



**“Improving EAC Private Sector Awareness on the EPA and
Involvement in Trade Policy”**

2nd Regional EAC-EU EPA Sensitisation Workshop

TRADE IN SERVICES

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Scope of presentation

- WTO legal basis and definitions
- Current position in EAC-EC negotiations
- Barriers to increased Trade in Services
- Cariforum: lessons to note
- Recommendations for negotiations
- Suggested Coalition of Service Industries

WTO legal basis

- General Agreement on trade in Services (GATS): Annex B to WTO Agreement
- Aim at non-discrimination and greater role for developing countries
- Rules must be transparent
- Defines 12 services sectors and four Modes of Supply

What is the status of EAC-EC EPA negotiations?

- Trade in Services is covered by Article 37 of FEPA (for later negotiation)
- EABC has done studies but no detailed negotiations yet between EAC and EC
- EAC Ministerial Meeting in Brussels in February 2010 did not consider
- EA private sector views may not be fully understood by EAC

What services sectors are of greatest interest?

- Tourism
- Entertainment and cultural services
- ICT and business process outsourcing
- Education, especially higher and private
- Professional services (nursing, legal, accounting, engineering, architectural)

Modes 3 and 4 are of greatest relevance

What are the most common barriers to Trade in Services?

- Generally through local (and EC) laws and regulations on participation of foreign services suppliers
- Examples:
 1. National treatment
 2. Market access
 3. Domestic regulations

1. National treatment

- Discriminatory subsidies and other financial measures
- Nationality of certain personnel and residency requirements
- Licensing, qualification and registration requirements
- Technology transfer/training requirements
- Local content requirements
- Prohibitions on land/property ownership
- Limitations on insurance portability, use of education grants, etc.

2. Market access

- Quotas and quantitative restrictions
- Limits on participation of foreign capital
- Limits on value of transactions
- Requirements for specific types of legal entity

Economic Needs Tests (ENTs) are a tool for applying quantitative restrictions

3. Domestic regulations

- Local standards
- Local qualification requirements
- Language requirements

- All of above may make it difficult for a foreign supplier to operate

What are (should be) the main concerns?

- Immigration rules: GATT does not oblige members to diverge from national rule
- Qualifications: lack of mutual recognition
- Differential treatment of domestic and foreign suppliers
- Regulations on commercial presence
- Application of ENTs

Qualifications

- Absence of mutual recognition (or non-recognition) by EC
- Rules allow discretion and are not always precise
- Mutual Recognition Agreements (MRAs) in EU do not apply to non-EC nationals
- Need for clear procedures for recognition, approval, etc.

Differential treatment

- Limits on availability of subsidies, tax incentives
- Limits on land ownership
- Barriers to entry to certain sectors (e.g. Italy, industrial sectors)
- More stringent qualification requirements
- Language tests

Regulations on commercial presence

- Types of business structure
- Limits on foreign participation
- Limits on opening branches
- Minimum capital requirements

Economic Needs Tests

- Identified by EAC stakeholders as major impediment
- Absence of clear definitions in GATS leads to lack of legal certainty and predictability
- Absence of mechanisms to challenge decisions
- 80% of ENTs directed at Mode 4 suppliers
- Cariforum EPA may not be a model ...

Cariforum: lessons to note

- Cariforum has negotiated market access for Cariforum professionals (employees) in 29 sectors for up to 90 days in a year
- Independent and self-employed professionals in 11 sectors are also allowed access to EU
- Unprecedented commitment by EU
- However, all subject to levels of qualification and ENTs set out in detailed annexes to EPA
- Lack of clarity on exact application of ENTs (“market situation”), no quantitative measures and no mechanism to challenge

Recommendations for negotiations:

1. Economic Needs Tests

- Aim for maximum clarity and transparency
- Argue for mechanisms for application of decisions and disputes
- Aim for sector-specific rulings and undertakings

Recommendations for negotiations

2. Qualifications

- Request reduced timescales for applications based on qualifications
- Avoid need for multiple registrations
- Seek sectors for expedited treatment
- Add new sectors (to Cariforum list), e.g. craft and commercial activities
- Request schedules of specific requirements by sector
- Request review and consultation mechanism

Recommendations for negotiations

3. Definition of Mode 4 categories

- Allow inter-corporate transfers
- Re-define “manager” and “specialist”
- Re-define “graduate trainee”
- Business visitors to be allowed to engage in direct transactions
- Allow contractual services suppliers and independent professionals to deal with intermediaries as well as final consumers
- Other suggestions?

Recommendations for negotiations

4. Add new Mode 3 and 4 categories

Examples:

- Botanical and zoological
- Wildlife
- Environmental
- Photographic
- Research and development

And add new category of “intermediate trainees” (skilled artisans)

Recommendations for negotiations

5. Complementary measures

- Funding to develop services export activities
- Finance to improve quality and standards
- Finance and TA to establish networks
- Finance to improve service-related infrastructure, e.g. telecoms
- Training
- Improvement in services regulatory regimes
- General education and training on buying and selling services

Proposal for Coalition of Service Industries

- Idea dates from February 2009 EPA Regional Sensitisation Workshop
- 6 possible roles: awareness raising; institution building; policy development; export and investment promotion; research and information dissemination; trade negotiations
- Specific actions: sensitising the services sector; internal forum; communicating information on negotiations; mechanism to interact and lobby governments