbean countries (% of GDP)**



Source: WDI (2004)

**Chart 2. World share of ACP services exports**



Source: OECD

Despite strong growth in the value of ACP exports of services (\$8 billion in 1980 to \$20.8 billion in 2000), the world share of the ACP dropped from 2.4% in 1980 to 1.5% in 2000 (see Chart 2).

According to OECD data, the ACP exported services worth \$21bn in 2000, around a quarter of total exports; between half and three-quarters of all ACP services exports went to the EU (see Table 1).

National publications in key European countries offer further details, but their quality and coverage is also poor. Developing countries' share of total imports of services is around 15%. This is evidence for a substantial capacity to supply the EU market. About half of UK services imports from developing countries are in the travel category; about half of German imports of services come from travel and

transport. A closer examination of the data presented before reveals that developing countries are weakly represented in several sectors or modes. For instance, developing countries are responsible for just 2.5% of total UK expenditure imports of royalties and research and development (R&D), and 2% for financial services into Germany. However, there are of course countries that have managed well, but which may not be clearly visible in aggregated EU import of services data (and perhaps would fall outside Mode 1 and 2 measures by the BoP).

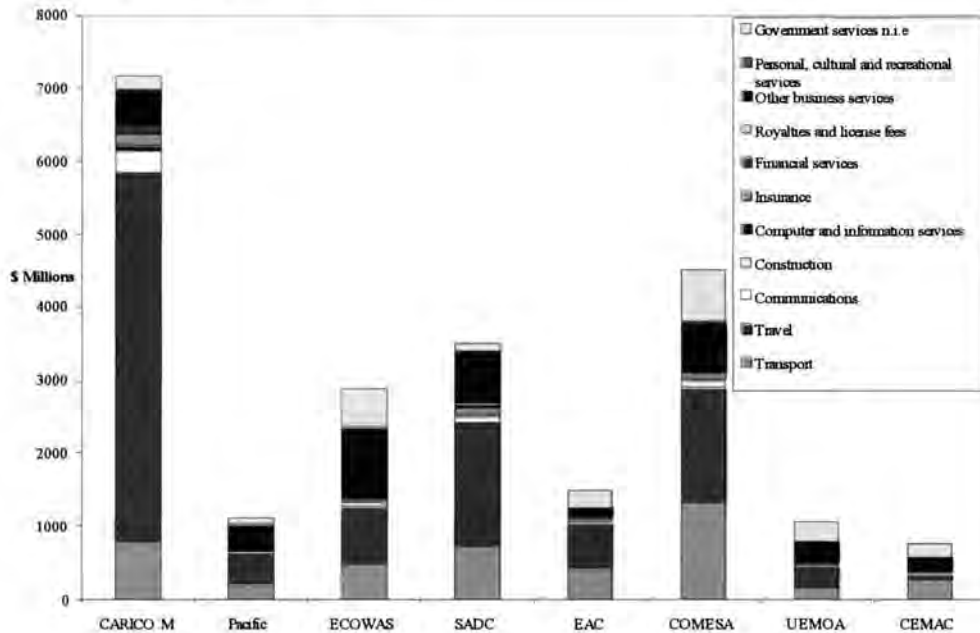
We can also look at sectoral-level data to get a more detailed picture of substantial services exporters, as reported by UNCTAD (Te Velde et al., 2004). The travel category covers all spending by travellers abroad, including purchases of goods.

**Table 1. ACP export services export to the EU (\$bn, 2000)**

	Total	Transport	Travel	Government services	Other
African ACP	8.863	2.483	3.487	0.647	1.224
Caribbean (incl. Central America)	5.241	1.267	1.460	0.157	2.136
Pacific	0.201	0.074	0.082	0.003	0.047
Total ACP exports to EU	14.305	3.824	5.029	0.807	3.407

Source: Te Velde et al, 2004, based on OECD data; Data are best available proxies: African ACP = Africa-Maghreb-South Africa-Egypt; Caribbean includes Central America.

**Chart 3. ACP regional exports by sector 2000**



Source: UNCTAD

Note: Sectoral shares are distorted as some countries do not report value for all sectors.

Transportation consists of passenger and freight sea, air and land transport. 'Other business services' is a catch-all for all unreported sectors. 'Communication services' groups together postal, courier and telecommunication services. A few ACP countries have a high share of exports in total ACP services exports across a number of sectors: Jamaica (tourism, transport, communications); Barbados (tourism, communications, insurance, financial services); Mauritius (tourism, transport, other business services, insurance, financial services); Kenya (transport, government services); Trinidad and Tobago (transport, insurance); and Côte d'Ivoire (other business services, communications, insurance, financial services).

The composition of services exports from the various ACP regional groupings is illustrated further in Chart 3. With the exception of ECOWAS, the largest export sectors are travel and transport which, combined, are responsible for between 45% (CEMAC) and 69% (SADC) of total services exports. The largest services export sector for UEMOA and ECOWAS is business services (because of its importance to the Côte d'Ivoire and Nigeria, respectively).

We should mention two important types of services export. Tourism is a very important export earner in several countries, responsible for most of services trade in the Caribbean. Tourism comprises several services such as travel and transportation services, but may also lead to e.g. health services exports (health tourism).<sup>1</sup> The tourism market in several Caribbean countries is heavily dependent on the European market. For instance, Suriname depends on the Netherlands for 84% of total tourist arrivals; Dominican Republic on Germany for 15%, Grenada on UK for 25%, Guadeloupe on France for 70%, etc.

Mode 4 'exports from the ACP' is also important, but it is difficult to find detailed data on this, or even a classification of what falls under Mode 4 trade. WTO (2004) shows that Mode 4 services UK imports by non-EU-15 temporary workforce amounted to \$2.5 billion, or 0.2% of the UK GDP in 2000. Newly arrived foreigners represented 2% of employees. The number of work permits is increasing rapidly and amounted to 132,418 in 2002, of which 29,658 from India, 13,217 from South Africa, 12,742 from Philippines, but there were also increases

from ACP countries. It is possible that some of this is counted as Mode 4 exports, though strictly speaking workers with work permits will only be counted as Mode 4 if they work temporarily for foreign firms.

Another example of developing-country services to the UK in Mode 4 includes nurses or health associate professionals. This sector accounts for 93.4% of immigrants from the Philippines (which is responsible for half the amount of work permits for non-EU nurses) and 42% from South Africa. Zambia sends 200 nurses a year to the UK.

## **Development-oriented services provisions**

The CPA contains the following main provisions on services (see Box 1 on those with a development dimension):

- Extending EPAs to encompass the liberalisation of services in accordance with provisions of GATS (CPA, Art. 41.4).
- Reaffirmation of GATS commitments (Art. 41.2), progressive liberalisation (Art. 41.3) and EC support for ACP export capacity, and it mentions the following sectors specifically: labour (i.e. Mode 4), business, distribution, finance, tourism, culture and construction (41.5).
- The need for SDT for ACP suppliers (41.2 and 41.3).
- Special sectors: Maritime transport (Art. 42), ICT/ Telecommunications (Art. 43), Tourism (Art. 24), Cultural services (Art. 27).

The CPA Arts 41–43 deal with negotiations on trade in services, in particular Art. 41.4, in which the EU and ACP agree to extend EPAs with the liberalisation of services in accordance with provisions of GATS. It should be noted that they do not oblige the ACP to conclude a ‘trade in services’ component to any EPA.

CPA Arts 41.2 and 41.3 provide for an affirmation of GATS commitments and crucially underline the need for SDT for ACP suppliers of services, and the need to give sympathetic consideration to the ACP states’ priorities for improvement in the EC schedule. Art. 41.2 is the clearest indication of the need for SDT measures. It is however not clear from

this article whether SDT should be provided to ACP in GATS negotiations or in EPA negotiations. We assume the latter. Article 41.3 is a clear example of SDT in services in its simplest form: the EU should liberalise sectors in which the ACP have an interest, without necessarily requiring the ACP to do the same.

CPA Art. 41.5 states that the EC shall support the ACP states’ efforts to strengthen their capacity in the supply of services. Particular attention shall be paid to services related to labour, business, distribution, finance, tourism, culture and construction and related engineering services with a view to enhancing their competitiveness and thereby increasing the value and the volume of their trade in goods and services. It does not state how this should be achieved. It is not clear whether the implementation of Art. 41.5 requires traditional SDT measures in a possible service EPA or whether this article should be viewed from a wider perspective: that it requires measures to support the ACP export supply capacity.

The articles on specific sectors in the CPA, which are not very different from past conventions, include a development dimension. Article 24, dealing with tourism, states that ‘co-operation programmes and projects will support the efforts of ACP countries to establish and improve the countries’ legal and institutional framework and resources for the development and implementation of sustainable tourism policies and programmes’. Article 27d aims at ‘developing cultural industries and enhancing market access opportunities for cultural goods and services’. And in Art. 43, the ‘parties agree that they will take measures that will enable inhabitants of ACP countries easy access to information and communication technologies’.

## ***Services negotiations in Phase 1***

Preliminary discussions on the development dimension of EPAs in the area of services have taken place in Phase 1 negotiations, see ‘Joint Report on the dedicated session on the development dimension of EPAs in the area of services’ held on 25 June, 2003. Both parties (EU and ACP) agreed to the importance of the services sector to their economy. But

### **Box 1. Main services provisions with development dimension**

#### ARTICLE 41

##### General provisions

1. The Parties underline the growing importance of services in international trade and their major contribution to economic and social development.
2. They reaffirm their respective commitments under the General Agreement on Trade in Services (GATS), and underline the need for special and differential treatment to ACP suppliers of services.
3. In the framework of the negotiations for progressive liberalisation in trade and services, as provided for in Article XIX of GATS, the Community undertakes to give sympathetic consideration to the ACP states' priorities for improvement in the EC schedule, with a view to meeting their specific interests.
4. The Parties further agree on the objective of extending, under the economic partnership agreements, and after they have acquired some experience in applying the Most Favoured Nation (MFN) treatment under GATS, their partnership to encompass the liberalisation of services in accordance with the provisions of GATS, and particularly those relating to the participation of developing countries in liberalisation agreements.
5. The Community shall support the ACP states' efforts to strengthen their capacity in the supply of services. Particular attention shall be paid to services related to labour, business, distribution, finance, tourism, culture and construction and related engineering services with a view to enhancing their competitiveness and thereby increasing the value and the volume of their trade in goods and services.

there was some disagreement over the development issue. The report states that:

- The ACP requested support for tackling their capacity and supply-side constraints; strengthening their immediate services; increasing the efficiency and competitiveness of their domestic services and services suppliers; and developing appropriate policies as well as legal and regulatory frameworks. EPAs should include provisions for resources additional to funds from the European Development Fund, which was found to be too slow to provide a boost to the services sector on time.
- The European Commission responded that funds should not be additional, but that concrete programmes should be designed for the development of the services sector. It also mentioned the set-up of an additional €20 million facility for EPA negotiations, as well as a new €50 million intra-ACP facility for trade-related needs.
- The ACP thought it could not liberalise sectors

unless they had become competitive. The EC would not force the ACP to liberalise services trade, but thought it was in the best interest of the ACP.

- The Parties should undertake to start negotiations in services in 2006 at the latest.

The 'Joint Report on ACP–EU negotiations on Economic Partnership Agreements, of the 7th all-ECP–EU Ambassadorial level meeting' on 11 July, 2003, states that:

- Support for services sector has to be seen in context of CPA Art. 34.<sup>2</sup>
- Objectives for the services sector under EPAs should include: (a) to strengthen capacity, efficiency and competitiveness of ACP services; (b) to improve access to the EU of services originating in ACP countries (particularly Mode 4); and (c) to increase ACP participation in world trade of services through access to technology, and access to distribution channels and information.

Negotiations, if it is decided to have them, based on CPA Art. 41.4, could start during or after Phase 2, depending on whether national assessments of the services sector in ACP have been carried out. Liberalisation should be based on SDT, asymmetry and positive discrimination and should include balance-of-payments safeguards.

Liberalisation of trade in services should be based on the following modalities: it should: (a) be progressive depending on the level of development; (b) be based on a positive list; (c) include a special safeguard mechanism; and (d) include measures to deal with anti-competitive behaviour.

The ACP proposed that the EU should remove barriers to entry into the EU of ACP service providers in Mode 4; the EU should be more transparent, and use less time-consuming visa procedures for ACP services suppliers; and mutual recognition agreements should be negotiated.

The EC replied that the proposals and objectives were defensive, but it stressed that it was willing to discuss the issue of Mode 4 liberalisation within EPA negotiations, as it was an issue of mutual interest. The EC was willing to apply asymmetric transition periods, to maintain intra-regional preferences, but it stressed the technical difficulties in achieving safeguard measures.

Negotiations in Phase 2 have continued for all ACP regions. Some regions have moved on from Phase 2 negotiations (Caribbean, in November 2004) to Phase 3 negotiations (October 2005), see original plan below.

### **Potential ACP options and broad objectives in a services EPA**

Services liberalisation might entail costs and benefits. The ACP countries might be interested in negotiating an EPA with the EU because it might:

- enhance the capacity, efficiency and competitiveness in the supply of ACP services;
- increase the value and the volume of their trade in services, and with it growth, jobs and the potential to reduce poverty; and
- diversify the ACP economies away from agriculture and industrial products that face preference erosion and newly emerging competitors.

The ACP could secure these criteria by negotiating *inter alia* on the following issues:

- Liberalisation of EU services in sectors and modes of supply of export interest to ACP, e.g. greater access in Mode 4 (temporary presence of natural persons) for ACP service suppliers.
- Liberalisation of ACP services sectors consistent with development goals, with possible inclusion of conditions and safeguard measures, but consistent with GATS Art. V.
- Recognition of the professional credentials in ACP states as equivalent to EU credentials for the following professions: accountants and bookkeepers, architects, engineers, lawyers, teachers, doctors, midwives, and nurses.

**Table 2. Schedule for Phase 2 negotiations**

Phase I	Phase II	Phase III	Phase IV
4/ 2004–9/2004	9/ 2004–9/ 2005	9/ 2005–12/ 2006	1/ 2007–12/ 2007
Establishing the priorities of EPA negotiations	Convergence on strategic approach to CARIFORUM regional integration	Structuring and consolidating of EPA negotiations	Completing EA negotiations
Negotiating structure (RPTF)	<ul style="list-style-type: none"> <li>• services and investment</li> <li>• trade-related areas</li> </ul>	Agreement on structure of EPA and approach to liberalisation	
Facilitating non-state actor (NSA) participation			

Source: Plan and Schedule for CARIFORUM-EC Negotiation of an Economic Partnership Agreement.

- Establishment of a dispute settlement mechanism.
- Obtain support to improve the regulatory capacity for services in ACP regions in order to support services liberalisation, and address constraints to further exports of services such as human resource, technological and other constraints.
- Obtain technical assistance to (1) assess the services sectors; (2) assess ex ante the impact of possible ACP services liberalisation; and (3) assess ex post the impact of concluded negotiations as and when they appear.

Discussions on support for the services sectors are less well-developed than discussions on support for industrial development or agriculture. This is also true for discussions of the development dimension in multilateral settings. SDT in GATS is not yet operational (apart from contact centres and the inherent flexibility of voluntary sectoral commitments – see next section), and unlike multilateral bodies for agriculture and industry, there is no multilateral body advocating services in its entirety (there is of course the WTO, mirrored by regional equivalents).

Yet, in the Cotonou context it does seem to be important to remind us of the development dimension. The development dimension of services-related provisions in the CPA stems from two principles:

1. Specifically, the need to incorporate SDT (Art. 41.2) and to give sympathetic consideration to the ACP states' priorities (Art. 41.3) in any services EPA, (see note in next section).
2. More generally, support for the ACP services sectors is required for the integration of the ACP into the global economy (a key aim), as embodied in e.g. Arts 24, 27, 43, and 41.5 which refers to capacity building.

Whatever the trade contents of EPA negotiations, there is the need to discuss support measures for the service sectors. If there is a services component to an EPA, then there will also be a need for additional (SDT) measures, but it is not clear whether they need to be purely trade related, or whether they can also be support measures (cf Art. 34) additional to

planned support. Conversely, the ACP needs to ensure that **existing** support by the EU in the ACP services is not used to force through EPA negotiations in services.

We suggest there are at least four ways forward for EPA services negotiations:

1. **No services agreement.** Restatement of partnership character as in CPA Art. 41.4. Channelling of current EDF resources to strengthen ACP capacity in the supply of services related to labour, business, distribution, finance, tourism, culture and construction and related engineering services (CPA Art. 41.5).
2. **No services agreement, with some SDT options,** such as additional resources, to satisfy 41.2 allowing for SDT of ACP suppliers.
3. **Limited services agreement.** No ACP commitments beyond GATS (CPA Art. 41.2), but with (significant) new EU commitments and inclusion of other SDT options while possible services EPAs satisfy the requirements of GATS Art. V as well as SDT in CPA Arts 41.2 and 41.5.
4. **Advanced services agreement,** with both the ACP and EU participating and giving more commitments than under GATS.

### ***Scope and possibilities for including SDT provisions in EPAs***

#### ***Services and SDT options***

##### **SDT in WTO**

The WTO ([www.wto.org](http://www.wto.org)) describes nine special and differential treatment provisions in the GATS, broken down as follows:

- Provisions aimed at increasing trade opportunities: Art. IV.1 and Art. IV.2.
- Provisions under which WTO members should safeguard the interests of developing country members: Art. XIX.3.
- Flexibility of commitments, of action and use of policy instruments: Art. III.4 (enquiry points), Art. V.3 (MFN exemptions and RTAs), Art. X.:1 (use of subsidies), and Art. XIX.2 (coverage).

- Technical Assistance: Art. XXV.2 and Paragraph 6 of the Annex on Telecommunication.
- Provisions relating to least-developed country (LDC) members: Art. IV.3.

There are several GATS articles that are relevant for discussing the role of technical assistance. For instance, technical assistance in the area of services seeks to fulfil the General Agreement on Trade in Services, Art XXV Guidelines and Procedures for the Negotiations in Trade in Services (S/L/93), para 14:

*'The Council for Trade in Services in Special Sessions shall continue to carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of the GATS and of Article IV in particular. This shall be an ongoing activity of the Council and negotiations shall be adjusted in the light of the results of the assessment. In accordance with Article XXV of the GATS, technical assistance shall be provided to developing country members, on request, in order to carry out national/regional assessments.'*

The LDC modalities adopted by the Special Session of the Council for Trade in Services on 3 September 2003 referred to the above paragraph 14.

Paragraph 8: Members shall take measures, in accordance with their individual capacities, aimed at increasing the participation of LDCs in trade in services. Such measures could include:

- strengthening programmes to promote investment in LDCs, with a view to building their domestic services capacity and enhancing their efficiency and export competitiveness;
- reinforcing export/import promotion programmes;
- promoting the development of LDCs' infrastructure and services exports through training, technology transfer, enterprise-level actions and schemes, intergovernmental co-operation programmes, and where feasible, financial resources; and
- improving the access of LDCs' services and service suppliers to distribution channels and

information networks, especially in sectors and modes of supply of interest to LDCs.

**Paragraph 12:** Targeted and co-ordinated technical assistance and capacity-building programmes shall continue to be provided to LDCs in order to strengthen their domestic services capacity, build institutional and human capacity, and enable them to undertake appropriate regulatory reforms. In pursuance of Paragraph 14 of the Guidelines and Procedures for the Negotiations on Trade in Services (S/L/93), technical assistance shall also be provided to LDCs to carry out national assessments of trade in services in overall terms and on a sectoral basis with reference to the objectives of the GATS and Article IV in particular.

LDCs have called for the Implementation of Modalities for the Special Treatment of Least Developed Country Members in Trade in Services Negotiations, (WTO Job 05/114). They have called for technical assistance and capacity building to assist them to identify critical areas of potential competitiveness and to build regulatory institutions and legislation, so as to enable them to effectively participate in services trade. So there are several references in GATS to capacity building and to general support for trade in services, in the guidelines and in the adopted LDC modalities. The main challenge does not appear to be one of language, but of following up on commitments. On the other hand, the current text does not include binding commitments to make technical assistance (TA) automatic, e.g. in the case of taking services commitments, and that is something that could be taken up in EPA negotiations (and possibly for all ACP countries).

There is also an issue on how to treat non-LDC, but small and vulnerable ACP countries. LDCs would be granted the most SDT in the WTO. The Caribbean countries are not LDCs (with the exception of Haiti). Some authors favour a special category for small countries (but non-LDC, and not 'large' developing countries) to which SDT can be granted in the WTO (Bernal, 2005):

*'Small developing economies, i.e. over \$1,000 in per capita income and small based on a combination of criteria of population, land area, GDP and vulnerability.'*

The debate on whether and how to accord SDT in the WTO generally and on how to apply services is far from over.<sup>3</sup> However, SDT in a services EPA could take another dimension. EPAs coincide with the disbursement of European Development Fund (EDF) funds for development co-operation and so a co-ordination of aid and trade policies (EU programmes already support the service sector). Furthermore, provisions in the CPA encourage the EU to accord SDT to all ACP countries, whether LDC or not, so the definitional issues of smallness matter less (and only with respect to WTO consistency, see below).

### ***SDT and EU services trade agreements***

We discuss differential treatment within the EU and between the EU and third parties (Te Velde et al. (2004) discusses services agreements in developing country regions). An interesting observation is that the EU itself does not have a single market in services. There are EU-wide regulations in the form of individual directives when services have been liberalised/harmonised internally, e.g. directives for insurance, TV, financial services, electronic communications services and transport services. However, in addition to this there are country-specific regulations for several sectors, many of which involve 'beyond the border' regulations. Te Velde et al. (2004) discuss these for the EU-15 based on its (draft) consolidated GATS schedule. For instance, in business services many individual member states require a university degree, professional qualifications and several years' professional experience for accountants, lawyers, etc. For construction and related engineering services, there are EU member-state nationality requirements in market access under Mode 3 and qualification requirements in Mode 4, while Mode 1 is largely unbound. There are country-specific regulations in health services in Modes 3 and 4 (economic-needs tests) and many EU health sectors are unbound or uncommitted.

Member states have discussed a new services directive proposed by the EC. This directive includes three issues:

- Freedom of establishment of services providers ('The formalities and procedures that service

providers wanting to establish have to comply with are too complex and administered by too many different authorities').

- Free movement of services ('To provide services in another Member State on a temporary or occasional basis, services providers have to comply with formalities and rules there which add another layer of regulation and complexity to those in our home Member State').
- Establishing mutual trust between services suppliers and consumers.

Service providers should be able to obtain information and complete formalities through a **single point of contact** (Art. 6, Chapter II) in any member state. This should also function online. The **country of origin principle** (Art. 16, Chapter III) should ensure that service providers who operate legally in one member state could operate temporarily or occasionally in another member state without meeting further requirements. There are a number of exceptions from this principle, e.g. to protect workers and consumers and public health and safety. There are also safeguards for use in exceptional circumstances. The **posting of third-country nationals** would be simplified (Art. 25, Chapter III). The member state to which the posting of third-country nationals (from another member state) occurs will no longer be able to require the service provider or the worker posted to undergo administrative requirements such as work permits, without affecting those immigration controls that are still allowed between member states. The member state of origin will be required to ensure that service providers post only workers who are resident and lawfully employed within their territory.

It is also relevant to note that derogations to the country of origin principle are due to differences in national approaches or an insufficient level of Community integration. In certain cases, the proposed directive cannot achieve harmonisation in standards or establish cooperation, e.g. in activities such as notarial acts, postal services, electricity, gas and water distribution services.

Hence, it is clear that the EU services market will remain fragmented for some time. Because of

existing fragmentation, the combination of EU-wide directives and individual country commitments appear as commitments in GATS or regional trade agreement (e.g. EU–Mexico). This route is also open to ACP–EU negotiations to deal with asymmetry and different levels of income, and seems a way to achieve variable SDT according to countries’ needs.

It is also relevant to discuss the external services negotiations of the EU. The EU has signed several free trade agreements that have included provisions on trade in services, and differences amongst these might inform options for ACP. There are EU association agreements: with the Central and East European countries (CEECs), also called Europe Agreements;<sup>4</sup> with the Mediterranean countries, also called EU–Med agreements;<sup>5</sup> and with South Africa,<sup>6</sup> Mexico<sup>7</sup> and Chile.<sup>8</sup> The EU agreements vary substantially with respect to several important services provisions (see Table 3 below):

- **Depth of commitments:** from not including services liberalisation above GATS (EU–South Africa is confirmation of GATS) to making substantially deeper commitments and more liberalised principles (EU–Chile).
- **General provisions related to cross-border supply of services and consumption abroad (Modes 1 and 2):** MFN is a general provision in EU–CEECs, some EU–Meds and EU–Mexico, and not the others; NT is a general provision in EU–Chile and EU–Mexico, but not in the others.
- **Treatment of investment (Mode 3):** commercial presence is included in the definition of services (e.g. in EU–Mexico and EU–Chile) but is also included in a separate chapter on establishment. EU–South Africa includes only a desire to ensure free movement of capital. Only the Europe agreements and EU–Chile include provisions for entry of investors (in addition to post establishment).
- **Treatment of movement of natural persons (Mode 4):** deeper liberalisation under Europe Agreements (employment of key personnel; temporary movement of natural persons related to

provision of service) than in EU–Mexico (managerial and set-up personnel in conjunction with investment, Mode 3), or EU–South Africa (where no provisions on Mode 4 are included and no commitments beyond GATS). The EU will eventually grant access to the labour market to the CEECs.

- **Government procurement of services:** only explicitly included in EU–Mexico and EU–Chile, and the latter includes procurement of government works and for the first time for EU bilateral agreements, a substantive list of sectors.
- **Technical/Economic Cooperation.** EU–Jordan (title V) and the Trade Development Cooperation Agreement (TDCA) (title IV) includes special measures to stimulate co-operation in e.g. financial services, ICT, transport and tourism (e.g. exchange of information), but there is little in the EU–Mexico agreement. There is one article on co-operation on services aimed at diversification and competitiveness of Chile’s services agreement (Art 20).

The Europe agreements and EU–Chile are the most liberal in terms of market access commitments and the liberalising framework. This is followed by EU–Mexico which has scheduled to liberalise all restrictions within ten years and where the liberalising principles (on services, public procurement and investment) guarantee predictability and access for EU exporters and investors equivalent to suppliers from NAFTA countries. Provisions on services in the EU–Med and EU–South Africa agreements are least liberal in terms of commitments (e.g. GATS commitments) and framework (handful of articles). Services agreements concluded by the EU thus vary considerably with respect to key aspects. And even within a similar set of EU–MED agreements, the services chapter can differ by MED country. For instance only Jordan (Art. 30) includes the right of establishment subject to reservations. It is possible to conceive of country-specific EPAs within a broader regional context and with country-specific details (e.g. on technical or economic co-operation), which offers scope for applying different levels of SDT.

**Table 3. Services provisions in regional trade agreements involving the EU**

	<b>EU–Med association agreements (Algeria, Jordan, etc.) – Title III</b>	<b>EU–CEECs Europe Agreements (e.g. EC–Poland, EC–Hungary)</b>	<b>EU–Chile</b>	<b>EU–Mexico</b>	<b>EU–South Africa</b>
Sectoral coverage	Universal	Universal	Universal (except audio visual air services, services and maritime cabotage)	Universal (over two stages, and except audio visual services, air services and maritime cabotage).	To be determined 5 years after entry.
Negotiating modality	Agree to widen scope of commitments under GATS, assessed after five years (Morocco).	Progressive liberalisation based on negative list approach	Positive listing	Negative-list approach	If further liberalisation occurs, there will be elimination of all discrimination (Art. 30).
Most favoured nation	Yes, general provision in e.g. in Art. 30.2 in Algeria, but for Jordan for establishment.	General provision	Not included as general provision	General provision (Art. 5)	Only for commitments under GATS
National Treatment	For Right of Establishment, only in Jordan (Art. 30), and subject to reservations in Annex VI; For maritime transport (Art. 39).	Scheduled sectors subject to bound commitments	General provision (Art. 98)	General provision (Art. 6)	Only for commitments under GATS
Market access	No	Scheduled sectors subject to bound commitments, no general provision.	General provision (Art. 97) banning several reservations on market access.	General provision (Art. 4)	Not mentioned
Transparency	Assessment of achievement after five years	Not mentioned	Each party shall respond promptly to information requests by other parties; list of commitments required after 10-year transitional period (Art. 7).	List of commitments required after 10-year transitional period (Art. 7).	Not mentioned
Treatment of investment		Chapter II, Title IV on Establishment. Clauses on establishment for Mode 1 and 2 in e.g. Art. 55 for Poland-EC.	Separate chapter on establishment, but this does not cover services. Indirectly covered by provisions on market access of services providers.	Covered as commercial presence and under a separate investment chapter.	Art. 33: Members should ensure free movement of capital.

**Table 3** (continued)

	<b>EU–Med association agreements (Algeria, Jordan, etc.) – Title III</b>	<b>EU–CEECs Europe Agreements (e.g. EC–Poland, EC–Hungary)</b>	<b>EU–Chile</b>	<b>EU–Mexico</b>	<b>EU–South Africa</b>
Safeguards	No	No	No	No	No
Government procurement	No	No	Separate chapter on government procurement, including public works. Includes substantive list in Annex XI and XII.	Title III, separate chapter on government procurement including for sectors listed in Annex VIII. Primer for EU agreements.	No. Art. 45, parties agree to co-operate for a fair, equitable and transparent system.
Movement of natural persons	Provisions vary. No general provisions for Algeria ; reaffirm GATS commitments for Morocco and Tunisia (Art. 69 provides for dialogue on movement of workers; and bilateral agreements with member states possibly more liberalised, Art. 68)	Under establishment, Art. 53 (Bulgaria and others), right to employ key personnel covering period of employment; Art. 56 permits temporary movement of natural persons related to provision of services (except for direct sales)	Art. 101: Two years after the entry into force, the Parties shall review the rules and conditions applicable to movement of natural persons (Mode 4) with a view to achieving further liberalisation.	Art. 3ci only managers and set up personnel in conjunction with investment; no access to labour market; key personnel and managers in financial services can be of any nationality, subject to exception (Art. 16 and 17)	Not included
Mutual recognition agreements	Art. 35 (Jordan): to agree on steps for negotiations MRAs	Art. 46 (Poland): to agree on steps for negotiations MRAs	Art. 103: Encourages mutual recognition	Art 9: to agree on steps for negotiations (MRAs. Agreement reached at professional level)	Not included
Dispute settlement			Dispute settlement for financial services	Yes, separate title on dispute settlement.	Article 104 on dispute settlement
Restricting non-conforming measures	Standstill to all modes of supply	Standstill on covering commercial presence		Standstill	
Special provisions		Selected: Maritime transport (Art. 56 1) in Hungary–EC and Poland–EC, Romania–EC (Art. 57 1) etc., granting unrestricted market access, and traffic on commercial basis	Separate section on Maritime transport, Telecommunications Services, Separate Chapter on Financial Services,	Maritime transport, Financial Services	Maritime transport (Art. 31), unrestricted access and fair competition

**Table 3** (continued)

	EU-Med association agreements (Algeria, Jordan, etc.) – Title III	EU-CEECs Europe Agreements (e.g. EC-Poland, EC-Hungary)	EU-Chile	EU-Mexico	EU-South Africa
Future liberalisation of trade in services				Progressive liberalisation within 10 years.	View to further liberalisation (Art. 30)
Services agreement beyond GATS?	Not yet, but Morocco and Tunisia have requested services negotiations.	Yes, but subsequently under <i>acquis</i> of the EC, and part of consolidated EC schedule. Now, new arrangements for labour mobility. (Bulgaria and Romania have not yet acceded)	The services agreement goes beyond GATS, but initial Mode 4 provisions not noticeably different.	Mode 4 provisions not very different from GATS but some additional provisions for key personnel in the case of financial services	No

Source: Te Velde et al. (2004)

### **Possibilities for inclusion of SDT**

There are two issues related to the possibility of including SDT. First, EU and ACP states differ in development levels, and may need different types of SDT. As discussed before, this is parallel to the EU by not yet having a single market in services (both services and investment fall to some extent under the shared competencies of the European Commission and its member states). Both EC and member states' commitments appear in schedules of international services agreements, and thus the same should be possible for ACP regions and countries.<sup>9</sup> On the other hand, it might be useful to think of regional integration and harmonisation first at the level of the ACP.

Secondly, SDT in regional services agreements needs to be WTO consistent. In particular SDT needs to satisfy the conditions of GATS Art. V. In order to be compatible with GATS Art. V, an agreement must fulfil two basic conditions:

1. It must have 'substantial' sectoral coverage, in terms of sectors, volume of trade, and modes of delivery, V:(1a).
2. It has to provide for national treatment for ser-

vices providers of the parties eliminating 'substantially' all discrimination, V(1b).

GATS Art. V.3 provides for flexibility with respect to these two requirements in two cases:

1. GATS Art. V.3(a) provides that where **developing countries** are parties to an agreement, flexibility shall be provided regarding conditions set out in GATS Art. V:1a and V:1b.
2. GATS Art. V.3(b) stipulates that **more favourable treatment** is to be accorded to legal persons of developing countries in the GATS of Regional Trade Agreements (RTAs) that involve **only developing countries**.

Thus, while the ACP can be accorded flexibility (and therefore SDT), coverage of services needs to be wider in scope than in GATS. Subject to this, SDT in an EPA context to non-LDC developing countries with respect to services offers can be WTO consistent. As with all WTO provisions, the interpretation of GATS Art. V depends on the views of the member states and can only be clarified by a dispute.

There is one important argument that would support a more flexible approach in GATS article V

than in GATT article XXIV. Both articles should ensure that the region is trade creating, not diverting. However, because at least one mode of services, temporary migration, is heavily restricted in different contexts, loosening up this one category is less likely to lead to trade diversion away from other categories, than in the case of relatively unrestricted trade in goods where tariff preferences may lead to a shift away from the most efficient imports; instead, it might displace or complement host-country labour; there is also no serious loss in tariffs in the possible event of trade diversion. Hence, we argue that the problem of trade diversion is much smaller when using trade in services preferences. It is also more politically acceptable to liberalise sensitive services sectors regionally with ACP regions, than globally.

Some would argue that mutual recognition agreements (MRAs) should also be seen in the context of GATS Art. V, while others argue that MRAs also need to be consistent with GATS Art VII. GATS Art. VII (Recognition) allows a member to recognise the education or experience obtained, requirements met, or licenses or certifications granted in a particular country, without breaking the MFN (Most Favoured Nation) rule. However, to ensure transparency, negotiations should allow third parties to be present during negotiations. Another way is to regard MRAs as part of notifying an RTA under GATS Art. V (Nielson, 2003). It is probably because of this possibility that the majority of notifications under Art. VII have been for (old) bilateral agreements (105 of 120) while around 10 agreements notified cover more than two countries (Adlung, 2004). Thus, if MRAs can be seen as part of a services EPA consistent with Art. V, it does not seem required to notify other parties of MRA negotiations (though if diversion in the case of regions was proven, this must be compensated). The services chapter in the EU–Mexico agreement includes an article that allows for the negotiation of MRAs.

### **General SDT options**

Te Velde et al. (2004) ‘scopes in’ 10 SDT options under EPA Services Negotiations. They are grouped in three areas: trade measures (SDT), services trade

facilitation (SDT) and development co-operation (capacity-building, see below). Some of these SDT measures apply to the general principles of the negotiations, but others need to be more country specific. Te Velde (2005) discusses possible measures that can be taken by the EU, and they are summarised below.

#### **1. Trade measures (these need to be WTO consistent)**

- (a) Full credit for autonomous ACP liberalisation of services (e.g. financial services in Trinidad and Tobago are already liberalised, so binding this would deserve credit, while the EU would be asked to start from actual levels of liberalisation.)
- (b) Fewer services commitments by ACP countries (affirming GATS commitments).
- (c) EU commitments over and above GATS. This could cover more liberal Mode 4 conditions (e.g. an ACP business travel card, see Box 2), safeguarding of 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 (see Box 3). Lifting of some restrictions can be achieved more easily at ACP level than in the GATS.
- (d) Including part of EU government procurement (e.g. health and IT).
- (e) Operationalise emergency safeguards measures for the ACP; (difficult for certain services sectors and/or Modes, e.g. Mode 3 when the services providers have already established a presence).
- (f) Flexible implementation time period, say 10–12 years for the ACP (this could apply to mutual recognition of qualifications and inventories of restrictions).

#### **2. Services trade facilitation (needs to be WTO consistent)**

- (a) Facilitation of the recognition of professional

credentials by setting up one-stop shops in ACP countries.

- (b) Information centres for ACP exporters of services.

### 3. Development co-operation (EDF programmes, EIB loans, other)

- (a) Financial support for services export capacity building (e.g. integrated tourism programmes, human resource development, trade policy capacity) and trade negotiations (this should be made mandatory or else this risks being too little, as in the case of GATS).
- (b) Increase in technology transfer to the ACP using 'home country measures' (e.g. PROINVEST, EIB Investment Facility).

## Capacity building for ACP service suppliers

Table 4 tries to match services trade constraints with the various support measures that either already exist as part of EC programmes or could be seen as part of services negotiations. This is based on interviews relating to trade barriers, regulatory framework and productive capacities in six services sectors: tourism, financial, ICT, education, cultural services and Mode 4 of supplying services across three ACP countries: Barbados, St Lucia and Suriname. The table shows that there are some key issues that can be addressed by the EC under a CARIFORUM-EC Economic Partnership Agreement, many of which could fall under SDT options: Mode 4, mutual recognition agreements, export promotion, import centres, human resources development, access

### Box 2. Introducing an ACP Business Travel Card (tailored to CARIFORUM)

The EU restricts the temporary movement of various categories of natural persons in GATS Mode 4 (while the EC does of course not have the competence over migration policies, it does act as a co-ordinating body which is able to put forward offers on Mode 4, temporary movement of natural persons, on the table after consultation with member states; this would not involve harmonisation of migration policies). In particular, medium to lower skilled workers from the ACP will find it difficult to enter the EU to supply services. Some higher skilled workers will be subject to quotas. Some new thinking is required so that the EU admits temporary movement of natural persons in all categories as long as some basic conditions are fulfilled. An ACP Business Travel Card may help to facilitate and operationalise market access in Mode 4. As a similar example, the APEC Business Travel Card has been successfully introduced. Under an ACP Business Travel Card there could be:

- visa-free or visa-at-border entry for business development purposes;
- creation of a multiple-entry visa;

- common service standards for processing (minimum time) of temporary entry visa;
- an expanded range of professions under 'business visitor'; and
- an expanded range of support staff, applying to less-skilled workers in particular.

There could be a pilot scheme running for a number of years (covering certain ACP countries, regions or sectors). Cardholders would be required to present their passports, but are not required to submit separate applications for business visitor visas. Participating economies would commit to implementing the scheme and would be free to maintain existing visa requirements for business visitors. They would also have the responsibility of avoiding abuse of the ACP Business Travel Cards by registering *bona fide* ACP employers (and avoiding overstaying temporary entry). All economies retain the right to refuse an individual without providing reasons, or to refuse entry to ACP Business Travel Cardholders at the border. The concept could be introduced at the ACP level, but the precise implementation could be left to regional negotiations, as ACP regions are interested in different services sectors.

### **Box 3. EU barriers to services imports**

Te Velde et al. (2004) reviews possible benefits of EU liberalisation to the ACP by sector and type of regulation in order to provide an improved insight into SDT (1c). Space requirements allow us to mention just a few here. We need to consider EU-wide regulations (when services have been liberalised internally) and country-specific regulations, many of which involve 'beyond the border' 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.

For construction and related engineering services, there are EU 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.

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.

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.

to finance, trade negotiations capacity support, public sector reform and private sector development. These findings are also applicable to other ACP regions.

### **Mode 4 and Mutual Recognition Agreements**

There are limitations to the temporary movement of people to the EC:

- Quotas with regard to entry of certain categories of workers will need to be determined.
- Economic needs test or residency requirements apply in certain sectors (e.g. number of pharmacists, nurses, R&D services, retail trade – on a national treatment basis).
- Less skilled workers are not automatically granted access through GATS provisions (though individual countries may have their own schemes).

And limitations on post-entry treatment:

- EU and national working conditions, minimum wage requirements, and any collective wage agreements will continue to apply.
- An important limitation on national treatment (NT) in Mode 4 is that EC directives on mutual recognition of diplomas do not apply to nationals of third countries. And recognition of the diplomas that are required in order to practice regulated professional services remains within the competence of each member state.

Hence, ACP countries can ask for better Mode 4 access, over and above what can be obtained in GATS (where progress has been slow). The ACP countries might also ask to be included in and initiate mutual recognition agreements, regionally, bilaterally or at the sector level with the EU. While

**Table 4. EU measures and services export capacity**

<b>Measures by EU to satisfy services capacity building needs in Art 41.5</b>			
	<b>Trade rules</b>	<b>Trade facilitation</b>	<b>Aid (for trade) programmes</b>
Tourism	Amend EU package travel directive to include Caribbean suppliers subject to Caribbean rules (St Lucia). Include Caribbean in EU reservation systems for transport and accommodation.	Import centres in new EU markets (also outside UK in case of St Lucia; outside Netherlands in case of Suriname). Provide credit for suppliers of major hotels to facilitate linkages (e.g. flowers in St Lucia), and enhance sustainable tourism development.	Support hospitality human resources development programme at SALCC; IT systems, health and safety training (to accord with EU travel directives, St Lucia and Suriname), particularly for local small hotels. Facilitate access to capital.
Financial services	Allow easier access to financial services to the diaspora in EU (remittances, savings, etc.)		Support for strengthening regulatory framework.
IT	Keep sector open for imports into EU. Avoid protective regulations in EU.	EU import centres in member states. Organise outsourcing match-making meetings (in EU and Caribbean).	Need for investment fund for new promising sector (St Lucia). CPA Art 43: take measures that will enable inhabitants of ACP countries to get easy access to information and communication technologies.
Education	Offer equality in payment of fees and access to courses and scholarships.	Develop partnerships between EU and Caribbean education institutes (Barbados, St Lucia and Suriname). Facilitate exchange of students.	Support targeted training programmes.
Cultural	Allow Caribbean as 'in quota' local content.	Strengthen or establish export centres such as national cultural foundations (Barbados, Suriname, St Lucia) – CPA Art 27.	Institutional support for marketing the sector – CPA Art 27. Develop heritage tourism.
Mode 4 (esp. inside companies).	Conclude MRAs. Access for all type of workers Obtain maximum quotas for skilled migrants.	Mode 4 facilitation: initiate ACP Business Travel Card. Support conformity to standards in MRAs (medical offshore schools).	Compensation for loss of capacity by supporting training centres for nurses, hospitality and IT sector.
Cross-cutting		Services import centres.	Private sector development (Suriname). Government capacity to co-ordinate services policy (St Lucia, Suriname).

Source: Te Velde (2005) based on interviews in Suriname, St Lucia and Barbados

it is generally acknowledged that MRAs (in professional services) can lead to significant benefits (UNCTAD, 2005), they are time consuming to negotiate and cost time. Support is needed for an adequate negotiation capacity and for the accreditation process, e.g. for ACP medical schools.

### **Export promotion**

Many services sectors are not regarded as significant export earners. Many ACP countries (with some exceptions) have done little to encourage entrepreneurship and export across borders in sectors

such as cultural services. Export promotion initiatives have traditionally focused on trade in goods, and more recently tourism. The EC could provide more assistance for export promotion, particularly for those organisations that try to organise emerging services suppliers (such as national cultural foundations) and develop marketing strategies. This is particularly relevant for those services sectors that consist of many fragmented suppliers with little knowledge of exporting and supplying services through Modes 2 and 4 (artists, entertainers, lawyers, accountants, etc.). Such suppliers face a lack of information, e.g. on demand for their services in the EU.

### ***Import centres***

It might be better to concentrate trade facilitation on the import side in EU member states, when the services sector in the Caribbean is more concentrated (e.g. there are only a few IT enabled services suppliers in the Windward Islands) and supplying services through Mode 1 (online) or Mode 3. In the case of Mode 1 it might be relevant to organise meetings for companies in the market for offshoring (matchmaking), or in the case of Mode 3 advice on how to access the EU market (outward investment promotion). While some of this support is already occurring, there has been comparatively little attempt to do this for services sectors. There is a bilateral precedent. The Netherlands Foreign Ministry has an agency called the CBI which is tasked with stimulating imports from developing countries. As part of this, it offers advice on accessing the EU markets, including in the tourism sector.

### ***Human resources***

Often, human resources are inadequately geared towards newly emerging services sectors. Even when tourism is responsible for a substantial part of GDP, there has been insufficient attention to developing human resources for the hospitality sector. Good quality and appropriate human resource development might help to reposition the Caribbean economies in the context of globalisation and preference erosion. In all case countries there exists a lack of qualified technical skills to move up the IT

ladder (only simple call-centres activities are present throughout the Caribbean). And, there is little attention to developing skills in entertainers and artists. In general terms, market and co-ordination failures constrain the achievement of sufficient and adequate skills development.

Education is also becoming a promising export sector itself. There is a need to strengthen tertiary education and training to build up competences in the sector as well as providing payments to ACP countries (it might be economically efficient to train nurses in the ACP) for the training of teaching and nursing capabilities. Foreign education institutions (e.g. in health, hospitality) have been attracted to the Caribbean from the US, but there is much less on this from the EU in ACP countries. This could be encouraged.

### ***Access to finance***

It is generally acknowledged that available credit (e.g. CDB or EIB) is not geared towards small services producers. There is a lack of financing that is quick and flexible – and this is required for dynamic services sectors. The EC could support further access to credit for specialised sectors, e.g. a Caribbean Tourism Investment Fund, or an ICT Investment Fund.

There are also other elements that may need attention under a services EPA. There is a discussion whether and how different types of tourism contribute to the local economy. One part of this debate relates to the extent to which local suppliers are connected to the big (foreign-owned) hotels. The extent of such linkages usually depends on good quality and timely supplies. However, access to finance is another factor. Discussions suggested that big hotels sometimes do not pay small local suppliers of flowers on time, so that access to credit is one of the constraints to further profitable tourism.

### ***Trade negotiations capacity support***

The trade negotiations capacity in small ACP states is often weak because of the limited number of officials available – there are exceptions. There is normally no continuous co-ordination on trade matters amongst ministries and between the private and

public sector. Some suggest that support for a national trade negotiations capacity centre in ACP countries is needed to: co-ordinate demands from ministries and industries, absorb academic knowledge, and communicate with the private sector on how they are constrained by trade-related issues.

### **Public sector reform**

In some cases regulations are outdated, and in other cases further services exports depend on public sector reform in other (services) sectors. While there may be various reasons for this, lack of government capacity is one. Further support for public sector reform may be required.

### **Private sector development**

There is a poor investment climate in some ACP countries, and assistance for improving the regulatory framework and for public sector reform would also help to create an improved investment climate. There is inadequate private sector development, and support for private sector development such as for the development of IT and culture services sector might help.

### **Conclusions**

This chapter reviewed the development dimensions of possible services negotiations under EPAs. We argued that there were four options forward for EPA services negotiations:

1. **No services agreement.** Restatement of partnership character as in CPA Art. 41.4. Channelling of current EDF resources to strengthen ACP capacity in the supply of services related to labour, business, distribution, finance, tourism, culture and construction and related engineering services (CPA Art. 41.5).
2. **No services agreement, with some SDT options,** such as additional resources, to satisfy 41.2 allowing for SDT of ACP suppliers.
3. **Limited services agreement.** No ACP commitments beyond GATS (CPA Art. 41.2), but with (significant) new EU commitments and inclusion of other SDT options while possible services

EPAs satisfy the requirements of GATS Art. V as well as SDT in CPA Arts 41.2 and 41.5.

4. **Advanced services agreement,** with both the ACP and EU participating and giving more commitments than under GATS.

A question that all ACP regions will have to answer is to what extent they want to negotiate in the area of services. But independent from this, significant thought will need to go into the development dimension of services. We think that development is an important aspect of the issue of services in the CPA; at the same time the trade aspects will need to respond to what has been achieved in GATS. We argued that there were a number of ways that aid measures may help to build the export capacity of the ACP, a stated aim in the CPA. We also argued that preferences in the area of trade in services (e.g. Mode 4) are actually less trade diverting than usual and hence more acceptable and more likely to be welfare enhancing.

### **Endnotes**

1. Health tourism (surgery in combination with cruise holidays, mode 2) is well documented in the case of the Caribbean (Gonzales et al., 2001). Lyford Cay hospital in the Bahamas serves UK patients; around two percent of hospital visits in Queen Elizabeth Hospital in Barbados originated from the UK, etc.
2. CPA Art. 34 (which is more general to the Cotonou Partnership Agreement): Economic and trade cooperation shall aim at fostering the smooth and gradual integration of the ACP States into the world economy, with due regard for their political choices and development priorities, thereby promoting their sustainable development and contributing to poverty eradication in the ACP countries.

The ultimate objective of economic and trade cooperation is to enable the ACP States to play a full part in international trade. In this context, particular regard shall be had to the need for the ACP States to participate actively in multilateral trade negotiations. Given the current level of development of the ACP countries, economic and trade cooperation shall be directed at enabling the ACP States to manage the challenges of globalisation and to adapt progressively to new conditions of international trade thereby facilitating their transition to the liberalised global economy.

To this end economic and trade cooperation shall aim at enhancing the production, supply and trading capacity of the ACP countries as well as their capacity to attract investment. It shall further aim at creating a new trading dynamic between the Parties, at strengthening the ACP countries trade and investment policies and at improving the ACP countries' capacity to handle all issues related to trade.

Economic and trade cooperation shall be implemented in full conformity with the provisions of the WTO, including

special and differential treatment, taking account of the Parties' mutual interests and their respective levels of development.

3. The draft November GATS text in the Doha Round says it will address concerns for small economies, but does not say how.
4. Europe Agreements are pre-accession agreements, with Bulgaria (into force 1995), Czech Republic (1995), Estonia (1998), Hungary (1994), Latvia (1998), Lithuania (1998), Poland (1994), Romania (1995), Slovakia (1995), Slovenia (1999). Most are now superseded by accession.
5. Euro-Mediterranean association agreements with Algeria (signed 2002), Tunisia (1998), Israel (1995), Jordan (1997), Lebanon (2003), Morocco (1996) and Palestinian Authority.
6. Trade Development Cooperation Agreement signed in 1999.
7. Economic Partnership, Political Coordination, and Cooperation agreement or Global Agreement, signed 2000 and 2001.
8. EU-Chile Association Agreement.
9. An alternative view is provided by Stephenson and Contreras (2002) concerning ongoing (but now stalled) EU-MERCOSUR negotiations in the area of services, where there are strong regulatory asymmetries. In the EU the establishment of the Single Market has had an impact on national regulations of many services sectors, and has led to some harmonisation of regulation. MERCOSUR, on the other hand, is in an earlier stage of integration of services markets, characterised by ongoing reforms of national regulations in specific services sectors and, to a lesser extent, regulatory harmonisation across countries. Because of these asymmetries, the authors identify a three-phase negotiating strategy departing from GATS:
  - Phase I: Identification of (potential) 'sensitive' sectors and liberalisation of 'non-sensitive' sectors (where asymmetries do not play a major role).
  - Phase II: Regulatory reform/review and political consensus around 'sensitive' sectors.
  - Phase III: Progressive liberalisation after completion of removing regulatory asymmetries through regulatory reform.

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