

4 The EU's approach to Free Trade Agreements Services

This paper forms part of a series of eight briefings on the European Union's approach to Free Trade Agreements. It aims to explain EU policies, procedures and practices to those interested in supporting developing countries. It is not intended to endorse any particular policy or position, rather to inform decisions and provide the means to better defend them. The views expressed in the briefings do not necessarily reflect the views of the publishers.

What's at stake?

For developing countries

Many services are critical to human development and poverty reduction, like healthcare and education; others are important to a well-functioning economy, for example telecommunications, transport or banking. How a country manages its services sector to make sure these are available to its citizens and firms, affordable and of good quality depends in part on whether it allows foreign services firms to play a part in their supply and, if so, how it manages their involvement.

Services are important to economic development. Services are the fastest-growing area of trade (around six per cent per annum), but developing countries' share remains static despite the fact that they are often a key share of developing countries' exports. Even among LDCs, the average contribution of services exports to GDP was 2.5 per cent in 2003 with some island economies reaching levels of over 50 per cent.

The domestic service market is also important. A study of 30 developing countries shows that developing countries' service economies are more important and diversified than reported, often made up of small and micro enterprises, and important to employment.¹ Developing countries have great potential to expand their share of services trade, thereby contributing to growth and a more diversified economy.

Opening up the services sector to foreign investment can contribute to development. However, to take advantage of the opportunities and avoid costs, any liberalisation needs to occur in a carefully sequenced manner, and countries need to have the appropriate level of administrative and regulatory capacity to ensure this opening is beneficial (see box on page 2).

Services trade is the trade in non-tangibles – such as haircuts, healthcare, power supply, telecommunications and banking.

1 Riddle, D., 2002. *Services Export Capacity in Developing Countries*. WTO Symposium on Assessment of Trade in Services. www.wto.org/english/tratop_e/serv_e/symp_mar02_riddle_e.doc

When to liberalise?

Admitting foreign service suppliers can bring benefits to developing country economies. They can bridge gaps in providing essential public and business services, they can boost business opportunities and learning for local firms, create jobs, and bring competition on price and quality. However, these benefits are not automatic. Services liberalisation can equally have negative impacts on poor consumers, local firms and government's ability to regulate. Key factors such as the quality of local institutions and the competitiveness of local firms are important in determining impact. Services trade is difficult to analyse because it is hard to measure and barriers are more complex (regulations rather than tariffs). These factors combined would suggest a strong need for caution and wide consultation before making services commitments. Some considerations are:

Sensitive sectors: These are sectors essential to economic and social development, such as essential services, network infrastructure services, and financial services. They are often described as 'public goods' since their benefits extend beyond immediate returns to the direct consumer. These are services sectors where other priorities often take precedence over economic efficiency, for example universal access to basic healthcare. For cultural, political and economic reasons governments of many countries, including OECD countries, have maintained tight controls of these sectors and have been slow to liberalise. For example, in water services, the OECD estimates that 90 per cent of water provision is still in public hands. Where these sectors have been privatised, there has been a marked need for increased regulation and competition, although this is difficult to achieve due to natural monopoly characteristics or high levels of investment required for entry into these sectors.

Sequencing: Many studies (see 'important information and where to find it' on page 11) show that regulatory structures should be effective before liberalisation of key service sectors, or the potential benefits could be reduced or even reversed. The need for careful sequencing holds true particularly for many of the 'sensitive sectors' described above that tend to be natural monopolies.

A study of 30 African and Latin American countries found that competition in the telecommunications sector was significantly associated with increases in access to services and lower costs of calls. Privatisation alone was not beneficial in terms of efficiency or number of connections; it needed to be combined with regulatory capacity.

Building the domestic economy: A developing country government may wish to protect infant industries in order to promote a diversified, dynamic economy and to protect jobs and livelihoods. Although they are net importers of services, developing countries often have a wide variety of service suppliers. Faced with unequal competition too soon in their development, these dynamic but often small industries, risk being put out of business. Most developing country governments lack programmes for supporting these businesses and their views are rarely put forward in trade negotiations. These firms are important in terms of employment and GDP, but also for providing essential services to other parts of the economy. (OECD estimates that 10–20 per cent of input for production is services.) Maintaining a healthy domestic sector can be critical in promoting competition and to providing locally tailored solutions to local consumers, especially when these are not well served by larger corporations interested in wealthier clients.

For the EU

Services are the cornerstone of the external trade and competitiveness agenda of the EU. They represent 77 per cent of the EU's GDP and employment. The EU sees its future wealth as coming from the provision of premium goods and services. It lists the sectors of telecommunications, distribution, finance, insurance, transport and environmental services as those where European firms are world leaders.

Target regions of the competitiveness strategy are important economically for EU service industries: India imports 33 billion euros of commercial services from the EU, whilst ASEAN imports 89 billion euros and Latin America 27 billion euros.

The EC calls for “far-reaching liberalisation of trade in services, covering all modes of supply”² and at least parity with its competitors’ FTAs in the target regions.

Liberalisation of services sectors generally involves tackling regulatory barriers affecting foreign service providers overseas. The EU recognises that this can be sensitive since it touches on the right to regulate domestically to achieve public policy objectives, but its stated aim in FTA policy is to move further and faster in promoting openness and integration and to reinforce regulatory ties. It further states that domestic regulation “must be done in a manner with the least restriction on trade, consistent with achieving other legitimate policy objectives.”

² See P17 Staff working paper to Global Europe available at: <http://trade.ec.europa.eu/doclib/html/130370.htm>

Understanding services texts: Key terms and definitions

Modes: These are the different ways in which services are traded across borders.

- The person providing the service can cross the border to do so (called Mode 4). An example is hiring a builder from overseas.
- The company can set up a branch in the country where its customers are (Mode 3). Foreign clothes shops and banks are examples.
- The customer can do the traveling (Mode 2), as for example when people eat in restaurants or get medical treatment abroad.
- Finally the service itself can cross the border (Mode 1). Previously this was confined to things like postal services, but the internet has enabled other services such as consultancy to “travel” in this way.

Countries make different liberalisation commitments according to each mode.

Sectors: These are the different types of service industries. The list of categories that is normally used is the one set up by the UN. The categories are broad, and it is useful to check to see exactly which activities are covered. The list can be found at: <http://unstats.un.org/unsd/cr/registry/regcst.asp?cl=16&Lg=1>.

Schedules: As well as the texts of the trade agreements, there are lists of specific commitments per sector called “schedules”. These list the sectors in which commitments are being made, as well as any limitations on free access to markets and any deviations from national treatment. Here is an example:

Sector or subsector	Limitations on market access	Limitations on national treatment
Packaging Services CPC 876	4) Unbound (The party is reserving the right to make changes to its market- access commitments in mode 4, so preserving maximum policy space.)	None (The party is committing to full national treatment, so cannot use measures which discriminate against foreign service suppliers.)

As with services negotiations at the World Trade Organisation, for those sectors committed, the European Commission asks its trading partners to eliminate quotas, Economic Needs Tests, requirements on the type of Legal Entity to be used, or limits on foreign shareholding and national treatment for firms entering the market, once they are established. Unless countries specify exceptions or “reservations” to these general conditions when they write up their schedules, they are considered to refrain from applying the above- mentioned policy measures.

The European Commission’s latest texts take a new approach to how it organises its services commitments and schedules. Rather than having one annex dealing with each of the modes, it is including one annex on “cross-border trade” for modes 1 and 2 and another on “Establishment” which covers both mode 3 services commitments as well as investment in non-service sectors. Mode 4 commitments are outlined within the text of the agreement. It remains to be seen whether this will be detrimental to clear outcomes for mode 4 – which tends to be a sensitive topic for the European Commission, and an offensive interest for developing countries. It also raises new challenges for negotiators.

Understanding services texts: Key terms and definitions continued

Parity/ Most Favoured Nation (MFN): This means that investors and service suppliers from the European Union will automatically be treated as well as those from other countries/regions with which the negotiating party has a trade deal – both current and future ones.

Again the Commission has taken a new approach in some of its most recent texts and is seeking parity only with countries that are commercially significant. This means that smaller countries can conclude deeper deals without having to offer the same terms to the European Union.

National treatment: Once a European investor is established in the country it must be treated at least the same as local firms.

The legal backdrop: What WTO rules mean for services in Free Trade Agreements

The World Trade Organisation's General Agreement on Trade in Services (GATS) sets out the rules for services trade including how services must be dealt with in regional trade deals. Free Trade Agreements (FTAs) do not necessarily need to deal with services at all to be compatible with WTO rules. Countries can simply reaffirm in broad language their existing multilateral commitments under the GATS. The European Union has done this in the past, for example in their Euromed agreements.

Once services are included in regional trade deals, they must conform with the requirements of GATS Article V. This rule requires countries to make sure new deals "substantially" liberalise services trade, but allows developing countries flexibility.

The GATS contains important flexibilities, safeguards and other measures designed to help developing countries in particular to avoid the pitfalls of services liberalisation and enjoy the benefits of enhanced services trade.

In order for regional deals on services to be of interest to developing countries, one condition is that they should reinforce and not undermine these important measures and that the framework for their services liberalisation should be at least as favourable as that provided for in the GATS. The table below compares key GATS provisions with European Commission practice in Free Trade Agreements. It shows that in some important areas, European Free Trade Agreements are undermining flexibilities that are provided for under GATS.

GATS provision	EU FTA practice	Development implications
<p>In FTAs, developing countries have greater flexibility both overall in the number of sectors liberalised and the extent of liberalisation in each sector committed. <i>GATS Article V:2</i></p> <p>WTO members are also asked to “take account of the serious difficulties” of LDCs in making commitments. <i>GATS Article IV</i></p> <p>The Hong Kong Ministerial Declaration reiterates that LDCs are exempt from commitments to liberalise services in the Doha Round.</p>	<p>Since these provisions are not well defined it is difficult to judge whether they are being implemented.</p> <p>In some EU FTAs (for example TDCA with South Africa) there is explicit reference to GATS V flexibilities for developing countries.</p> <p>In EPA negotiations, the EU appears to be seeking comprehensive coverage but allowing longer timeframes for liberalisation.</p> <p>There is nothing in draft EPA texts to indicate that the EU is exempting LDCs from services liberalisation commitments.</p>	<p>GATS rules generally require countries in FTAs to liberalise most sectors and to eliminate any discriminatory measures.</p> <p>Developing countries might wish to liberalise fewer sectors more slowly to promote local service industries, to keep control of key sensitive sectors or to develop regulatory capacity before liberalising.</p> <p>Developing countries might also wish to retain some policy tools, falling under the GATS, or to pursue development objectives such as quotas, joint venture requirements or measures that discriminate in favour of local firms.</p>
<p>Developed countries are to strive to help developing countries to increase their share of services trade, through liberalising sectors where they have potential to export. <i>GATS Article IV</i></p>	<p>The EU always exempts key sensitive sectors from liberalisation in FTAs. Some of these are of export interest to developing countries, notably audio-visual services, and air transport services.</p> <p>The EU’s offers in Mode 4, even in EPA drafts, fall short of developing country expectations as expressed in WTO talks.</p>	<p>Services are important to economic diversification and moves into value-added activity.</p> <p>Some commentators disagree on the potential benefits and pitfalls of Mode 4 liberalisation. The World Bank calculates that gains for developing countries could reach \$150 billion per annum,³ while others warn of the dangers of “brain drain”. It is clear that by liberalising only the movement of the most qualified personnel, the EU risks preventing countries from adopting an optimal strategy.</p>
<p>The GATS allows countries to choose in which sectors they would like to liberalise. This contrasts with goods negotiations where countries commit to liberalise all sectors and can name upfront which few sectors to exclude. The GATS approach is called “positive list”.</p>	<p>The ECU adopts a positive list approach to services. However, the EU also requests broad commitments such as a standstill on discriminatory measures (EU–Mexico) and on Most Favoured Nation treatment including market access (EPAs) which undermines this flexibility.</p>	<p>One of the perceived advantages of services negotiations is the flexibility they allow countries in deciding when and where to liberalise.</p> <p>MFN commitments mean countries will not be able to decide with which regions they would like to integrate most or first. This has been tempered in EPA negotiations by allowing countries to offer more favourable terms to trading partners that are not “major trading economies” defined as developed countries or those accounting for 1 per cent or more share of world exports.</p> <p>A standstill on discriminatory measures means that countries cannot introduce measures, even in sectors where they have not locked in GATS commitments.</p>
<p>Countries are allowed to exempt public services from GATS commitments even if the relevant sector is liberalised. These must be supplied “neither on a commercial basis, nor in competition with one or more service suppliers”. <i>GATS Article I</i></p>	<p>The EU repeats the language of the GATS exemption for public services, although in recent texts it is unclear to what extent the carve-out applies in the investment chapter, because of new organisation of texts.</p>	<p>Many governments, including in OECD countries, prefer to keep control of strategic sectors such as essential services (sanitation, health, education) or infrastructure services (telecommunications).</p> <p>The GATS language is felt to be ambiguous. It is unclear whether contracting out the provision of government services to the private sector or the co-existence of a private sector provider or the introduction of fee-based service provision could jeopardise use of the carve-out. Developing countries have been under significant pressure to liberalise these sensitive sectors and involve the private sector through donors and multilateral lenders.</p>
<p>The GATS contains other exemptions and safeguards important for countries to maintain financial stability and to achieve public policy objectives including:</p> <ul style="list-style-type: none"> • security • public morals and order • human, animal & plant life and health • fraud prevention • data privacy protection • safety • direct taxation. 	<p>The EU allows many of the standard exemptions and safeguards allowed in GATS.</p>	<p>Some novelties have been introduced. The EU has introduced an exemption for protection of exhaustible natural resources. Access to natural resources and energy security are key objectives of Global Europe. These measures seem to aim at preserving equal European access to diminishing reserves.</p> <p>The EC has also introduced an exemption to protect “national treasures”.</p> <p>Apparently missing from draft EPA texts are safeguards to prevent Balance of Payments difficulties.</p>

3 Winters & Walmsley (2002), Relaxing the Restrictions on the Temporary Movement of Natural Persons: A Simulation Analysis

GATS provision	EC FTA practice	Development implications
Under GATS Article X, the WTO foresees the establishment of an Emergency Safeguard Mechanism (ESM). The details of this mechanism are not defined and are part of the Doha Round of negotiations.	The EU's position at the WTO has not been supportive of an ESM and there is no reflection of this possible tool and its application in its FTAs.	The ESM is potentially very important to developing countries in particular. This escape clause would help to cope with unforeseen import surges as a result of liberalisation commitments, and safeguard the interests of nascent domestic industries and defend against other negative impacts, for example financial imbalances such as those experienced in East Asia.
Developing countries are allowed to attach conditions to liberalisation commitments to enhance their services trade. <i>GATS Article XIX</i>	This provision is not recognised in EU FTAs.	Such conditions can be a useful instrument to safeguard and implement development policies. Examples of conditions WTO members have attached to GATS commitments and that might be useful to developing countries in this respect are: <ul style="list-style-type: none"> • Standards: such as service targets, performance requirements, specification standards (for example, to use local labour or to provide technology transfer), competition law (for example preventing price-fixing) • Price controls: Usually to ensure affordability of essential services • Entry controls: Professional and educational requirements, restrictions on marketing and use (e.g. zoning laws), prior authorisation requirements and licensing • Information regulation: Certification and labelling requirements for the benefit of consumers.
GATS Article VI has rules on how to balance the right of countries to introduce domestic regulations that affect foreign service providers with their commitment to liberalise in particular sectors. These rules are currently ill-defined and are under negotiation at the WTO.	The EU tends to take a strict approach to rules on how and when countries can introduce domestic regulations in sectors in which they have made commitments to liberalise their services. It requires these to be in pursuit of legitimate policy objectives and to be not more restrictive than necessary on trade.	In the Doha Round, developing countries are fighting to retain the right to regulate for development objectives and to avoid the “necessity test” which judges the validity of a measure based only on its impact on trade and not on other factors, for example, institutional capacity. Some EC texts also require commitments on the quality and type of regulatory and institutional arrangements. Countries should consider their capacity to fulfill these without jeopardising other spending commitments before accepting binding terms.
The GATS aims at progressive liberalisation and has an in-built agenda to make this operational. However, there is no requirement for FTA deals to include a timetable or process for further liberalisation between the parties.	Most EU agreements include a commitment to look at liberalising further later on. These have tended to become more far-reaching in subsequent agreements.	Developing countries should decide to what extent these commitments should be binding, and to what extent they want to set up new institutions and mechanisms to identify and implement further liberalisation.
GATS rules state that countries may reach agreement on mutual recognition of qualifications, standards, certification and should not do so in a way that acts as discrimination between countries. It does not call on countries to harmonise their regulations and requirements. It also calls on members to increase participation of developing countries, through strengthening domestic services capacity and competitiveness, and to improve their access to distribution channels and information networks. It foresees the establishment of “contact points” to assist services exporters	In its Global Europe paper the EC looks to co-operation on regulatory issues as a strong tool for harmonisation. The EC generally does provide contact points for services exporters and foresees more general co-operation provisions in EPAs. These are as yet undefined.	These features can be helpful for developing countries, if they help overcome the barriers to their services' exports. For example, mutual recognition of professional qualifications can help in facilitating the movement of service providers (mode 4). Co-operation can mean development assistance but can also mean help to address problems like access to technology or dealing with anti-competitive practices that stop developing country firms having access to essential reservation networks in the tourism sector. However, these can also place obligations on developing countries, limit their use of licences and be a “soft” means to achieve changes in their regulations to suit European firms.

Analysing offensive and defensive interests: Some questions to ask

Since there is no WTO compulsion to include services in an FTA, parties must be satisfied that the balance of their offensive and defensive interests is well served before signing up to any deal.

What the EU might want and what this might mean for development

In general, coverage and ambition have increased in subsequent agreements by the EU; for example in several of the Euromed agreements, countries simply confirmed their existing GATS commitments (and a future reassessment of commitments). The later EU–Mexico and EU–Chile have more substantive and detailed provisions, and frequently go beyond GATS requirements, for example in financial services and telecommunications liberalisation.

According to the EC's past practice and Global Europe statements, the EC is likely to seek liberalisation commitments from developing countries in at least the following sectors: telecommunications, distribution, environmental services and financial services.

Telecommunications

Access to telecommunications is important to economic activity, social cohesion and many other aspects of development.

Telecommunications markets tend to be natural monopolies because there is generally only one infrastructure and high set-up costs and the need for continual technology upgrades mean large firms tend to dominate. Liberalisation needs to be carefully planned and sequenced.

The GATS has a reference paper or template for telecommunications. The EC approach has differences which are useful to analyse.

Although the GATS paper requires information on requirements and conditions to be publicly available, the EC also sets out conditions for the regulatory authority and provisions for dispute settlement for providers. Implementations of these kinds of provisions can be expensive and burdensome.

According to GATS, developing countries are allowed to specify in their schedules conditions to strengthen their telecommunications infrastructure and participation in international trade in telecommunications services. The GATS paper also calls for technical co-operation to assist developing countries, including “encouraging” foreign suppliers to provide technology transfer and training to assist LDCs’ development of the sector. None of these positive measures appear in EC texts on telecommunications.

The EC recognises that universal service obligations can be required, but places restrictions that these must be “transparent, objective, non-discriminatory”, neutral with respect to competition and “not more burdensome than necessary for the kind of universal service defined by the Party”. It also requires that directories of all users be published and updated on an annual basis! Recent texts also call for governments to compensate suppliers if universal service becomes an “unfair burden”.

The EC also places restrictions on the right of firms to cross-subsidise and thus keep prices low for poorer consumers. It requires that these must not be “anti-competitive”. This kind of provision has already created difficulties, for example for the Mexican government who lost a case brought by the US.

Financial Services

The financial sector is essential to economic development because it provides access to credit and savings facilities for entrepreneurs and farmers, for example. It is also key in promoting macro-economic stability and market development. Many OECD countries still maintain restrictions on foreign participation in their financial sectors, perceived as important to maintaining economic and political independence.

For these reasons, liberalisation of the sector must be carefully managed. Developing countries might hesitate to lock in liberalisation over a fixed period of time where they cannot be sure of the right conditions being in place or of the consequences of liberalisation.

Some possible impacts to consider are:

- Financial sector liberalisation without adequate regulations and supervision can lead to financial instability. For example, the EC text asks countries to allow full foreign ownership and board membership of their banks and not to impose any limits on foreign participation in the sector. Domestic providers may respond to foreign competition by lending imprudently or engaging in higher-risk activities, or unsound foreign institutions may enter the financial sector. Some countries might want to limit or restrict participation in risky sectors, for example debt markets or hedge funds.
- Increasing foreign participation through Mode 3, as the EC requests, can also increase capital flows, unless controls are introduced. This can lead to instability, as demonstrated by the East Asia Financial crisis of 1997, as well as exacerbating the problems of capital flight for developing countries.
- Financial sector liberalisation can reduce access to credit for customers who lack collateral or find formal information requirements difficult to fulfil. The IMF found that the presence of foreign banks results in less access to credit for the country's private sector.⁴ An earlier study of financial markets in four African countries found that financial services liberalisation negatively affected access to credit in rural areas. This is exacerbated as domestic firms are often driven out of business. Concentration in banking activities in African countries has risen since the sector was liberalised.

4 E. Detragiache, T. Tressel, and P. Gupta (2006) 'Foreign Banks in Poor Countries: Theory and Evidence', IMF.

Many of these issues are not unique to EU deals. In fact much of the language on the scope, definitions, etc of the agreement comes directly from GATS text. However, there are some novelties in the EC's approach that deserve some further consideration:

- The EC includes far-reaching commitments on "effective and transparent regulations" and how these should be implemented. These can be burdensome if included as binding commitments for developing countries, but also they involve signing up to various international instruments and standards, some of which, for example the Basel Conventions, are controversial for developing countries who have not participated in the development of such standards.
- The EC's "prudential carve-out" clause is different from that in the GATS. This clause is intended to make sure that GATS commitments do not undermine financial stability or fiduciary responsibility. The GATS language requires that countries do not use this right to avoid their obligations. The EC adds language that the measures a country takes under this clause should be non-discriminatory and "not more burdensome than necessary". Developing countries might want to add additional criteria for prudential carve-out including their ability to supervise and regulate the sector.
- The EU in some agreements includes detailed provisions on dispute settlement and the kind of mechanisms that should be in place – down to the composition of the panel members. In combination with strict disciplines on domestic regulation this could create risk for developing country governments on implementing new policies or regulations to manage their services sectors.

- In some agreements the EC sets up a Supervisory Committee to supervise implementation and to allow the parties to discuss any “issues” as well as seeking to facilitate and expand bi-regional services trade. The current remit is imbalanced and might put developing country Parties under pressure to implement swiftly and further liberalise. A more balanced approach would consider also capacity to implement, monitoring development impacts as well as the usefulness of development co-operation with the EU.

Distribution services

Unlike the previous sectors there is no specific framework within the text of European Free Trade Agreements for distribution services. Liberalisation is determined via the usual request–offer process of negotiations. The sector is important for the EC, both because large EU firms dominate the sector, but also because distribution services are an important part of a well-functioning supply chain. For developing countries, the nature of the distribution sector is important for their own firms’ efficiency and the viability of their markets and trade links.

However, efficiency is not the only consideration. There can be high short-term costs as many developing countries’ distribution sectors, especially the retail part of them, are dominated by small traditional enterprises. Being able to supply the retail sector is also important especially for poor farmers. Introducing full liberalisation in this sector has tended to disadvantage these players who are too small to compete with large retailers or who – as in the case of farmers – lack the necessary access to credit, technology and flexibility to do business with them. Consumers are also not necessarily going to benefit from liberalisation, nor is competition or efficiency a guaranteed outcome, as the market is dominated by a few global players who dominate local markets as both sellers and buyers.

This is a sector that requires regulation to correct market failures and ensure best outcomes for local firms and consumers. Any services commitments should therefore be careful not to preclude important policy tools such as:

- Zoning regulations, limitations on opening hours or products for foreign or large traders that can ensure niche markets for local firms. Economic Needs Tests can ensure that local firms are not crowded by foreign firms.
- Price controls to protect consumers
- Joint venture, technology transfer requirements to ensure local firms benefit from the presence of large foreign firms
- Local employment, staff training requirements
- Requirements to sell certain local products.

Countries that cannot be sure to properly regulate the sector or feel that competition is likely to be lacking should also consider carefully before making commitments in this sector.

Making trade-offs: Analysing the EC’s offer

As well as considering the impacts of their own liberalisation commitments, countries need to determine whether what the EC is offering is sufficient and appropriate to suit their own potential export interests and bring real economic benefits.

To do this, the EC’s services liberalisation offer needs to be examined in conjunction with their current (revised) GATS offer, so that countries can be sure about what is additionally on offer to them beyond what they would obtain from a multilateral deal and therefore where they are given an edge over the remainder of WTO members. A link to this offer is provided in the section “Important information and where to find it” on page 11.

5 This analysis is based on the EC's offer in EPA negotiations which is considered to be 'generous'. It is likely that in countries where there is a stronger economic interest and/or there are non-WTO members this offer will be reduced.

The EC has begun to organise its offers in separate annexes for different modes, and to include its mode 4 offer within the text of the agreement. Some key points to note on the EC's services offer are:⁵

- First, the EC generally treats some sensitive areas as off the table. These include audio-visual services and air transport services. Some developing countries clearly have domestic industries with export potential in these sectors. The EC also tends not to make offers in the health and education sectors where member states prefer to decide their own regimes.
- In modes 1 and 2, the latest EC offer seems to have small improvements over its existing GATS commitments and revised GATS offer. These involve the removal of some reservations and restrictions by individual EU member states, for example in the area of legal services. This is in line with the internal liberalisation process of the EU in its services market and a move toward more unified approach. Liberalisation of mode 2 is relatively uncontroversial since it involves allowing consumers to spend money overseas. Liberalisation of mode 1 is potentially of interest to developing countries that wish to export internet-enabled services.
- In mode 3, the EC's latest offer is to bind existing levels of liberalisation, with exceptions in sensitive sectors especially public services. It compares this to a quasi-negative list approach. Many developing countries do not have significant capacity to invest in Europe and should be wary of request for comparably sweeping commitments in return.
- In mode 4 the EC includes its commitments within the text of the agreement rather than as an annex. It uses the four categories generally used under the GATS:
 - **Key personnel:** Commitments in this category involve short-term transfers for skilled, senior personnel within the same company.
 - **Graduate trainees** are permitted to travel to and from their parent company and the EU for a limited period. In the GATS offer this is set at six months, in the latest offer examined, the limit is as yet undefined.
 - **Contractual Service Suppliers:** These are suppliers who do not have a branch established in the EU, but who have a short-term contract to supply services. There is a more extensive list of sectors where contractual service suppliers movements are liberalised. Numerical ceilings are removed, but economic means tests are to be applied in key sectors – notably health. This means that countries can deny access if it cannot be proven that the local economy cannot provide the service. Contractual service suppliers are also required to be educated to degree level apart from models and chefs!
 - **The independent professionals (IP)** category is liberalised for only a limited number of sectors. Contractual service suppliers and independent professionals categories, being delinked from the need to have a commercial presence in the EU, are generally of more interest to developing countries.

In general, the most highly skilled categories are those emphasised by the EC, although these are not those where developing countries might have most capacity or most interest to export.

The EU's working conditions and minimum wage requirements still apply to its Mode 4 commitments, this means that countries will not be able to exploit wage differential advantages.

It is worth noting that the definition of Mode 4 is limited to short-term service suppliers who do not enter the employment market. It does not cover non-service sectors or permanent economic migration. It also does not address visa or immigration formalities. These would need to be dealt with in separate deals, usually outside an FTA and between individual member states and the party in question.

Developing countries should also consider what are the barriers affecting their services export performance and whether these are most appropriately addressed through the traditional method of swapping liberalisation offers and requests. For many of the relevant barriers to their exports, these would be most effectively addressed through increasing other areas of co-operation and not through trading services liberalisation commitments with the EC:

- **Capacity building:** As in other sectors, differences in infrastructure, human resources and technology access affect services export competitiveness of developing country firms, especially small and medium-sized enterprises (SMEs). Governments might also need to increase capacity both to regulate newly liberalised sectors, as well as to help with involvement in standard setting, etc. The EC does include co-operation chapters within its FTAs that seek to support diversification and competitiveness of developing country markets. These are generally “best endeavour” (i.e. not enforceable) and can be too overly general to be useful.
- **Standards:** As is the case in goods, standards, for example in the construction sector, can hinder developing country exports.
- **Mutual recognition:** Recognition of qualifications of service providers is particularly problematic in service sector.
- **Anti-competitive practices:** The dominance of multinationals and their anti-competitive business practices. This is particularly the case in construction, distribution services and tourism. For example in tourism, developing country firms are disadvantaged as they lack access to the Computer Reservations System and Global Distribution System, exacerbated by the technology gap.

Important information and where to find it

Existing GATS commitments and guidance on how to read them

Where to find out more about your country/region's services trade:

www.wto.org/english/res_e/statis_e/statis_e.htm

www.istia.org

Evidence and sectoral case studies

www.unctad.org: see especially “Trade in services and development implications” TD/B/Com.1/71, 16/01/2006

On regulation and sequencing, see working papers of Centre on Regulation and Competition, especially:

www.competition-regulation.org.uk/publications/working_papers/wp85.pdf

www.southcentre.org: see especially:

www.southcentre.org/publications/workingpapers/wp23.pdf

ECDPM/ILEAP on EC past practice in FTAs on services:

www.ecdpm.org/Web_ECDPM/Web/Content/Navigation.nsf/index2?readform&http://www.ecdpm.org/Web_ECDPM/Web/Content/Content.nsf/7732def81dddfa7ac1256c240034fe65/5eec2f714800b082c1256eed002c6980?OpenDocument

Useful NGO sites:

www.somo.nl

www.wdm.org.uk/campaigns/past/gats/

www.citizen.org/trade/wto/gats/

www.servicesforall.org/

The EU FTA Manual is a series of eight briefings on the European Union's approach to Free Trade Agreements.

1. Introduction: Tackling EU Free Trade Agreements
2. Inside European Union Trade Policy
3. The EU's approach to Free Trade Agreements: Market Access for Goods
4. The EU's approach to Free Trade Agreements: Services
5. The EU's approach to Free Trade Agreements: Investment
6. The EU's approach to Free Trade Agreements: Competition
7. The EU's approach to Free Trade Agreements: Government Procurement
8. The EU's approach to Free Trade Agreements: Intellectual Property

We will be updating these briefings as negotiations and understanding progress, and would welcome your feedback.

Please contact: tradeandcorporates@actionaid.org