

***CARICOM Perspectives on the CARIFORUM-EC, Economic Partnership
Agreement****

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CARICOM Perspectives on the CARIFORUM-EC, EPA

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CARICOM Perspectives on the CARIFORUM-EC, Economic Partnership Agreement*

Introduction

This paper offers from a CARICOM perspective a strategic appraisal of the CARIFORUM-EC, EPA, recognised as the first “full and comprehensive” EPA among the six being negotiated by the EU among the ACP group of countries. The EPA is both a legal document and an *instrument* designed to promote specified development objectives. Its strengths, weaknesses, as well as the opportunities it will create and the threats it faces, will unfold during its implementation. How this is done will be a principal determinant of its success in attaining those objectives.

The first Section contrasts key forecasted long-run benefits with front-loaded implementation costs that are already occurring. Section II assesses why this is the case. Section III comments on the EU assistance commitments in the Agreement. Section IV assesses the consultations process in CARICOM during the negotiations and draws attention to some important issues of economic governance. The final Section (V) looks at the Interim EPAs in Africa and the Pacific in an effort to point a way forward.

I: Forecasted Long-Run Benefits and Front-Loaded Costs

I.1: Long-run benefits

Without even the limited assurance of supporting long-term quantitative economic and trade assessments, or the customary computable general equilibrium multi-sector multi-country model projections of the likely effects of trade policy changes, it has been confidently asserted (speculated) that, with the EU’s offer of substantial market access for CARIFORUM’s goods and services, when full liberalisation kicks-in with its accompanying development and trade-related measures (that is, in about two-and-a-half decades), the EPA would have secured for CARIFORUM 1) substantial trade-creation

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following the dismantling of regional and global barriers to trade 2) deep-rooted development reforms 3) sustainable regional integration and development 4) an endogenous capacity to eradicate poverty and other deep-seated social and economic ills 5) an economic regime in which trade will be routinely at the service of development, and 6) the economic reforms in place would demonstrate the earnestness of the Region in meeting the EPA objectives, thereby ensuring that it becomes a substantial net capital-importer and recipient of official resource inflows. This modernisation is crucially dependent on the efforts of CARIFORUM, the EU's development assistance, and the access to EU markets the EPA provides.

We are also assured that despite 1) the absence of a CARIFORUM Customs Union area 2) substantial liberalisation of *trade-in-goods* (61% of EU imports in 5 years and 83% in 15 years), 3) as well as *trade-in-services* (based on the W120 list of services, immediate sectoral coverage of 50-62% and tariff-line coverage of 75% for CARICOM developed countries and 65% for lesser developed countries, with 80% for the Dominican Republic), 4) the removal of export duties (within 3 years), 5) the removal of "other duties and charges" (within 10 years) 6) the existence of trade-related provisions (Singapore issues) in the EPA and, 7) the EU's "denunciation" of the Sugar Protocol, a substantial foreign exchange earner that, there are adequate protections from economic disaster. These protections take the form principally of 1) improved rules-of-origin for CARIFORUM exports 2) phase-in periods for CARIFORUM obligations; 3) safeguard mechanisms, such as the designation of sensitive industries/sectors, and "zero for zero treatment" of agricultural subsidies; and, 4) not linking market access opportunities for the EU to agreements seeking to build institutional capacity of the region in trade-related areas (Singapore issues) for example, government procurement.

A list of exclusions and sensitive items, (those with long-term phase-in periods of up to 25 years) is included in the EPA, as well as transitional arrangements for rice and sugar. Assurances are repeatedly given that the EU is not seeking market access opportunities in the trade-related areas only to build regional institutional capacity.

In addition to immediate duty free quota free access to EU market, with improved rules-of-origin, aid is also offered to support the process through the 10th EDF. However, as we shall see, *incremental* aid clearly associated with the EPA is non-existent.

Taking the above at its face value for the time being, what has not been identified, (and this requires little forecasting/speculation) are the significant front-loaded costs already attached to the EPA. These costs are simultaneously economic, political, and geo-strategic.

1.2: Front-loaded costs

Eight (8) of these costs are indicated below. Space prevents a full analysis of each, but with the observations made in this sub-Section readers should not find it difficult to envision the fuller-range of considerations involved.

Sugar Protocol (SP)

Reduced to five main sugar producers, CARICOM's sugar exports still remain a considerable foreign exchange earner, source of employment, and provider of rural livelihoods. The Sugar Protocol (SP) has been a mainstay of this achievement. The SP is usually referred to as a "preference" arrangement between the EU and the ACP group of countries. This is not correct. It is an indefinite commercial Treaty agreed to in 1975 between the EU and the ACP for the commercial supply *on penalty* of definite annual quantities of sugar (a total quota of 1.34 million tonnes) at agreed negotiated prices. The CARICOM Region was allotted its own quota within the overall quota, with prices negotiated annually. The SP was a bankable guarantee, which regional sugar producers used to finance on-going production. It guaranteed supplies of sugar to the EU at agreed prices when the world faced shortages and an explosion of commodity prices including sugar.

Legally, neither the EU nor the ACP could unilaterally abrogate the Treaty. CARICOM agreed to Europe's "denunciation" of it in 2007 to facilitate the establishment of the EPA and simultaneously, Europe's reform of its overall sugar production and marketing

arrangements. This envisaged a price fall of 36 percent over the period 2006/2010 with later adjustments over the period 2013/15. Based on the Region's quota (443,000 tonnes), the estimated annual financial cost of the full 36 percent price cut is approximately US 100 million dollars. For Guyana, the largest quota producer, the amount is US\$40 million (equivalent to G\$8 billion, annually).

Under the EPA, CARICOM's sugar quota up to 2009 is increased by 30,000 tonnes or about 7 percent. (As a Member of CARIFORUM, the Dominican Republic's quota is also 30,000 tonnes.) Total sugar revenue earned from the SP if this quota were to be filled will substantially decline as this compares very unfavorably to the 36 percent price reduction. Provision is made for the intra-regional reallocation of any quota shortfalls among regional producers. After the 2009 delivery period, there will be no fixed quota. Unlimited access will be provided at the EU price then in force, which will certainly be lower. As mentioned a further round of price adjustments is due over the 2013-2015 period.

Interestingly, as part of its domestic sugar production and marketing reforms to which the EPA is accommodating, the EU is paying producers of sugar in its French Overseas Territories, 2 billion Euros for the period 2007-2013 to cover an output of about 280,000 tonnes (see Thomas, Clive and Haraksingh, Kusha, 2006).

Special Preferential Sugar (SPS)

This was introduced in 1995 to meet EU sugar needs following expansion of refinery capacity on the joining of Portugal and Spain. The erosion of this quota began in 2001, after the granting of Everything But Arms (EBA) preferences to LDCs. The original ACP quota was 325,000 tonnes and this has fallen to less than half that amount. CARICOM's share of the quota was originally set at 38 percent of the total and this too has fallen by half. The region's largest sugar producer, Guyana's share averaged 5-6 percent of its exports of sugar to the EU. With the EPA and the accompanying EU's sugar reform programme the SPS quota is terminated.

The African Caribbean Pacific Group (ACP)

The ACP was established in 1975 as a tri-continental political grouping under the Georgetown Agreement. Its main objective was to promote solidarity and unified action across a wide array of small, vulnerable and poor states. It forged common positions on several global development issues, particularly in regard to the responsibilities of OECD countries and the international financing institutions. The ACP operated with a Secretariat to facilitate the work of its political bodies such as its Council of ACP Ministers.

The CARIFORUM-EC, EPA indicates that much of these activities will now be located within the six separate regional EPAs where there are substantial organizational and institutional provisions (see Part V of the CARIFORUM-EC-EPA-Institutional Provisions). This would reduce its political, economic and geo-strategic weight. Indeed in some quarters its further continuation might be in question. When asked about this, the current Secretary General answered as follows:

“Could EPAs eventually be a substitute for the ACP-EU Partnership-Agreement? Do EPAs signal the forthcoming disappearance of the ACP as a group? Can the ACP Group foster its relevance?”

The Secretary General’s first response was:

“This is for the two partners to decide” (Kaputin, Sir John, 2008)

It seems likely that its future role could be confined to routine and bureaucratic matters emanating from EPA operations such as reporting, information gathering, dissemination, and promoting cross-EPAs dialogue. At this stage of negotiations at the WTO and other major inter-governmental fora this could be a significant loss. A reduced ACP reduces the organised voices of the poor, marginalized, and vulnerable economies in the global trading regime. (See Section IV)

Small Island Developing States (SIDS)

SIDS is a major political achievement for small, poor, vulnerable economies. Hosted by CARICOM (Barbados) in 1995, SIDS and the related global Alliance of Small Island States (AOSIS), have since been recognized within the United Nations system. SIDS also has standing as a grouping at the WTO. The Barbados Plan of Action (1995), extended at

the Mauritius Summit (2005) is testament to the hard work of many SIDS countries at the United Nations particularly in consort with the G77 Group of Non-aligned Countries and China. In the WTO SIDS urges that small, poor, vulnerable economies, be recognised as *intrinsically disadvantaged* in the global trading regime. It is not yet recognised as a “category” of developing countries, and all that implies, but signing on to an EPA before the Doha Development Round and the many Singapore issues are resolved is a major setback in this regard.

Sacrificing multilateralism for expedient bilateralism

The net trade policy effect of the EPA is to prioritize bilateral modalities for trade negotiations with developed countries over international negotiations at the WTO, with the Doha Round still incomplete. The recent “kick-start” to the WTO negotiations with the submission of texts by the respective Chairs of the Agriculture and NAMA bodies could indicate poor timing. Further, bilateral negotiations with other developed countries are likely to continue. With the Dominican Republic (DR)-CAFTA-USA Free Trade Area already in place, bilateral negotiations with the USA is almost certain to follow. Canada has also publicly signalled its intentions to negotiate a trade deal with CARICOM/CARIFORUM.

CARICOM Integration

The CARICOM integration movement itself has already been prejudiced in several ways by the EPA both in its *trade and development dimensions*. A few examples of these are briefly indicated below:

- 1) Without a prior DR-CARICOM agreement on 1) customs union area, 2) trade in services and, 3) trade-related measures, the Region has put the “cart before the horse”. With the EPA in place, subsequent agreement can only now be framed within it. Some argue, mistakenly, that with a 3-year phase-in period before starting implementation of the EPA, there is time to work on a DR-CARICOM agreement. Surely, the reality is that the shape and content of any such agreement are already locked-in to the EPA, to which the two Parties are already legally bound.

- 2) Similarly, without any treaty defined operational framework agreement for services and trade-related issues in CARICOM, the Region is exposed to having these indirectly imposed through the modalities of the EPA. Both from a development and integration perspective this is poor sequencing. Such action cannot be treated as benign, the by-product of an EU effort to develop the Region's capacity in services. The commitments made under the GATS in the EPA are far reaching: legal, strict, specific, time bound, and most importantly subject to the disciplines of the Dispute Avoidance and Settlement provisions of the EPA (see Part III of the EPA and Chapters 4 and 5 of Part II, Title IV.)
- 3) The talked about "kick-start" to the WTO Doha Development Round of negotiations is based on key players, including the USA, expressing 'cautious optimism', (notwithstanding its up-coming Presidential elections). It is reasonable to expect that benchmarks of WTO-compatibility in areas other than trade-in goods are best established multilaterally at the WTO and certainly not as a product of North-South bilateral negotiations with the EU and, as is likely later, the USA and Canada.
- 4) The institutional arrangements in the EPA also undermine economic governance in CARICOM.(see Section IV) One example of this is that EPA institutions legally embody levels of supra-national authority that CARICOM has been loathe to cede to its own bodies in pursuit of regional integration.

Developing Countries Coalitions at the WTO

During the on-going negotiations at the WTO, CARICOM has helped to forge several coalitions among developing countries. These are now undermined. Indeed the position is that while the EU promotes bilateral trade arrangements exclusively as part of its wider global multilateral project (Global Europe) at the WTO; CARICOM has reversed this by promoting expedient bilateralism at the cost of multilateralism. (See Section IV) This point is related to the already observed impact on SIDS and the ACP, but its effect is felt in other fora, for example, the G77. The 14 CARICOM countries in the WTO, while

insignificant in economic and trade terms, are not inconsequential as part of negotiating blocs of developing countries.

Sacrificing the search for a Cotonou plus agreement

The original intention to transform the Cotonou Agreement into a WTO compatible trade arrangement by January 1, 2008 was constrained by Europe's conviction that it knew best what CARICOM's development priorities, needs and capacities were. There is a wide legal consensus that there was no legal compunction for a trade in services and trade-related measures agreements to have been in place to meet the WTO-waiver deadline. As Wamkele Mene points out:

“The pervading legal opinion has always been that there is no WTO requirement to conclude an EPA with disciplines on new generation issues in order for it to meet the test set forth in Article XXIV of GATT. Indeed, the Commission itself has not refuted this legal interpretation. As such, South Africa could not accept the notion that unless the EPA includes new generation issues, it is not ‘full and comprehensive’ and therefore will not be notifiable under Article XXIV of the GATT, as the Commission claims.”* (Wamkele, Mene, TNI, January 2008)

The concern is that the original Cotonou Agreement embraced 1) non-reciprocity, recognizing that trade relations between the EU and the Region did not exist on a level playing field and, 2) an element of “indemnification” for colonial excesses (such as slavery, indenture and the rapacious plunder of local treasure and natural resources). Arising out of the latter, provision was made for relatively substantial amounts of development assistance. Under the EPA there are a plethora of best-endeavour, good-faith clauses, but when it comes to specific identifiable sums of finance to support cooperation there is none. (See Section III)

For convenience, the two Schedules below list 1) the immediate “casualties” of the EPA and 2) the unresolved WTO-issues on which agreement was reached in the CARIFORUM-EC, EPA.

* Of note, Wamkele Mene wrote on behalf of South Africa's entire Negotiating Team. The position he represents has been indeed affirmed by the coming into existence of five (5) Interim or Two-step EPAs and only one comprehensive EPA (CARIFORUM-EC, EPA).

Schedule 1: Casualties of the EPA

- | No. | Item |
|------------|---|
| 1. | African-Caribbean Pacific (ACP) Group of Countries established 1975 |
| 2. | The Sugar Protocol (est. 1975) |
| 3. | Special Preferential Sugar (est. 1995/1996) |
| 4. | Small Island Developing States (SIDS) |
| 5. | Original Cotonou plus Goal |
| 6. | * Coalition around <i>unresolved</i> WTO issues (Singapore, separately listed, Schedule 2) |
| 7. | Multilateralism |
| 8. | CARICOM as an autonomous, development-oriented open integration process creating the basis for effective integration into the global market |

*See Schedule 2

Source: Thomas, C.Y., (2008)

Schedule 2: Unresolved WTO Issues in the EPA

- | No. | Item |
|------------|--|
| 1. | Trade in Services (GATS, Article 5) |
| 2. | Investment (Trade-related) |
| 3. | Intellectual Property Rights |
| 4. | E-Commerce |
| 5. | Competition Policy |
| 6. | Technical Barriers to Trade (TBTs) |
| 7. | Sanitary and Phyto-sanitary Measures (SPS) |
| 8. | Current and Capital Payment |
| 9. | Environment |
| 10. | Social Factors (as Trade conditionalities) (e.g., crime control, financing of terrorism, money laundering) |
| 11. | Government Procurement |
| 12. | Special and Differential Treatment (and Preferences) (mainly SIDS) |
| 13. | Safeguard Mechanisms (including sensitive products) |
| 14. | Subsidies (Agriculture) |

Source: Thomas C.Y. (2008)

II: Why has this occurred?

II.1: Design and Architectural Flaws

How did these casualties of the EPA come about? I believe the answer lies in **three** sources. One is that empirical evidence does not support several theoretical propositions implicit to the EPA (without necessarily implying support for any counter-proposition). Secondly, several of the supposedly “certain” evaluations, assessments and interpretations underlying the EPA are in fact in strong dispute, lacking consensus among analysts and scholars. Thirdly, there are fundamental design and architectural flaws of the EPA including its negotiating modalities. In recent writings I have referred to these as the “contentious planks” on which the EPA rests. These are listed below and briefly introduced.

Schedule 3: Contentious Planks

Number	Item
1.	Reciprocity – trade liberalisation – WTO-plus arrangements and “WTO-compatibility” in the context of 1) incomplete Doha round and 2) asymmetrical development capacities
2.	Perceived wisdom: Preferences as uniformly harmful
3.	The Doha (development) round and Special and Differential Treatment (SDT) for small states
4.	Responsibility, accountability and functional autonomy (the EU Trade Commission and CRNM)
5.	Shaping reality: The “Global Europe” project and the role of EPAs
6.	One-size-fits-all: negotiating for a complex Region
7.	The EU carve-out and carve-up. Legal construct (CARICOM) and negotiating abstraction (CARIFORUM)
8.	“Interim” (two-step) EPAs
9.	The “WTO waiver deadline: 31/12/07”
10.	Development aid, and “aid-for-trade” Adjustment measures vs compensating EU access and entry to CARIFORUM markets
11.	The Sugar Protocol as a special case
12.	Promoting CARICOM integration with the EPA as baggage
13.	Negotiating other external trade agreements with developed countries
14.	Coping with the world economy then and now, post-WTO and EPA

Source: Thomas, C.Y. (2008)

The first of these is the EPA’s emphasis on reciprocity and trade liberalisation between asymmetrical regions while the Doha (Development) Round is still incomplete. The theoretical premise underpinning this position that trade always promotes growth is not supported by adequate empirical data. The second is the firm view that preferences have been invariably dysfunctional, inefficient and backward-looking. In the absence of a single marginal analysis of the value of preferences to the Region based on counterfactual or with-without cost-benefit measures, this claim is contestable and remains unsubstantiated (see Clive Thomas, 2005 and 2008). A partial study of the Sugar Protocol in Guyana arrives at very different conclusions (see Weatherhead 2004) as well as US reviews of its previous preferences-granting regimes. Indeed positive reviews have fostered the United States’ Africa Growth Opportunity Act 2000 as well as indication of commitment to further support along the lines of the original preferences-granting Caribbean Basin Initiative.

The third contentious plank is the unresolved issue at the WTO of Special and Differential Treatment (SDT) for small, vulnerable and relatively poor countries. The

case has been argued that these economies are *intrinsically disadvantaged* and therefore SDT should be embodied *substantially* in the rules, procedures and obligations of the WTO, and not remain perfunctory and mainly as best endeavour objectives as is the case presently. The matter remains unresolved at the WTO, but appears in the EPA as definitely settled. Here the SDT provisions are not qualitatively improved from those at the WTO.

The contentious planks relating to design and architecture flaws of the negotiating modalities of the EPA, undermined the search for a “partnership of equals”. These include:

- The *relative autonomy*, which both the EU Trade Commission and the Caribbean Negotiating Machinery (CRNM) have been able to exercise over the negotiating process despite their protestations that consultations were adequate (plank 4);
- The *Global Europe* project advanced by the EU as the guiding force behind the formation of the six ACP-EPAs (plank 5); and, the asymmetry inherent in the CARIFORUM States not projecting a clear CARIFORUM objective preference function or *Project Caribbean*. The Region is heterogeneous in resource structures, development capacities and geo-strategic interests and this makes a “one-size-fits-all” negotiating mandate difficult to accomplish to everyone’s “reasonable satisfaction”. (plank 6);
- The further complication is that CARIFORUM is a negotiating abstraction carved out of various European ex-colonial territories in the Caribbean. CARICOM however, has been established by the Treaty of Chaguaramas (1973) and comprises independent English-speaking Caribbean states. A full CARICOM-Dominican Republic framework for the matters covered in the EPAs has not been the subject of prior agreement (plank 7)

The eighth contentious plank on which the EPA rests is the EU-imposed sub-divisions of the ACP political grouping into six separate negotiating EPAs. This created scope for “divide and rule” tactics, which several observers believe the EU resorted to when it

invoked the spectre of impending GSP duties on non-LDCs as the December 31, 2007 deadline approached.

The “aid-for-trade” proposal and its relation to the EPAs is the tenth contentious plank. It is unclear whether this is a financially appropriate and viable addition of additional finance for the purposes of meeting adjustment and development costs occasioned by trade liberalisation. Eleventh, is the issue of characterizing “special products” from a development standpoint. Twelfth, there is the very special case where the Treaty establishing the Sugar Protocol has been treated as a preference-arrangement, which it is not. ACP governments and sugar producers were clearly pressured by the EU to permit its “denunciation” of the Treaty.

Finally, we have three remaining contentious issues namely, whether the EPA is consistent with promoting the deepening of CARICOM integration; 13) how will CARICOM handle impending external trade negotiations with Canada and the USA; 14) and a political economy assessment of the role of “leadership, vision, political will, and peoples involvement” in something as profound and far reaching in its consequences for the Region.

Several of these contentious planks are discussed further in this paper. However, central to all is the observation of Timothy Kondo (2007) that the draft EPA, which formed the basis of negotiations for his region and the EU was prepared by the EU. Marc Maes (2007) reiterated this more generally when he said:

“The texts that the Commission has tabled have reflected the Commission’s approach to global trade. They do not reflect the interests and needs of ACP countries”.

II.2: Critiques of the Process

This Paper is not denying or contesting the right of the EU to pursue in its own deliberate judgement its interests when designing the EPAs. However, in Europe its tactics and *modus operandi* have come under severe criticism and censure. At the time of Britain’s

Presidency of the EU, and the appointment of Peter Mandelson as EC Trade Commissioner, the Select Committee on International Development of the United Kingdom Parliament, reviewed the on-going EPA negotiations for which purpose it interviewed key officials including those at DFID and DTI. In its Sixth Report it expressed four concerns of enormous significance to our present review of the EPA.

First, it condemned the negotiations for being non-transparent and conducted away from effective public scrutiny in parallel to the Doha Round of negotiations. Thus the Report laments:

“The lack of public scrutiny over the negotiation process between one of the world’s more powerful economic actors, the EU, and 79 of the world’s poorest economies, the African, Caribbean and Pacific group of states (ACP). Outside of a small trade circle, very little notice is being taken of these negotiations which are running parallel to the WTO’s Doha ‘development’ round”.

Second, the Committee noted that it was unfair to the ACP for the EU to push an agreement through without *special and differential treatment* and pressed for the developing status of the ACP countries to be guaranteed. Thus the Report states:

“The negotiations will fundamentally alter the trade relationship between the EU and the ACP. In particular, the ACP group, which used to be the most preferred trading partner of the EU, will be moving from non-reciprocal preferential access to reciprocal trading arrangements with the EU. Because of slow progress at the WTO, the EU cannot guarantee to offer the ACP states consideration of their development status in these new Partnership Agreements. Without special and differential treatment, the agreements will not be fair”.

Third, the Committee advised of potential conflict with regional integration efforts of the ACP states. It urged also that ACP positions at the WTO were being subverted by the piece-meal, region-by-region mode of negotiations, which the EU had foisted on the process:

“Any agreement offered to the ACP must have a developmental component; should not conflict with regional integration processes; should not demand liberalisation in sectors where the EU has not itself liberalized; and should not seek to put onto the agenda in regional

negotiations, issues which the ACP group has previously rejected as the all ACP level”.

Finally, the Committee was appalled by reports of the cynical, manipulative way the EU was handling the negotiations, comparing it to a game of poker, where the winner-takes-all. It stressed the unequal power relation in such a situation:

“That the EU is approaching the negotiations with the ACP as if they were playing a game of poker. The Commission is refusing to lay its cards on the table and to dispel the ACP’s fear that it stands to lose more than it will gain ... The ACP is negotiating under considerable duress and the EU approach emphasizes the unequal nature of the negotiation process”.

On the eve of the official launch of the EPA negotiations, the *Cotonou Monitoring Group* requested a review of the ACP guidelines and the EU negotiating mandates, and in its report an early indication of what the Select Committee subsequently noted can be found. The review stated:

“Despite its over-riding policy emphasis on poverty eradication and sustainable development, for the EU the ACP-EU negotiations are primarily about one thing, namely achieving the ‘*progressive and reciprocal liberalisation of trade in goods and services, in accordance with WTO rules, not taking into account the level of development of the ACP countries and the economic, social and environmental constraints they are facing*’. The emphasis is very much on ‘*removing progressively barriers to trade*’. This is the overwhelming focus of the EU negotiating directives.”

The review went on to note that the EU negotiating directives virtually assume *a priori* that reciprocity was accepted as the goal of the ACP since there was really no provision for effective alternative trade arrangements, even though this was listed as an option under the terms of the Cotonou Agreement.

II.3: Lessons Not Learned

Crucial lessons can be drawn from the precursors to the EPA (the Lomé Conventions and the Cotonou Agreement). Had these been adequately embodied in the EPA there would have been less controversy. My view is that while it can be said that the EC mis-managed the overall process, it was nevertheless able to get away with it because of asymmetric

negotiating capacities across the six EPAs. In this circumstance the EC was able to balance the pursuit of mercantilist self-interest in the EPAs vis a vis other developed regions and emerging economies like Brazil, China and India, while simultaneously promoting a multilateral vision of Global Europe. (See Section IV)

The experience of economic arrangements between the EU and CARICOM reveals some disturbing occurrences. The first is that the EPA was originally envisaged as the *successor arrangement for trade* in the Cotonou Agreement (2000-2020). It provided for renegotiation of its trade aspects after eight (8) years in order to meet the WTO-waiver deadline. Three features were however, expected to remain embedded in the Cotonou Agreement. One was the *moral* recognition that the funding arrangements were on partial indemnification for Europe's brutal colonial exploitation. Another was that owing to the vast disparities in economic, technological, and financial capacities of the two areas, these arrangements could not be expected to depend *principally* on market-based trade liberalisation and simultaneously produce mutual gains. To secure mutual gains, the previous arrangements embraced *non-reciprocity*. Third, the Cotonou Agreement *politically affirmed and promoted the ACP* as a major grouping in the global community.

The second occurrence is that no sooner had the "ink dried" on the Cotonou Agreement (2000) when the EC announced in 2001 the "Everything But Arms Agreement" (EBA). This offered *in principle* to the Least Developed Countries (LDCs), *non-reciprocal duty free access* to the EC market for all exported goods except arms. This turned out to be morally suspect as concessions portrayed by the EU as "pro-development" and "generous", were in fact largely at the expense of non-LDC exports from ACP countries. We have already noted the effects of this on the Special Preferential Sugar (SPS). Thus circumstance led to a huge outcry and loud protests at EU duplicity in the Region.

A third occurrence is that concurrently with the EPA negotiations, the EU was deeply involved in shaping the WTO and promoting a European vision of its evolution. On several issues this met stern opposition from developing and emerging economies.

CARICOM countries were also deeply involved in the WTO, but negotiating in supposed solidarity with other developing countries, especially SIDS. The EPA however, contradicts several basic positions taken by SIDS during the Doha Round of negotiations.

A fourth occurrence is that the Caribbean Regional Negotiating Machinery (CRNM) was established to handle external trade negotiations and negotiated the EPA on behalf of CARICOM. It was established independent of the CARICOM Secretariat and the various national external trade policy entities of Member States. (See Section IV)

Finally, *two* key economic lessons can be drawn from past experiences. These refer to two *intractable problems*. One is that legal access to overseas markets for CARICOM's exports (except perhaps the traditional ones) is far removed from effective determination of sales in these markets. This reflects the weak development capacity of the area, and still remains an intractable problem. Secondly, making available resources/aid to fight poverty and develop regional economies translate into effective results is also an intractable problem that speaks to Europe's inability to effectively manage and disburse aid.

III: Re-packaging Aid

III.1: Cotonou Funding

The development dimension of the EPA hinges on the provision of development assistance to boost CARIFORUM's institutional, infrastructural, regulatory and productive capacities at the national and regional levels so as to promote a sustainable expansion in exports both to the EU and the Rest-of-the-World. The question that arises is: how likely is the development assistance to be forthcoming in a timely and effective manner?

The EC appears to be torn by two contradictory tendencies. On the one hand there is a realisation that its past colonial excesses are in no small measure responsible for much of the development predicaments which many poor countries and regions presently face. Thus, this has no doubt inspired in large measure its Cotonou funding. And, on the other,

the need to pursue its economic self interest vigorously at the global level, while opportunistically exploiting whatever mercantilist options arise. As a result, the EU has earned a suspect reputation as a provider of development assistance. While quick to promise new envelopes of aid funding and to promote new delivery mechanisms, its actual track record in effective aid delivery is poor. This is one of the lessons of the Lomé Conventions and the Cotonou Agreement. Government, private sector, and civil society view EU aid to CARICOM as burdened by two defects namely, 1) an overly bureaucratic, cumbersome and protracted delivery mechanism and 2) seemingly benefiting principally those European consultant firms, which have mastered the craft of negotiating the EU's serpentine aid bureaucracy.

Make no mistake about it: signing on to the EPA does not assure specific EPA financing. Indeed, no specific funds are provided or promised in the EPA other than those *already committed* by the EC to the 10th European Development Fund (EDF) arising from the Cotonou Agreement, and its companion Aid-for-Trade proposals, laid at the WTO in 2005. The details are that under the 10th EDF, the EU is pledging overall 23 billion Euros to the 79 ACP countries over a seven year period. This averages 3.3 billion Euros annually and most importantly it is pledged under the Cotonou Agreement, not the EPA. Of this amount, 165 million Euros are promised to the Region, of which 132 million Euros go toward CARIFORUM and the remainder (33 million Euros) go towards the EPA. From the sum of 132 million Euros, 85 percent will go to the focal areas of the regional integration indicative programme and the remaining 15 percent goes to non-focal areas such as social issues and vulnerabilities.

Many readers may find it hard to believe that given the way EU assistance to the EPAs is being advertised that there is no incremental funding attached to the EPA. In a recent published interview Louis Michel, the EU Development Commissioner made this clear. When asked:

“Will there be additional financing beyond the EDF to accompany EPA's?”

The EU Development Commissioner Louis Michel replied:

“This is a question I am often asked. I have to say that as far as the EDF and the Commission are concerned, there will be no further financing”. (Trade Negotiations Insight, February 2008, P.4)

In the same interview the EU Development Commissioner further pointed out:

“We must emphasise that the countries that have not signed an EPA have not been *penalised*. They will benefit from the same financing within the EDF framework. This financing is allocated on the basis of development criteria which are independent of the position they take in relation to the EPA”. (My emphasis, *ibid*, P.4)

III.2: Aid-for-Trade or EU Sleight-of-Hand

A similar situation exists with regards to the EU’s celebrated *Aid-for-Trade proposal*. That proposal was put to the WTO in 2005 and there are only best-endeavour, good-faith statements about linking this previously promised Aid-for-Trade to the EPA. No additional specific financing however, is committed to the proposal as far as the EPA is concerned. The EU Aid-for-Trade proposal is also clearly not EPA-inspired in its origin. It is in fact WTO-inspired and was first made at the time of the Hong Kong Ministerial (2005). It remains at the WTO as part of the EU’s efforts to kick-start the Doha Round of Negotiations. It is not however, linked to the successful conclusion of that Doha Round. As Barbara Spect (2007) observes:

“The Aid-for-Trade [proposal] is thus not a substitute for the successful conclusion of the Doha Development Agenda, nor is it linked to the successful conclusion of the EPAs” (*Specht*, Barbara, 2007)

The details of the Proposal are that the EU is offering 2 billion Euros per year beginning in 2010. Half of this amount would be supplied by the European Commission from *already* available funding (another re-packaging) and the other half would come from Member States. Currently the European Commission provides 840 million Euros and the Member States 300 million Euros for Aid-for-Trade. The hope is that Member States would increase to 600 million Euros by this year, reaching the one 1 billion Euros target by 2010. The provision of this funding is not dependent on the successful conclusion of the Doha Round of negotiation.

The financial commitments are to be attained by 2010 and refer only to *trade-related assistance*. No financial promises have been made for the wider *aid-for-trade agenda*.

There are other concerns over provision of EU assistance. One is, the absence of specific, legally binding, time-bound provisions for the delivery of assistance through clearly specified delivery mechanisms. The vagueness to the EU development assistance is accompanied with a liberal dose of laudable objectives and good-faith/best-endeavour provisions. This stands in stark contrast to the specific, time-bound, legal provisions of the trade dimension of the EPA, which impacts CARIFORUM severely. Further the aid-for-trade proposal is more demand-driven than supply-directed. This would be fine, except that attached to the proposal are numerous caveats, which provide the EU with lots of opt-out opportunities, if it so desired.

The most disconcerting aspect of the EU's re-packaging of aid envelopes is that the development dimension of the EPA can only be made secure if the EU's commitments were legal, time-bound, specific and subject to the legal provisions of the Dispute Avoidance and Settlement provisions in the EPA.

IV: Consultations, Economic Governance and Global Europe

IV.1 The Consultation Process

It has been widely advertised by the Caribbean Regional Negotiating Machinery (CRNM) and the EU Negotiating Body that highly successful stakeholder consultations took place during the negotiations. Details of the many regional Meetings give the impression that once the CRNM as the negotiating entity for CARICOM agreed to proposals at the bargaining table then *ipso facto* it could be assumed that regional stakeholders ownership was assured. This is a very contentious assumption, since the content, form, and other modalities of the consultations were flawed.

The CRNM claims:

“The process of negotiations of the EPA began years ago and involved a wide range of stakeholders. These stakeholders included State representatives, the private sector and non-state actors [...] Several fora were established to formulate regional negotiating positions. National

positions which were formulated through national consultations, as well as the positions of regional sectoral interests and regional NGOs, were systematically harmonised and refined into coherent regional negotiating positions. This coordination activity took place through a series of meetings which were open to officials from all Member States, the regional secretariats, regional private sector and the NGO community. This forum of the Technical Working Group (TWG) convened at least 29 meetings since the official launch of the EPA negotiations in 2004. Of that total, 11 were devoted to market access issues in goods. Consultations on services were also considerable as 8 TWGs were convened. Through these processes, the ensuing dialogue and exchange of positions through proposals and research papers would have engendered continuous consensus building”. (CRNM Website)

There was however, a large gap between the CRNM’s rather formularistic description of the consultation process and the reality of those consultations. One finds that just as there were marked negotiating asymmetries between the EU Negotiating Body and CRNM, similar asymmetries existed between the CRNM and CARICOM Member States including the various national and regional private sector bodies.

During the process several weaknesses emerged, the most important being that the *scope* of the consultations was limited to two options. One was the EPA and the other was, failing that, the EU’s resort to the General System of Preferences (GSP) duties in order to satisfy the requirements of the WTO-waiver to 31/12/07. The choice for those who challenged the EPA concept was reduced therefore to the lesser of two evils. No effort was made to explore outside the EPA box for non-EPA, non-GSP options, within the evolving framework of the Doha Development Round. As it turned out it was left to think-tanks in Europe and the USA to explore these options and make public their findings.

A fuller analysis of this is taken up in Section V. The point I wish to make here is that the methodology of CRNM’s consultations was flawed, by its own deliberate avoidance of consideration of options other than the two on offer by the EU. The Region therefore, was largely reactive to EU positions. Realizing this, the EU was insistent that it had no “Plan B” in event the WTO-waiver deadline was breached. In the absence of

counterproposals from CARIFORUM (or for that matter other ACP-EPA groupings) other options were effectively foreclosed and the only ones that remained were those of an EPA or the imposition of GSP duties on non-LDCs, leaving LDCs to resort to EBA status if they desired.

A second weakness was that participation at the regional Meetings was low and from all reports the level of stakeholders understanding of the EPA was also low. Sacha Silva, the Commonwealth Secretariat/IDB Advisor to the Region on the Market Access Offer describes the situation as follows:

“The second goal was to conduct, country-by-country consultations across the public and civil society sectors[...]in many countries, turnout was low and understanding of the EPA limited among the various stakeholders, even after two rounds of country consultations which were eventually conducted” (Sacha Silva, Trade Negotiations Insight , February 2008, p9)

A third weakness was that Member States technical capacity to contribute was very unevenly distributed. It is reported that in some smaller states there was not even a single full-time person assigned to this task!

A fourth weakness was available human resources were over-stretched. An unfortunate ritual of “musical chairs”, therefore took place as the same person was asked to perform multiple roles at varying levels of authority not only in the process but at times even during the same Meeting.

Fifth, as the negotiating process unfolded it became evident that a “one-size-fits-all” approach was unfeasible. Member States uneven negotiating capacities reflected a more fundamental variation in their size; development levels; and, long-run resources, structural transformation and development goals. Thus for example, resource-rich commodity- exporting economies like Belize, Guyana, Jamaica, Suriname and Trinidad and Tobago’s have strategic economic interests dissimilar from the more service-intensive economies like Antigua and Barbuda and Barbados. Indeed, even within the former grouping, energy-rich exporting Trinidad and Tobago has a different commodity

outlook than say Belize and Guyana to whom for example, the Sugar Protocol is most crucial. Such variation is exceptionally difficult to harmonize in one negotiating body, especially when operating from an unanimity principle. This situation added to the complexity of the task and to the emergence of the *relative autonomy* of the CRNM.

It seemed also as if the CRNM and the EU were impatient when these *structural weaknesses* slowed the process. If the goal was a satisfactory EPA and not pre-established deadlines, then these structural weaknesses, which stemmed from genuine regional unevenness of the countries negotiating, might have been better accommodated. The process was instead more “deadline-driven” than “goal-driven” so that lagging states ended up in a situation where *de facto* they were forced to surrender their negotiating authority to the CRNM. Unwisely, the CRNM was in haste to sign the “first full comprehensive EPA”.

There were also other considerations. One in particular was the *relative autonomy* referred to above. It is almost a natural law that large organizations created by the State and dedicated to operate in areas of complex and technical matters, develop relative autonomy in relation to the State. Where many States are involved as the originating body, this phenomenon manifests itself more strongly. Experience has also shown that adept leadership can expand the “degrees of freedom” for relatively autonomous action by large organisations in relation to their State sponsors. Thus the EU Trade Commission has played a significant autonomous role in shaping the views of Member States about the evolution of the global economy and Europe’s role in this, the so-called *Global Europe* project. The CRNM, although far less so has also been able to expand its authority over the negotiating process because of relative autonomy. The CRNM was aided by having to deal with several States with limited capacities to cope with a process heavily driven by timelines.

The EU has touted the EPAs as a breakthrough in economic partnership arrangements between rich and poor countries, with the objective of putting trade at the service of development. As the WTO-waiver deadline became imminent in the last quarter of 2007,

the EU put enormous pressure on the six negotiating regions to conclude EPAs. As we now know, only one full EPA was achieved and the remainders are Interim EPAs. In the circumstances the CARIFORUM-EU, EPA clearly helped the EU to “save face”. The all-ACP response to EU pressure was fierce. Thus the ACP Council of Ministers at their 86th Session on December 13, 2007 declared that they:

“Deplore [d] the enormous pressure that has been brought to bear on the ACP States by the European Commission to initial the interim trade arrangements, contrary to the spirit of the ACP-EU partnership” (ACP Council of Ministers, Declaration, December 13, 2007).

Finally, there is an obvious contradiction in the CRNM responding to regional critics by claiming on the one hand that EU pressure was intense, and that given the deadline date of 31/12/07 and the threat of the imposition of GSP duties, there was no alternative for the Region and *simultaneously* claiming that the Agreement is eminently satisfactory. The Region cannot at one and the same time claim full partnership status and ownership of the Agreement and on the other that it took action, defensively! A similar contradiction arises on the part of the EU. For the sake of convenience, simplicity, and speed it was easier for the EU to treat CRNM *acceptance* of proposals, as signifying full stakeholder *ownership* of the details behind these proposals. There was no incentive to challenge this, given the pressure of deadlines the process faced. In this regard the EU exercised poor judgement.

IV.2: EPA Fall Out: Governance in CARICOM

The decision to create a specialized agency (CRNM) to pilot the negotiations with the EC was made as part of a broader remit to have that agency deal with all issues related to external trade negotiations. This was necessary at the time, given the fiasco attending the preceding WTO negotiations, where there was no effective CARICOM coordination. The revealed weakness of that decision is its failure to locate the CRNM properly within the governance framework arrangements of CARICOM and, in particular, to specify unambiguously its relations to the CARICOM Secretariat. That failure resulted in a “dual-headed” arrangement, which has over the years systemically hampered the integration of external trade negotiations and the promotion of the Caribbean Single Market and Economy. While there is clearly an organic relation between the two, the

“dual-headed” arrangement unintendedly militates against it. This contradiction has not produced, so far, discernible public conflicts between the two bodies. But if unambiguous priority is to be given to the regional integration process, then the CRNM must necessarily be reporting directly to the CARICOM Secretariat, which has not been the case thus far.

As a consequence the just concluded EPA has included in its administrative and organisational arrangements, which give EPA institutions a greater degree of “sovereignty” over the domestic economic affairs of CARICOM, than the Treaty of Chaguaramas, which established the Secretariat and organs of CARICOM does. Since EPA bodies are jointly controlled by the EC and CARIFORUM Member States this is clearly unacceptable. In addition, there is the vexatious issue of funding. Both the CARICOM Secretariat and the CRNM are largely externally funded. I have always found it anomalous that the Region’s political leaders would advocate CARICOM as their topmost priority, and yet do not feel compelled to ask their constituents to fund the process! Apart however, from this general concern there is a more specific concern, which arises from the fact that the Region has the CRNM routinely requesting funding for its negotiations from the very countries with which it is negotiating.

As far as I am aware no spoken or written directives have been given by the EC to CARIFORUM States, but clearly there is a conflict of interest on the part of both Parties to the Agreement. How much this may have led to self-imposed restrictions on the scope of CRNM actions we will never know. Once again the fault of this situation does not lie entirely at the door of the CRNM, but speaks volumes to the quality of economic governance that prevails in the Region.

Next Steps

According to the Agreement the legal steps necessary by CARIFORUM to put the EPA into operation are 1) formal Ministerial signature by March 15 and, 2) putting in place the administrative and legal instruments in order to make the EPA operational by April 15. However, at the last CARICOM Summit (March 7-8, 2008) it was decided to reschedule the formal signing by CARICOM Governments to June. The reasons offered for the

postponement are technical and related to the completion of the legal text and translation into other CARICOM languages. It is not much referred to, but the EU also has two steps to take: 1) A Council decision to authorise the signature of the initialled Agreement and, 2) Assent of the European Parliament. After that the Parties to the EPA have to *notify* the WTO.

The institutional framework for the next steps including provisions, bodies and scope of operation are *legally* specified in the text of the EPA (Part V). At the apex is a *Joint CARIFORUM-EC Council*, whose responsibility it is to actualize the EPA in all its aspects including monitoring, trouble-shooting and reviewing the EPA. This Council will be comprised of representatives of signatory CARIFORUM States and Members of the Council of the European Commission (EC) and the EC itself. This Joint Council will have the power to take decisions on all matters covered by the EPA. In this regard it seemingly has more authority over the Region's external trade than CARICOM itself.

There is also a CARIFORUM-EC *Trade and Development Committee* comprised of senior officials of both Parties. This body services the Council and assists it in the execution of its responsibilities. It is thus responsible for ensuring that disputes are resolved and that the opportunities afforded by the agreement for trade, investment business ventures are utilized. In this regard it has responsibilities for securing the development objectives of the EPA. There is in addition a *Special Committee on Customs Cooperation and Trade Facilitation*, which is responsible for the effective implementation/administration of the EPA Chapter on Customs and Trade facilitation. There are also two other non-specialist Committees, namely the CARIFORUM-EC Parliamentary Committee and a CARIFORUM-EC Consultative Committee. The former comprises representatives of the various Parliaments that are Party to the Agreement and the latter organizations of civil society.

IV.3 The “Global Europe” Project (Government Procurement and MFN Treatment)

The EU has promulgated a ***Global Europe*** project, which defines and motivates its actions in the global economy. From this vantage point the moral duplicity, dishonesty and contradictions inherent to several of the EU’s actions reviewed in this paper are best understood. Two concrete instances of this are seen in the Government Procurement and Most Favoured Nation (MFN) provisions of the Agreement.

Government Procurement

In the face of widely expressed concerns about the Public Procurement provision in the EPA the EU has been adamant that it is not seeking market access opportunities and claims its concern is to introduce best practices and raise the level of transparency, accountability and efficiency in this area of the Region’s economy. It is, however, difficult to accept this at face value when the Global Europe project identifies Government Procurement ***as a number one target*** for its efforts in multilateral and bilateral fora. Thus the EU has unabashedly portrayed Government Procurement as a major new frontier for trade and investments, which EU firms are well positioned to capture. On its Global Europe Website, it describes Government Procurement as:

“[An] area of significant untapped potential for EU exporters. EU companies are world leaders in areas such as transport equipment, public works and utilities. But they face discriminatory practices in almost all our trading partners, which effectively close off exporting opportunities. This is probably the biggest trade sector remaining sheltered from multilateral disciplines” (EC. 2006)

If the EU can state unambiguously that Government Procurement is one of the crucial frontiers for new business for EU firms one has to be extraordinarily trustful or naïve to accept the claims of EU negotiators that its inclusion in the EPA is benign and motivated solely by concern for CARIFORUM’s well being!

Most Favoured Nation (MFN)

A similar situation exists in regard to the MFN stipulation of the Agreement. While multilateral liberalization under the rubric of the WTO is grounded in the universal

application of MFN treatment to all Member States this can hardly apply to North-South bilateral arrangements between asymmetric regions. The primary reason for this is that the Enabling Clause of the WTO specifically permits a greater degree of preferential South-South trade liberalization, in recognition of their developmental needs and the prevailing structures and workings of the global economy.

The EU claims the legal right to extract preferences from EPA signatories in exchange for the preferences that they grant them. It also claims that the EPAs have a development dimension and are intended to promote South-South integration arrangements within and across the respective EPA regions and more generally among countries of the South. In an effort no doubt to balance these positions, it is stipulated in the Agreement that the MFN provision applies where any CARIFORUM Member State offers superior market access to a country or region, which accounts for more than 1 and 1.5% of world merchandise trade, respectively.

Several key developing and emerging economies are likely sooner or later to be affected by this provision including: China, India, Australia, South Africa, Malaysia, Paraguay, Indonesia, Mexico, and Brazil. For most of these countries one or more CARIFORUM States and CARICOM itself have been negotiating trade and economic agreements. The EU has however described these countries as the “*competitive new players*” with which it has to engage in the fight for export markets.

Brazil, a neighboring CARICOM state has however declared the matter at the WTO during the recent General Council meeting (February 5, 2008) indicating that a formal complaint against the MFN clause might be laid there. Brazil currently exports more than half of its merchandise trade to developing countries. Its interest in the matter is therefore not only legal and systemic but reflects the “concrete” conditions of a developing country promoting South-South trade and economic linkages as a strategic element of its development policies. As we shall see later trade policy projections of the impact of the EPAs indicate substantial collateral damage to non-EU exporters like Brazil, with their exports falling by several billion euros when full implementation of all six of the EPAs

are in force (2035). In contrast, the EU's trade gains are substantial estimated at 29 billion euros at the time of full implementation. Brazil is therefore aware of the potential negative effects of the MFN clause on South-South trade. Indeed Australia had objected to the MFN clause when raised in the Pacific region. It should also be noted here that China is the third largest trading nation with Africa, even though its merchandise exports to the region average only 3% of its total exports. It has displaced Germany from this position and overall the EU's share of Africa's trade is declining.

The most serious aspect of the MFN provision is that it creates a disincentive for CARIFORUM States to seek better trade deals with developing countries/regions above the 1%/1.5% cap as stipulated in the EPA. Several critics have denounced these arrangements on two principal counts. First, it effectively "disables" the enabling clause, which seeks to promote South-South trade deals as a strategy for global development. Second, it limits the range of options for future CARIFORUM external trade deals. In effect the provision gives up all that CARIFORUM "might one day" negotiate with other developing countries or regions. This provision will not pose significant difficulties for developed economies like the USA and Canada, which are next in line to negotiate trade and economic deals with CARICOM.

The EU has denied that there is a legal conflict between the Enabling Clause and the MFN provisions. The former, it claims, permits South-South preferences but does not **rule** out preferences to other WTO members and it does not cover FTAs. FTAs relate to MFN the, while preferences relate to the Enabling Clause. The Global Europe project however sees these emerging economies as "competitive new players", which are its rivals, rather than developing countries. The position of the EU is captured in the statement of Louis Michel, Director General, of the Development Commission who when interviewed on this subject stated recently: "The EU is generous but not naïve". (Louis Michel 2008).

Explaining the Global Europe Concept

The two instances of Government Procurement and the Most Favoured Nation stipulations of the EPA make unconvincing the EU claim that it is dispassionately concerned about promoting the development goals of CARIFORUM, even at the expense of its self interest. Those who would present these provisions as benign and the well-intentioned pursuit of CARIFORUM/CARICOM's well-being need to convince us of this beyond a reasonable doubt. This may sound cynical but the Global Europe project outlined below leaves little doubt about the EU's guiding purpose.

“Projectionism” and the Global Europe Project

In recent years the EU's *Global Europe* project has been mainly articulated through the writings and commentaries of Peter Mandelson, the EC Trade Commissioner. Recently, on the occasion of the Alcuin Lecture at Cambridge University, (February 8, 2008), the theses behind this Project were further elaborated as indispensable actions the EU must pursue in order to secure the sustenance of the “openness boom”. It is claimed the “rising tide of global prosperity” rests on the boom. It is urged by Mandelson that such a vision should inform *all* of Europe's future external trade and development agendas.

In essence the Global Europe project claims that the “openness boom” the world has been witnessing over the past two decades is here to stay. While it admits that critics are right about the “openness boom” facing two fundamental long-run challenges namely, “environmental damage” and risky “political consequences”, nevertheless, it is advanced that the only role for the EU to play is to resolutely promote continued global openness. Disengagement or an inward - looking Europe at this stage would be calamitous. The project admits that even in the face of the political challenges posed by the huge gains, which states like Russia and China are receiving, grave political risks for the EU would follow if it turned inwards.

Indeed, Mandelson states that a coherent EU response would be one rooted in the notion of “projectionism”, not protectionism. By this is meant, enhancing Europe's capacity to *project* its interests and values onto the world as steering modalities even as globalization

continues to advance rapidly in the 21st Century. In the lecture the EC Trade Commissioner asserts:

“Politics in Europe and a conception of the European Union that equips us to shape the openness boom not abandon it and, in doing so, project our values and our interests in a changing world”. (Mandelson, Peter. The Alcuin Lecture, Cambridge, University, February, 2008, page 2)

He then goes on to point out more bluntly:

“Asia may have pressed on the accelerator, but ***we have kept a steady hand on the wheel...***The EU as a whole has prospered from the openness boom” (my emphasis. Ibid, page 3)

As a consequence the EU pursues its global trade agenda multilaterally at the WTO. Bilateral agendas such as the EPAs [and what it terms as “autonomous measures” on its Website, such as the Generalized System of Preference (GSP) and the Everything But Arms Agreement (EBA)] are designed to serve, not substitute for, this global agenda.

Two crucial considerations flow from this. One is that it must be conceded that the EU is entitled to promote its national interests based on its world view; CARICOM must therefore seek to establish clearly a distinction as to where the EU’s autonomous philanthropy begins and *real politik* ends. CARICOM cannot assume an invariant dispassionate objective EU in situations where its national interests and those of the EU’s diverge. Indeed, the EU has never hidden its deep intent in the EPA negotiations, no matter what its negotiators might have said to the contrary. To quote again:

“The Economic Partnership Agreement (EPAs) are not an end in themselves, but are intended to act as a stepping stone to the gradual integration of the ACP countries into the world economy” (European Commission Website, External Trade, Trade Issues)

The second consideration is that there has not been a similar provision of a coherent and sustained elaboration (for the benefit of CARICOM citizens and others) of a ***Project Caribbean*** with which to steer the Region’s negotiations. Implicit however, to every major action along the way, especially regional efforts to construct the CSME, is the vision of promoting an open-regionalism, which builds CARICOM as a platform for sustainable engagement in the wider global economy. Given the uneven and asymmetric distribution of power, development levels and capacities globally, engagement in the

international economy has to be sequenced and firmly rooted in the priorities of the Region. An “as is” and “where is” engagement in the present global economy poses risks for all countries but while none of these are likely to produce catastrophic results for the EU, they could for CARICOM, considering that it comprises small, vulnerable and relatively poor states. It is this perspective however that has guided our analysis.

The EC Trade Commissioner has therefore confidently asserted that even with the Doha Development Round incomplete: “The WTO *already* (my emphasis) governs the multilateral trading system with striking effectiveness”. Can CARICOM/CARIFORUM say the same?

Brazil’s Observations

From the perspective of Global Europe we can appreciate the concern of Brazil when it stated at the WTO General Council meeting of February 6, 2008, in regard to the EPAs:

“The migration of trade preferences from schemes authorized by waivers to free trade agreements such as the EPAs poses a series of questions and challenges both to the ACP countries and to the broader WTO Membership”. (Brazil Statement, WTO General Council February 6, 2008).

In the statement Brazil’s representative went on to remind us of the long struggle of developing countries to negotiate the Enabling Clause and its overwhelming significance for them:

“The Enabling Clause, painstakingly negotiated, has been since then, the basis of a number of agreements and schemes, constituting one of the pillars of the multilateral trading system. It would be ironic; to say the least, if the Clause were to be severely undermined in the middle of a “Development Round”.

V: THE WAY FORWARD

V.1: The Interim EPAs: Challenges and Opportunities

Challenges

A firestorm of controversy has greeted the announcement of the CARIFORUM-EU, EPA in the Caribbean. As shortcomings have become more and more apparent and criticisms surfaced from many quarters in the developing world and Europe this has added further fuel and produced sharp differences. It is my belief that at this juncture a way forward, which seeks to reconcile these differences would depend first and foremost on a political accord arising out of the continuing negotiation of the Interim EPAs. The aim should be an eventual all-ACP-EU framework arrangement to govern all six separate regional EPAs.

Several distinguished colleagues, Professors Havelock Brewster, Norman Girvan and Vaughn Lewis have posited that there is still room (time) for CARICOM reflection and the formal re-negotiation of the EPA. Experts in international law point out that legally the initialed EPAs are by no means cast in stone and this is entirely possible. (See Lorand Bartels, Trade Negotiations Insights, April, 2008). My reading of the situation however, is that while this may be the best way forward, I do not believe the political leadership of CARICOM has any appetite for the considerable intellectual, moral, and political challenges this will pose. Those already fully committed to the existing EPA are unable or unwilling to envisage an alternative route to the development objectives of CARICOM. Those who are not so fully committed and are prepared to think outside the EPA-box may well feel that the costs of the EPA to their economies are “bearable” and would practice moral hazard believing that in any event the costs will largely fall on future generations. Those who may be definitely opposed to the EPA approach may feel that they cannot take on both their colleagues and the EU. An alternative route therefore needs to be constructed.

No Plan B

As we saw when negotiating the six regional EPAs with the ACP group of countries, the WTO-waiver deadline of 31/12/07 loomed large to the EU. At a crucial stage of the negotiations the EC Trade Commissioner made it clear that failure to reach an EPA in any region by 31/12/07 would not spur the EU to engage an alternative strategy. As it has come to be celebratedly recognised, he stated: ***“There is no Plan B”***. (Mandelson 2007) From all reports from then on until the end of 2007 “contention and conflict surrounded the process”. The EU rhetoric over the previous five years that, in the context of the stalled Doha Development Round, it would be innovating with the EPAs new “partnerships of equals” among rich and poor countries, which should be emulated worldwide, sounded hollow. Indeed, the signing of the only full EPA with CARIFORUM “saved face” for the EU.

The Interim EPAs were variously signed with regions, sub-regions and individual countries. They were therefore, expedient and configured to specific sub-regional and individual country situations at the time. In Africa and the Pacific, on-going regional arrangements were put in disarray, even though the EPAs were supposed to promote regional integration. In particular, divisions separated LDC status countries from non-LDC ones, mainly because if the deadline was breached, the former countries would have still benefited from EBA preferences to the EU (even though the rules-of-origin arrangements were not as good as those on offers in the EPA). The latter group would have been penalized however by the imposition of GSP duties. Twenty-two (22) non-LDCs therefore signed Interim EPAs. In some regional arrangements the legality of these Interim EPAs may yet be challenged, because signatories are Members of integration groupings, which prohibit them from entering legal arrangements for trade on an individual basis. As one analyst at the centre of these events ironically observed:

“Separate deals with individual states or group of countries have effectively split ACP regions and have caused much tension between neighbours. Only the EU seems to have the audacity to claim otherwise”.
(Sam Bilal, 2008. P.3)

As examples: The East African Community (EAC) signed to an Interim EPA separate and apart from the Eastern and Southern Africa (ESA) group. In Central and West Africa, the Cameroon, Ghana and Ivory Coast concluded separate Interim EPAs, thereby undermining existing regional integration efforts in these two areas. Concerned by these developments the African Union at its Summit took the decision to play a more active political role in future EPA negotiations for Africa.

The haste and pressure exerted on the six regional ACP groups as the deadline approached was so intense that it has been claimed:

“Some of the texts for Interim deals were tabled (my emphasis) by the European Commission just a few weeks (as was the case for ESA and EAC) and in some cases a few days (Cameroon, Ghana and Ivory Coast) before the deadline for conclusion”. (Sam Bilal, 2008, P.3)

Furthermore, the several Interim EPAs were so individually constructed that close observation of the details shows no clear developmental rationale behind the trade liberalization schedules in the agreed texts. The Overseas Development Institute and the European Centre for Policy Development Management recently completed a study (The New EPAs Comparative Analysis of the Content and the Challenges for 2008) in which it observes:

“All of the African EPAs are different and only in one region does more than a single country have the same commitments as the others: the East African Community (EAC). At the other extreme is West Africa, where the only two countries with Interim EPAs have initialed significantly different texts with distinct liberalization commitments... The picture that emerges is entirely consistent with the hypothesis that countries have a deal that reflects their negotiating skills.”

Opportunities

The overall stratagem that might best describe the process of hasty initialing of Interim EPAs when it seemed that agreement would be reached nowhere was “the aversion of disaster at all costs”. As a consequence the Interim EPAs lack careful thought and reflect no clear economic rationale, except perhaps a barometer of the negotiating capacity of the concerned African and Pacific countries. Specifically, the degree of trade liberalization (whether measured by implementation schedules; coverage of items; waivers, exceptions

and exclusions; or other transitional details) shows no definite correlation with expected country economic variables (such as income and poverty levels, developmental needs, economic openness, or even trade shares with the EU).

There is also no revealed coherence between the Interim EPAs and the integration movements in Africa and Pacific regions. Thus, different liberalization schedules among countries in the same region can impede the smooth development of regional integration among these countries. Some have argued that this might also occasion undesirable trade deflection. Further, in some integration arrangements it is even the case that the “rendezvous clauses” for this year’s negotiations differ among countries in the same region!

In this situation the EU remains so firmly committed to its version of what is the correct development path for the ACP group of countries that, at present, it is safe to say it is not prepared to brook consideration of alternative ACP directed autonomous paths to its development. The Editorial for the April, 2008 issue of Trade Negotiations Insights reports a statement by the EU Development Commissioner made in reply to comments and questions from concerned Europeans:

“If you want to remain poor, just be against the EPAs”.

This has been interpreted variously as a possible threat to withhold EU development assistance to ACP countries against EPAs, or a restatement of the EU’s conviction that only the EPAs can deliver development to the ACP group of countries, or the blending of both. There have also been statements by EU officials in complaint of what they decry as “the sluggish pace” of negotiations in 2008. Veiled threats have also been issued about the imposition of GSP duties on states that do not complete full EPAs by the end of this year — so much for the much heralded “partnership of equals”.

Significantly, if the former interpretation of this blunt statement holds true, it would contradict previous EU declarations to the effect that there is no linkage, intended or otherwise, between development assistance and the EPAs. The DG Development was

very clear and precise that there are no links between the provision of financing and the EPAs:

“As I have said, the EU has never made the granting of trade aid conditional on signing up to an EPA. At the EU-Africa Summit in Lisbon in December 2007, the Commissioner signed ‘country strategy papers’ with 31 African countries, which allocate 8 billion Euros from the 10th EDF over the period 2008-2013. Half the signatory countries to these documents have not signed EPA’s. As for regional aid, it will certainly enforce ACP regional integration, but its programming guidelines do not require the signing of an EPA”. (Louis Michel 2007)

Do the Interim EPAs however, create opportunities? In going forward the hope is that continued negotiations would create at least an opportunity for reflection and other options to be pursued. Regrettably, having been the “first” to initial a full EPA, this option might very well have been foreclosed for CARIFORUM. It is my view though that what is required first and foremost is combined ACP political pressure to attain a framework arrangement in which one element is an EU commitment to give to every Party to an EPA (Interim or Full) any provision it desires to import that the EU might agree to in other EPAs.

Roadmap

Based on such a commitment, I would advance the following three markers (signposts) as a roadmap for going forward: First, a political agreement at the all-ACP-EU level to the effect that at the completion of the process all Parties to all EPAs may have imported to their specific EPA any provision agreed to by the EU, in any other EPA. This can be expressed in a time-constrained manner. Three important considerations however flow from this first marker (signpost). One is that this is not intended to predetermine that all EPAs should be uniform and identical, unless the Parties to the various Agreements freely require this outcome. It would however accommodate for asymmetric negotiating capacities across the regions. Another is that pursuit of this political accommodation at the all-ACP level could very well re-invigorate the ACP as a tri-continental political-economic grouping of poor developing economies, most of which are small. Finally, pursuing this goal offers the EU a splendid opportunity to show “goodwill” and commitment to the much heralded development dimension of the EPAs.

The second marker (signpost) is that the agenda and time frame for continued negotiation should be more explicitly “goal-driven” than time-driven now that the WTO-wavier deadline has been accommodated. Such an understanding would place a high premium on all Parties to ensure transparency, effective participation and real ownership of the process. It would also reinforce commitments to compensate and redress asymmetric negotiating capacity across the ACP.

The third marker (signpost) is that every opportunity should be taken to creatively explore non-EPA alternatives to the development and trade goals of the ACP countries within a broader multilateral framework consistent with the WTO as it stands rather than the constrained bilateral constructs implicit to the present EPAs.

V.2: The Plan A+ Proposal

This Paper established early on that the EPA rests on several contentious planks as a result of its being based on: 1) lack of empirical evidence supporting several theoretical propositions implicit to its construction 2) the utilization of several evaluations, assessments and interpretations, which are in strong dispute, lacking consensus among analysts and scholars and 3) major design and architectural flaws including those embedded in its negotiating modalities. The Paper also offered insights into the nature of the political economy of this species of North-South trade and economic arrangements. Beyond the *Roadmap* sketched in the previous Section, several important economic, legal and technical considerations are key to charting a way forward.

The first of these is that an important recent study (Bouët *et al*, 2007) has established for the EPAs that when subjected to the customary multi-sector, multi-region/country (computable general equilibrium model) assessment of trade policy effects, it is revealed that with full implementation (2035) the EPAs yield an increase of EU exports to the ACP countries of 29.4 billion Euros but a decline of 6.5 billion Euros for the Rest-of-the-World’s exports to the ACP. These are huge trade-diversion effects and if only partially true, will produce substantial distortions and welfare losses to the ACP as a result of the

subsidies and economic rents implicit to the ACP granting bilateral preferences to the EU. This clearly would be unacceptable to the ACP and the Rest-of-the-World

A second technical consideration is that apart from this high collateral damage to non-EU suppliers, the data also imply significant welfare losses to individuals and firms consuming EU supplies under the EPAs. Facing restricted competition (because of tariff and non-tariff barriers on non-EU suppliers), EU firms can, in theory, subsidize inefficiency in their sales to CARIFORUM markets, capture economic rents, or do a mixture of both.

A third technical consideration is that, under the WTO rules, tariff offers are based on *bound* rates. Under the EPA they are based on *applied* rates. The former gives developing countries greater flexibility as there is “tariff water” between the bound and applied rates. Reduction in tariff water and with it reduced uncertainty is treated as a liberalisation measure under the WTO rules. Some EPA bound rates are high. In the Caribbean these average around 90-110 percent and 60-80 percent, respectively for agriculture and NAMA products. Applied rates average 15-25 and 6-11 percent, respectively.

Fourthly, despite urgings in and out of the negotiating arenas, the EU has yet to provide economic calculations of the value of the relative margin of the preferences as between its offers at the WTO and those at the EPAs. The fear is that despite platitudinous statements about the development dimension of the EPAs, the margin of economic value of the two may be close to parity.

A fifth technical consideration addresses legal issues. Throughout the negotiations there was no concerted attempt to think through and formulate a WTO compatible arrangement, other than the EPA. Two “think-tanks”, the Groupe d’Economie Mondiale (GEM) based in Paris and the International Food Policy Research Institute (IFPRI) concerned about the substantial trade diversion effects of the six ACP-EU, EPAs have formulated options within the WTO legal framework to secure multilateral liberalisation

in order to modify the massive trade diversion effects to the EU, reduce welfare losses to the ACP countries, while providing the efficiency benefits of liberalisation for the ACP. (See Bouët *et al* 2007 and Messerlin *et al* 2007). This is the basis of their *Plan A+*, proposal, in contrast to the EU's position of no "*Plan B*".

Basically this alternative has two points of departure. One is that for the market access offers of the EPAs, WTO-compatibility rests on Article XXIV of the GATT, which requires substantial coverage of all trade and for services under the GATS a similar requirement, as measured by such factors as the number of sectors, the proportion that would be liberalized, and so forth. The other is that the Enabling Clause (November 28, 1979) authorizes, however, granting preferences to developing countries and LDCs (which is the basis of the EBA and GSP preferential arrangements). Developed countries can however, grant preferences beyond the GSP to countries "similarly-situated". This is indeed the basis for both the Africa Growth Opportunity Act and the Caribbean Basin Initiative being acceptable as WTO-compatible.

Based on the Appellate Body Report on the EC-India Panel on EC Preferential Tariffs, April 7, 2004 para-173, it is pointed out that WTO Members can go beyond GSP offers of preferential market access to developing countries based on their being "similarly-situated" (Bouët *et al*, 2007). It is therefore suggested that small vulnerable economies could qualify as being "similarly-situated". Given their standing in SIDS, the United Nations, and the WTO, there seems to be a strong *a priori* case, as this category of countries share similar developmental, financial, and trade needs, which is what the Panel ruling indicates.

It is therefore, proposed that those ACP regions still negotiating EPAs, should make their access offers multilateral, that is, to all WTO Members in exchange for granting reduced preferential market access offers to the EU in their EPAs. Given the estimated magnitude of trade diversion, such an offer is shown in the studies cited to be significant to non-EU suppliers. By multilateralizing their offer ACP countries would find that the scope for EU capture of economic rents and/or to pass on inefficiencies to their consumers is reduced.

Such an approach has been termed “rebalancing” market access offers to EU and non-EU suppliers. (Messerlin *et al* 2007) It would of course be a test of the EU’s commitment to 1) multilateralism and 2) supporting the development objectives of the ACP countries through broad-based liberalisation.

A concrete example has been worked out in the study referred to, based on tariff rates and market access offers of NAMA, at the level recognized by the WTO Chair (Messerlin 2007). The results indicate that a substantial reduction of bound tariffs combined with modest reductions on applied tariffs, using the Swiss measure, would produce generous offerings at the WTO, which may thus qualify the proposal for multilateral negotiations.

It goes without saying that such approaches would rely heavily on all-ACP solidarity and are also based on securing the political commitment to let provisions in any EPA be imported by others if they so desire. The working out of steps along this and similar lines should be a top priority for the 2008 negotiating period. It must however, be buttressed by all-ACP political pressure on the EU. For CARIFORUM (CARICOM) what is required in going forward is caution and not a rush to action on the basis of the EPA being acted upon as a done deal. It is not.

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