

THE EPA: FACT VS. FICTION - Issue 4

Fiction: In the negotiations of the Economic Partnership Agreement (EPA) that was intended to replace the trade provisions of the Cotonou Agreement, reciprocity was forced upon the Region quite unexpectedly.

Fact: CARIFORUM was in no way caught by surprise in relation to either (a) the phasing out of the unilateral granting of preferences by the EU under the Cotonou Agreement of 2000, or (b) the need for the EPA to be based on reciprocity. Indeed, the Cotonou Agreement, in providing that the non-reciprocal preferences granted under the Fourth ACP-EC Convention would be maintained during the so-called "preparatory period" (2000-2007) for ACP States, expressed in Art. 36.1 a clear commitment for the Parties "to conclude new World Trade Organisation (WTO) compatible trading arrangements, removing progressively barriers to trade between them..."

The dual reference to the need to conclude WTO compatible trading arrangements and the need for the new arrangements to effect a progressive removal of barriers to trade between the "Parties", is an explicit reference to the need for the EPAs to be legally consistent with Article XXIV of the General Agreement on Tariffs and Trade which in effect, demands that free trade agreements must be reciprocal arrangements. It is to be further noted that the preparatory period referenced in the Cotonou Agreement was by design intended to allow for capacity building in both the private and public sectors of the ACP States in order to facilitate the transition to a reciprocal trading environment in 2008.

Reciprocity can of course be full or symmetrical, wherein both sides extend roughly equal concessions to each other, or it can be partial or asymmetrical, wherein both sides agree that lesser concessions would be required of one side. Article 35.3 of the Cotonou Agreement commits the Parties to the latter obligation in enshrining that the Parties, taking account of the different needs and levels of development of the ACP countries and regions, "reaffirm their attachment to ensuring special and differential treatment for all ACP countries and to maintaining special treatment for ACP LDCs and to taking due account of the vulnerability of small, landlocked and island countries".

In light of the above, the Region, in signing the Cotonou Agreement in 2000, was fully aware that what was to be negotiated during the preparatory period as a replacement on January 1, 2008 for the temporary trade regime of Cotonou, was a trade arrangement based upon the principle of asymmetrical reciprocity.

Fiction: The EPA makes no distinction between CARICOM MDCs and LDCs

Fact: The EPA does make distinctions between the CARICOM LDCs and MDCs. A salient example is the fact that the LDCs enjoy on average twice as much protection as the MDCs, in that the share of their imports that is excluded from liberalisation is 30%, whereas this figure is 15% for the MDCs. The corresponding figure for the Dominican Republic is 5%. It should be noted as well that CARIFORUM exempted from tariff liberalisation all items currently on the Revised Treaty of Chaguaramas Article 164 list of products, which addresses the promotion of the industrial development of CARICOM-designated LDCs.

Another example is in respect of the liberalisation of Services where the sectoral coverage for LDCs is 65% which is less than the 75% sectoral coverage granted by MDCs.

Differentiation is also reflected in the Chapter on Public Procurement wherein the CARICOM MDCs and the Dominican Republic are allowed a period of two years from the date of signature of the Agreement within which to bring their measures into conformity with the requirements of the Chapter, whereas the LDCs benefit from a longer transitional period of five (5) years.