



CARIBBEAN

REGIONAL NEGOTIATING MACHINERY

**SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS IN THE CARIFORUM-EC
ECONOMIC PARTNERSHIP AGREEMENT**

Background

1. Before proceeding to chronicle the Special and Differential Treatment (S&DT) provisions contained in the CARIFORUM-EC Economic Partnership Agreement (EPA), it is first necessary to have a fundamental understanding of the concept.
2. S&DT is an established principle in the GATT and WTO legal system. Essentially, it is a fundamental right which recognizes that by virtue of their development needs and resource constraints, which by extension would limit the derived benefits and opportunities, developing and least developed countries (LDCs) are to be accorded special treatment by developed country partners. In the context of trade accords, therefore, the term S&DT, construed broadly, refers to the set of provisions which operationalize the notion that developing countries taking part in trade negotiations have no obligation to reciprocate fully the concessions they receive¹.
3. S&DT is a cross-cutting issue which can assume several forms. For instance, the WTO Secretariat has identified 145 provisions spread across the various Multilateral Agreements. These have been classified according to the following six-fold typology²:
 - (i) provisions aimed at increasing the trade opportunities of developing country Members;
 - (ii) provisions under which the interests of developing country would be safeguarded;
 - (iii) flexibility of commitments, of action, and use of policy instruments;
 - (iv) transitional time periods;
 - (v) technical assistance; and
 - (vi) provisions relating to least-developed country Members.
4. The aforementioned classification would be applied to the CARIFORUM-EC EPA in the identification of S&DT provisions.

¹ Melendez-Ortiz, Ricardo., and Ali Dehlavi. 1999. "Sustainable Development and Environmental Policy Objectives: A case for Updating Special and Differential Treatment in the WTO"

² WTO. 2000. Implementation of Special and Differential Treatment Provisions in WTO Agreements and Decisions. Geneva

Special & Differential Treatment in the EPA

5. The principle of S&DT is a central pillar of the EPA between CARIFORUM and the EC. In this regard, Article 35.3 of the Cotonou Partnership Agreement (CPA) reaffirms the centrality of S&DT in the EPAs. Specifically, the Article states that *“economic and trade cooperation shall take account of the different needs and levels of development of the ACP countries and regions. In this context, the Parties 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.”*
6. Moreover, according to Article 1(f) of the EPA, the objectives of the Agreement include *“Strengthening the existing relations between the Parties on the basis of solidarity and mutual interest. To this end, taking into account their respective levels of development and consistent with WTO obligations, the Agreement shall enhance commercial and economic relations, support a new trading dynamic between the Parties by means of the progressive, asymmetrical liberalisation of trade between them and reinforce, broaden and deepen cooperation in all areas relevant to trade and investment.”*
7. In giving expression to the principle of S&DT, a cursory examination of the CARIFORUM-EU EPA would confirm that the Agreement is punctuated with S&DT provisions. However, in an effort not to reproduce the entire text of the Agreement, only the key S&DT provisions will be enumerated below. The provisions contained in the EPA are not only rooted in a desire to address the disparities in economic situation and capacities between the Parties, but also, an effort to ensure consistency across negotiating theatres as it relates to policy space, as well as in support of CARIFORUM’s regional integration processes.

KEY Special & Differential Treatment Provisions

8. An overarching S&DT provision is in the area of development cooperation. Not only is there a chapter on development cooperation which sets the scope and priorities for such cooperation, but embedded in every substantive chapter of the EPA are subject-specific cooperation provisions which aim at facilitating implementation of commitments, improving CARIFORUM’s ability to take advantage of the opportunities contained in the Agreement through increased competitiveness, improved export capabilities, fostering closer integration, building human, legal and institutional capacity and enhancing technological and research capabilities *inter alia*.

Trade in Goods:

Customs Duties

9. The most noticeable S&DT provision in this area relates to the levels of tariff reduction commitments between CARIFORUM and the EC. Whereas the latter commits to full duty-free, quota-free (DF/QF) for all tariff lines immediately, save for sugar and rice which will be subject to short transition periods, CARIFORUM commits to liberalise

86.9%³ of the value of its imports from the EC over twenty-five years, with three year moratorium across the board except for vehicles, parts and gasoline will benefit from ten years moratorium. Haiti is exempted from liberalisation of gasoline. Consequently, S&DT is with respect to both coverage as well as transition time period;

10. Similarly, with respect to Other Duties and Charges, CARIFORUM commits to eliminate such charges in ten years, with the flexibility that reduction will commence after year seven;
11. S&DT is also accorded to the treatment of export duties, where CARIFORUM States which currently apply such duties have three years within which to eliminate them⁴;
12. As regards MFN clause, whereas the EC commits to offer CARIFORUM States MFN treatment as a result of the EC becoming a party to a free trade area (FTA) with a third state, CARIFORUM commits only to accord MFN treatment to the EC with respect to FTAs with any “major trading economy⁵”. Moreover, CARIFORUM has recourse to the Trade and Development Committee to seek a decision to deny offering MFN treatment to the EC for any FTA a “major trading economy” ;
13. Under the rubric of provisions to safeguard the interest of developing countries, CARIFORUM has the flexibility to, in the event of serious difficulties in respect of imports of a given product; modify the time schedule for reduction or elimination. Such modification, however, would not lead to the time periods for reduction or elimination being extended. Further, CARIFORUM-designated LDCs and Guyana also have the flexibility to seek modification of customs duty stipulated in CARIFORUM’s Schedule of Commitments;
14. The Chapter-specific cooperation priorities in this area include cooperation efforts aimed at strengthening tax administration and improving tax revenues collection by facilitating technical assistance in the area of fiscal reform as well as capacity and institution building.

Trade Defence Measures

15. As part of the EC’s commitment to safeguard the interest of CARIFORUM States, as it relates to multilateral safeguard measures, the EC commits to exclude the latter exports from multilateral safeguard measures as provided for in the WTO. Further, as it relates

³ CARIFORUM liberalisation commitments would be implemented as follows: 52.8% of which 51% already attract no duty will be zero rated from the start of implementation of liberalisation commitments; an additional 3.2% in 5 years, 8.3% in 10 years; 21.7%, 1.9% and 2.3% in 15, 20 and 25 years respectively, cumulatively accounting for 86.9% of EC imports.

⁴ Only Guyana and Suriname currently apply export duties, in particular on forestry products.

⁵ Major trading economy means any developed country, or any country or territory accounting for a share of world merchandise exports above 1 percent in the year before the entry into force of the free trade agreement, or any group of countries acting individually, collectively or through a free trade agreement accounting collectively for a share of world merchandise exports above 1.5 percent in the year before the entry into force of the free trade agreement

to antidumping and countervailing measures, as an additional S&DT provision, the EC commits to consider the use of constructive remedies before definitive antidumping or countervailing duties on CARIFORUM's exports to the EC are applied.

Non-tariff Measures

16. At least three key S&DT provisions can be extracted from the chapter on Non-tariff Measures. The first is referred to as the zero for zero treatment of EU export subsidies. Essentially, what it means is that the EC commits to eliminate export subsidies on all tariff lines that CARIFORUM liberalise. The second provision allows CARIFORUM to maintain recourse to Article 9.4⁶ of the Agreement on Agriculture and Article 27 of the Agreement on Subsidies and Countervailing Measures. Finally, on export prohibition, the EC undertakes not to challenge Law No. 147 of 27 December 2000 of the Dominican Republic which applies to the importation of motor vehicles and motor cycles in excess of a certain number of years. This commitment is reflected in a Joint Declaration on Used Goods.

Trade Facilitation

17. Similar to the other thematic areas, the Trade Facilitation Chapter places strong emphasis on co-operation between the EC and CARIFORUM. Further, due recognition is given to the differences in level of institutional development and capacities, application of best practices and international standards of the Customs Administrations in the EC and CARIFORUM. Consequently, a number of CARIFORUM commitments are conditional on the provision of technical and technological assistance, financial support and training. Therefore, in light of this systemic concern, the Agreement establishes a clear link between the implementation of specific commitments by CARIFORUM States and the delivery of development support in the following areas:
- a. the application of modern customs techniques, including risk assessment, advance binding rulings, simplified procedures for entry and release of goods, post release controls and company audit methods ;
 - b. introduction of procedures and practices which reflect as far as practicable, international instruments and standards applicable in the field of customs and trade, including WTO rules and WCO instruments and standards, inter alia the revised Kyoto Convention on the simplification and harmonisation of customs procedures and the WCO Framework of Standard to Secure and Facilitate Global Trade; and
 - c. the automation of customs and other trade procedures.

⁶ This relates to *subsidies to reduce the costs of marketing exports of agricultural products, including handling, upgrading and other processing costs, and the costs of international transport and freight; and providing internal transport charges on export shipments terms more favourable than those for domestic shipment.*

Agriculture and Fisheries

18. Where compliance with the Agreement leads to problems with the availability of, or access to, foodstuffs or other products essential to ensure food security of a CARIFORUM State and where this situation gives rise or is likely to give rise to major difficulties for such a CARIFORUM State, CARIFORUM State may take appropriate measures in accordance with the provisions on bilateral safeguards;
19. Additionally, the EC commits to endeavour to maintain significant preferential access within the multilateral trading system for CARIFORUM's traditional agricultural products for as long as is feasible and to ensure that any unavoidable reduction in preference is phased in over as long a period as possible;
20. The cooperation priorities include facilitating support aimed at improving competitiveness; development of export marketing capabilities, compliance with and adoption of quality standards relating to food production and marketing; promotion of private investment and public-private partnerships in potentially viable production; improvement in the ability of CARIFORUM operators to comply with national, regional and international technical, health and quality standards for fish and fish products; and building or strengthening the scientific and technical human and institutional capability at regional level for sustainable trade in fisheries products, including aquaculture.

Sanitary and Phytosanitary Measures/Technical Barriers to Trade

21. The provisions of the Agreements on Sanitary and Phytosanitary Measures and Technical Barriers to Trade were reaffirmed in the EPA. Consequently, the S&DT provisions contained therein would apply. Further, the Parties agree to cooperate in international standard setting bodies, including by facilitating the participation by representatives of the CARIFORUM States in the meetings and the work of these bodies.
22. Development cooperation initiatives will include: establishment of the appropriate arrangements for the sharing of expertise; development of centres of expertise within CARIFORUM for the assessment of goods access into the EC market; development of the capacity of enterprises, in particular CARIFORUM enterprises to meet regulatory and market requirements; developing and adopting harmonized technical regulations, standards and conformity assessment procedures based on relevant international standards; reinforcement of regional integration and the improvement of monitoring, implementation and enforcement of SPS measures; cooperation in the international bodies, including the facilitation of participation of representatives of CARIFORUM States in the meeting of these bodies.

Investment, Trade in Services and E-Commerce

23. On Services, similar asymmetries exist with respect to scope of liberalisation as in the area of goods trade. The EC has agreed to liberalise 94% of their services sector in the

W120 list. Several sectors are of export interest to CARIFORUM such as Tourism, Recreation services, Business services. On the other hand, CARIFORUM States sectoral coverage is around 65 and 75% for LDCs and MDCs respectively. The Dominican Republic has made the most ambitious offer for CARIFORUM States with liberalisation commitments of approximately 90%.

24. Additional asymmetry exists with respect to The Bahamas and Haiti which have six months to submit their respective liberalisation schedules.
25. CARIFORUM was also able to maintain special reservations for small and medium-sized enterprises (SMEs) in several sectors, as well as the right to regulate any sector or economic activity to meet national policy objectives.
26. Other forms of S&DT, especially with respect to tourism services include the commitment by the EC:
 - to facilitate the transfer of technology on a commercial basis to establishments in the Signatory CARIFORUM States as it relates to tourism services;
 - to encourage the participation of CARIFORUM services suppliers in international, regional, sub-regional, bilateral and private financing programs to support the sustainable development of tourism; and
 - to facilitate the participation of the Signatory CARIFORUM States in relevant international organizations setting environmental and quality standards applicable to tourism services.
27. The development cooperation commitments cover the following areas: improving the ability of service suppliers of CARIFORUM States to meet regulations and standards of the European Community at the national and sub-national levels; improving the export capacity of service suppliers of CARIFORUM States, with particular attention to the marketing of tourism and cultural services, the needs of small and medium-sized enterprises (SMEs), franchising and the negotiation of mutual recognition agreements; facilitating interaction and dialogue between service suppliers of the EC Party and of CARIFORUM States; addressing quality and standards needs in those sectors where CARIFORUM States have undertaken commitments under EPA; developing and implementing regulatory regimes for specific service sectors at CARIFORUM regional level and in CARIFORUM States in those sectors where they have undertaken commitments; and establishing mechanisms for promoting investment and joint ventures between service suppliers in the EC and CARIFORUM States, and enhancing the capacities of investment promotion agencies in CARIFORUM States.

Trade-related Issues

28. The Trade-related Issues (TRIs) in the EPA comprise the following areas: Competition Policy, Innovation and Intellectual Property, Public Procurement, Environmental, Social Aspects, and Protection of Personal Data.

29. On **Competition Policy**, the two Sides committed to have legislation in place to address restrictions on competition in their jurisdiction within five years of the coming into force of the EPA. While this provision is available to both the EC and CARIFORUM, the time period for implementation is more relevant to CARIFORUM given its competition authorities are still in a stage of infancy. Another S&DT relates to “public enterprises and enterprises entrusted with special exclusive rights”. Specifically, where such enterprises in CARIFORUM States are subjected to specific sectoral rules as mandated by their respective regulatory frameworks they would not be bound or governed by provisions contained therein.
30. The cooperation priorities include support to facilitate the efficient functioning of the CARIFORUM Competition Authorities; assistance in drafting guidelines, manuals and, where necessary, legislation; the provision of independent experts; and the provision of training for key personnel involved in the implementation of and enforcement of competition policy.
31. With regard to **Innovation and Intellectual Property**, the S&DT provisions relate to, *inter alia*, transition time period, differential in Treaty compliance and measures aimed at increasing trade opportunities such a transfer of technology. Most notable in this regard are:
- the commitment by the two Sides to implement the provisions on IP by 2014, unless determined otherwise by the CARIFORUM-EC Trade and Development Committee taking into account the development priorities and levels of development of the Signatory CARIFORUM States;
 - flexibility accorded to CARIFORUM to establish a system of protection of geographical indication in their respective territories no later than 1 January 2014;
 - exemption of least developed countries from the provisions on intellectual property, other than on equal pace with what may be required of them with regard to the implementation of the TRIPS Agreement as well as the flexibility to implement the provisions relating to standards on intellectual property and enforcement no later than 1 January 2021;
 - the transfer of technology to institutions and enterprises of the CARIFORUM States in order to enable the CARIFORUM States to establish a viable technological base.
32. Cooperation priorities with respect to Innovation comprise initiatives in the area of competitiveness and innovation, science and technology, information society and information and communication technology and eco-innovation and renewable energy. With respect to Intellectual Property, the cooperation priorities include: reinforcement of regional initiatives, organisations and offices, support in the preparation of national laws

and regulations and the identification of products that could benefit from protection as geographical indications.

33. On **Public Procurement**, as regards transparency, CARIFORUM States have two years, save for CARICOM-designated LDCs which have five years, from the entry into force of the EPA to bring their measures into conformity with any specific procedural obligation contained therein. Further, if at the end of the aforementioned implementation, a review by the Trade and Development Committee reveals that one or more CARIFORUM States need additional time to comply with their implementation commitments, the implementation period may be extended by one year.
34. Exchange of experience and information about best practices and regulatory frameworks; establishment and maintenance of appropriate systems and mechanisms to facilitate compliance with the obligations on public procurement; and creation of an on-line facility at the regional level for the effective dissemination of information on tendering opportunities, so as to facilitate the awareness of all companies about procurement processes.
35. On **Environment**, it was agreed that the special needs and requirements of CARIFORUM States shall be taken into account in the design and implementation of measures aimed at protecting environment and public health that affect trade.
36. The cooperation priorities include the provision of technical assistance to producers in meeting standards applicable in European Community markets; promotion and facilitation of private and public voluntary and market-based schemes including relevant labelling and accreditation schemes; technical assistance and capacity building, in particular to the public sector, in the implementation and enforcement of multilateral environmental agreements, including with respect to trade-related aspects; and assistance to producers to develop and/or improve production of goods and services, which the Parties consider to be beneficial to the environment.
37. On **Protection of Personal Data**, CARIFORUM has the flexibility to implement the provisions contained therein no later than seven years after the entry into force of the Agreement.
38. The cooperation priorities in this area include exchange of information and expertise; assistance in drafting legislation, guidelines and manuals; provision of training for key personnel; assistance with the establishment and functioning of relevant institutional frameworks; and assistance with the design and implementation of compliance initiatives aimed at economic operators and consumers in order to stimulate investor and public confidence.

As is evident from the above the provisions on special and differential treatment cuts across all of the thematic areas of the EPA. Some provisions are mandatory whereas others can be considered best endeavour. What is important, however, is the operationalisation of the provisions. An important element in this regard is the Regional Preparatory Task Force process whose mandate is to translate needs for support identified in the negotiations into operational ideas for

trade-related and other development assistance and work out these ideas up to the level of pre-identification of fundable actions.

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