



ILEAP | INTERNATIONAL LAWYERS AND
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INTERNATIONAUX CONTRE LA PAUVRETÉ

EABC EPA REGIONAL SENSITIZATION WORKSHOP

*Trade in Services Negotiations and the Private Sector:
Generating Opportunities for Development*

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**Nairobi Safari Club
Nairobi, Kenya**

Final Report

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Introduction

The [East African Business Council](#) (EABC) is the apex body of business associations of the private sector in East Africa. Its mission is to promote private sector regional and global competitiveness in trade and investment.

[International Lawyers and Economists Against Poverty](#) (ILEAP) aims to promote pro-development outcomes in international negotiations. ILEAP's mission is to increase the effective participation of developing countries in trade negotiations

Together, EABC and ILEAP convened the workshop: *Trade in Services Negotiations and the Private Sector: Generating Opportunities for Development* from 26-28 February 2009 in Nairobi, Kenya. Over the course of three days, stakeholders drawn mainly from the private sector met to discuss issues and options for priorities in services export development in the context of the EPA trade in services negotiations. The interactive workshop also served as an opportunity to sensitize the private sector on trade in services talks under the EPA. More specifically, the workshop sought to:

- Facilitate a better appreciation of the state of play on services in the EPAs and assisting in the identification of associated opportunities and challenges ahead;
- Promote enhanced involvement of the private sector based on specific sectoral knowledge (both EAC and international); and
- Support discussions on a roadmap for the continued involvement of the private sector in the EPA trade in services negotiations.

The meeting was attended by over fifty stakeholders, comprising mainly private sector operators and/or representatives, as well as researchers and government representatives from all five EAC Partner States, as well as the EAC Secretariat. Resource persons were drawn from ILEAP's roster of advisors and partner institutions. The workshop's Aide Memoire and Agenda are found in Annex I, following by the Participants List in Annex II.

Opening Session

Introducing the Vice-Chairman of the East African Business Council (EABC) was EABC Executive Director Mr. Charles Mutuma Mbogori. He called upon Vice-Chairman Mr. Keli Kiilu to share some opening comments. Herein, Mr. Kiilu thanked the Honourable Assistant Minister for Trade for accepting the invitation to open the workshop, demonstrating once again the level of commitment by the Kenyan government in working closely with the EAC private sector to help ensure a win-win outcome on EPAs. He was optimistic that this Public-Private Partnership would continue in both the EPA and EAC Common Market negotiations. He stressed that participants were here, both private and public stakeholders, not only to make sure that a comprehensive EPA will be signed as scheduled but more importantly to enable the EAC private sector to articulate its sectoral priorities for export development in the context of the EPA trade services negotiations. On this front, he was again optimistic that the trade in services

negotiations would be launched shortly, informed in part by the EABC-ILEAP analysis, which would form the basis of the workshop and hopefully assist the negotiators to deliberate from a more informed position.

Mr. Dominique Njinkeu, Executive Director of ILEAP spoke subsequently, wherein he thanked participants for helping to advance on this important work, as well as EABC for the fruitful collaboration in this area. He also thanked the Ministry of Trade and Government of Kenya for providing their support in convening the workshop. In highlighting the progress to date, Mr. Njinkeu noted that the articulation of request and offers was still plagued by several concerns. Numerous questions were as-yet unanswered, for example, whether, given the complexity of the issues and what is currently understood by the stakeholders, whether trade in services should be included in the EPA? Should exclusive attention not be paid to promoting regional trade? Can African private sectors and professionals effectively export to Europe? Should binding commitments not be made only at the WTO? Will binding commitments in the EPA or at the WTO improve export prospects? These were just some of the questions on which the workshop hoped to offer some guidance. Mr. Njinkeu also took time to underscore the importance of the services sector, in particular the fundamental role played by infrastructural services to underpin the overall competitiveness of the economy and thus the determinant role services reforms can have on poverty reduction efforts.

Dr. (Eng) Cyrus Njiru, Permanent Secretary of the Kenyan Ministry of Trade then introduced the Honourable Assistant Minister for Trade, Hon. James Omingo Magara. The Minister thanked the organisers of the workshop, stressing the timely nature of the work and his hope that the outcome of the workshop would contribute to the development of trade in services in the region. The Honourable Minister went on to highlight a number of key opportunities and challenges that surrounded services reforms, including more efficient, cheaper and better quality services available to consumers and other economic operators; while cautioning of the need to proceed at an appropriate pace, ensuring there were measures in place to cope with potential adverse effects of services liberalization (both to consumers and producers). He flagged the importance of regulatory frameworks and clear domestic policy objectives to ensure such reforms could help promote better functioning markets at home. He also called on participants to take heed of the pacing required, services was a fast growing sector with opportunities to be had if the region could move quickly enough. In formally opening the proceedings, the Honourable Minister reiterated his support for the workshop, whose outcome he said would be a useful contribution to the negotiating process amongst EAC Partner States and also with the European Union.

Session I: Exchange of views on services reforms in the EAC

This session offered participants an opportunity to hear from the EAC Secretariat and EABC regarding services reforms and preparations for negotiations in the region. Mr. Gerald Ajumbo, Principal Trade Officer with the EAC Secretariat helped to set the context of the process around services preparations in the EPA and the Common Market (CM). He drew participants' attention to a meeting on 11-15 August 2008, whereupon EAC Partner States (PS) deliberated on their strategic approach on services in the EPA. He also referenced 'services state of play'

presentations by PS at the August 2008 meeting, which are available to participants as an addendum to Mr. Ajumbo's presentation.¹

In his presentation, Mr. Ajumbo stressed that nothing had been agreed with respect to trade in services negotiations in the EPA, but rather that PS sought a study that could help them better understand the state of play and potential options for moving forward. Noting that the study would not likely answer all questions, it would certainly serve as a good starting point. Here he stressed the need to determine the appropriate sequencing of activities. Drawing on lessons from other regions (e.g. CARIFORUM and SADC), as well as the private sector and views from other experts presented to the August 2008 meeting, Mr. Ajumbo enumerated a way forward in the formal process that included the following:

- Trade in Services Study;
- Developing EPA Legal Text on Services;
- Presenting the EAC's approach on Services to the EC;
- Submitting requests to the EC;
- Negotiating Investment outside Trade in Services;
- Validating results of the Study

On investment, he stressed that the EAC wanted to de-link the services negotiations from investment issues. Regarding the validation of the Study, he noted that Partner States were meeting in Kigali on 2 March 2009 with this aim in mind.

From the private sector perspective, EABC Executive Director Mr. Charles Mutuma Mbogori highlighted a number of key challenges with respect to negotiating trade in services (at both the EPA and CM levels). Firstly, that the EAC private sector had not had the opportunity to harmonise their position on sectors of strategic importance, including those most sensitive. He noted that EABC was currently working on a mechanism for generating and harmonizing country positions. Part of this absence of harmonisation, he noted, stemmed from the lack of readiness of the private sector to contribute to the negotiating process. With only Observer Status in the formal process, EABC could not guarantee that private sector input was taken on board. Mr. Mbogori also stressed the lack of information available to the private sector to take informed positions. Here he underscored the need for more information on legal and regulatory frameworks across the EAC to be available to the private sector. He also identified the need for micro-level research to help focus efforts on measures needed to build the competitiveness of EAC services firms.

On the issue of EPA and Common Market services negotiations running in parallel, Mr. Mbogori emphasised the need to ensure those involved adequately briefed each other on their respective preparations and strategies. He questioned whether there was a clear view on which negotiation would, or should, precede the other. From his view, it seemed sensible to have agreement at home before pursuing agreement with a third party. Ultimately however, what mattered was that the commitments taken amongst EAC PS within the region went beyond those taken outside the region (i.e. EAC CM should go further than WTO or EPA on services integration). Similarly,

¹ See files available for the Nairobi services workshop at www.ileap-jeicp.org or www.eabc.info.

with the various negotiations being undertaken ostensibly to promote greater private sector activity, their interests should be fully taken on board at every stage of the negotiations.

In discussions, participants focussed on two elements. Firstly was the need to understand what was underway with respect to establishing EAC competitiveness in the various sectors. This was widely acknowledged to be of eminent importance to underpinning either negotiation. On the interface between EPA and CM negotiations, it was offered that the need to 'sequence' reforms did not necessarily imply one had to precede the other. Rather what mattered was that each PS was comfortable with what it was seeking from the respective negotiations and that at a sectoral level there was a sense of what was appropriate (either in requesting market access or consolidating reforms in the offer). The absence of a single services market in either the EAC or the EU underscored a common theme at the workshop; that the work ahead was at least to begin with inherently a national process.

Session II: Introduction and key policy issues underpinning the delivery of service exports

The session commenced with a presentation from ILEAP Programme Officer Mr. David Primack which aimed to ensure participants shared a common understanding of key principles and concepts in a GATS-based framework, such as was being proposed for the EPA on services. He focussed however on situating the EABC-ILEAP work on services within the broader 'request-offer process', which he noted should be founded as much as possible on national development strategies, services export strategies and sectoral strategies, alongside objectives for regional integration. In practise however, he recognized that this was much harder to ensure.

Outlining in more detail some of the steps involved in preparing trade in services negotiations, as well as elements of work already underway in the region, he emphasised that neither the preparation of a legal text or development of either requests or offers could happen in a vacuum and that all needed to be considered as a holistic package. Thus, for example, any efforts to prepare a request needed to equally consider the import dimension, with associated implications for the offer (e.g. making possible offers on infrastructure services to help promote BPO exports). He also underscored the need to ensure the private sector was driving the preparatory work on the, whereas there was clearly a stronger role needed for government/regulators on the offer side. Balancing ambitions with realistic expectations of what concessions the EC would offer would also be useful, he suggested, in ensuring efforts were focussed where the greatest benefits could be captured. In this respect, the area of complementary measures and addressing supply-side constraints was perhaps in need of relatively greater attention.

On the offer side, Mr. Primack again pointed to on-going efforts to address the analytical gaps, including earlier work undertaken under the auspices of COMESA, sectoral studies commissioned by ILEAP, and the EAC Secretariat-mandated Trade in Services study, amongst others. With such clear implications on domestic regulatory frameworks, the lead role for government in this aspect of the work was clear, although it was still essential to ensure the private sector was being properly engaged and helping to shape the agenda.

In conclusion, he stressed that such preparations on request and offer were not EPA-specific and should provide inputs into other services deliberations, such as those within the EAC Common Market context, as well as the WTO. In order to assist decision-makers and negotiators make informed decisions on services in the EPA, Mr. Primack underscored the importance of a process that involved research and analysis, consultations and consensus-building. While such a process can draw on scarce technical and financial resources, he argued that it was important to facilitate informed decisions and secure stakeholder ownership of the outcomes. He highlighted the likes of organisations such as ILEAP, which can assist in this regard.

Recommended reading

- Primack, David. (2009). *Preparing Requests and Offers*. ILEAP.

On policies underpinning mode 4-enabled exports, ODI Research Associate Dirk Willem te Velde stressed the need to situate temporary labour mobility (TLM), of which mode 4 was part of, within the broader migration debate. That said however, it was essential to adequately differentiate TLM and mode 4 from migration, due to their specific nature. In particular, he underscored that mode 4 was not about accessing foreign labour markets and as such did not cover domestic labour market or visa issues.

From a migration perspective, there too was often little distinction between temporary and permanent migration and hence a gap when it came to managed migration policy. Key concerns revolved around controlling borders (e.g. visas), protecting the domestic workforce (through the issuing of work permits) and safeguarding the quality of services provided (including the use of professional regulations and qualification requirements). For filling gaps in domestic labour markets, he pointed to the common use of special temporary migration schemes (e.g. seasonal agricultural workers), which were often more successful than making use of mode 4 access.

From a trade-investment approach, the focus was more on using trade rules to enable services to be provided via temporary mobility (mode 4), guided by key trade principles such as most favoured nation treatment, national treatment and provisions on domestic regulations. For investors, securing work permits for workers was critical (highlighting the common mode 3-mode 4 linkage).

In terms of key policies needed to make temporary migration work for development, Mr. te Velde highlighted the importance of a number of source/sending and destination/recipient country policies. On the source or sending country side, to help address issues of brain drain, he highlighted the importance of putting in place good incentives to stay, such as better pay and working conditions, alongside normal development policies such as a good investment climate, etc. To capture some of the more dynamic gains from TLM (and help ensure temporariness), he also stressed the importance of effective return migration schemes to promote the return and re-integration of migrants back home. Promoting domestic capacity and training measures to enhance both the domestic provision of needed services as well as export supply capacity was clearly an essential component of any TLM policy.

For destination or labour-receiving countries, policies highlighted included making use of diaspora organisations already present domestically to network with those abroad and assist

recent arrivals, facilitating the sending the of remittances home and lifting constraints to temporary migration (e.g. via the provision of appropriate visa categories, etc.).

On negotiating mode 4 commitments, Mr. te Velde noted the slow pace at which things had proceeded at the multilateral level (i.e. GATS), positing that it may not prove much better at the EPA and/or regional level. In contrast, he pointed to some success in more specialised (unilateral) schemes. A key consideration for overcoming the current impasse in mode 4 discussions was taking into account the impact of the current global financial crisis and the increasing protectionist tendencies on migration (in both developed and developing countries). In looking for solutions, he called for more specific and focussed proposals, for example, increased quotas to address quantitative restrictions, extending the scope of skill level and categories covered by mode 4 commitments, clarifying requirements for economic needs tests (ENTs) and working towards mutual recognition agreements (MRAs). Consulting with the private sector to ensure such proposals addressed their specific concerns was essential.

On the domestic side, he stressed the importance of capacity building and aid for trade (AFT) to build domestic supply capacity, to improve regulatory constraints at home and to pursue the reduction of external constraints wherever possible. In closing he pointed to the need to situate improved mode 4 access for exports within labour mobility policy more broadly, both in terms of exports as well as imports. Mode 4, in terms of enhanced market access and improved national treatment can certainly help, but was only one dimension of a much broader issue.

Based on the presentation and related discussions, **recommendations on mode 4** centred on the following:

1. More thinking was needed to help move the debate on mode 4 beyond the current stalemate, including situating it within the migration debate.
2. There was a need to take stock on existing special labour mobility schemes operating in the region, so as to help inform the possible parameters of trade-related temporary labour mobility schemes (and policies) in the future.

Recommended reading

- te Velde, Dirk Willem. (2005). *Temporary Movement of Natural Persons in EU Trade Agreements: Issues, existing provisions and options for EPA negotiations*. ODI.
- Cali, Massimiliano and Dirk Willem te Velde. (2008). *Temporary migration and development: A review of the evidence and policy options*. Commonwealth Secretariat.

Moving to the topic of services enabled by Information Technology (IT) or IT-enabled services (ITeS) Clarus Law Associates Partner, Ms. Anuradha R.V. assisted participants to define what is meant by ITeS. Here she noted that ITeS referred to any service that can be delivered via the internet or any other medium that can deliver data (and was thus akin to 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). The rationale for outsourcing was clear, combining basic principles of ‘competitive advantage’ with the increasing need for firms to shift functions from higher-wage to lower-wage economies. The nature of skills and the legal/policy framework in the lower-wage economy, she stressed, would help determine what kind of services that could be provided through ITeS.

In terms of what firms were seeking in the destination countries, she highlighted four main areas, including low costs (to establish a presence and in terms of human resources), deep technical and language skills among service providers, advanced yet cost effective ICT infrastructure, and supportive government laws and policies. As such, a number of key domestic policy areas could be prioritised for attention. One important cluster was capacity building for human resources, such as skills and language training, building training centres, and ensuring facilitative labour laws (e.g. promoting employee retention and career development strategies). Similarly it was essential to facilitate the establishment of the physical infrastructure, such as low-cost, robust telecom and IT networks, an attractive climate for investment and appropriate incentives for outsourcing hubs and technology parks. The regulatory framework was also a key policy area, which needed appropriate laws governing IT services and licensing regulations, as well as those for protecting data and ensuring data privacy. Regulations in a wide host of other areas also came into play, including e-commerce, FDI, cross-border payments, consumer protection, competition, etc. A strong implementation and enforcement mechanism was also essential, without which merely having this myriad of regulations on the books would serve little benefit. The fourth policy area for priority surrounded appropriate fiscal incentives for growing the sector, such as tax and other fiscal incentives, policies to attract FDI, and incentives for setting up IT hubs and technology parks; as well as import duty concessions on intermediate imports (software and hardware). A balance was needed however to ensure the incentives were not overly ‘trade-distorting’.

Promoting ITeS in the future required an identification of strengths (i.e. in what core service sectors would ITeS be offered; e.g. accounting, legal advice, etc.), development of the infrastructure available for IT services and plans for how it could be improved, training and capacity building for the resources needed to deliver ITeS efficiently, enhancing domestic legal frameworks for providing ITeS (including on data protection), and targeted government policies and fiscal incentives for the sector.

In terms of **recommendations on mode 1**, discussions centred on the following:

1. While mode 4 has traditionally been perceived as important for EAC countries, a closer look at mode 1 was needed. A number of EAC firms have already made inroads into mode 1 in the form of IT-enabled BPO services. This however needs to be augmented further through internal capacity building, as well as proactive identification of sectors in which mode 1 market access is necessary.
2. The EPA process provides an opportunity to request mode 1 access from the EU in sectors of interest to the EAC (as well as related complementary support measures).
3. In light of the growing potential for ITeS worldwide, Partner States needed to make an assessment of the service sectors in which they could develop their own potential and niche areas. For example, it could be in the areas of call-centre and back office support, or data collection and data processing for telecom or financial services; or core services such as accounting/auditing, etc.
4. To develop ITeS potential, internal capacity building was recognised as a primary requirement. EAC countries may therefore want to seek collaborative assistance from other countries effectively offering ITeS.

5. The EAC countries should also examine carefully other aspects of the EPA which will have potential implications for exporting ITeS. One important element in this regard is what the EC demanded of the Caribbean in the chapter on Data Protection. This chapter should be examined carefully for implications on the domestic regulatory regimes. One aspect that could be considered is to provide longer time-lines and technical assistance in implementing the proposed obligations in this chapter.
6. Technical and financial assistance from the EU is also required in order to grow the ITeS sector, including helping effectively implement and enforce policies on data protection. This needs to be built both as part of the EPA process and the 'Aid for Trade' agenda.

Recommended reading

- Anuradha, R.V. *Negotiating IT-Enabled Services Under EU EPAs: India's Experience and Possible Lessons for African Countries*. ILEAP. [also available in French]

Session III: Private sector analysis on improved services exports

This session was comprised of four presentations based on the preliminary results of national studies undertaken by the private sector on behalf of EABC and ILEAP. These studies are aimed at identifying four key sectors that could constitute strategic export interests for each respective Partner State and identify i) key market access, national treatment and/or regulatory barriers in the EU facing EAC services exports and ii) domestic supply-side and regulatory constraints in the EAC hampering services exports to Europe. The presenters were asked to address the following questions in their presentations:

- What is the importance of the selected sector in your country? Are there additional sectors showing export potential?
- What were the key barriers you identified for exporting these services to Europe (either barriers in the EU or domestic)?
- What actions could be taken to overcome these barriers?
- Would you prioritize any single negotiation over another – i.e. WTO, EPA, EAC Common Market, COMESA??
- What role do you envisage for the EPA in addressing these barriers and constraints?

In terms of sectoral coverage, the key services selected included:

- Entertainment and cultural services (Burundi, Kenya, and Tanzania);
- Tourism, especially travel agents and tour operator services (all five EAC countries);
- ICT/BPO (Kenya, Rwanda and Uganda);
- Education, especially in higher and adult education (Burundi, Tanzania and Uganda); and
- Professional services, specifically nursing and midwifery, legal, accounting, engineering, and architecture (Kenya, Rwanda, Tanzania and Uganda).

Presenting the Kenyan case study, Mr. Peter Okara of the Centre for Trade Facilitation focused on some key constraints to exporting services. In entertainment and cultural services, he

identified challenges surrounding access to resources for marketing, visa issues and dependency of EAC artists on EU promoters. For tour operators and travel agencies, he pointed to the lack of competition in the EU market, dominated by large integrated suppliers, as well as the issue of obtaining visas and the impact of unnecessarily strong travel advisories. The absence of adequate air services agreements with the EU was another area he cited hampering tourism exports to Europe. In ICT/BPO, Mr. Okara stressed the overriding impact of the absence of broadband infrastructure. This was far and away, in his view, the largest constraint on enhancing Kenyan exports in this area. For professional services, broadly speaking, he identified four common areas of concern, including the issuance of visas, use of economic needs tests (ENTs), nationality requirements and the lack of recognition of professional qualifications. To overcome this myriad of constraints and barriers, he targeted the need to relax visa requirements, harmonise professional qualifications (in the EAC and EU), reduce the scope of ENTs, and decrease the use of nationality requirements to discriminate against non-EU nationals. In his view, greater gains would emanate from prioritising regional efforts before looking to the world outside East Africa.

In Tanzania, Mr. Kalua Simba targeted his work in the tourism, health and education sectors. Key EU markets were identified as the UK, Ireland, Germany, Spain, France, the Netherlands, Belgium, Denmark and Sweden, with a domestic focus on the other EAC Partner States, as well as DRC, Malawi, Zambia and Mozambique. In tourism, he identified the following barriers of particular concern in the EU, namely the use of ENTs, licensing provisions, the lack of recognition of qualifications, and the use of nationality requirements. As well, he pointed to taxation rates, insurance requirements and visa issues as constraints limiting Tanzanian firms operating in the EU under mode 3. In health services, Mr. Simba highlighted the absence of export strategies in this area (despite the history of exporting nurses and other health professionals in the region), as well as the need to enhance domestic capacity and promote recognitions of qualifications. The pervasive use of ENTs and nationality requirements were again flagged as barriers limiting exports in this sector. In education services, and language training in Swahili in particular, he identified a significant export opportunity for Tanzania, which remained as-yet untapped. He stressed the importance of collaborating/partnering with EC schools and universities to help capitalise on these opportunities (pointing, as others had done prior, to the importance of taking into account what may be needed in offers/imports to help enhance the capacity to export). In conclusion, he called for the EPA negotiations to pursue a reduction of the EC's use ENTs, nationality and residency requirements, as well as recognition of Tanzanian professional qualifications. Improved market access should also be sought, he proposed, in medical, dental and education services; with associated development assistance in the education, tourism and health sectors. Such resources, in addition to EDF funds, should be made available through rapid and flexible disbursement procedures.

Presenting the Rwandan case on behalf of Mr. Prudence Sebahizi, Mr. John Bosco Kanyangoga discussed the selection of tourism as the main services export sector alongside potential in financial services, ICT, logistics and distribution, and transport services. Key constraints in the tourism sector were identified, including challenges to comply with national and international tourism standards, difficulties ensuring the quality of tourism service provision (resulting mostly low levels of skills and training), the underdevelopment of tourism-related financial services (e.g. use of credit cards, travellers cheques and bank machines) and the relatively low competitiveness of Rwanda as a tourist destination as compared to others in the region. Mr.

Kanyangoga also highlighted the need to improve domestic infrastructure to attract higher-spending tourists as well as the lack of availability of diverse tourism products for prospective consumers. Limited access to finance to help address many of these areas was also touched on. To help overcome such barriers and constraints, a key area in need of attention was tourism export development and marketing in the EU, in particular to help match operators in the region with international buyers and build brand awareness. Infrastructure support and training via aid for trade was another avenue to pursue for overcoming these various constraints. In terms of the various fora in which Rwanda was currently considering services commitments, it was highlighted that Rwanda's highest level of engagement was at the EAC Common Market level (and to an extent COMESA). Such priority was followed by the EPA and then the WTO. As such, it was suggested that the role for the EPA was to focus development resources towards supply-side constraints, in particular infrastructure issues, as well as opening up greater mode 4 access into the EU. Enhanced and better utilised AFT, including EU technical assistance and capacity building, were also important.

The presentation on Burundi, delivered by Ms. Marie Chantal Nzopfidekuye on behalf of Mr. Ernest Manirumva focussed on tourism, cultural services, education and traditional medicine (health services). Tourism it was noted was far away the most important, said to contribute half of all services exports. In the cultural sector it was highlighted that a number of prominent Burundian dance troupes were already exporting their services worldwide. The external barriers of greatest concern in these sectors surrounded mode 4 market access abroad and in particular visa-related issues and the recognition of qualifications. The imposition of high taxes on the repatriation of income was also flagged. Internal constraints were also touched on and included low levels of income and capital, high cost and low quality infrastructure, the low supply of skilled workers, the absence of competition in local markets, high rates of taxation and the lack of information about external market opportunities. Promoting Burundi as a location for foreign trade and investment was an important avenue for overcoming some of these barriers, including efforts for export promotion/development, marketing fairs, training and improving the domestic regulatory and institutional framework.

The researcher from Uganda was unable to attend the workshop and thus there was no presentation on the Ugandan national study.

Remanding some of the substantive points to the sectoral sessions to follow, the discussions focussed on two key themes, one being the issue of sequencing the Common Market (CM) and EPA negotiations. Here participants deliberated as to the extent which it was needed to complete the CM negotiations prior to the EPA negotiations. Views were split, with some feeling that it was essential to 'get the regional house in order' before negotiating with anyone outside, while others believed that the two provided complementary processes that could be pursued in tandem. It was reiterated that both the CM and EPA were inherently national processes that required each country to identify where it wanted to advance/consolidate reforms and where it was more comfortable with the status quo. As such, the absence of the CM did not preclude being able to do this and make meaningful commitments at the EPA, were this deemed of national interest (provided certain provisions in the EPA did not substitute for the CM itself). Consensus was held however that whatever was offered to external partners, the CM should go further in terms of integrating the EAC markets.

The second key area of discussion revolved around the issue of private sector awareness of existing and/or potential future services export opportunities. Questions were put to participants as to the extent they felt operators on the ground were aware of such opportunities in services (in the EU and elsewhere). It was the general view from the researchers and the floor that there was wholly inadequate understanding of what constituted services exports, in particular by those already exporting. The result was sub-optimal networking amongst exporters, including professional groups and a clear need for a systematic programme of sensitising EAC private sector actors on this matter. Both EABC and the national private sector associations indicated this was a key priority for them, despite their own capacity constraints for doing so. The need to deepen market research and the availability of information on market opportunities in Europe was also highlighted, as operators were rarely aware of existing or new opportunities outside the tourism sector. In BPO/ICT there was a degree of awareness, but it was noted that this was more often from firms with non-EAC ownership. Mechanisms for assisting were touched on, including making better use of diaspora networks abroad, as well as types of institutions such as the Dutch Ministry of Foreign Affairs agency the *Centre for Promoting Imports from developing countries* (CBI) (<http://www.cbi.eu/>).

Session IV: Negotiating trade in services with the EU: Options and opportunities

Before delving into sector specific analysis of barriers and constraints to exporting services to Europe, this session aimed to assist participants secure a better understanding of a number of cross-cutting considerations, in particular as related to options and opportunities in modes 1 and 4. The intention was thus to also assist EAC stakeholders identify key issues that could be taken up in a possible request to the EC. Ms. Anuradha R.V.'s presentation is based on findings from her recent ILEAP-commissioned paper.²

To preface her presentation, Ms. Anuradha stressed the importance of understanding the reality of the EU services market at the outset, or the lack thereof. More often than not there was a mixture of 27 individual Member States (MS) services markets, with sufficient harmonisation in a select number of sectors that enabled one to speak of a single EU market. In general, research showed that EU MS were most open with respect to mode 3 and least open in mode 4. Modes 1 and 2 were found somewhere in between. Of perhaps greater importance was the myriad of diverse regulatory requirements in the EU, especially relating to qualifications and licensing requirements in each EU MS.

On mode 4, the framework (and limitations) of the Cariforum EPA was used to guide the discussions. An explanation was offered on the various elements, including types and definitions of categories of mode 4 service suppliers (i.e. key personnel (KP), business service sellers (BSS), contractual services suppliers (CSS) and independent professionals (IP)), the allowed duration of stay (ranging from 90 days to three years), and the sectors eligible for entry under CSS and IP (see presentation). Of greatest relevance to the EAC, she noted that key improvements in the

² See *Papers Circulated*: http://ileap-jeicp.org/programmes/meetings_workshops/nairobi_feb09_papers.html

Cariforum EPA over the EU's Revised Offer in the WTO were additions to the number of sectors eligible for entry under CSS³ and to a lesser extent IP⁴. It was noted however that the pervasive use of economic needs tests (ENTs) undermined the predictability and security of these commitments and thus called into question the extent this represented 'enhanced' access. She also highlighted the importance of understanding that exporting under KP – which included Intra-Corporate Transferees (ICT) and Graduate Trainees – required an EAC firm having a commercial presence in the EU (i.e. mode 4 access under KP access was tied to mode 3). There was thus no provision for trainees outside those transferred within a company already established in Europe. As such, the category was likely to be limited interest for the region. This contrasted with IP and CSS (in that order), which were of relatively greater interest (and inversely were associated with the least amount of access).

Additional sectors where CSS access could be pursued were also flagged, such as educational services, including publicly funded educational activities in higher, primary, secondary, adult education services, and other educational services; recreational services, other cultural services, and sporting services; transport services (maritime, air and services auxiliary to both); professionals working in hotels, restaurants and financial service professionals/ consultants. Professional engineering services were also identified from the floor. For IP, the limited sectoral coverage in the Cariforum EPA implied there was, at least in principle, great scope for improvement (e.g. accounting and book-keeping services; medical and dental services; midwives services; services by nurses, physiotherapists and paramedical personnel; entertainment, recreational, other cultural services, sporting services; educational services; tourist guide services, travel agencies and tour operator services; transport services (maritime, air and services auxiliary to both); and professionals working in hotels, restaurants and financial service professionals/consultants). The actual sectors to pursue would of course need to better reflect specific country and sectoral interests.

In terms of general trends and restrictions on mode 4 in the EU, Ms. Anuradha reiterated that the most liberal approach for mode 4 was linked to mode 3 and thus of relatively less interest to the region. She also stressed the importance of putting the EU's approach to mode 4 in context, that it was primarily aimed at skilled professionals and not mid/low-skilled persons and that this could pose important limitations to the EPA process. Key horizontal restrictions employed in the EU were listed, aligning with those identified in the national studies earlier, namely the use of nationality and residency requirements, ENTs, numerical quotas, and qualification and licensing criteria. On the latter, she highlighted that all mode 4 access was based on each EU MS' right to evaluate the qualification, experience and licensing requirements of the concerned natural person. That most professions were highly regulated in each MS, with largely diverse requirements amongst them posed significant challenges for prospective exporters.

³ CSS in the Cariforum EPA was defined as: "Natural persons employed by a juridical person of a Party which has no commercial presence in the territory of the other Party and which has concluded a bona fide contract to supply services with a final consumer in the other Party requiring the presence on a temporary basis of its employees in that Party in order to fulfill the contract to provide services."

⁴ IP in the Cariforum EPA was defined as: "Natural persons engaged in the supply of a service and established as self-employed in the territory of a Party who have no commercial presence in the territory of the other Party and who have concluded a bona fide contract to supply services with a final consumer in the other Party requiring their presence on a temporary basis in that Party in order to fulfil the contract to provide services."

On economic needs tests (ENTs), it was re-iterated that these were used throughout the EU's commitments in the Cariforum EPA, with no clear set of criteria or guidelines on usage. The main criteria indicated is an assessment of the relevant market situation in the MS or the region where the service is to be provided, including: the number of and the impact on existing services suppliers. This, it was noted, offered little by way of real transparency or predictability on how and when they would be used to restrict market access. That said, it was recognised amongst participants that to pursue greater precision would require a detailed look at the actual activity in question (i.e. disaggregated sub-sector) and input from the national professional associations.

Recognising qualifications and licensing requirements, as noted above, were key constraints to increasing services exports from the region. The need to pursue mutual recognition was thus a repeat theme touched on in previous presentations and thus Ms. Anuradha sought to provide some clarifications. She noted that each EU MS has its own (often different) requirements in virtually every services sector, which were not required to be 'scheduled' under market access restrictions (i.e. they are not a market access barrier per se). Negotiating Mutual Recognition Agreements or MRAs were extremely time consuming and thus likely not practical to be included in the EPA itself. It could however provide a mechanism for pursuing them. In the absence of completing MRAs, clear provisions could be sought on:

- Transparent procedures and strict timelines for evaluating licenses and certification of the other party's service provider;
- Procedures for fulfilling any shortcomings in an application;
- The concerned authority should provide reasons for any rejection of an application for recognition of qualifications;
- Allow for re-submission of application; and
- Appeal and review procedures.

It was also suggested that the EAC could start by considering those sectors where the EU itself had advanced with internal harmonisation, as done in the context of the Mutual Recognition Directive (i.e. doctors, nurses, midwives, pharmacists, dentists, veterinarians and architects). In addition, the EAC would need to identify other sectors of interest for expedited MRA treatment. Lessons could be drawn from the Cariforum approach, which offers a general statement of 'encouragement' to professional bodies in accounting, architecture, engineering and tourism. Herein the professional bodies should meet within three years, but this was not mandatory (and hence was of uncertain value).

On cross-border supply of services/consumption abroad (modes 1 and 2), it was noted that they were more open than mode 4, with mode 2 relatively more open than mode 1. In mode 1, as touched on in session II, key areas included ITeS, BPO, etc. On mode 2, medical tourism and education services were of potential interest. The use of qualifications and licensing requirements were again underscored as impediments to exporting mode 1 services to Europe, as was the absence of any EU commitments under the Cariforum EPA in medical and dental services; midwives, nurses, paramedics, physiotherapists services; publicly-funded R&D services; education services; hotels and restaurants; entertainment, recreational, other cultural services. The EAC could thus consider seeking some meaningful new commitments in these areas.

Concluding on the topic of cultural cooperation, Ms. Anuradha highlighted the new approach taken by the EU under the Cariforum EPA, which did not actually entail undertaking commitments as elsewhere on trade in services. Excluding audio-visual services altogether, they were instead offering restricted access in entertainment, recreational and other cultural services based on UNESCO's 2005 Convention on Cultural on Protection and Promotion of Diversity of Cultural Expressions (aimed at promoting cultural exchanges and dialogue worldwide). In effect, artists and cultural professionals would be able to stay for up to 90-days in any 12-month period (however on a discretionary basis, i.e. there is no legal right of entry conferred upon them).

Discussions and **recommendations on mode 4** included:

1. Pursue a new category of natural persons for trainees that is not linked to mode 3 commercial presence (i.e. they can work for an EU-firm) and can stay in the EU for longer than one year. The educational requirements for such a category should also be more appropriate for the EAC context, including allowing for non-university level graduates
2. Include in the new category above the provision for semi-skilled workers. EAC countries would need to clearly identify the sectors and skills in which such access is being sought, and request for expansion of the list in the EPA.
3. The sectoral coverage for both IP and CSS need to be expanded to better cover those sectors where EAC countries have the potential to export (either existing or near future). The sectors listed in the presentation (see above) were meant to guide national-level discussions, which would need to identify in greater precision which sectors to be pursued.
4. The duration of stay for CSS and IP is inadequate and should be expanded.
5. The pervasive use of economic needs tests by the EU MS in the Cariforum EPA is of great concern to the EAC. Stakeholders were of the view that such usage with the EAC would effectively nullify the potential market access opportunities. If the EU was unwilling to remove such ENTS, there would be a clear need to clarify the criteria for usage and manner of application. Specific requests would need to be formulated at the sector-specific level with input from relevant professional associations/stakeholders.
6. On MRAs, EAC PS need to interact with sector-specific professionals and identify sectors in which MRAs with the EU will need to be concluded. A clarification should be sought from the EU on the sectors that would constitute the 'art, craft and industry' sector and the possibility of MRAs for some of these sectors.
7. The EU MS would need to ensure that whatever categories agreed upon for natural persons under the EPA would be reflected in individual MS visa categories.
8. Elements of the Protocol on Cultural Cooperation need to be examined closely for relevance for the cultural, entertainment and audio-visual industries in the EAC countries.
9. Enhanced coordination with other ACP regions on mode 4, and the services negotiations more generally, would prove of great value to the EAC.

On mode 1, participants recalled the **recommendations on ITeS** in session II, adding that EAC Partner States, service professionals and associations needed to identify sectors in which mode 1 access would be desirable (including in areas of core services).

Recommended reading

- Anuradha, R.V. *Negotiating Trade In Services With The EC: Analysis of Options and Opportunities for African Countries*. ILEAP.

Session V: Capacity building to support services exports

This session looked at both the bigger picture on capacity building on trade in services, as well as an example of a World Bank project aimed at enhancing the provision of business services in East Africa.

Opening the session was ODI Research Fellow Mr. Dirk Willem te Velde, presenting on Aid for Trade in Services. He introduced the topic by reviewing some of the key constraints to trade in services (import and export), which included the lack of services supply capacity, inadequate regulatory frameworks and regulators, the absence of national services trade policy, restrictive international trade barriers and an inability to translate regulatory frameworks into GATS language. For these he enumerated a number of activities to overcome these constraints, including:

- Building supply capacity for services sectors that are sustainable, using appropriate and good quality human resources, infrastructure, new technologies;
- Regulatory reform;
- Formulating sectoral services negotiations, need for services coalitions, national and sectoral working groups, impact assessments, complementary economic and social policies
- Negotiating trade rules internationally or reducing barriers unilaterally; and
- Translating current and future commitments into GATS language, and communicate between capitals and Geneva.

External support could thus be provided via donor finance/budget support (bilateral and multilateral) and capacity building/technical assistance from various donors, agencies and organisations (multilateral: World Bank, OECD, UNCTAD; regional: RECs, AfDB, UNECA; bilateral: EU, US, China; as well as other more targeted groups: South Centre, Commonwealth Secretariat, and ILEAP). In this respect, donor support and bilateral financial arrangements between EAC PS and EU MS may be utilized to create budgetary provisions to assist EAC countries put in place needed infrastructure. In addition, such funds might be used to assist the private sector meet international standards and better understand key European markets. Technical and financial expertise could also be brought to bear in those sectors where regulatory reform was essential to underpin growth, e.g. data protection laws in the BPO industry. Economy-wide issue like investment reforms would also need attention, for which the World Bank's bilateral programme on Investment Climate Reform was highlighted. Similarly, technical and financial support for sectoral analysis, mobilising professional associations and supporting broader private sector representative engagement were needed to promote a more robust policy- and decision-making process.

In terms of the negotiations, it was also clear that EAC Partner States required further technical and financial assistance to train more experts and negotiators, and fund their placement in key

negotiating centres both domestically (in capital) and abroad (e.g. Geneva and Brussels). This would allow for more informed negotiations and engagements with more developed and experienced trade partners. In addition, such support will need to help countries in the region to translate their current and future commitments on services reforms into GATS language and to ensure these are adequately communicated between capitals and Geneva.

The portion of technical support directed to trade in services was in fact negligible noted Mr. te Velde, comprising only 0.75% of all trade-related TA/capacity building in 2004. This represented a mere 0.01% of aid. While this support was regarded as useful, the magnitude lay in stark contrast to the role and value of trade in services globally. This would have included the various work of UNCTAD, World Bank, OECD, WTO, ILEAP, COMESA, RNM, others, providing TA for preparing offers and requests (one-off), assessments and policy research, building negotiating capacities, workshops, toolkits, services baselines and general capacity building on services. He suggested that if stakeholders were to expect anything more, there was a need to alter the approach and mindset, which could start by focussing more efforts on building up the processes behind services negotiations, such as supporting a national trade in services working groups where continued discussions and learning can take place; building up national think tanks on international trade (in services) issues; and improving the regulatory agencies at the sector level.

In addition to continuing with more conventional TA, other elements that could be pursued include re-focusing TA to capitals to help support national services trade groups (which can generate buy-in for TA and other assessments from regional and international organisations), foster regional networks where sectoral agencies can learn, and create trade in services windows in international organisations.

Binding access to technical assistance could also be investigated as a mechanism to support developing countries making pre-commitments, without a priori obligation to make this binding. In other words, countries could make pre-commitments, which would trigger unconditional access to (additional) capacity building fund grants that were available only for a specified period of time, for certain types of assistance and subject to a certain maximum. The pre-commitment would then become binding when a joint body (e.g. WTO Council for Trade in Services or EPA Joint Council agrees there has been satisfactory TA).

The discussions centred in part on the constituencies for services reforms at the national (and regional) level and the organisations that are already in place representing them. On options for EAC-wide professional bodies, examples such as APSEA and the East African Law Society were cited, as was EABC. Nationally, groups such as the Kenyan Private Sector Alliance (KEPSA), the Private Sector Foundation of Uganda (PSFU), the Ugandan Services Exporters Association (USEA), the Private Sector Foundation of Rwanda (PSFR), the Confederation of Tanzania Industries (CTI) and the Burundi Chamber of Commerce (CCI BDI) were also touched on. In hearing from stakeholders, Mr. te Velde highlighted two key roles for such organisations. The first was an external role, liaising with government and trade negotiators on barriers, appropriate negotiating strategies and how to facilitate greater services exports. Internally, their role was to help facilitate harmonisation within the region/sector on standards, qualifications and licensing requirements.

The following presentation was delivered by World Bank Economist Ms. Nora Dihel on their on-going project on regional trade and integration in East Africa. The project is focussed in particular on business services and her presentation dealt specifically with the role of business services in the development of the EAC region. In this regard, Ms. Dihel noted the varied positive effects of business services on development, including their direct contribution to growth and employment, as well as the dynamic benefits they can confer to other activities (e.g. reducing transaction costs, other spillover effects, etc.). Such services were however underdeveloped in the EAC, which attributed to various factors including: lack of skills (and skill mismatches), market failures (vis-a-vis market concentration and fragmentation; also information asymmetries), small services markets (absence of economies of scale) and inequity of access to certain services (e.g. education). Other factors included capacity constraints, rent-seeking, tax regimes and incentives to keep economic activity in the informal sector.

Causative factors impacting market failures included licensing controls, restrictions on multidisciplinary activities and inter-professional cooperation, minimum and maximum fees, prohibitions on advertising and overregulation via indirect regulation in other sectors that impose criteria in addition of direct qualification requirements. Re-examining such rules, strengthening competition laws and coordinated regulatory frameworks for specific professions were highlighted as potential responses at the national level. Regionally, such reforms and efforts could be coordinated, for example, via the EAC Common Market provisions on Competition Policy and Easing of Border Crossings.

Factors highlighted that were exacerbating the lack of scale economies included burdensome licensing and qualification requirements, restrictions on nationality and residency, quantitative restrictions and economic needs tests and restrictions on types of establishment. Reforms to licensing and qualification criteria alongside autonomous liberalisation were flagged by Ms. Dihel as possible national level responses. At the regional level, regulatory cooperation and harmonisation could assist, including via coordinated services commitments under the EAC CM, EPA or WTO.

In terms of equity, the presentation touched on the idea that certain students and firms were excluded from accessing relevant education and related services. Here she pointed to vertical differentiation determined by the market and professional and educational regulatory failures as examples of causative factors. It was possible to address these by taking a dualistic approach to professional standards in relevant sectors (e.g. accounting), where it would be appropriate at a national/regional level to delay implementing certain components of international standards that were not useful or relevant to the actual services in demand. Similarly, education programmes targeting different levels, with adequate financing for students was another avenue to address such concerns. Regional coordination in either respect would prove beneficial.

To be competitive globally, business services including professional services, needed to meet globally acceptable standards (in terms of quality, etc.). However, the business services offered in the EAC region did not currently demonstrate that they could do so. One rationale offered related to the fact that few firms in the regional were exporting such services internationally, but rather producing/exporting for domestic/regional clientele who did not insist on the same level of

standards. The quality of education was also flagged as playing a role in helping to ensure services providers were operating at the level of international 'best practise'. That the domestic/regional market is small has also contributed to the absence of larger international firms, which could help set the pace in this area.

The role of the private sector in developing business services was also explored and included the offering of training and internships (enhancing the skill base), pursuing cooperative agreements between firms (which can spur regional integration) and catalyzing reforms in domestic regulation and pro-active trade agendas.

Specific **recommendations on capacity building and aid for trade** emanating from the discussions included:

- There was a need to promote the development of an EAC 'Coalition of Services Industries' type organisation (or body within an existing agency). Such a plan would be longer-term, starting with proper situating of national bodies. There was also a need to identify those sectors where such efforts could commence.
- The inability to translate domestic services frameworks into GATS-based language for use in the EPA (or CM or WTO) acts as a significant impediment to the negotiation of potentially beneficial commitments and was an important next stepping stone in advancing reforms and negotiations. This should be a key area for upcoming TA support.
- Additional analytical work could be commissioned to quickly take stock in a number of selected sectors, to assess regional frameworks and draw together relevant professional associations to discuss key constraints/barriers to enhancing exports of their services.
- There was a need to catalyze professional associations to take a deeper look at their sector and how standards could be improved, including through the improvement of educational curriculum and a more targeted use of internships and training.
- Efforts could also be directed at creating more focussed exchange programmes for students in EAC universities with those from developed countries.

Recommended reading

- te Velde, Dirk Willem. (2005). *Revitalising services negotiations at the WTO - Can technical assistance help?*
- Sauve, Pierre. (2007). *Services-related Projects in Aid for Trade*. ILEAP

Session VI: Sectoral Analysis

The sessions on sectoral analysis were based upon the five draft national studies (presented in session III) and additional analysis undertaken by ILEAP in a regional report under preparation. As presented by the researchers, Mr. David Primack and Ms. Serah Kimani, the objective of the work is to assist the private sector to identify domestic and external barriers/constraints to enhancing their services exports and ultimately feed information to individual EAC governments in the formulation of a possible request to EC. This would include both a market access dimension (which helps create the opportunity) and a complementary support dimension (needed to enable EAC firms to take advantage of the opportunity).

As noted above, the sectors covered by the report included:

- Entertainment and cultural services (Burundi, Kenya, and Tanzania);
- Tourism, especially travel agents and tour operator services (all five EAC countries);
- ICT/BPO (Kenya, Rwanda and Uganda);
- Education, especially higher and adult education services (Burundi, Tanzania and Uganda); and
- Professional services, specifically nursing and midwifery, legal, accounting, engineering, and architecture (Kenya, Rwanda, Tanzania and Uganda).

Each sector presented at the workshop – including ICT/BPO, nursing, travel agent and tour operators, and higher and adult education services – saw the sector defined and elaborated in terms of examples of different modes of supply. An overview of the state of each sector in the EAC was provided, followed by some examples of typical barriers in the sector. In the EU context, specific barriers were highlighted, emanating either from services schedules (WTO or the EU's commitments in the Cariforum EPA) or from specific legislative examples. Lastly, points were offered with respect to domestic constraints identified in the sector.

ICT/Business Process Outsourcing (BPO) services

On ICT/BPO, which was an overlap of Computer & Related Services (C&RS) and Telecommunication services in the WTO classification context, it was noted that there were some new services in the field that were not captured in the existing classification. A key example included call centres, which only show up explicitly in later versions of the UN Central Product Classification (CPC) code (v 1.1) whereas the WTO classification (MTN\GNS\W\120) is based upon the Provisional version of the CPC. This raised some important considerations about where to situate certain key BPO-related services in a request.

Within the EAC, it was noted that BPO was a relative new industry, however domestic demand was on the rise. It was also a sector identified as key pillar of the economy in most Partner States (especially Kenya, Uganda and Rwanda). Research had uncovered that there were over 30 firms offering BPO services in Uganda, with 50+ in Kenya (the numbers in other Partner States were unclear). The sector, it was noted, was already starting to provide better-paying jobs to local IT graduates. The lack of good ICT infrastructure (e.g. broadband) was widely acknowledged as the biggest challenge to growth in the sector.

As touched on earlier, there were few sector-specific barriers on ICT/BPO in the EU. Indeed in the Cariforum EPA, modes 1, 2 & 3 for C&RS were fully open (no limitations scheduled). The EU's commitments in mode 4 however were far less ambitious, in that they were most liberal for mode 4 tied to commercial presence (mode 3; i.e. key personnel (KP) and graduate trainees (GT)), which is of relatively less interest to the region. C&RS was eligible under contractual services suppliers (CSS) and independent professionals (IP), with no restrictions listed for some key EU MS (Germany, France, Ireland, Netherlands, Sweden), however the UK and Belgium retained economic needs tests (ENTs). Other important barriers included rules on immigration and work permits, as well as stringent data protection requirements (the EU-wide Data Protection Directive).

Key domestic constraints identified so far in the research included the lack of broad band internet connectivity, which increases costs and lowers quality/reliability of internet access. This leads to unreliable service provision and thus credibility challenges with clients. The high cost and unreliable supply of energy/electricity also serves as a key constraint, as does lack of modern equipment to train in cutting-edge activities. From a regulatory perspective, the absence of a regulatory framework to support BPO, especially data security and consumer protection laws, e-commerce regulations were stressed. Low levels of skills/ human resource capacity was also identified as an impediment for improving competitiveness in the sector. The need to improve training curricula and the tendency of higher-skilled BPO employees to migrate abroad were other human resource-related constraints in need of attention. Other issues discussed included the lack of BPO-specific incentives in the EAC, which were used widely in promoting the sector elsewhere, general access to finance constraints, the small size/scale of operations of EAC BPO firms and differences in business culture in EAC and key BPO export markets.

The discussions stressed two key areas in need of greatest attention:

1. The need to enhance the level of skills in the sector, including at the managerial level
2. The need to pursue international standards in service provision (including data security, certification, site security (e.g. within call/data centres), etc.)

While the latter were essential to exporting internationally, it was felt by many (though not all) that skills development should take greater priority. In part, this was because it was the building block to starting to provide services domestically, which would not require internationally accepted standards in all areas at the outset. This could enable the nascent industry to grow and learn-by-doing within the region, building the capacity needed to pursue higher-level standards and eventually export outside the region.

While it was recognised that the larger proportion of efforts would focus on tackling domestic constraints, it was also agreed that there were important links to the negotiations. This included, as touched on above, pursuing broad commitments in mode 1, not only in C&RS, but in the core services sectors as well (accounting, legal services, etc.). Similarly, in terms of regulatory reform (e.g. data protection), support could be sought to assist with legal drafting, implementation, and importantly, enforcement. Technical and financial assistance could also be sought in terms of enhancing contacts and networks in the region (e.g. BPO fairs) and other export promotion/trade facilitation activities.

Recommended reading

- Anuradha, R.V. *Negotiating IT-Enabled Services Under EU EPAs: India's Experience and Possible Lessons for African Countries*. ILEAP. [also available in French]

Nursing services

In terms of defining nursing services (which in the WTO falls under the professional services sub-sector of 'services provided by midwives, nurses, physiotherapists and para-medical personnel') it was highlighted that there was some divergence amongst Members as to the feasibility of supplying such services cross-border (i.e. mode 1). Looking more closely however

at the UN CPC definition, which included ‘...Services in the field of nursing (without admission) care, advice and prevention for patients at home ...’), it would seem that the simultaneous presence of nurse and patient was not mandatory. As such, mode 1 in nursing services was a potential area for new opportunities.

In the region, nursing services was clearly an active sector in all EAC countries, with a well established history of mobility. Nurses from the region have long been going abroad to the EU, USA and within East and Southern Africa, however this was occurring through traditional migration channels and not related to mode 4 per se. Despite trends internationally moving towards university qualifications in nursing, few nurses in the region were obtaining such qualifications. Rather, most were receiving diplomas or certificates in their field. Due to the attraction of the sector, there was often an oversupply of nurses domestically, which combined with poor terms of employment, was helping to drive demand for to go abroad.

Key restrictions in the EU revolved again around immigration rules/work permits and onerous qualification requirements, which affected mode 4 in particular, but carried implication as well for mode 1 (where the same qualifications were often sought even if the service provider was based abroad). That said, it was noted again that no EU MS had made any commitments on nursing services in mode 1 under the Cariforum EPA, hence it was an area of possible interest for the EAC in their EPA discussions. Mode 2 was largely open (i.e. no limitations), as was mode 3 (though there were some limitations on activities (Austria) or types of legal forms (France)). For mode 4 tied to commercial presence, i.e. KP & GT, the restrictions were similar to mode 3, with some additional limitations on Graduate Trainees (GT) to seek authorization from the competent authority). In CSS and IP, where the EAC had the greatest potential to export, all key EU MS (except France) maintained ENTs, which as noted earlier, served to undermine the value of the commitment. That the EU’s Mutual Recognition Directive provided a degree of harmonisation for nursing qualifications, it was suggested that this offered a useful starting point to pursue recognition with the EAC.

Domestic constraints were characterised largely in terms of infrastructure-related issues. This included the fact that most hospitals and training facilities were outdated, including equipment and buildings, as were some of the training procedures. Some EAC facilities were also overcrowded and there were limits (financial and physical) to expansion and upgrading. In terms of human resources, the nursing qualifications garnered in the region were not recognised abroad and the low supply of qualified teachers (who were often enticed abroad) made it difficult to maintain education standards. The question of skill mismatches was also raised – were nurses in the EAC learning those skills most in demand abroad (i.e. specialist areas). From a regulatory perspective, the fragmentation of authorities in many of the countries in the region (e.g. part Ministry of Health, part Ministry of Education) was highlighted as a key impediment to undertaking needed reforms in the sector.

Recommended reading

- Commonwealth Secretariat/COMESA. *A Managed Temporary Migration Scheme for Nurses from Eastern Africa to the European Union.*

Higher and Adult Education services

Higher and adult education services fall under the education sector in the WTO's GATS classification. To provide some additional details however, participants were also pointed to the UN CPC definitions. Higher education, it was noted, would include 'post secondary technical and vocational education services', which covers sub-degree level training with both a theoretical and practical component, such as trades people (electricians, auto mechanic, etc.).⁵ It also covers 'other higher education services' which includes university or professional schools, leading to a university degree or equivalent. Adult education covers a broad range of services, aimed at adults not in the regular school and university system, offered by day or evening classes by schools or specialized institutions, covering both general and vocational subjects.

Within the region, it was noted that the education sector was vibrant with numerous established institutions (both public and private). Indeed in Uganda, where the sector was reported to be the largest provider of formal employment, the sector has been undergoing extensive reforms since 1997 and was largely private sector-led. As a result, Uganda was currently exporting secondary, high school and university education services throughout the EAC and elsewhere in Africa. Adult language education services in Swahili were also highlighted as an active sector, especially in Tanzania and Kenya, with options for expansion and exports abroad (including via mode 1). The Inter-University Council for East Africa (IUCEA) was also flagged as the main regional body for coordination and cooperation on education in the region, including on standards (though the standardisation process was not far advanced).

The presentation moved on to outline the barriers in place to exporting education services into the EU. Pointing to the Cariforum EPA, it was first highlighted that education service exporters were only allowed to participate in privately-funded education services (whereas a large majority of such services in the EU had public financial support). Further, establishing a commercial presence (i.e. mode 3) in the "education network" was "subject to concession". The absence of specifying what constitutes 'privately-funded' (e.g. any threshold for public funding?) or defining the 'education network' introduces significant uncertainty over the actual extent of the commitments offered by the entire EU. Similarly, the lack of any information on the concession (e.g. procedure, terms, or conditions) undermines any security or predictability that might otherwise be expected from a commitment. Indeed, these new qualifications (in particular on mode 3) would appear to represent a degradation of what was offered under GATS Revised Offer.

Recalling the limitation to participate in privately-funded services only, EU MS maintained few other limitations in modes 1 and 2 for higher education, except in certain key Members such as Austria, France and Sweden. This was similarly the case for adult education, however only Sweden remained unbound from the key EU MS. In mode 3, with the additional (and unspecified) "subject to concession" requirement introducing further uncertainty, key EU Members also maintained few additional restrictions in both higher and adult education services.

⁵ Such services are often found under the TVET heading (Technical and Vocational Education and Training), which focuses on training people with practical and specific work skills (often including a period of apprenticeship).

The EU's Cariforum EPA commitments on mode 4 in this sector were also quite sparse (and confusing), with the most liberal conditions prevailing in higher education services that were linked to a commercial presence in the EU (i.e. in Key Personnel (KP) and Graduate Trainees (GT)). Here it was highlighted that most EU MS maintained no additional limitations, though France and Denmark did have nationality requirements (which effectively nullify the commitment). For adult education services, mode 3 appeared open by virtue of Article 81 of the legal text, which indicates that any sector liberalised under mode 3 would be granted KP & GT access, subject to any limitations included in the schedule (for which there were none under adult education). While IPs were not eligible for market access for either higher or adult education services, nor CSS for adult education, higher education was listed in the legal text as being eligible for CSS. However, participants were pointed to the schedule, wherein all key Members except France undertook no commitments (i.e. 'unbound'). The latter it was noted seemed contradictory and would need clarification if the EAC were to pursue the subsector (which in light of the absence of significant EU commitments, combined with EAC export potential was deemed of interest by participants).

Of interest, the presentation quickly touched on the European Bologna Process, a process expanding beyond just the 27 EU MS that aimed to create a European Higher Education Area (EHEA).⁶ The Bologna Process has already adopted an overarching framework of qualifications for EHEA in 2005, covering a three-stage process of bachelor, master and doctorate. Based on these, individual countries were to develop compatible national qualifications framework by 2010. With an explicit 'mobility' and 'international cooperation' dimension identified for future work, it was suggested that this could be an avenue on which to pursue recognition of non-EU education qualifications at a later date (based potentially on a framework enumerated in the EPA).

In terms of domestic constraints identified in the sector, issues were highlighted with regards to the quality of training infrastructure, including buildings, materials, and equipment. A key difficulty lay in the lack of ICT infrastructure, especially broadband internet access and computers. The latter was a particular hindrance to export opportunities under mode 1. From a regulatory perspective, the fragmented nature of different regulatory authorities was underscored, often falling under two or more Ministries. Aside from Uganda, the absence of an export policy directed at education services was also impeding a move towards exporting these services from the region. Facilitating such a move, it was stressed, would likely require more effective regional standards and a degree of harmonisation of qualifications. In terms of skills, while there were many well-trained educators in the region, it was questionable whether the skills were appropriately calibrated for the export market. Collaborating further with EU-based educational institutions was flagged as one avenue for improving the situation. The implication of the latter on opening areas of the education sector for imports (i.e. in the offer) was well recognised. Other key domestic constraints included a lack of key market information to penetrate EU markets and access to finance constraints for SMEs.

Recommended reading

- Bashir, Sajita. (2007). *Trends in International Trade in Higher Education: Implications and Options for Developing Countries*. World Bank

⁶ See <http://www.ond.vlaanderen.be/hogeronderwijs/bologna/>

- Knight, Jane. (2006). *Higher Education Crossing Borders: A Guide to the Implications of the (GATS) for Cross-border Education*. Commonwealth of Learning and UNESCO

Travel Agents & Tour Operators services

In addition to travel agents and tour operator services, it was noted that the GATS classification also included hotels and restaurants (incl. catering); tourist guide services; and other tourism and travel related services). Participants were pointed again to the UN CPC definition for further details, which covers “services rendered for passenger travel by travel agencies, tour operators, and similar services; travel information, advice and planning services; services related to arrangement of tours, accommodation, passenger and baggage transportation; ticket issuance services. These services are provided on a fee or contract basis.”

Tourism and travel related services are perhaps the most easily identifiable services exports in most developing countries, including the EAC. As widely known, the sector generates significant employment, income and export earnings in the region. It is active to varying degrees in all five EAC Partner States and also has the largest percentage of intra-Africa tourist arrivals. There has been however uneven development of the tourism sector in the EAC, with Kenya and Tanzania capturing the majority share of the market. The growth of travel agents and tour operating firms has paralleled this uneven development. Due to the size of their domestic market, travel agencies/tour operators from the two countries are able to dominate and as a result have potential to compete outside the region.

Turning to the barriers in the sector, it was noted that the EU market was quite open for travel agents and tour operator services, with no restrictions in any key EU MS under modes 1, 2 or 3 under the Cariforum EPA. In mode 4, the more liberal commitments were again tied to an EAC firm being established in the EU/mode 3 (i.e. Key Personnel (KP) and Graduate Trainees (GT)), however the subsector was also relatively open for service suppliers not tied to mode 3 (i.e. CSS & IP), where a number of key EU MS retained no restrictions. Of note however, Germany, Denmark, and Brussels make use of an ENT limitation and Ireland undertook no commitments on CSS & IP at all (i.e. ‘unbound’).

While there is no specific EU-wide legislation concerning access to the profession of travel agents and tour operators, it was highlighted that they are still obligated to comply with the EC Package Travel Directive. The latter contains rules concerning the liability of package organisers and retailers and requires organisers to provide financial guarantees for the benefit of consumers. Travel agents and tour operators (as well as tour guides) are also covered by the Services Directive, which as discussed earlier, enables the free provision of services within the EU, however only for EU companies and professionals of EU nationality (irrespective of where any qualifications have been obtained). As such it would only be useful if an EAC firm established as an EU firm (mode 3) (and for its EU-national employees).

The rules of the EC Package Travel Directive, including licensing requirements, were identified as being particularly onerous and often impeding travel agents and tour operators from accessing the EU market. An example was cited in Ireland, where the Transport (Tour Operators and Travel Agents) Act (1982) and the Package Holiday and Travel Trade Act (1995) required agents

to be licensed and bonded to sell travel from Ireland to destinations outside the State. The license requirements include a minimal capital investment of €25,000 or 5% of annual licensable turnover for travel agents or €38,000 or more than 5% of annual licensable turnover for tour operators. A travel agent would also need to make available a bond equivalent to 4% of projected annual licensable turnover. Lastly, the applicant has to satisfy authorities that they have the requisite level of managerial experience and competence as well as persons who are experienced and competent in the normal procedures of the travel trade (including legal entitlement to work in Ireland). It was suggested that the specifics of this requirement were emblematic of the fact that gaining real market entry was often more complicated than relatively open schedules might imply. Indeed the example cited could potentially reflect a contradiction in Ireland's commitments on travel agents and tour operators.

The impacts of domestic constraints in the tourism sector were pointed to as being of overriding concern, in particular poor transportation infrastructure, including roads and airports. The resulting higher costs were pushing operators to outsource transport to external drivers, who were also doubling as tour guides. The often lack of training on the part of the drivers was consequently leading to sub-standard tourism products. Poor telecommunications infrastructure, especially internet, was also impeding the ability of travel agents to access international booking systems. From a policy and regulatory standpoint, it was underscored that most EAC Partner States did not have adequate tourism policies and/or were not effectively implementing what was on paper. That agents and operators within the region were not recognised by each other was also said to be hampering the ability to offer 'regional packages', leading tourists to do so themselves and/or turn to EU-based operators. The lack of well-trained hospitality personnel was also highlighted, as was the high incidence of unlicensed operators, which was degrading the quality of products and undermining the image and credibility of established operators. Another constraint related to the high costs of marketing and advertising in the EU, preventing all but the largest operators to be proactive in the EU market. The highly integrated nature of the EU market also forced EAC operators to contract EU brokers to see their services, which led to unpredictable and often unequal relationships. More general access to finance constraints were also hampering exports, in particular for SMEs, who made up the bulk of travel agents and tour operators in the region.

Recommended reading

- OECD. (2000). *Assessing Barriers to Trade in Services: Tourism Services*.
- UNCTAD. (1998). *Report of the Expert Meeting on Strengthening Capacity for Expanding the Tourism Sector in Developing Countries, with particular focus on Tour Operators, Travel Agencies and Other Suppliers*.

Session VII: Securing effective engagement in services negotiations and the Way Forward

The final session was opened with formal comments from ILEAP Executive Director Mr. Dominique Njinkeu and Professor Sam Wangwe, Chair of Daima Associates Ltd. Hoping to synthesize what had been covered in the discussions over the three days, what had been learned and how work moving forward could be organised, the two speakers proceeded to highlight some key cross-cutting and sector-specific themes and recommendations.

One important message that resonated with participants was that there were clearly existing services export opportunities to be had, some of which were being exploited, others that were not. The EPA, properly negotiated, could thus help to enhance the ability of the private sector to take advantage of existing and new opportunities, both in terms of reducing barriers abroad and addressing binding constraints at home (nationally and in the region).

Another theme that emerged was that in order to identify priorities in a manner that can inform the negotiations, stakeholders needed to operate beyond the level of generalities and unpack the issues at a detailed sector-specific level. While this could also be done by sectors at the regional level, stakeholders maintained that efforts should focus in the near-term on disaggregating at the national level, on which regional positions would emerge. As such, this work would be relevant not only for the EPA, but also the CM and WTO.

In terms of modes of supply, participants delved further into issues surrounding mode 4 and mode 1. On mode 4, which was a clear priority for all stakeholders, deficiencies were identified on the types of service provider categories ostensibly on offer from the EC, as well as their proposed duration of stay. The need to evaluate specific definitions contained in the legal text and their implications on the potential benefit of enhanced market access was also noted. In terms of importance, it was noted that IP and CSS were likely to offer the greatest opportunities and should be pursued vigorously, followed by BSS and KP. In that vein, the sectors eligible for IP and CSS were deemed inadequate. For real benefits to be available, stakeholders felt a new category would likely be necessary that better accounted for their needs, including a trainee category that was not tied to a commercial presence.

While a more robust temporary labour mobility scheme, combining broad mode 4 access with complementary support (skills training, assistance on standards, regulatory support, etc.) was discussed as a more development-friendly approach, the political sensitivities of such a scheme were also recognised. This was even more so due to the current global economic climate and focus on generating jobs domestically. Irrespective, any such scheme would require further research and need to be both sector and EU Member State specific to gain any traction (making a clear distinction between itself and migration). It would also need to look inward, taking into account the role for mode 4 imports (nationally and within the region).

In light of the importance of internationally recognised standards across various sectors and professions, finding a suitable role for the EPA to facilitate Mutual Recognition Agreements

(MRAs) was also stressed as a key priority for the private sector. A consideration of which sector could be included for expedited treatment (as in the Caribbean EPA) would need to take place (areas where EU harmonisation have advanced were flagged as potential starting point, e.g. nurses and doctors, architects). Highlighting again the need to consider both exports and imports together, the requirement of reciprocal market access for MRAs would need to be taken into account in such deliberations.

In terms of ITeS (mode 1), rich discussions were had from both a cross-sectoral perspective as well as the ICT/BPO sector. The private sector resoundingly supported this as an area of strategic importance. In the trade context, the role of complementary measures to support skills development, the meeting of international standards and the advancement of regulatory reforms, such as data protection were stressed. Similarly, there was a need to determine which areas to prioritise, both in terms of types of BPO activities (e.g. call centres, back office support, etc.) as well as in the core services (e.g. accounting). A broad request on mode 1 would be essential in this regard.

On aid for trade and capacity building, a key message included the need to promote sector professionals and trade experts speaking the same language and working from a space of shared knowledge, in particular as much of the key information resided with the sector experts (who were rarely 'at the table'). One suggestion for promoting such a constituency on services in the private sector was for a 'Coalition of Services Associations'-type body that could bring relevant national associations together. Doing so however would require some stocktaking of existing national groups (also possible regional candidates), as well as enhancing their capacity so as to become effective stakeholders in any regional body.

In terms of domestic constraints on enhancing services exports (i.e. areas ripe for complementary support measures), the national studies and regional report, alongside participants, highlighted the following:

- Poor infrastructure, especially electricity and ICT;
- Absence of appropriate policy and/or regulatory environment to support growth in the sector;
- Appropriate skills training to minimise the education/skills mismatch, including at management level;
- Improving standards nationally (on the basis of relevant international standards) and promoting regional convergence (including regional MRAs);
- Inadequate information on market conditions in key EU Member States. Engaging the Diaspora already living in Europe as well as more traditional export development activities (e.g. networking events) were identified as areas for further investigation;
- General access to finance issues;
- From a negotiating perspective, the lack of effective institutional mechanisms to coordinate the policy-making/negotiating processes.
- Programmes to support interns

In the sectoral discussions, based on preliminary results from the national studies and regional report underway, export interest seemed particularly high in ICT/BPO, education, tourism, entertainment and cultural services, and a number of professional services (e.g.

nursing/midwifery). Common barriers found in the EU that were of concern to the private sector included:

- Qualifications and standards
- Licensing procedures
- National requirements
- Visa/permit requirements
- Pervasive use of ENTs (especially in the EC's mode 4 commitments with the Caribbean)

While there was a clear role for the negotiations to have an impact in these areas, discussions often pointed to domestic constraints as being of greater importance to facilitate enhanced services exports (e.g. BPO). It was agreed that efforts at domestic reform should maintain their priority and that there was a need to identify where the negotiations could realistically have the greatest impact (so as to help differentiate between what may be included in a possible request for tactical reasons and what is really needed to generate opportunities for development).

Way Forward

Participants at the workshop, both in the closing session and throughout the workshop, identified and recommended a number of possible interventions. These covered such areas as process and consultations, research and analysis, and capacity building and aid for trade.

Process and Consultations

1. Building on the theme of moving forward at the national level, it was recommended that further support be provided to enhance the national institutional process, both in terms of trade policy formulation, but also for trade negotiations and specifically on trade in services (due to its expansive coverage across the economy). Where needed, short evaluations of the current process and practise in the Partner States could be undertaken and/or options for implementing existing recommendations could be considered.
2. The private sector needed to be more intimately engaged in the formal process, including in the negotiations themselves and also at the level of professional associations (who often hold the requisite knowledge). Doing so however would also involve better sensitising the private sector on trade in services issues and building capacity to negotiate. Efforts identified to help promote this included:
 - a. A round of national consultations to help raise awareness in the private sector of trade in services, including services export opportunities and the role of negotiations in pursuing them (alongside other domestic complementary measures).
 - b. A feasibility study on the setting up of a regional 'Coalition of Services Associations'-type body (or committee within an existing organisation) that could bring relevant national private sector associations together and help oversee their research, policy and lobbying efforts. Such a study should also take stock of existing national/regional organisations that could be involved.
3. Related to recommendation 2, participants identified the need for a mechanism to bring the private sector process (and related work) into the official process, including the recommendations contained herein. While concern was raised that governments often perceive private sector research as 'lobbying' as opposed to an articulation of private sector

interests in services reforms and negotiations, Partner State representatives assured the meeting that the outcome of this private sector work on services would be taken seriously. One option for proceeding was for the EAC Secretariat and EABC to collaborate more closely (as well as PS governments and national private sector bodies), including in the determination of the sequencing of activities (research, consultations, consensus-building) on preparing requests, offers and analysing the legal text. As per earlier presentations, there was a need to see how to move forward after the validation of the EAC-mandated Trade in Services study and the completion of the private sector studies and report.

4. While further research would be essential (see below), it was noted that research alone was not a panacea. A mechanism was also needed whereby the information and knowledge generated in the research could be extracted and translated into a form that could facilitate informed decision-making by policy-makers and negotiators. This step would be essential to move the process beyond the assessment phase. To support this, it was recommended that efforts at the national (and/or sectoral) level be undertaken to facilitate a process of translating research into enhanced knowledge and ultimately the foundation for decision-making. This could be factored into the enhanced institutional process touched on in recommendation 1.
5. With a view to better organising and coordinating at the all-ACP level, there was a need for a more effective systematic institutional arrangement to interface between the different ACP regions on services issues. To this end, the EAC Secretariat and/or other partners involved in services negotiations elsewhere in the ACP could propose a mechanism to help ensure better coordination on EPA services negotiations.

Research and Analysis

6. To position themselves globally, including in how to make use of services negotiations as a deliberate vehicle for structural transformation, it was essential for these negotiations to be based on development strategies (both at the national and regional level). There was however a need to ensure such strategies adequately accounted for the services sector (as a whole and individually). As such, it was recommended that an assessment of the services content in national/regional development strategies and export strategies could be undertaken, including where available, an evaluation of services export strategies (and sectoral strategies).
7. The national and regional analysis on enhancing services exports to Europe currently underway would serve as a useful foundation for supporting informed decision-making in the regional and within each EAC Partner State. This research should thus be finalised as soon as possible, which would also help in the determination of outstanding information gaps. One area where the researchers could consider enhancing this analysis, so as to provide a more holistic picture, would be to take better consideration of import linkages in the selected sectors.
8. A wide range of information gaps were discussed, with associated recommendations, throughout the workshop. This included:
 - a. More robust analysis on the competitiveness of individual services sectors within the EAC economies.
 - b. The need for broader and more in-depth knowledge of services market opportunities in key EU Member States. A stocktaking of EAC Diaspora networks and activities in

- the EU would also complement this information (as part of the same research and/or as a standalone study).
- c. A stocktaking on existing and/or proposed data protection laws in EAC economies to determine their adequacy for underpinning international BPO exports (including but not exclusively, as compared to data protection laws in key EU MS).
 - d. An improved understanding of the precise nature of existing BPO activity in the EAC (e.g. scale of operations, types of activities (call centre, software development, etc.) and sectors of activity (financial services, accounting, legal, etc.). Such research could also help identify those skills most in demand in the region, including technical ICT skills and those at the managerial level.
 - e. A review of existing special temporary labour mobility schemes in use in the EAC and/or EU. The aim would be to generate lessons learned with a view to developing a proposal for a new category of mode 4 service provider (which may comprise non-mode 3 linked trainees, eligible to stay for a longer duration). Those sectors covered in existing EU schemes could also be targeted for the request, to be included under IP and CSS coverage (if not already).
 - f. Analysis of the impact of definitions and parameters proposed in the EC EPA services text, including with regards to mode 4 and temporary labour mobility. The possible role for Mutual Recognition Agreements (MRAs) in the EPA could also be considered here (or as a standalone study).
 - g. Identification of sectors for possible inclusion under:
 - i. Mode 4 EPA service provider categories: IP and CSS
 - ii. Expedited EPA treatment for MRAs
 - h. Sector-specific analysis of the appropriateness of economic needs tests and identification of possible parameters to be included in the EPA so as to minimise the uncertainty introduced by the use of ENTs in Europe.

Capacity Building and AFT

9. Enhanced and improved training for experts based in capitals and other negotiating centres (e.g. Geneva and Brussels). Going beyond the traditional multiple-day workshop was essential for helping to improve the analytical and negotiating capacity of these experts.
10. Specific training in the near-term would be needed to help translate domestic regulatory frameworks into GATS-based language. Such training could be undertaken with complementary analysis to assist EAC stakeholders undertake such work. The existing national regulatory auditing work/services template would form the basis for such efforts.

Session VIII: Closing

In closing, it was noted that the recommendations above were clearly of great importance and also covered a significant range of activities. To this end, the organisers assured stakeholders – both private sector and governments – that they would remain engaged at various levels to help assist wherever possible and to the extent of their abilities and resources allowed. Both EABC and ILEAP thanked the participants for their contributions and enthusiasm and looked forward to collaborating as this challenging work advanced.

Annex I – Aide Memoire & Agenda



ILEAP | INTERNATIONAL LAWYERS AND
ECONOMISTS AGAINST POVERTY

JEICP | JURISTES ET ÉCONOMISTES
INTERNATIONAUX CONTRE LA PAUVRETÉ

EABC EPA REGIONAL SENSITIZATION WORKSHOP

Trade in Services Negotiations and the Private Sector: Generating Opportunities for Development

Aide Memoire & Agenda

26-28 February 2009 - Nairobi Safari Club, Nairobi, Kenya

Introduction

The East African Business Council (EABC) is the apex body of business associations of the private sector in East Africa. Its mission is to promote private sector regional and global competitiveness in trade and investment.

International Lawyers and Economists Against Poverty (ILEAP) aims to promote pro-development outcomes in international negotiations. ILEAP's mission is to increase the effective participation of developing countries in trade negotiations

Background

Trade in services is a dynamic area of international trade, offering significant opportunities both in terms of increased exports and imports, aimed together at enhancing competitiveness, stimulating economic development and reducing poverty. At the same time services reforms and negotiations remain understandably contentious due to their potential to expose vulnerable stakeholders, including private sector operators, to a variety of risks.

Part of the challenge with regards to services reforms and negotiations is that barriers to services trade are found 'behind the border' in the form of domestic laws and regulations, etc. These may, for example, impact on whether and how foreign service providers can enter a market and/or the treatment they receive relative to domestic firms once in the market. Similarly, the availability of market information on services in major export markets, including the existence of possible market access and regulatory barriers abroad, is poor. This only serves to exacerbate challenges for EAC firms to identify services export opportunities abroad and competitively access those markets.

With commitments being contemplated simultaneously under the EPA, the WTO (bearing in mind existing GATS commitments), the EAC Common Market and other regional schemes, it is a challenge for EAC private sector operators to contribute to the process of establishing priorities and developing a coherent strategy for creating a well-functioning regional services market. Effectively engaging the private sector, who ultimately constitute the main actors that will exploit the opportunities stemming from the negotiations, is essential. Furthermore, if the private sector is to be assisted in securing pro-poor outcomes from these negotiations, it is imperative that complementary support measures be identified as part of comprehensive trade in services export promotion strategies. Navigating this complex substantive and institutional process thus draws heavily on scarce human, financial and institutional resources.

Objective

It is on the strength of the above that EABC with support from ILEAP is organising a regional workshop to help the East African private sector articulate its sectoral priorities for services export development in the context of the EPA trade in services negotiations. The interactive workshop also serves as an opportunity to sensitize the private sector on the EPA trade in services negotiations. More specifically, the workshop aims to:

- Facilitate a better appreciation of the state of play on services in the EPAs and assisting in the identification of associated opportunities and challenges ahead;
- Promote enhanced involvement of the private sector based on specific sectoral knowledge (both EAC and international); and
- Support discussions on a roadmap for the continued involvement of the private sector in the EPA trade in services negotiations.

Organisation and participants

The meeting is being organised for EAC stakeholders by EABC, with support from ILEAP. The meeting will be attended primarily by EAC private sector professionals from selected services sectors. A limited number of non-African services professionals and advisors will also attend. The core substantive elements of the workshop will be undertaken in breakout sessions, delving into the needed sector-specific knowledge.

As such, target participants will include:

- Private sector operators and in particular representatives of professional associations and/or individual firms engaged in or interested in exporting services to the EU (based in the EAC or EU);
- Government officials involved in the development of services export strategies and/or services negotiations; and
- Researchers in academia, think tanks and regional research networks concerned with trade and regulatory policies who can provide on-demand assistance to regional and national negotiators in the formulation and negotiation of request and offers.

Resource persons will be drawn from the ILEAP Secretariat and its roster of advisors, as well as partner institutions, including African research institutions and think tanks.

Agenda

Thursday, 26 February	
8:00 - 8:30	Registration
8:30 - 9:30	<p>Opening Session</p> <ul style="list-style-type: none"> • Keli Kiilu, Vice-Chairman (EABC) • Dominique Njinkeu, Executive Director (ILEAP) • Hon. Amos Kimunya, E.G.H., M.P., Minister of Trade (Government of Kenya)
9:30 - 10:30	<p>Session I: Exchange of views on services reforms in the EAC</p> <p>This session will provide an opportunity for an exchange of views between the private and public sector on services reforms in the EAC.</p> <p>Presentations</p> <ul style="list-style-type: none"> • <i>Trade in services in EPA, WTO and EAC Common Market agendas</i>, Gerald Ajumbo, Principal Trade Officer (EAC Secretariat) • <i>Private sector perspective on trade in services negotiations in the EAC</i>, Charles Mutuma Mbogori, Executive Director (EABC) <p>Q&A</p>
10:30 - 11:00	Coffee Break
11:00 - 13:30	<p>Session II: Introduction and key policy issues underpinning the delivery of service exports</p> <p>This session introduces the GATS-based framework and lays out some basic principles of the request-offer process. It goes on to identify some key policy considerations underpinning the delivery of service exports, focussing on those delivered via temporary labour mobility and IT and the types of policies required at the domestic level to help enable them.</p> <p>Presentation</p> <ul style="list-style-type: none"> • <i>GATS-based framework & the request-offer process</i>, David Primack, Programme Officer (ILEAP) • <i>Policies underpinning mode 4-enabled services exports</i>, Dirk Willem te Velde, Research Associate (ODI) • <i>Policies underpinning IT-enabled services exports</i>, Anuradha R.V., Partner (Clarus Law Associates) <p>Q&A</p>

13:30 - 14:30	Lunch
14:30 - 16:00	<p>Session III: Private sector analysis on improved services exports</p> <p>One regional and five national studies are under preparation to help the private sector (and governments) better understand their opportunities for improved market access for services export to the EU, as well as key domestic constraints for pursuing them. This session will avail an opportunity for the national study authors to share their preliminary results and help feed into the sectoral sessions.</p> <p>Presentations</p> <ul style="list-style-type: none"> • Ernest Manirumva (Burundi) • Peter Riechi Okara (Kenya) • Prudence Sebahizi (Rwanda) • Kalua M. Simba (Tanzania) <p>Q&A</p>
16:00 - 16:30	Coffee break
16:30 - 18:30	<p>Special Session: The global financial crisis and developing countries</p> <p>This special session will discuss preliminary results of an ODI project on issues related to the impact of the global financial crisis on developing countries, including on financial and other services.</p> <p>Presentations</p> <ul style="list-style-type: none"> • Dirk Willem te Velde, Research Fellow (ODI) • Professor Francis Mwegu, Professor (University of Nairobi) • Sarah Ssewanyana, Principal Research Fellow (EPRC) <p>Q&A</p>

Friday, 27 February	
8:30 - 10:30	<p>Session IV: Negotiating trade in services with the EU: Options and opportunities</p> <p>This session seeks to help participants better understand the market for trade in services in the EU. It will consider the potential impact of rules governing trade in services on generating export opportunities, with specific reference to the EPA context and the CARIFORUM-EU EPA.</p> <p>Presentations</p> <ul style="list-style-type: none"> • <i>Exporting mode 1 & 4 services to Europe</i>, Anuradha R.V., Partner (Clarus Law Associates) <p>Q&A</p>
10:30 - 11:00	Coffee Break
11:00 - 13:00	<p>Session V: Capacity building to support services exports</p> <p>This session will look at capacity building proposals that can be considered for exploiting export opportunities for EAC private sector firms and professionals. Discussions will situate services sectors within efforts to provide aid for trade, as well as draw together related subject areas and clusters.</p> <p>Presentations</p> <ul style="list-style-type: none"> • <i>Aid for trade in services</i>, Dirk Willem te Velde, Research Fellow (ODI) • <i>Aid for trade in practice</i>, Nora Dihel, Economist (World Bank) <p>Q&A</p>
13:00 - 14:00	Lunch

	<p>Session VI: Sectoral Analysis</p> <p>The following sessions will delve into sector-specific opportunities and constraints facing EAC private sector operators in taking advantage of existing and/or enhanced market access into Europe. The aim is to facilitate convergence of private sector positions on how and where trade agreements can be utilised to generate services export opportunities, including with specific recommendations regarding the formulation of requests.</p>
14:00 - 17:00	<p>Session VI (continued): Sectoral Analysis</p> <p>Presentations</p> <ul style="list-style-type: none"> • Serah Kimani and David Primack (ILEAP) <p>1. Business Process Outsourcing (BPO)/ICT services 2. Nursing services</p> <p>(Coffee Break @ 16:00)</p>
Saturday, 28 February	
9:00 - 11:00	<p>Session VI (continued): Sectoral Analysis</p> <p>Presentations</p> <ul style="list-style-type: none"> • Serah Kimani and David Primack (ILEAP) <p>3. Education services 4. Tourism services</p> <p>(Coffee Break @ 10:30)</p>

11:00 - 12:30	<p>Session VII: Securing effective engagement in services negotiations and Way Forward</p> <p>This session will consider the elements needed to help secure effective participation in the EPA services negotiations (including the request, offers and legal text) and help enumerate a possible way forward.</p> <p>Presentations</p> <ul style="list-style-type: none"> • Dominique Njinkeu, Executive Director (ILEAP) • Professor Sam Wangwe, Chairman (Daima Associates Ltd) <p>Q & A</p>
12:30 - 12:45	<p>Session VIII: Closing</p>

Annex II – Participants List

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