« The voice of the European Service Industries for International Trade Negotiations »

SADC WORKSHOP

TRADE IN SERVICES 1 INVESTMENT IN THE EPA NEGOTIATIONS

Cape Town, South Africa,

20-22 February 2008

“Business Perspective / Ambitions – The EU views”

Pascal Kerneis, Managing Director

ESF (European Services Forum)

WHO ESF DOES REPRESENT?

- 36 European services companies, most of them major multinational companies

  (represented at CEO or Chairman level in the European Services Leaders Group – ESLG)

- 37 European trade federations of various services sectors (e.g. banking, insurance, telecommunications, express, architects, engineers, accountants, shipping, tourism, etc.)

« The voice of the European Service Industries for International Trade Negotiations in Services»

ESF covers most services sectors, including:

- Insurance
- Banking
- Business services: IT & Computer; consulting, advertising, after-sales services
- Professional services: legal services, accountants, architects, engineers
- Construction services
- Distribution services
- Publishing services (incl. Music)
- Postal & Express Delivery services
- Audio-visual services
- Energy related services
- Environmental services
- Telecommunication services
- Tourism
- Air Transport
- Maritime Transport

But no members in Education or Health services

For more information, see **www.esf.be**

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ESF MEMBERS INCLUDE:

- BARCLAYS BANK
- BT (British Telecom)
- CLIFFORD CHANCE
- COMMERZBANK
- DEUTSCHE BANK
- DHL
- FRANCE TELECOM
- GOLDMAN SACHS
- IBM EUROPE
- LLOYD’S
- PRICEWATERHOUSE-COOPERS
- ROYAL AHOLD NV
- SIEMENS AG
- STANDARD CHARTERED BANK
- TELEFONICA
- TNT
- TUI
- VEOLIA ENVIRONMENT

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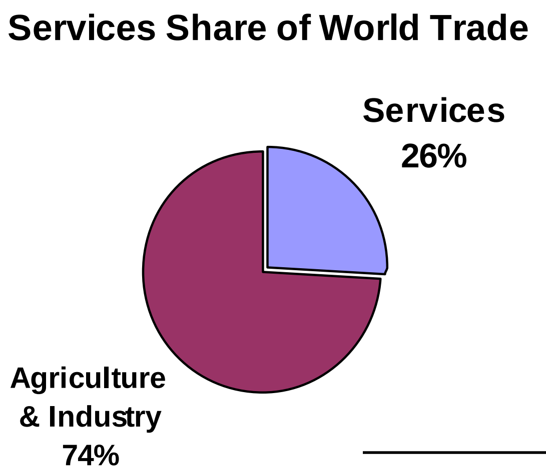
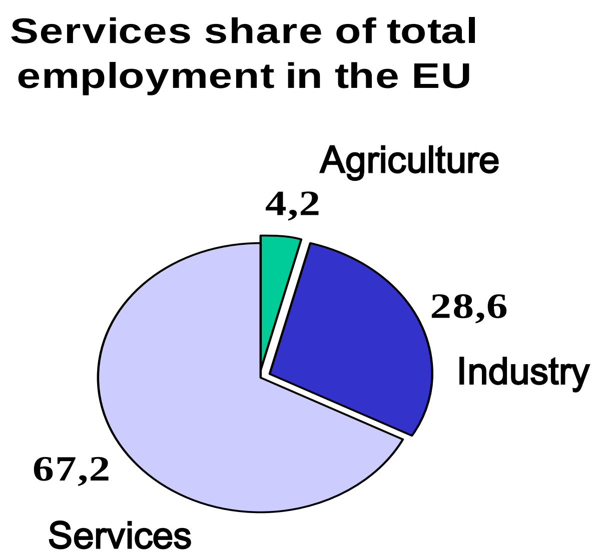
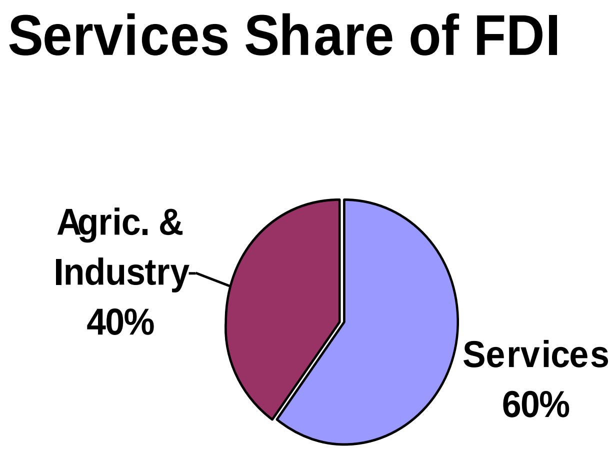
WHAT DOES ESF DO?

1. It represents the interests of European services companies that export (or wish to export) their services and that do (or wish to do) business outside the EU.
2. As an important and well recognised Forum in its scope of activity, ESF is an appropriate interlocutor for the briefings done by services negotiators from Brussels (DG Trade) and from Geneva (WTO), reaching a large panel of the interested sectors in one place.
3. It informs its members on the GATS negotiations and regional and bilateral trade negotiations, on the offensives and/or defensives positions of the other trading parties.

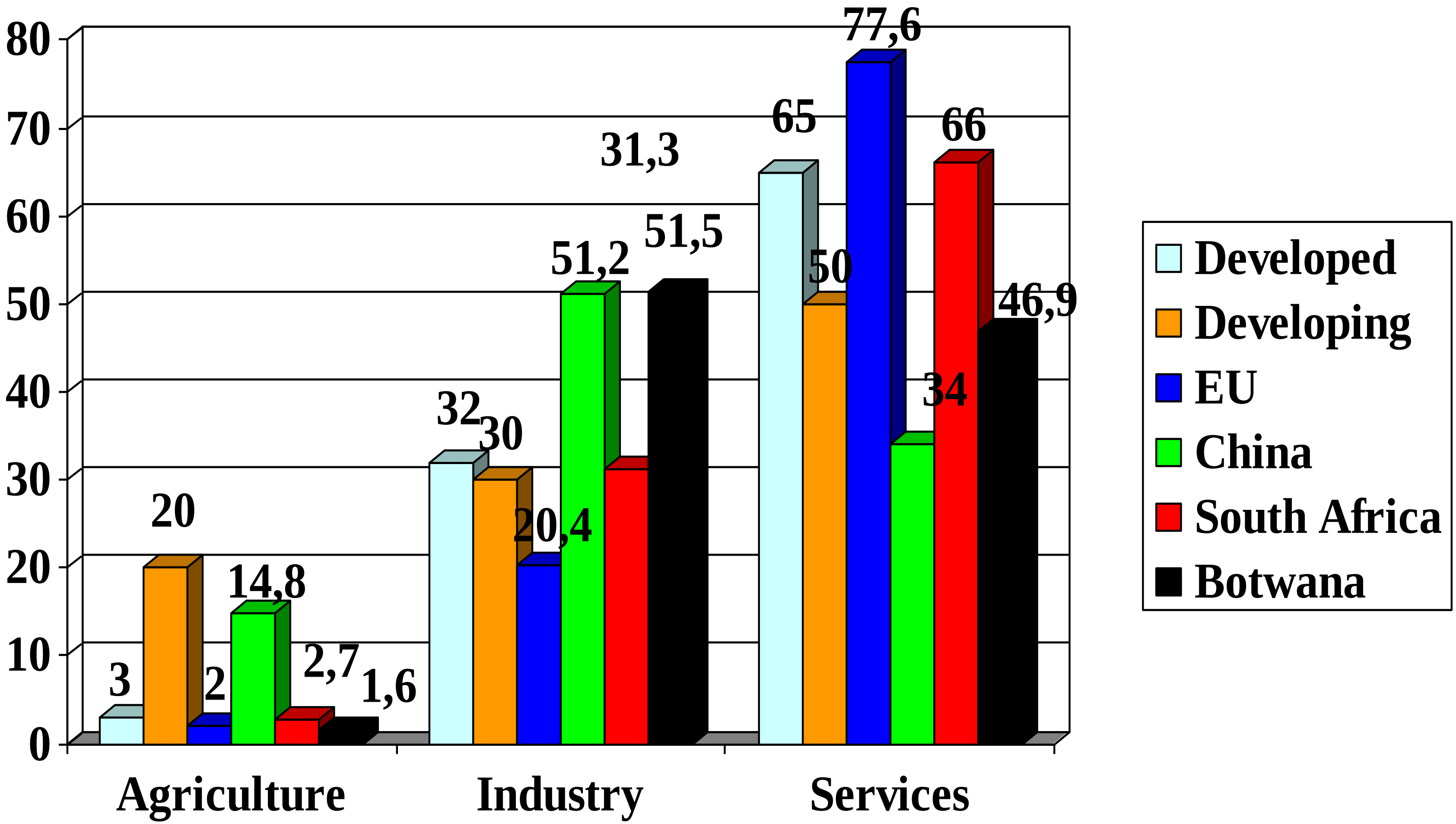




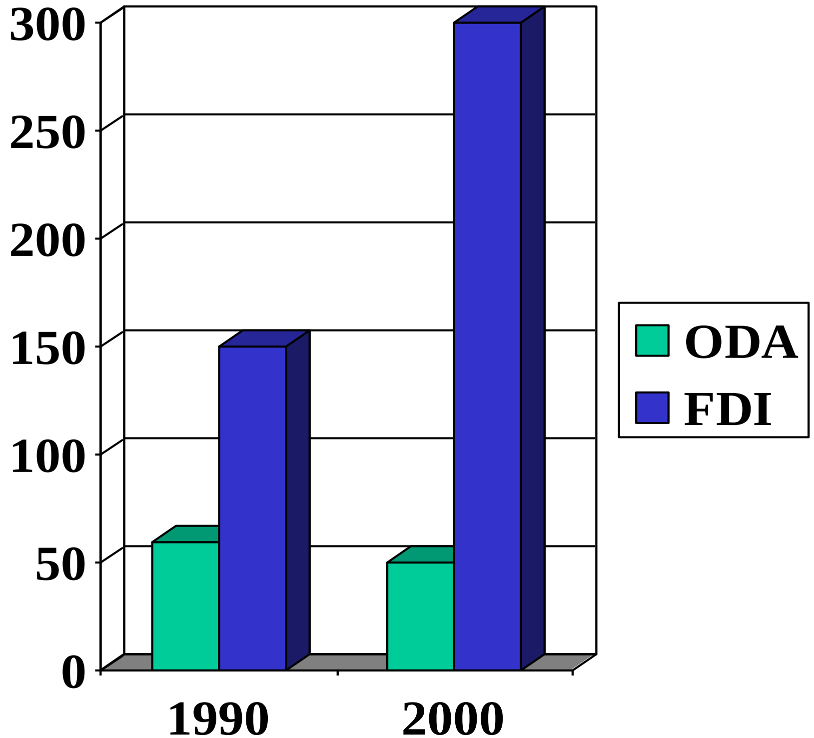


The Services sector generates 90% of new jobs in the EU15

World Economy:
Percentage of GDP by Sector, 2006



The importance of private Foreign Direct Investment in Developing Countries



Bio US $/Year Source: World Bank

- ODA : Overseas Development Assistance
- FDI : Private Foreign Direct Investment in Developing Countries

ACP countries export already services in the EU

EU-25 International Trade in Services with non-EU Countries 2004, EUR bn

Rank	Country	**Trade Volume**	Exports	Imports	Balance
1	**USA**	**221,394**	116,284	105,110	11,173
2	**Switzerland**	**77,016**	43,934	33,082	9,921
3	**Japan**	**29,255**	18,927	10,328	3,798
4	**Norway**	**22,125**	12,961	9,164	2,758
5	**China**	**16,050**	8,786	7,264	1,522
6	**Canada**	**15,287**	8,062	7,225	8,37
7	**Russia**	**14,872**	8,222	6,650	1,572
12	**South Africa**	**7,151**	**3,552**	**3,599**	**-48**
All ACP Countries		**30,722**	**15,759**	**14,963**	**796**

Participation of ACP countries in DDA GATS negotiations

14 ACP countries have tabled an initial offer = Barbados; Dominica; Gabon; Grenada; Guyana; Fiji, Jamaica; Kenya; Mauritius; St. Chris & Nevis; St. Lucia; St Vincent & Grenadine; Senegal; Trinidad & Tobago

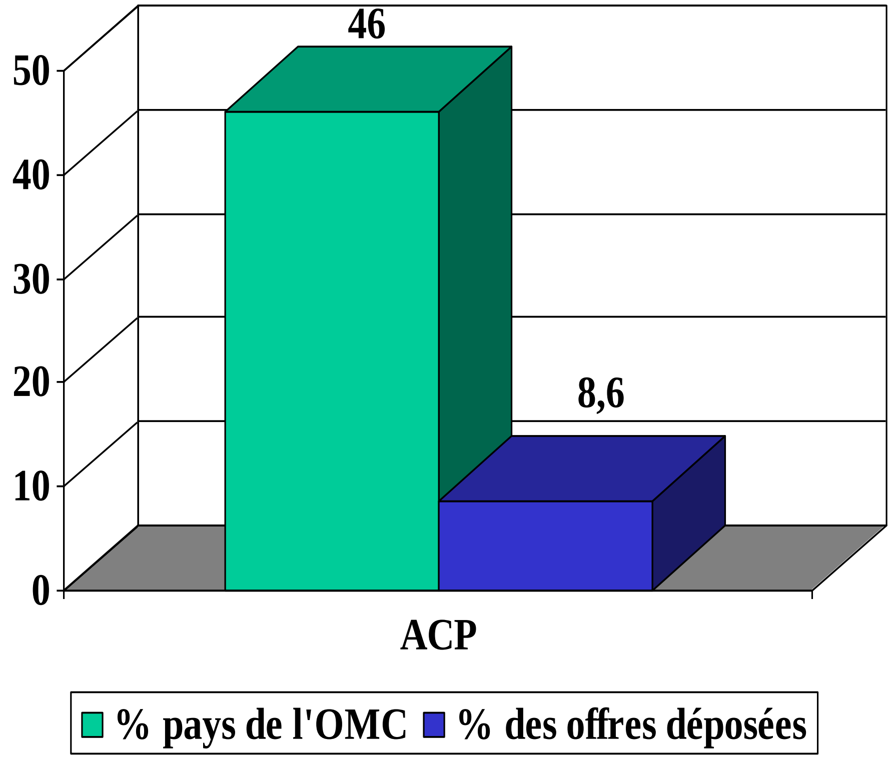
4 African Countries;

9 Caribbean Countries;

1 Pacific Region;

2 ESA Region;

0 SADC (1: S.A.)



State of play of the GATS Negotiations

- + 400 Initial requests (EU= 109 in 2002, 103 Revised in 2005)
- 69 Initial offers as of March 2007
- 29 Improved Offers in July 2006
- Missed deadlines
  - a) Revised Offers = 31July 2006
  - b) Draft Final Offers = 31October 2006
- But Suspension of the negotiations on 24 July!
- Soft revival of the negotiations in Geneva on 16 November 2006.
- Formal « Full Fledge » negotiations on 27 January 2007 after Davos WEF
- Chairmen’s Texts proposals on Ag, NAMA, & Services: 02/2008
- DDA Conclusion:???

  - US TPA deadline was on 30 June 2007…

  - WTO Ministerial meeting in April 2008?

WHAT NEXT for the EU ?

Bilateral Free Trade Agreements (FTA)? (RTA)?

- EU/GCC (Gulf Cooperation Council) (2008?)
- EU/Mercosur (negotiations since 1999)(?)
- EU/ACP (6 Economic Partnership Agreements = 12/2007?)… Interim EPAs…=12/2008?
- EU/Mediterranean countries (EuroMed)(2008)?
- EU/Central America
- EU/Andean Countries
- EU/South Korea - 2008
- EU/ASEAN
- EU/China
- EU/India - 2008?
- EU/Ukraine

WHAT THE EUROPEAN SERVICES SECTOR WANTS FROM TRADE NEGOTIATIONS

- To be able to operate in foreign countries in an non discriminatory environment.
- To negotiate the removal of all obstacles that prevent companies to access the market of a largest possible number of countries or that prevent them to expand their business operations where they are already established.

WHAT THE EUROPEAN SERVICES SECTOR WANTS FROM THE GATS NEGOTIATIONS…

- Improved market access via Commercial Presence Abroad **Mode 3 of the GATS** – i.e. joint ventures; subsidiaries; branching: Removal of equity cap to allow 100% ownership of FDI

- Commitments for Cross-Border Supply via **Mode 1 of the GATS**, i.e. e-commerce, internet, sending electronic data to call centers, back offices, etc.

- Movement of Natural Persons via **Mode 4 of the GATS**, i.e. moving ***skilled*** business personnel within a company (intra-corporate transferees) and to a company’s clients on a **temporary basis**

Hierarchy of European Interests in Trade Negotiations

What EU companies want:

1. WTO DDA
2. Regional Trade Agreements (with Integrated Markets)
3. Bilateral Agreements
4. Autonomous Liberalisation… **BUT**

=>What is happening in the reality:

1. Autonomous Liberalisation
2. FTAs
3. RTAs
4. WTO ?? !!!

IMPORTANCE OF SERVICES IN A SUSTAINABLE DEVELOPMENT

- **Attract FDI in Infrastructure services:**
  - Telecoms, Express Courier
  - Logistics (transports, distribution, etc.),
  - Energy distribution network,
  - Water and Waste management,
  - Financial services System, etc.

  Experience shows that foreign service suppliers that invest in a country do it for a long period.

- **Attract transfers of expertise and of know-how of foreign service suppliers, which in turn initiate:**
  - Local jobs creations staff vocational training, etc.
  - Better quality of the services,
  - Cheaper services,
  - More choice for the consumers
  - Reduction of the cost of doing business for local SMEs.

Privatisation and liberalisation

- The development of the services sectors play a key role for the sustainable development of the economy and the fight for the poverty eradication (economic, social, cultural, education and training)
- Many Developing countries and LDCs have already undertaken privatisation and liberalisation policies, so as to improve the efficiency and the internal competitiveness, as well as to attract FDI.
- **But this is not sufficient !**

A good regulation is a necessity

- A good regulation and a regulatory and control authority in the various services sectors is an absolute necessity for the a proper functioning of the services.
- These regulations must ensure that a good balance between on one side, the role of the government to protect public interest and the access for all (universal services) and on the other side, the need to attract foreign direct investment in good conditions, without putting into danger the local SMEs.
- The Authority must be competent and independent (not linked to the government or to the incumbent operator); The Legislation must be effectively into force and implemented in a non discriminatory manner
- **But this is not enough to attract FDI!**

➢ So what is missing?

- **Legal security** for all investment is missing.
- This can be achieved through the binding of the domestic/autonomous legislation in the framework of a multilateral trade agreement (WTO) or a Regional (EPA or Bilateral trade agreement.
- This legal security is a crucial element for the services companies, but too often ignored by the governments.
- Foreign companies are reluctant or hesitant to invest time and money if the conditions of establishment or of doing business can be changed without notice (change of government, corruption, military coup, etc.).

List of criteria that a CEO looks at when taking a decision to invest in a developing countries:

- Potential market (size, income per capita, follow the demand, i.e. corporate customers)
- Existing competition, special treatment for local players
- Benefits prospects at short, medium and long terms
- Good governance (level of corruption, transparency of the legislation, etc.)
- State of the regulation (existing barriers at all levels, independent regulatory authority, implementation of the regulations, i.e. Regulatory Certainty)
- FDI incentives (special zones, tax incentives, corporate tax, etc.)
- Business Environment (incl. availability of human capital, level of education)
- Country Risk Assessment: political stability, GATS/Trade agreement sector specific binding commitments, **i.e.**

  the GATS/EPA are only additional criterion for companies to tick. But they can often make the difference. For the Developing countries, it is an additional opportunity to seize as to attract FDI.

Type of limitations imposed by developing countries as pre-conditions to the establishment of commercial presence (Mode 3) (1)

- As to reach the country development objectives, on the basis of GATS Art IV, some basic criteria economic needs tests, necessity to strengthen the capacity of the local providers, etc, are imposed by the hosting country.
- Furthermore, the following conditions are often required:

1. The commercial presence will be authorised only through a joint venture with national partners of the hosting country.
2. The foreign provider can only own less that half of the capital of the JV.
3. A specific number of the members of the board of the company have to be national citizens or resident in the hosting country.

Type of limitations imposed by developing countries as pre-conditions to the establishment of commercial presence (Mode 3) (2)

4. The foreign provider must use the most advanced technology, and the most evolved management expertise.
5. The foreign provider must train local employees and transfer the technology for the benefit of the local staff.
6. When possible, The foreign provider must use local outsourcing.
7. Imposition of local content, requiring that the foreign provider must give preference to local services for its own need.
8. The foreign provider must provide regular reports on its operations, including on technological, accounting, economic and administrative data.

- **What is the <u>impact of these pre-conditions?</u>**

- All these limitations are as many **<u>dissuasive arguments</u>** for the foreign services suppliers.
- They are often motivated by laudable objectives (rhythm of development, policy space), **but are in reality extremely counter productive.**
- Foreign companies see their potential scope of activities substantially reduced and are doubtful on the reasons put forward by the regulatory authorities (while their are present in many other countries and implement higher international standards). **<u>Therefore they decide not to invest</u>…**
- **So, what to do?**

- Good regulation is indeed a preliminary necessity, not deregulation, not privatisation of public monopoly…
- But the development of local players should not be a pre condition to the binding of the autonomous liberalisation, All to the contrary...
- To link a progressive liberalisation (phasing out period) to the effective delivery of a technical assistance???

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