

Reflections on the Cariforum-EC EPA

Presentation prepared for a Hearing on the Cariforum-EU EPA before the Committee on International Trade of the European Parliament

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By

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Brief background/introductory comments:

On 15 October 2008, in Bridgetown, Barbados 13 of the 15 Cariforum member countries signed an Economic Partnership Agreement (EPA) with the European Union. Guyana signed a week later in Brussels and it was agreed that Haiti, the only internationally recognised LDC in Cariforum, would sign at a later date. Haiti, already plagued by institutional limitations, has been struggling to cope with the after effects of four (4) hurricanes which struck the country during the late summer. The Cariforum-EC regional EPA negotiations commenced on April 16, 2004 in Kingston, Jamaica and the negotiated text for a comprehensive (EPA) was initialled on December 16, 2007 in Bridgetown, Barbados.

The core objectives of the Agreement, as set out in the joint Plan of Action agreed at the start of the negotiations by the two sides, include: sustainable economic development; poverty elimination; facilitation of Caribbean structural transformation; and adjustment of Caribbean economies in a manner and at a pace that is conducive to overall economic and social development.

The EPA covers trade in goods, trade in services, investment, and trade related issues between the 15 Cariforum Member States and the 27 Members of the EU. The EPA, which was negotiated to complete the trade provisions of the Cotonou Agreement, will liberalise trade and investment between Cariforum and the EU on a reciprocal, but asymmetrical basis. In addition, the EC will provide development support aimed at strengthening Cariforum institutions, improving competitiveness and building the capacity of regional economic operators to compete internationally.

Parliamentarians may recall that one of the key provisions of the Cotonou Agreement, which was signed in June 2000 by ACP and EU Member States, is for the conclusion of “new WTO compatible trading arrangements, removing progressively barriers to trade between them and enhancing cooperation in all areas relevant to trade” (Art. 36.1). It was also agreed in the Cotonou Agreement (Art. 37.1) that EPAs would be negotiated during the period between September 2002 and 31 December 2007. This latter date is particularly important because it coincides with the expiration of the so called “Cotonou waiver” which was obtained at the WTO in November 2001 and, basically, excused the EC from its obligations under Art. 1.1 of the GATT so that it could continue to extend preferential access to products from ACP/Cariforum countries until 31 December 2007.

To negotiate or not to negotiate – that was one of the first major questions to be addressed by Cariforum. We decided to negotiate and these are some of the principal reasons:

1. After more than 30 years of duty free and quota free non-reciprocal access to the EU market for Caribbean manufactured and agricultural products, the region had made little progress in exploiting the market opportunities. Therefore, it was clear that we had to do something different - a paradigm shift was necessary. Market access was and is of limited value if the region is not in a position to produce competitive products which can also satisfy market access requirements.
2. Cariforum perceived that the EPA could be used as an effective mechanism to advance the region's development by addressing a number of the supply-side constraints which have been negatively affecting our competitiveness. These constraints, many of which are characteristic of small developing economies, include a limited export base dependent on one or two commodities; widespread operational inefficiencies; ineffective or non-existent regulatory institutions; and a general lack of international competitiveness.
3. Faced with EU CAP reform and challenges from other WTO members, Cariforum decided that it would try to use an EPA, as far as possible, to bind EU preferences and ring fence the region's commodities against further challenges in the WTO. This strategy would involve securing the existing preferences for as long as possible, while seeking to restructure and adapt to a more liberalised trading environment. In my view, maintaining the status quo was not a realistic option.
4. With respect Services, Cariforum states, as small economies increasingly dependent on the services sector, saw the EPA as offering an opportunity to improve and guarantee access to the EU market for the region's services suppliers.
5. In the area of development cooperation, Cariforum concluded that an EPA could provide additional resources and critical impetus in the region's ongoing battle with the EC to find a more efficient vehicle through which to expedite the delivery of EC development assistance in support of regional priorities. A more streamlined and region-centered EC support mechanism would facilitate the implementation of our regional integration and development programmes.
6. With respect to the decision to negotiate Investment, we envisaged that Cariforum States, as net capital importing countries, would be able to use the EPA to stimulate increased flows of FDI investment, as well as to improve the business environment for local investors. In addition, by demonstrating to international organisations and bi-lateral partners that the Caribbean is committed to undertaking necessary economic reforms, the region hopes to make a compelling case for their development long-term support.
7. Finally, although in theory an EPA was not the only option for the Caribbean with respect to our continuing relationship with the European Union (EU), the crucial question to be answered was whether there was a better option available to the region. After a careful assessment of the alternatives, we concluded that the GSP and GSP Plus were the most likely WTO compatible options and, given that reality, we decided that a development-oriented EPA would be much better for CARIFORUM.

Having decided to negotiate an EPA with the EU, CARIFORUM wanted to ensure that the Agreement was underpinned by the following six (6) principles:

Sustainable development: **The ultimate objective for CARIFORUM was to ensure sustainable economic development and alleviate poverty in our countries.** In this regard, facilitation of the region's structural transformation in order to reduce acute economic vulnerability and foster international competitiveness was a prerequisite.

Timely delivery of development support: **In our view, there was a critical need to put in place a mechanism which would facilitate a more sensitive processing of projects and the rapid disbursement of EU development resources to the Caribbean.** The region's efforts to undertake structural transformation and improve international competitiveness were closely linked to the availability and accessibility of resources.

Asymmetry: **The region insisted that any EPA had to reflect an asymmetrical approach with respect to market access for goods and services, as well as the application of rules - longer transition periods, phased liberalization re both goods and services etc.**

Respect for CARIFORUM's Regional Integration process: **Another CARIFORUM objective was to retain the integrity of its own regional integration process and to be able to build on that process.** During the negotiations, CARIFORUM fought a long battle with the EC to ensure respect for the "variable geometry" which characterised our region (CARICOM, the OECS, the CARICOM-Dominican Republic FTA).

Services: **There must be recognition of the importance of services, especially tourism and culture, to almost all of the region's economies.** An EPA should improve on the Lomé and Cotonou *acquis* in respect of both market access and development co-operation. Market access under Mode IV was a principal target and EC cooperation should be available to raise overall standards of the region's services providers.

A phased CARIFORUM Tariff Liberalisation: **The region wanted to ensure that there would be a phasing of CARIFORUM's liberalisation of its tariffs, which would allow for any necessary reform of national tax regimes and the nurturing of fragile domestic production.** It should be instructive that CARIFORUM will only eliminate duties on an additional 10.1% of its EU imports over the first ten years and that there will be a three-year moratorium on the implementation of the region's liberalisation commitments.

What are the key elements of the Cariforum-EC EPA Agreement?

An holistic approach to Development Cooperation: The two sides agreed, from the beginning, that the EPA should be a tool for development. Although, initially advocating different approaches, both Cariforum and the EC eventually concurred that development should infuse all aspects of the EPA and that a two-pronged approach should be adopted. Consequently, in the first place, there is a development chapter (Part 1 of the Agreement), which reflects the overall pro-development orientation of the Agreement. Secondly, the region's sectoral development needs have been set out in each subject-specific chapter in order to complement any applicable rules.

Trade in goods: Earlier I stated that an asymmetrical outcome to the negotiations was one of the region's principles and such an outcome is evident with respect to "Trade in Goods". Whereas the EU is liberalising immediately all imports from Cariforum (there is a short transition period for sugar and rice); the region, starting from a position where 51% of imports from the EU were already free of duty, agrees to liberalise 86.9% of the value of its imports over twenty-five (25) years, with 61.1 % after the first ten (10) years and 82.7% after the first fifteen (15) years. Not only will Cariforum be allowed up to 25 years for the phasing out of tariffs on some sensitive products as well as the exclusion from tariff liberalisation of a number of items, the region will also be able to apply a general moratorium on its tariff liberalisation commitments for the first three years of the Agreement.

Treatment of ODCs: The region will be able to maintain Other Duties and Charges (those which have a similar impact as a tariff on imports) during the first seven years of the agreement before phasing them out during the subsequent three-year-period. These are important sources of revenue for some Cariforum member states and the region was able to persuade the EC to agree on this transition period to allow time for countries to adapt to other fiscal arrangements.

Commodity protocols: The Sugar Protocol (SP) quotas will remain on a transitional basis until September 2009 when full DFQF will be introduced. During the transition period, the SP quotas will be complemented by market access for an additional quota of 60,000 tonnes divided evenly between CARICOM SP members (Barbados, Belize, Guyana, Jamaica, and Trinidad and Tobago) 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 other Cariforum members;

Development cooperation in Agriculture: The Agricultural chapter is consistent with the region's objectives for this sector: i.e. pursuing sustainable development, poverty eradication, enhanced competitiveness and food security. One notable provision is the treatment of EU export subsidies, which provides that the EU shall eliminate export subsidies on all agricultural products/tariff lines which are liberalised by Cariforum.

Trade defence measures & other safeguards: The EC agrees to exclude Cariforum exports from multilateral safeguard measures, such as those provided for in the WTO (Art. XIX of the GATT) and agrees to consider the use of constructive remedies, before imposing anti-dumping or countervailing duties in respect of products imported from Cariforum States. This is another example of asymmetry because there are no such provisions to benefit EU exporters. In reality, it is most unlikely that the EU would find it necessary to apply trade defence measures against Caribbean exporters, but these provisions are vital for Cariforum to ensure that our smaller producers are not swamped by large EU multinationals.

MFN Clause: There is asymmetry even in the approach to this somewhat controversial provision. Whereas, the EU agrees to confer automatically to Cariforum any better treatment granted to another trading partner; the region **might be required** to consider granting such better treatment to the EU only where the "third country/region" is a developed or major developing country. These are defined as countries or regional blocs responsible at least 1% or 1.5% respectively of world merchandise exports.

Preferential treatment for regional partners: The two sides agreed that any concession which is granted by any Cariforum State or group of states to the EC should be automatically

conferred on all other Cariforum States. This provision, the so called “*Regional preference*” will be implemented after one year with respect to Cariforum MDCs, two years for Cariforum-designated LDCs, and five years in the case of Haiti. **It should also be noted that the EPA reinforces the right of Cariforum States to grant each other preferential treatment, which they do not have to extend to the EU.**

Market access in Services: The outcome in services also reflects asymmetry with the EC liberalising 94% of its services sectors while the more developed Cariforum countries (MDC) will liberalise 65% and the lesser developed (LDC) 55%. The Dominican Republic agreed to liberalise 84%. Access has been secured for Caribbean professionals to enter the EU to sell services as Contractual Service Suppliers and as Independent Professionals or self employed persons. The Cariforum EPA also contains significant development-supporting provisions in Tourism and Cultural industries – two areas which are particularly important for our region.

Investment: In negotiating Investment, our approach was influenced by the fact that all Cariforum States welcome foreign investors and are aggressively seeking Foreign Direct Investment to support our economic development. **However, public services, utilities and other sensitive sectors have not been liberalised to foreign investors. In addition, we have maintained special reservations on small and medium enterprises in some sectors.** The EPA also contains provisions which obligate investors to safeguard the environment and maintain high labour, occupational health and safety standards. **It also stipulates, on the insistence of Cariforum, that investors should be penalised for engaging in corrupt practices, such as bribery, in order to secure special concessions from public officials.**

Rules of Origin: The interim Rules of Origin applicable to the Cariforum EPA represent a small improvement over those which currently exist in the Cotonou Agreement, with respect to items such as bakery products, jams and jellies, chocolate confectionery, juices and drinks, airconditioning units, and garments. Furthermore, provision has been made to review these Rules within five years after the entry into force of the Agreement with a view towards further simplification in the light of actual experience.

Trade Related Issues: The Agreement addresses a number of Trade Related Issues, including competition policy, innovation and intellectual property, public procurement, the environment, and protection of personal data. Time does not permit me to examine these in any detail, but I will touch on them briefly for completeness.

The chapter on **Innovation and Intellectual Property** covers a broad range of issues which falls within this area and its focus is on technical cooperation to strengthen the relevant institutions and to foster innovation, creativity, and competitiveness in Cariforum. The Agreement also contains provisions on **Competition Policy**, which are intended to prevent anticompetitive business practices. **The EC has agreed to provide necessary technical assistance for the establishment or strengthening of two Competition Authorities in the region.**

With respect to **Public Procurement**, the focus is on increased transparency in the procurement of goods and services by Governments. The EC was very keen to include market access in the Agreement, but Cariforum was adamant that such access would be a step too far at this time.

In addition, the two sides agreed on the importance of protecting the **Environment** as development proceeded and the **Social Issues** are also included in the Agreement, particularly with reference to the observance of internationally recognized core labour standards and overall ethical corporate behaviour. There is also a Chapter on **personal data protection** to ensure that there are appropriate regulations in this area to reduce the risk of abuse of personal data.

Legal and Institutional Issues: It is envisaged that a number of institutions will be established to monitor and oversee the implementation of the EPA. The highest level will be a Joint Cariforum-EC Ministerial level Council, which will be supported by a Joint Trade and Development Committee and other special or ad hoc Joint Committees to be established from time to time as the need arises. There is provision for a Joint Parliamentary Committee, comprising Cariforum Parliamentarians and members of the European Parliament. It is also envisaged that there will be a Special Committee to facilitate the involvement of various non-governmental organisations in the EPA monitoring and implementation processes.

What resources are available to support EPA Implementation?

Ensuring the primacy of development in the EPA and securing enough resources on a timely basis to implement the EPA provisions constitute two of the region's priorities. The EC agreed, after much prodding, that in addition to the Regional and National Indicative Programmes (R&NIPs), other sources of funding would be identified.

Therefore, the 132 million Euro Regional Indicative Programme (RIP) was boosted to 165 million and it was emphasised that this commitment of 165 million Euro to the regional development programme only relates to the period from 2008 to 2013. The region can also expect a further tranche of development/EPA implementation assistance under the Cotonou Agreement for the period 2014 to 2020 and, even beyond the expiration of Cotonou in 2020, the EC is committed to some type of post-Cotonou aid facility for ACP countries and regions.

Although the Development aspect of the EPA is not restricted to Financial Cooperation, as evidenced by the range of asymmetrical arrangements discussed earlier, it is an important facet of the agreement. Therefore, Cariforum was insistent that, while "supporting the implementation of this Agreement shall be one of the priorities" to be funded through the European Development Fund (EDF) and the relevant instruments financed by the General Budget of the European Union, these should not be the only sources of EPA-related support. Consequently, Member States of the European Union have collectively undertaken to support, through their respective development policies and instruments, the development initiatives and the ongoing regional economic integration programme in Cariforum.

In another chapter of the EPA, there is also a declaration establishing the Agreement's link to the EU's expanded Aid-for-Trade programme. Unfortunately, the modalities governing access to the Aft commitment of EU Member States have not yet been properly elaborated. Therefore, there remains some uncertainty about the net additional Aft resources which will be available and the conditions governing any disbursement.

At least Cariforum has secured a commitment from the EC to channel EPA support through the CARICOM Development Fund, to the extent possible. This latter orientation should both promote greater regional ownership and also make it easier to access

resources for EPA-related projects. Nevertheless, the uncertain status of the EU's enhanced AfT programme remains an area of concern.

Concluding comment concerning implementation challenges:

The EPA represents a fundamental change in the Cariforum-EC relationship. We hope that this change will facilitate the repositioning of Cariforum member states away from an overdependence on commodities and the minimal exports of rudimentary industrial products to more value added output of high end branded products and internationally-competitive services. The EU has a key role to play in this process because we expect that our European partners will provide timely and substantial support to assist Cariforum States in achieving their development goals.

The Cariforum-EC EPA is a satisfactory agreement, but it is not perfect. This is a natural outcome in negotiations, with neither side securing its “wish list” but with both parties feeling that they can “live with the outcome”. The tough EPA negotiations have been concluded, but the real challenges, those associated with implementation, lie ahead. Cariforum Governments, development officials and economic operators must undertake necessary fiscal reforms; secure required institutional strengthening; oversee the restructuring of economic activity away from declining to emerging industries; and make a commitment to improve our competitiveness in every sphere of activity. In this regard, there are a few areas which will require ongoing attention and where the European Parliament's support could be crucial:

- Continuous monitoring and periodic review – monitoring and review of the EPA must be undertaken in an impartial manner and with a commitment to address any identified shortcomings by amending the Agreement as necessary, without undue delay.
- Improved procedures for disbursing 10th EDF resources – the Commission must be prepared to work with Cariforum counterparts in improving EDF-related procedures and ensuring the timely delivery of development support, which is structured to respond expeditiously to Cariforum's prioritised needs.
- Aid-for-Trade and other non-EDF resources – there is a clear need to take steps to operationalise the EU's expanded AfT programme without further delay and the EU side must make good on its promises “to ensure that an equitable share of Member States' AfT commitments will benefit Caribbean ACP States” and “to mobilize and channel EPA related development resources from the EU and other potential donors”.
- Cariforum's variable geometry – The Commission must be mindful of the variable geometry with respect to Cariforum's existing regional integration processes and approach EPA implementation in such a manner as to ensure that the EPA remains compatible with and not contradictory towards the pace and priorities of the region's integration.

It is the manner in which we face-up to these challenges which will determine the success or failure of the EPA negotiations because only time will tell whether or not the EPA achieves the objectives which Cariforum established prior to the start of these negotiations in April 2004. Cariforum and its EU partners must not allow this far-reaching agreement to remain

underutilised, together they must focus on EPA implementation and development of the region's economic competitiveness.

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ELH
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