

## **NEGOTIATING IT-ENABLED SERVICES UNDER EU EPAs: India's Experience and Possible Lessons for African Countries**

### *Executive Summary*

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## **I INTRODUCTION**

The focus of this paper is on the possibilities of Information Technology Enabled Services or “ITeS”, and the opportunities and challenges it could potentially present for African countries. ITeS, as the term indicates, refers to any service that can be delivered via the internet or any other medium that can deliver data. In the context of the terminologies used in Trade in Services, ITeS involves services delivered through Mode 1, i.e., cross-border supply of services through IT networks, where the service provider is in the ‘outsourcing’ or ‘off-shoring’ destination country, and the service consumer is in another country.

This presents particularly interesting opportunities since a service provider is not required to invest in establishment and other related expenses required for physical presence in the country where the service consumers are present. It therefore allows service providers to capitalize on their competitive advantages such as costs and skills, and harness Information Technology to deliver such service.

Several Asian and Latin American countries have benefited from the growth of the ITeS sector. African countries are relatively newer entrants in this sector. Countries such as Mauritius, Tunisia, Ghana, South Africa, Morocco and Senegal, have made significant headways in this sector. The full potential for African countries, however, remains to be recognized. In this regard, the experience of countries like India could hold valuable lessons for African countries. In particular, it may be interesting for African countries to understand how available IT skills have been enhanced and channelized through private and Government initiatives and policy frameworks to enable growth of a viable ITeS industry.

The complete report deals with an overview of the worldwide situation on ITeS, and focuses in some depth at India’s experience of becoming a significant global leader in providing these services. After doing so, it categorizes recommendations for African countries into two broad categories:

- (a) Recommendations for internal assessment and preparedness for offering ITeS; and
- (b) Recommendations for the EPA negotiations with the EU and suggestions for the text of the EPA.

This Executive Summary shall highlight the principal issues discussed in the report, and then highlights the recommendations for African countries.

## **II NEGOTIATING ‘ITES’ UNDER THE EPA WITH THE EU**

For the purposes of the services classification used in Trade in Services negotiations, ITeS needs to be understood as comprising of two elements:

- (a) the category of ‘computer and related services’<sup>1</sup> which comprises of a variety of basic services pertaining to computer systems, software development and maintenance of the same; and

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<sup>1</sup> Classification of Service sectors used under the WTO’s General Agreement on Trade in Services is the Central Product Classification Division. CPC 84 refers to ‘Computer and Related Services’. Several WTO Members, including the EC, have proposed the following definition for ‘Computer and Related Services’:

- (b) the use of the IT medium to deliver some other ‘core’ service, such as accounting services, or cultural content, or financial services, etc.

Negotiating ITeS under any Trade in Services negotiations therefore involves negotiating Mode 1 liberalization, i.e., ‘cross-border supply of services’ in the sector dealing with ‘computer and related services’, as well as the core service sector in which African countries would like to seek access for cross-border supply.

The experience of the African countries that have currently made forays into ITeS, seems to be in the nature of ‘call-centre’ services that provides back-office customer support in various areas. For operations of this nature, which do not involve ‘content’ services in any core sector, Mode 1 market access in ‘Computer and Related Services’, may be sufficient. While negotiating the EPA with the EU, however, African countries may need to think more creatively about other core services which they can potentially offer through the IT medium. This could range from entertainment services, to educational services, or research and development services, or any other sector that a country may be interested in. Mode 1 access in each ‘core service’ segment is a critical aspect of the negotiations.

By way of illustration, India’s evolution in this sector can be traced to back-office data-processing and call-centre operations for customer care services. Over a period of time, and with greater experience, this evolved into more mature advisory work, such as equity research and investment advisory services rendered through ITeS.

### **III DATA PROTECTION UNDER THE EU EPA**

A particularly challenging aspect of EU’s recent EPA with the Cariforum countries, as well as its approach in several other FTAs, is its stringent requirement for a regulatory framework for ‘data protection’ in its trading partners. This requirement would have implications for any Mode 1 access involving ‘data’ from the EC. The preparedness of African countries to adopt and enforce ‘data protection’ legislation of the nature and standard specified by the EU under the Cariforum EPA, will therefore need to be evaluated. Assistance may also need to be sought from the EU in this regard to enact and implement such requirements.

The Chapter dealing with Personal Data protection in the EU-Cariforum EPA is perhaps the most elaborate one in all of EU’s bilateral trade agreements so far. It begins by stating that ‘appropriate’ legal frameworks should be put in place; but then moves on to defining the scope of such ‘appropriate’ framework when it outlines the “content principles” and

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*Computer and related services, regardless of whether they are delivered via a network, including the Internet, include all services that provide any of the following or any combination thereof:*

- *consulting, adaptation, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, support, technical assistance, or management of or for computers or computer systems;*
- *consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, adaptation, maintenance, support, technical assistance, management or use of or for software;*
- *data processing, data storage, data hosting or database services;*
- *maintenance and repair services for office machinery and equipment, including computers and*
- *training services for staff of clients, related to software, computers or computer systems, and not elsewhere classified.*

“enforcement mechanisms” for such a regulatory framework. It also goes into some detail in terms of the definitions of the key terms relevant for personal data, which is any data pertaining to any individual.

Other areas of the Cariforum EPA which reflect principles of data protection include the provisions on E-Commerce, Financial Services and General Exceptions.

Implementing these provisions could also be an important determinant of whether African countries can emerge as viable service providers of cross-border ITeS services for EU countries. Implementing the ‘data protection’ provisions of the EPA, therefore, is not just important for fulfilling a standalone obligation of the EPA itself; but also for ensuring that African countries can attract greater investment for ITeS from EU investors, and become service providers for a range of services delivered through the IT medium.

However, the nature of obligations to be implemented is highly onerous. African countries would therefore need to consider provisions for phased implementation, proactive technical assistance, financial assistance, and assistance for training and implementation of the legal requirements on data protection, and build these into the agenda for EPA negotiations.

#### **IV DOMESTIC PREPAREDNESS OF AFRICAN COUNTRIES TO OFFER ITeS**

Apart from negotiating market access under Mode 1 under the EPA with EU Members, African countries will also need to take certain measures to develop the IT infrastructure, as well as undertake several legislative, policy and administrative measures, in order to ensure that there is a robust internal framework that is capable of offering ITeS. There are several factors that make a country an attractive destination for ITeS. These include low costs, technical and language skills, mature vendors and supportive government policies relating to investment by IT companies, as well as supportive policies in relation to the costs of infrastructure (e.g., high-tech and telecom infrastructure) that are necessary for providing services through IT networks.

The following table highlights the various internal measures that a country would need to take in order to develop a robust ITeS market. These have been drawn from India’s experience in developing this sector, as well as from UNDP’s analysis of Asian countries, including India<sup>2</sup>. These measures could be used as a checklist of issues that African countries could use for assessing the status of their internal policy and legal framework, and assess further steps that may be required in this regard.

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<sup>2</sup> This Table relies on recommendations of the UNDP in the 2006 Asia-Pacific Human Development Report, and lessons drawn from India’s experience.

**TABLE 1: CHECKLIST OF DOMESTIC MEASURES TO PROMOTE ITeS**

<b>Areas for Policy Action</b>	<b>Specific Measures</b>
<b><i>Human resource development</i></b>	<p><u>Investments in education and training to:</u></p> <ul style="list-style-type: none"> <li>- create a pipeline of manpower for lower-end activities</li> <li>- create a high-tech workforce</li> <li>- develop curricula, programmes, institutions, training infrastructure, specialized skills</li> <li>- ensure quality certification and recognition</li> </ul> <p><u>Labour laws and standards for:</u></p> <ul style="list-style-type: none"> <li>- welfare-oriented human resource management practices</li> <li>- employee retention and career development strategies</li> </ul>
<b><i>Physical Infrastructure</i></b>	<p><u>Liberalize key sectors to attract private investment in development of infrastructure for telecommunications and internet-based services, by:</u></p> <ul style="list-style-type: none"> <li>- dismantling the government monopoly of provision of such infrastructure</li> <li>- promoting competition in telecom services through deregulation, especially in Internet service provision and long-distance telephony</li> <li>- liberalizing laws and policies dealing with foreign direct investment</li> <li>- investing in satellite links</li> <li>- expanding bandwidth</li> <li>- promoting tele-working establishments by creating technology parks and outsourcing hubs</li> <li>- facilitating the acquisition of real estate, power, telecom links, and the procurement of equipment.</li> </ul>
<b><i>Regulatory Framework &amp; Enforcement</i></b>	<ul style="list-style-type: none"> <li>- Legislation on governing IT services, Data Protection and piracy, with adequate remedies for violation</li> <li>- Consumer protection laws</li> <li>- E-commerce regulations</li> <li>- Regulation on cross-border payments and Internet transactions</li> <li>- Technology licensing frameworks</li> </ul> <p>Any regulatory framework should also be accompanied by a strong implementation and enforcement mechanism.</p>
<b><i>Fiscal incentives</i></b>	<p><u>Tax incentives</u></p> <ul style="list-style-type: none"> <li>- provide fiscal incentives in initial stages</li> <li>- bring the industry under the tax net once it has matured and grown in size</li> <li>- use fiscal resources to target industry-specific and wider investments in infrastructure, training</li> <li>- export incentives</li> <li>- provide import duty concessions and rebates for import of software and hardware related to the IT and ITeS sectors</li> <li>- discourage firm- or sector-oriented export subsidies that could distort trade</li> <li>- provide general infrastructural subsidies that are not trade-distorting.</li> </ul>

## V WAY FORWARD AND NEXT STEPS FOR AFRICAN COUNTRIES

The way forward for African countries can be discussed under two broad categories: (a) Internal assessment and checklist of domestic measures to be undertaken by African countries, and (b) Recommendations to be considered as part of Africa's list of requests to the EU.

### A. Recommendations for Internal Assessment of Domestic Measures required for ITeS

African countries would need to examine their internal regulatory framework against the Checklist of Domestic Measures to promote ITeS activities, provided in Table 1 above, and identify suitable measures with regard to:

- Technical training and development of human resources for rendering ITeS;
- Development of a robust IT and telecom infrastructure, access to which is reasonably priced;
- Supportive laws and policies for enabling investment into the ITeS sector,
- Adequate incentives for attracting in-bound investment into the ITeS sector.

### B. Recommendations for the EPA negotiations with the EU

- (i) *Mode 1 in the 'Core Service'*: EU's Commitment under the category 'Computer and Related Services' does not specify any restrictions for Mode 1. This means that market access is available for EU markets for any support services using computers and IT networks as the medium, such as back-office support through call centres.

African countries should additionally evaluate the specific sectors in which they would like to engage in providing 'content'-based services through the IT medium. These could include any other service sector in which if African countries had Mode 1 access, then they could potentially supply services cross-border through IT networks. These could range from medical services to educational services to research and development services, or entertainment services and other cultural services. Requests to the EU to liberalize Mode 1 in such other service sectors of interest to African countries, should be considered.

- (ii) *Data Protection*: As discussed above, Data Protection related obligations are fairly elaborate under the EU-Cariforum EPA. This is likely to be one of the more difficult areas to comply with. Considering the substantial costs of formulating, administration and implementation of EU-type requirements as may be required under the EPA, African countries would need to formulate their negotiating strategies carefully on this aspect.

In this regard, African countries could consider arguing for the following provisions under the EPA:

- (a) **Phased Implementation**: The EPA should have provisions for phased implementation of the commitments on Data Protection.
- (b) **EU Obligation to Provide Technical and Financial Assistance**: There should be a concrete obligation on the EU to provide technical and financial assistance for

formulating and implementing the regulatory framework for data protection, and the phased implementation should be linked to the fulfilment of such obligations.

- (c) **No Consequences till Full Implementation:** The requirements under the ‘Data Protection’ provisions of the EPA should be applicable for African countries only after the ‘phased implementation’ is complete and a robust regulatory framework is in place.
- (d) **Commitments to Ensure Investment in ITeS and Contribute to growth of ITeS:** Implementation of strong provisions on Data Protection would need to be accompanied by growth of the ITeS sector. There should therefore be a commitment from the EU on ITeS investment in African countries in order to make it a viable service sector.

**(iii) Assistance on Regulatory, Infrastructure, Training and Capacity Building from the EU:** Article 137 of the Cariforum EPA deals with cooperation and facilitation of support between the EU and Cariforum countries with regard to information and communication technologies. These provisions, is currently broadly worded, and relies on good faith alone for implementation. In order to ensure binding obligations under this provision, it is recommended that it is strengthened further by reflecting a concrete obligation on EU to:

- (a) Provide research and development assistance and capacity building in the areas of ICT research and development;
- (b) Provide technical and financial assistance for ICT-based research infrastructures;
- (c) Ensure ICT capacity-building with, in particular, the promotion of networking, exchange and training of specialists, especially in the regulatory domain;
- (d) Provide capacity building, training and financial assistance for putting in place appropriate legal framework that can facilitate growth of ICT and ITeS, while ensuring that such legal framework is suitable for countries where the ICT and ITeS industries are at a nascent stage of development. This should include regulatory frameworks for implementing the data protection related provisions of the EPA;
- (e) Provide continued capacity building and training for ensuring implementation of the regulatory framework.