

Examining the Legal Framework for Services Trade Under the EPAs: A Development-Friendly Perspective

*NANTS/ILEAP Workshop on Advancing Services Sector
Development and Reforms in Nigeria
Abuja, November 2009*

Aniekan Iboro Ukpe
Head, Legal; National Association of Nigerian Traders
(NANTS), Abuja, Nigeria.

ani_abasi@yahoo.com, aukpe@nants.org

Overview

- I. Services in RTAs: Trends and Developments
- II. Legal Framework for Services Trade
- III. Defining Approach for Services Negotiation in WA
- IV. Conclusion

Services in RTAs: Trends and Development

- RTAs as tool for growth and development
- -Biggest contribution to income generation foreign exchange earnings in the last two decades.
- Between 1990 and 2006, the share of services in GDP grew continuously from 49.6% to 50.8%
- Accounts for 35% of employment in developed economies
- Between 1980 and 2006, international Trade in Services expanded, with total exports rising from about \$400 billion to \$2.8 trillion.
- Since 1990, developing countries' exports share of world services exports have increased from 18.7% in 1990 to 25% in 2006.
- Transport and Travel Services account for the major proportion of Services Export in developing countries
 - Up to 36% of services export in 2005

Trends and Development Contd.

- Doha Stalemate and RTAs
 - Countries have resorted to bilateral and regional free trade agreements.
 - Liberalization of Trade in Goods to Services
Liberalization
- Liberalization of Services in the EPAs
 - January 2010

Legal Framework for Services Trade

-Services Liberalization is not Obligatory.

- However Parties commit to Services Liberalization under EPAs in Accordance with WTO GATS. Cotonou Agreement, Art. 41

1. WTO Agreement – Article V of the GATS (Economic Integration Exception)

- Preconditions: Substantial Sectoral Coverage

- Sectors, volume of trade, modes of supply

- Absence or Elimination of Substantially all Discriminations on National Treatment

- Flexibilities for Developing Countries Article V.3

- Open Fewer Sectors

- Lower Volume of Trade

- Fewer Modes of Supply

- Wider Scope of National Treatment Restrictions

- Use of transitional periods and exclusion of basic services EC-CARIFORUM EPA

Legal Framework for Services Trade

2. Cotonou Agreement – Article 41

- Parties Commit to Services Liberalisation
- Only after ACP States acquire GATS experience:

‘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 liberalization of services in accordance with the provisions of GATS and particularly those relating to the participation of developing countries in liberalization agreements’. Art 41.4

• Flexibilities for ACP States Art. 41.2

- EC undertakes to exercise SDT in favour of ACP countries and in a manner consistent with their priorities.

Defining an Approach for Services Negotiations in West Africa

- Services Liberalisation is not Obligatory
- Preconditions Should Include:
 - Deepening Regional Integration
 - EPA shall build on ACP countries' regional integration initiatives. CA Art. 35.2
 - Trade liberalisation shall be pursued flexibly and asymmetrically, and prioritise regional integration Joint EC-West Africa EPA Roadmap, Para. 7.
 - -intra-regional services trade
 - Regulatory framework

Approach for Services

Negotiations in West Africa Contd.

- Enhancing Regional Supply Capacities
 - Establish Institutional Structures
 - Appropriate policies
 - Competitive environment
- Flexibilities/SDT
 - Sectoral Coverage
 - Determine nature of sector to be liberalised
 - Sectors of basic supply character VS. Sectors needing investments etc.
 - Need to conduct impact studies to determine liberalisation of sectors of basic supply character.

Approach for Services Negotiations in West Africa Contd

- Modal Coverage: Concentrate on modes of Export Interest
 - See EC-CARIFORUM EPA
 - CARIFORUM got the most significant EU market access ever offered in the highly development-valued entertainment sector.
 - Mode 4 – Negotiating Tactics
 - Requirement that foreign investors employ and train domestic workforce under GATS Mode 3 increases willingness of labour-recipient countries to admit temporary workers under Mode 4. –Latin America FTAs.
 - Returns obligation/readmission Art 10 Japan-Phillipines EPA
 - Visa Standardization, Quotas and Preferential elimination
 - ‘skills and competencies’
 - ‘young professionals’
 - ‘professionals’
 - Temporary workers’
- France Immigration Law 2006.

Approach for Services Negotiations in West Africa Contd

- Liberalization Modalities:
 - GATS-styled four Mode liberalisation Vs New EU 'hybrid System'
 - Positive list approach Vs Negative list approach
- Asymmetrical Liberalisation:
 - Progressive Liberalization eg EC-CARIFORUM where further negotiations on services and investments are to take place within 5 years.
 - Request for Moratorium
 - Depth of Liberalization: EU 94% of sectors Vs CARIFORUM countries 75% to 65% (on basis of development indicators)

Conclusion

- There is no obligation on West African countries to enter in to services agreement with the EU.
- Achieving a Development-Friendly Services Liberalization in the EPAs is dependent on:

The Parties' Use of GATS-guaranteed Flexibilities in Favour of the West African parties, reflected in;

- I. An adequate content (sectoral /modal coverages etc)
- II. Pacing and sequencing of domestic reforms
- III. Regional regulatory framework