

CARIFORUM EPA Negotiations: an initial reflection

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After three and half years of negotiations, CARIFORUM and the European Commission finally concluded a comprehensive Economic Partnership Agreement on December 16, 2007. An EPA constitutes new territory in a number of respects, but three are most notable. First, it is a GATT Article XXIV-consistent Free Trade Agreement and thereby represents a radical departure from the Lomé/Cotonou paradigm of non-reciprocal market access. Second, the range of technical disciplines on which commitments are assumed is comprehensive and not confined to tariff liberalisation. Third, the EPA recognises regional integration as a pro-development tool and therefore applies CARIFORUM-wide commitments.

CARIFORUM rationale for a comprehensive EPA

Before enumerating the most salient features of the CARIFORUM EPA, it might be useful to sketch the region's motivation for agreeing to this modern trade and development compact. First, CARIFORUM needed to bind current levels of EU preferences and immunise such preferences from WTO litigation. The recent spate of challenges to the EU's preferential regimes for sugar and bananas under the Dispute Settlement Understanding strengthened the need to secure the existing EU preferences to ACP countries. Second, as trade dependent economies, CARIFORUM states need to improve their access to the EU market – the world's largest regional bloc and a longstanding trading partner. All CARIFORUM States, except Guyana and Suriname, have a service sector that is the most significant contributor to GDP. Preferential access to the EU services market was therefore a prime requirement to drive increased growth of Caribbean economies.

Third, the combination of preference erosion and secular decline in agricultural prices compels the region to diversify its export base and capture greater value from its exportables. In 2005, the major six CARICOM exports to the EU were: alumina (15.6% export share); rum (11.3%); petroleum (11.1%); sugar (9.5%) and natural gas (4.7%). The performance of the Dominican Republic mirrors that of its other CARIFORUM partners, with 2005 exports to the EU dominated by commodities, namely ferro-alloys, bananas and rum. CARIFORUM States exude characteristics typical of small economies, i.e. production costs are high, export base is undiversified and production volumes are constrained. These problems are compounded by the region's physical expanse which is dominated by an arc of islands that results in, *inter alia*, high transport costs. The challenge, therefore, is to enhance competitiveness, graduate into branded and high-value products and develop innovation systems as a strategic tool.

Fourth, in spite of being longstanding and firmly embedded in the region's political DNA, implementation of Caribbean regional integration has been sub-optimal. The CARICOM Single Market and Economy (CSME) was promulgated in 1989, yet a number of regional rules and regulatory framework are yet to emerge. One key policy mechanism – the Common External Tariff remains uncommon in terms of the rates applied by each of the 12 CSME members. In 2006, CARICOM Heads renewed a timetable to fully implement the

CSME by 2015. A Free Trade Agreement binding CARICOM with the Dominican Republic was signed in 1998, yet implementation has been limited to goods, while progress on the built-in agenda (Services, Government Procurement, Intellectual Property and Trade Facilitation) awaits completion of CSME regimes. The EPA's thrust on regional integration should engender the injection of greater dynamism into the CARIFORUM-designed effort. In addition, the EPA includes CARIFORUM development priorities and should therefore facilitate the delivery of European Commission development assistance to support CARIFORUM regional integration.

Fifth, while the Lomé/Cotonou trade preferences delivered market access for Caribbean economic operators, the ability of these firms to contest the EU market required the assessment of regulatory issues and productive capacity. Mastering the modern and competitive trading environment requires rules, such as Technical Barriers to Trade, Sanitary and Phytosanitary Measures, Services, Investment, Government Procurement, Competition Policy, Trade Facilitation, Trade Defence Measures and Intellectual Property Rights. The EPA supports the establishment of CARIFORUM regimes in these disciplines, primarily through the promotion of a regional policy framework. This modern regionalism does not countenance a common economic space protected from global competition via high tariffs. Instead, strengthened CARIFORUM regional integration provides the major policy tool through which the Caribbean enhances competitiveness, advances productive capacity, and innovates in both new products and production systems. Accelerated economic integration therefore represents the platform through which the Caribbean seeks to garner the benefits of increasingly internationalised production chains while modulating the impact of globalisation's more deleterious face.

Sixth, an EPA constitutes a forceful signal – to both investors and development partners - of the earnestness of a Caribbean's programme of economic reform. As net capital importing countries, CARIFORUM States can use an EPA to lever increased investment and heighten the region's appeal as a premier investment destination. In addition, CARIFORUM development partners are now presented with an advanced trade and development framework that requires long-term funding. In this context, an EPA is also a vehicle aimed at reversing the declining share of development assistance extended to the Caribbean.

Key elements of the Agreement

The elements below represent the key elements of the CARIFORUM EPA, *viz.*:

- CARIFORUM liberalises 86.9% of the value of its imports with 82.7% within the first 15 years. The Agreement will result in the liberalisation of 92% of bilateral CARIFORUM-EU trade;
- CARIFORUM applies a general moratorium on its tariff liberalisation commitments on all products for the first three years of the Agreement. For revenue sensitive items such as gasoline, motor vehicles and parts, the moratorium is extended to 10 years;
- Other Duties and Charges (ODCs) are to be maintained during the first seven years and then phased out during the subsequent three years;

- The Sugar Protocol (SP) quotas will remain on a transitional basis until September 2009 when Duty-Free Quota-Free will be introduced. During the transitional period, the SP quotas will be complemented by a Tariff Rate Quota of 60,000 tonnes split evenly between CARIFORUM SP members and the Dominican Republic. In addition, a joint declaration commits both Parties to ensure, within the structures of the SP rules, that shortfalls of any CARIFORUM SP member will be reallocated to another CARIFORUM SP member;
- An Agricultural chapter that establishes rules consistent with the objectives of pursuing sustainable development, poverty eradication, enhanced competitiveness and food security. Most notable in the provisions on agriculture is the zero for zero treatment of EU export subsidies. That is, the EU eliminates export subsidies on all agricultural products that CARIFORUM liberalises;
- The EU shall exclude CARIFORUM exports from any contemplated use of a multilateral safeguard measure and consider the use of constructive remedies before imposing anti-dumping or countervailing duties in respect of products imported from CARIFORUM States;
- Both CARIFORUM and the EU automatically confer on each other any better treatment granted by one Party to a major trading partner. Such entities are defined as countries or regional blocs garnering 1%, or 1.5% and above, of world merchandise exports. This MFN provision covers both goods and services;
- In services, the EU liberalises 94% of W120 list of sectors while the respective figures for CARIFORUM LDCs and MDCs are 65% and 75% respectively.² The Bahamas and Haiti have six months within which to submit their respective liberalisation schedules. The commitments also include a standstill clause and provisions for future liberalisation;
- In the case of the temporary movement of natural persons (Mode 4) the EU Commission has granted market access for Caribbean professionals in 29 sectors for Caribbean Contractual Service Suppliers (CSS) to enter the EU to supply services once a contract has been secured. This includes entertainment services for all EU Member States - except Belgium and Italy. The EU has liberalized 11 sectors for temporary entry by CARIFORUM Independent Professionals (IPs) or self employed persons;
- CARIFORUM access to the EU entertainment market is complemented by a Protocol on Cultural Cooperation that provides for greater collaboration on all cultural fronts and with special provisions on audiovisual activities. In particular, co-produced audiovisual products involving European and Caribbean creative teams will qualify as European works and thereby satisfy cultural content rules in all EU member states;
- The rules on investment confer predictability and transparency on market access in agriculture and forestry, manufacturing, mining and service sectors in both EU and CARIFORUM. Both regions have liberalised most areas of manufacturing except for some sensitive areas in CARIFORUM and the EU. However, public services and utilities and other sensitive sectors have not been liberalised to EU investors. CARIFORUM has also maintained special reservations for small and medium enterprises in some sectors;
- The EPA also contains obligations that will ensure that investors safeguard the environment and maintain high labour, occupational health and safety standards. Furthermore, the Agreement proscribes the Parties from lowering environmental

- and social standards in order to attract investment, and forbids investors from engaging in corruption to secure special concessions from public officials;
- Finally, regional preference (whatever concession is granted by one CARIFORUM State to the EU should automatically be conferred on all other CARIFORUM States) will be implemented in one, two and five years respectively in CARIFORUM MDCs, LDCs and Haiti.

CARIFORUM's overarching approach

The provisions of the CARIFORUM EPA were carefully calibrated in order to respect a number of approaches. These include (a) special and differential treatment, and in particular, asymmetry; (b) respect for CARIFORUM regional integration; (c) a modulated tariff liberalisation schedule that would facilitate the reform of national tax regimes while safeguarding trade-generated fiscal revenue and domestic production; and (d) a holistic approach that combined the articulation of rules with the definition of CARIFORUM priorities to benefit from EU development assistance.

The Agreement is littered with examples of the asymmetrical commitments. This can be evinced in the liberalisation schedules for goods and services where the EU's commitments are higher than those of the Caribbean. Asymmetry is also expressed in the construct of the safeguard measures, CARIFORUM retaining the use of export subsidies while those of the EU are eliminated; and only CARIFORUM has recourse to recalibration of its tariff schedule (while respecting the overall architecture of liberalisation).

One of CARIFORUM's central objectives was to retain the veracity of its own regional integration process. This was one of the reasons why the initial EU Commission proposal of harmonisation was rejected, as it would be complemented by the principle of non-discrimination, and in particular, the Commission's demand for CAFTA-parity. Acceptance of this EU approach would have resulted in not only a front-loaded liberalisation schedule but also the Dominican Republic, a non-member of the deepest form of Caribbean regional integration, solely determining the nature of the CARIFORUM economic space. One of the key EPA instruments in strengthening Caribbean integration is regional preference. While the concept has a compelling economic logic and is consistent with the MFN provision of the Revised Treaty of Chaguaramas, implementation was staggered in order to afford time for the negotiation of the built-in agenda of the CARICOM-DR FTA.³ Similarly, CARIFORUM exempted from tariff liberalisation all items currently on the Revised Treaty of Chaguaramas Article 164 list of products.⁴ Furthermore, the Agreement can be recast to allow for any item placed on the Article 164 list in future to attract similar treatment.

The concern has been tabled that the EPA compromises CARIFORUM capacity to design and implement its own brand of regional integration. Such a conclusion is at stark variance with the provisions of the CARIFORUM EPA. Again, respect for CARIFORUM-designed regional integration characterises the entire Agreement but two examples should suffice. First, the region limited Government Procurement negotiations to transparency precisely because it did not want to circumscribe the design and implementation of its own GP regime. Second, a regime not to impose duties on EU-originating goods circulating within CARIFORUM is not only a best endeavour, but hinges on the establishment of a CARIFORUM free-circulation regime. The EPA should strengthen CARIFORUM regional

integration in terms of facilitating deeper ties with The Bahamas and Haiti – two states whose relationships with the CSME are ill-defined. Indeed, the EPA entrenches the right of every CARIFORUM State to grant each other preferences that need not be awarded to the EU. Furthermore, the clear enumeration of CARIFORUM development needs should allow for the delivery of EU development assistance aimed at the establishment of regional trade regimes.

Yet another popular myth of the CARIFORUM EPA refers to the tariff liberalisation schedule. In particular, CARIFORUM negotiators have been charged with accepting tariff liberalisation commitments that are front-loaded. As stated earlier, CARIFORUM will liberalise 82.7% of its EU imports in 15 years. This headline figure should be read in conjunction with a number of other salient facts. First, the corresponding liberalisation effort over 5 and 10 years is 57% and 61.1% respectively. However, the key benchmark is the current level of EU imports that is already liberalised, i.e. 51%. An additional 1.8% of CARIFORUM imports were immediately liberalised and items attracting nuisance tariffs, thereby resulting in total liberalisation of 52.8% when the Agreement comes into effect. There, CARIFORUM States will eliminate duties on an additional 8.3% of their EU imports during the first ten years of the Agreement.

Second, the three-year moratorium is aimed at cushioning governments from any sudden loss in fiscal receipts and shielding domestic producers from facing immediate competition from EU exports. Protection of government revenue was also the primary motivation for securing a ten-year moratorium on high-revenue sensitive items coupled with the phased elimination of ODCs. Thirdly, only 50% of the number of agricultural tariff lines will be subjected to tariff liberalisation. The impact of the CARIFORUM liberalisation schedules on both government revenue and domestic production are deliberately moderate. This tempered pace of liberalisation is complemented by the EU's commitment to assist in reform of national tax regimes. Whether the Doha Round is successful or not, reducing CARIFORUM States' reliance on trade taxes remains an immediate task. Indeed, with imminent FTA negotiations with other major trading partners, prudence dictates that CARIFORUM States vigorously implement alternative taxation regimes.

The final overarching approach of the CARIFORUM EPA concerns the treatment of development cooperation. Informed by the Free Trade Area of the Americas process, Caribbean governments were adamant that development should infuse all provisions of the EPA. Furthermore, the region was strident in articulating the view that its developmental ambitions should not be conflated with development cooperation. At the September 2006 meeting of Principal Negotiators, agreement was struck on a generic approach to development cooperation. First, there would be a prominently placed 'Development Chapter' that would reflect the pro-development logic of an EPA. The parameters governing this 'Development Chapter' are: monitoring of the agreement to ensure its continued relevance and ability to meet stated objectives; cooperation in international fora (most notably in the WTO); promotion of CARIFORUM regional integration; pursuit of the principle of sustainable development; and development cooperation instruments.

Second, CARIFORUM development priorities are articulated in subject-specific chapters and thereby complement the specific rules. For example, the section on Agriculture charts

the following cooperation priorities to be supported by EU development assistance, *viz.*: (a) enhance the competitiveness of potentially viable production; (b) develop export marketing capabilities; (c) develop CARIFORUM capacity to comply with and adopt quality standards relating to food production and marketing - including standards relating to environmentally and socially sound agricultural practices and organic and non-genetically modified foods; and (d) promote private investment and public-private partnerships in potentially viable production. Furthermore, a number of the CARIFORUM commitments are linked to the delivery of EU Commission support, e.g. in trade facilitation and intellectual property rights.

The CARIFORUM EPA encompasses provisions on a clutch of pro-development and modern trade disciplines. The Agreement aims at repositioning the Caribbean away from commodity producers and purveyors of rudimentary services. As stated before, the region's production cost profile is not conducive for mass production of low cost items. Instead, moving up the value chain through branding or shifting to production that is neither scale-specific nor price competitive remains imperative. While the EPA text is replete with opportunities for Caribbean economic operators, the real challenge lies in giving operational effect to the legal commitments. Furthermore, the benefits of a major trade and development cannot be automatically harnessed. In liberalising, albeit at a modest pace to the EU, CARIFORUM faces a number of challenges in terms of adjustment (tax reform, addressing sunset industries, retooling, retraining) and building productive and institutional capacity. However, properly implemented, and accompanied by the requisite support measures, the EPA should assist CARIFORUM States to bridge the gap between their economic and social potential and actual performance.

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² The 'W120' title refers to the name of the official WTO document, which provides a list of all sectors which can be negotiated under the GATS.

³ The Revised Treaty of Chaguaramas established the Caribbean Community including the CARICOM Single Market and Economy. It was signed by the Heads of Government of the Caribbean Community on July 5, 2001 at the Twenty-Second Meeting of their Conference in Nassau, The Bahamas.

⁴ Article 164 addresses the promotion of the industrial development of CARICOM-designated LDCs.