

Caribbean Integration and Global Europe

Implications of the EPA for the CSME

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ABSTRACT

This paper critically assesses the compatibility of the CARIFORUM-EC EPA with the proposed CARICOM Single Market and Economy—CSME. Cross-cutting compatibility issues include development strategy and the role of regional integration, policy space and governance; and sectoral compatibility issues relate to trade in goods, services and trade-related issues. The main conclusion is that the CSME, a project for the creation/strengthening of the regional economy for engagement with globalisation; will be superseded by the EPA, which involves a high degree of bilateral integration of individual Cariforum countries with Europe in trade, investment and regulatory policies. The paper ends with pointers on how the EPA could be modified to resolve this dilemma and to increase its effectiveness as an instrument of development and regional integration.

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CARIBBEAN INTEGRATION AND ‘GLOBAL EUROPE’ IMPLICATIONS OF THE EPA FOR THE CSME

Norman Girvan¹

I. Introduction

Since 1989 the countries of the Caribbean Community (Caricom) have been constructing the Caricom Single Market and Economy (CSME)²; an economic integration scheme that responds to globalisation by means of Open Regionalism. The urgency of economic diversification has been underlined by the erosion of preferences for Caricom’s traditional exports in the European market as a result of challenges mounted under WTO rules. The replacement of the EU’s non-reciprocal trade preferences for the African Caribbean and Pacific (ACP) group of countries under the Lome agreement (1975), and temporarily extended under the Cotonou Agreement (2000), is to be effected under Economic Partnership Agreements (EPAs) with ACP countries. EPA negotiations were concluded with the ‘Cariforum group’³ in December 2007.

EPAs are negotiated under a mandate from the Cotonou Partnership Agreement to conclude ‘WTO compatible’ trade agreements that promote sustainable development, poverty reduction, regional integration within ACP groups, and the gradual integration of ACP countries into the world economy⁴. However, the content of the Cariforum-EU EPA is in accordance with the objectives of the EU’s ‘Global Europe’ project⁵; which seeks to use bilateral trade agreements to prize open developing country markets to European firms and secure binding WTO-plus commitments in the EU’s bilateral trade agreements. This chapter argues that the EPA’s emphasis on reciprocal trade and investment liberalization, and its binding of neo-liberal policy regimes, render problematic the

completion of the Caricom Single Market and Economy and call into question the feasibility of the Caricom integration project.

Section II of this paper is an account of the history and current status of Caricom economic integration. In Section III we discuss the origins and content of the Cariforum-EU EPA. In Sections IV and V we analyse major compatibility issues between the EPA and the CSME. Section VI summarises the main conclusions of the analysis and suggests the kinds of changes to the EPA that would address issues in the relationship between the EPA and Caricom's integration project.

II. Caricom and the CSME

Caricom originated with attempts at economic cooperation among the former British colonial territories in the Caribbean, following the failure of the West Indies Federation (1958-1962). With the territories now proceeding to independence as separate nation-states, economic integration was proposed as way of overcoming the constraints of small size. The Caribbean Free Trade Association was launched in 1965-1967 and in 1973 the decision was taken to establish the Caribbean Community and Common Market by means of the Treaty of Chaguaramas. The Treaty provided for a Customs Union with free movement of goods and services, complemented by foreign policy coordination and functional cooperation in the economic, social, and cultural fields. After an initial period of expansion of intra-regional trade, Caricom economic integration lost steam. Oil price shocks, adjustment crises and ideological differences impacted negatively on intra-regional trade and made impossible the forging of a regional policy consensus...

Interest in regional economic integration project was rekindled from the mid-1980s. Globalisation and the emergence of the European and North American economic blocs provided the impetus for a new drive to pool markets and bargaining power in order to facilitate a new insertion into the global economy. Most Caricom countries now subscribed to a neo-liberal policy framework and hence were prepared to embrace a scheme of Open Regionalism. In this context the strengthening of Europe's own

integration process through the European Single Market and European Union provided both a rationale and a model for a renewal of the Caricom integration project. The scheme to establish a Caricom Single Market and Economy was first mooted by Caricom leaders in 1989, when a target date of 1993 was fixed. This target proved unattainable because of the huge legal and administrative tasks involved. The governments then decided to provide a comprehensive legal framework for the CSME by effecting a complete revision of the founding treaty of the Community. This was affected through the negotiation of nine Protocols of Amendment, each to be legally applied as it was completed. This task occupied the rest of the 1990s. Simultaneously a Common External Tariff was adopted, with phased reductions over the course of the 1990s. The Protocols of Amendment were ultimately incorporated into the Revised Treaty of Chaguaramas⁶ (hereinafter ‘RTC’), which was given Provisional Application in 2002, and brought into force in 2006.

The Preamble to the RTC indicates that the CSME is a response to ‘globalisation and liberalisation’, which require ‘the attainment of international competitiveness’, and that this is to be achieved by means of ‘market-led’ production facilitated by the ‘unrestricted movement of capital, labour and technology’ and ‘a fully integrated and liberalised internal market’. Its architecture consists of an institutional superstructure with the organs of governance and other common institutions; and an infrastructure with a ‘Single Market’ component and a ‘Single Economy’ component. However the RTC provides only the enabling legal framework for the CSME. Specific implementation measures are left for determination by Caricom governance organs, followed by actions by the governments of member states within their respective national jurisdictions. Thus, the process of CSME implementation has been marked by missed targets and unevenness of compliance among countries. As of 2007 we estimate that just 55 percent of the measures required for full CSME implementation had actually been completed (Table 2). Most of the institutional infrastructure and much of the Single Market had been completed; but most of the Single Economy components remained to be drafted, negotiated among the governments, and adopted. Key incomplete elements include the single market in services, the Investment and Financial Services agreements, common sectoral policies;

and agreements on government procurement, electronic commerce, and free circulation of goods within the Community and treatment of goods originating in Free Zones⁷.

In 2007 Caricom leaders approved a ‘Single Development Vision’ for the Community with a schedule for completing the CSME by 2015⁸. Still to be addressed is the need for reform of Caricom governance in order to address the ‘Implementation deficit’⁹. Caricom leaders have been deliberating on proposals by which decisions made by the Heads of Government are automatically applied in member states, and one or more ‘Commissioners’ –high-level functionaries similar to the European Commissioners—will be appointed to oversee implementation¹⁰. This requires endowing Caricom governance with a degree of supranationality; but there is still no consensus on this issue among the governments.

Currently intra-Caricom trade is about 14 percent of the total trade of member states; up from 11 percent in 1993 (Table 1). Table 3 provides a summary of the recent growth of intra-regional exports within Caricom and its country distribution. Most of the recent expansion in intra-regional trade has originated with Trinidad and Tobago, which accounts for over 70 percent of intra-regional exports. Consisting mainly of energy-related products and light manufactured goods, it is argued that that this growth is not attributable to the Single Market in goods, in that it has occurred in items with a low degree of protection afforded by the Common External Tariff¹¹. Most Caricom countries do not depend significantly on the regional market, especially when exports of services are taken into account; the export of services (tourism and international financial services) and of primary commodities to extra-regional markets being far more important. The gains from market integration in Caricom are likely to be limited; because of the small size and undiversified structure of the economies. The rationale for economic integration is to create a platform for internationally competitive exports to global markets; and to pursue functional cooperation to exploit institutional and resource synergies among the countries¹².

III. Lome, Cotonou, and the EPA negotiations

The Lome Convention between the European Community and a group of African, Caribbean and Pacific states (ACP), former colonies of the European powers, ran from 1976 to 2000. The agreement provided non-reciprocal and preferential market access for the majority of ACP exports to Europe; stable and equitable prices for ACP primary commodities; assured flows of development assistance; and an investment financing facility. With the establishment of the WTO, Lome's preferential regime for bananas came under a series of successful legal challenges, culminating in a 1999 ruling by a WTO Disputes Settlement panel that the preferential trade agreements of the Convention violated WTO rules. By this time the EU had already decided to replace Lome with new trading arrangements with the ACP based on the principle of reciprocity. EU-ACP negotiations resulted in the Cotonou Partnership Agreement (CPA) of 2000.

The CPA mandated that 'Economic Partnership Agreements' (EPAs) would be concluded between Europe and the ACP regions by the end of 2007, allowing for a transition period of preparations for, and negotiation of, the new trading regime. A waiver was secured at the WTO 3rd Ministerial conference in 2001 to allow the existing non-reciprocal trade arrangements to remain in place during that time. Under the CPA mandate, EPAs were to be WTO-compatible; were meant to promote sustainable development, poverty reduction and regional integration; and would provide for the gradual integration of the ACP into the world economy. However, a number of factors signalled a pronounced shift in bargaining power in the EU-ACP relationship, which meant that the EPAs would be cast within the framework of Europe's global strategic trade objectives; rather than that of addressing the 'development deficit' resulting from centuries of colonial exploitation that had informed the Lome Convention.

To begin with, the end of the Cold War and the enlargement of the EU to include less-developed countries of the European 'periphery' reduced the leverage of the ACP group with Europe EU on the one hand; and diminished the weight of the former colonial

powers in determining European perspectives and priorities on the other hand. Second, ACP bargaining power suffered a further reversal when the EU insisted on splitting the ACP into six regional groups for EPA negotiations.

Third, the new ideological climate accompanying neo-liberal globalisation enabled European officials to invoke the mantra of trade and investment liberalisation as a panacea for development in providing the rationale for the design of EPAs. Hence, in interpreting the mandate for EPAs provided by the Cotonou Agreement, the European Commission repeatedly referred to the ‘progressive (removal) of barriers to trade’ between the ACP and the EU and ‘enhancing cooperation in all areas relevant to trade’; and further to assert that

‘EPAs (are) above all an **instrument for development**... by establishing a stable, predictable and transparent framework for economic and trade relations between the ACP countries and the EU, EPAs are intended to mobilise economic operators at local, national, regional and international levels and to promote local economic activity and attract regional and international investments. By removing border measures to trade between the parties as well as other factors causing market segmentation, they will enlarge the markets of ACP countries, which will allow for economies of scale, will improve the level of specialisation, will increase competitiveness of the ACP States and will help attract investment. This, in turn, will lead to an increase in trade flows in the region, with the Community and with the rest of the world, thereby promoting the sustainable economic and social development of the ACP countries.’^{13,}

Fourth, in setting the parameters of the negotiations, European Commission (EC) officials¹⁴ were able to use the doctrine of ‘WTO compatibility’ as the basis for their negotiating demands and to use their advantages over the ACP in legal and technical resources to exploit ambiguities in existing WTO rules. Specifically, the EC decided that EPAs would be negotiated within the terms of the GATT Article XXIV relating to Regional Trade Agreements; which requires that ‘substantially all trade’ between the Parties be liberalised within a ‘reasonable time’. EC negotiators interpreted this to mean at least 90 percent of all EC-ACP trade should be liberalised within 10 years and sought to have these established as benchmarks for the EPA negotiations. However it has been

argued that Article XXIV was established to facilitate integration among countries of roughly equal levels of development, rather than North-South agreements; and that there is no written WTO rule or precedent to support the requirement of 90 percent liberalisation¹⁵. Nonetheless in the EPA negotiations the EC interpretations prevailed.

Fifth, and in addition to this, the principle of ‘WTO-compatibility’ was stretched considerably by the EC insistence that the scope of EPAs should go *beyond* the scope of current WTO agreements in incorporating Investment, Competition and Government Procurement, the so-called ‘Singapore Issues’ that were rejected for inclusion in the Doha Round at the 4th WTO Ministerial Conference in Cancun 2003. After the failure in Cancun, the EC resorted to bilateral trade agreements as a means of securing commitments in these areas; as shown by its negotiating framework for Phase 2 of the EPA negotiations, which commenced in 2004. The policy was formalised in the adoption of the ‘Global Europe’ strategy in 2006¹⁶; which calls for the EU to “pursue bilateral trade agreements with major emerging economies to secure new and profitable markets for EU companies’ exports and investments and access to energy and others resources’¹⁷. BTAs would aim to include (a) rules securing European investments, (b) stronger Intellectual Property rights coverage and enforcement provisions, including Geographical Indications, (c) reduction of non-tariff barriers to EU exports and investments, such as application of anti-dumping mechanisms, national treatment, and competition policy and (d) opening up of public procurement markets. As well (e) the European Services Forum, a coalition of EU service firms, lobbied strongly and successfully for the inclusion of services in BTAs. EC officials therefore defined delivery of the ‘development dimension’ mandated by the Cotonou Agreement in terms of incorporation of the Global Europe agenda into EPAs¹⁸. In effect Global Europe became the template for the EPA negotiations.

The sixth and seventh factors relate to developments orchestrated by the EC over the course of the negotiations that further increased its negotiating leverage. In 2001 the EC announced its ‘Everything But Arms’ initiative, which grants duty free quota free market access for all Least Developed Countries’ (LDC) exports to Europe with the exception of

armaments. The effect of this was to exert pressure on non-LDC ACP countries to conclude EPAs, so as not to be disadvantaged vis-à-vis LDCs. The pressure was substantially increased when it became apparent that the EC had manoeuvred the situation so that these countries would face considerably higher tariffs on their exports to Europe from January 1, 2008 if they failed to conclude EPAs before the official deadline. Article 37.6 of the Cotonou Agreement was an undertaking that

‘In 2004, the Community will assess the situation of the non-LDC which, after consultations with the Community decide that they are not in a position to enter into economic partnership agreements and will examine all alternative possibilities, in order to provide these countries with a new framework for trade which is equivalent to their existing situation and in conformity with WTO rules’/

In 2005, the EC determined that the only alternative to EPAs for non-LDCs would be to access the European market under the Generalised System of Preferences (GSP) scheme or Most Favoured Nation (MFN) provisions. This interpretation of Article 37.6 has been contested¹⁹, but the EC decision stood. The higher tariffs payable under GSP/MFN would result in major trade disruption for ACP non-LDCs, a group that includes 14 of the 15 Cariforum countries. Although only 12 percent of Caricom’s exports are destined for the EU market, the vulnerable products include bananas, sugar, rice and light manufactures; industries which are significant employers of labour and well-organised politically (Tables 4-6). This threat of trade disruption proved to be a potent weapon in the hands of European negotiators in the final stages of the EPA negotiations.

At the end of 2007 35 ACP countries, most of them non-LDCs, had initialled EPAs with the EC. 18 African and two Pacific countries agreed to ‘Interim’ EPAs covering trade in goods only, with negotiations to continue through 2008 to arrive at ‘full’ EPAs. Cariforum was the only ACP group to initial a ‘full’ EPA incorporating Goods, Services and other WTO-plus disciplines²⁰; including several subjects in which the CSME is still incomplete. Cariforum did pursue the option of initialling only an ‘Interim’ EPA, in order to protect its access to the EU market after December 2007; as other ACP countries did²¹ Negotiators²² argued that, by being the first region to conclude a ‘full’ agreement, the

Caribbean would be strategically positioned to access financial assistance from the EU's 'Aid for Trade' envelope. The Cariforum EPA calls for 83 percent of merchandise imports from the EU are to be fully liberalised within 15 years and 87 percent within 25 years (Table 7). 75 percent of Services in Caricom's MDCS are to be immediately liberalised as to Investment and Commercial Presence and 65 percent for Caricom LDCs²³. National Treatment is assured; and policies are bound in a number of 'Trade Related' subjects including Investment and Current Account Transactions, Competition, Intellectual Property, and Public Procurement²⁴.

The content of the Cariforum EPA has been strongly criticised by at least one Head of Government and by academics, civil society organisations, trade unions and some Opposition political Parties; many of whom have called for it to be renegotiated²⁵. The criticisms centre on the lack absence of public education and dialogue; on the absence of a 'development dimension'; on the 'WTO-plus' scope; on the Most Favoured Nation Clause and other features; and on its potential to further fragmentation in Caricom. Nonetheless, the signing of the EPA by the EC and Cariforum ministers is scheduled for September 2008.

How compatible is the EPA with the CSME? That is the question we address in the remainder of this chapter. We consider compatibility first in relation to cross-cutting issues, including the role of regional integration and policy space; and then to sector-specific and subject-specific issues arising.

IV Cross-cutting issues

Development strategy and regional integration

The CSME embodies a strategy in which Caricom regional integration is a springboard for engagement with globalisation. The consolidation of a single economic space in the Community will facilitate cross-border production integration, economies of scale in

production and synergies from factor combination; which will lead to internationally competitive production and growth of regional enterprises. The EPA forecloses this route by superimposing a scheme of regional integration that is both deeper and wider than the CSME as presently configured, simultaneously assimilating that scheme into an EU-centred economic zone.

The de facto pre-empting of CSME regimes in uncompleted subject areas by the EPA has been justified as a means of ‘fast-tracking’ completion of the Single Economy. However, this assumes that “what’s good for the EPA is good for the CSME”. This is debatable, as the two schemes are driven by a different logic and have a different geographic scope. Hence, disciplines designed to ensure market access for EU firms under conditions of ‘national treatment’²⁶ normally prohibit discriminatory practices aimed at developing local production and at fostering the growth of local and regional enterprises. Furthermore, Special and Differential Treatment for Caricom’s Less Developed Countries is fundamental to the architecture of the CSME, but not to the EPA²⁷.

‘Regional integration’ is an EPA objective; but it has a completely different meaning in than in the CSME. First, the EPA defines the Dominican Republic as part of the ‘region’: this country has an economy that is larger than that of any single Caricom country and the equivalent of all 64 percent of the combined size of all 14 Caricom economies²⁸. The existing Caricom--Dominican Republic free trade agreement covers only goods, has not yet been extended to services, and does not contemplate extension to trade-related issues. The EPA’s Regional Preference clause obliges Cariforum states to extend to each other the same treatment they extend to the EU²⁹. CSME countries will, therefore, liberalise goods, services and investment with regard to non-CSME Caricom countries and to the Dominican Republic at the same rate as to the EU.

More important, it is questionable whether the EPA involves a scheme of ‘regional integration’ at all. Cariforum countries will not have a Customs Union or a Common External Tariff, or common policies and regulatory barriers that set them apart as a distinct economic space from Europe. Rather, barriers will be pulled down with Europe at

the same rate as with one another, and harmonised policies will be adopted; all supervised jointly with Europe. Hence, it is more properly deemed a scheme of ‘integration of a region with Europe’; where the two regions concerned are characterised by huge asymmetries in size, levels of development and economic power. Thus, the EPA compresses the objectives of ‘regional integration’ and of ‘integration with the world economy’ in sequencing and in substance; with the EU serving as the proxy for the ‘world economy’.

Policy space

The CSME mandates policies for sectoral development embracing industry, micro and small enterprises, services, sustainable tourism, agriculture, forestry and fisheries³⁰. Common Supportive Measures include human resources development, research and development, environmental protection, protection of Intellectual Property Rights, and a Community Investment Policy. The goal of the Community Industrial Policy is ‘market-led, internationally competitive and sustainable production’, with specific objectives of promoting cross-border employment of natural and human resources, linkages among economic sectors and enterprise, promotion of regional economic enterprises, establishment of a viable micro and small enterprises sector and sustained public-private sector collaboration (Article 51).

There is no reference to the development of CSME-related policies in the EPA. Market access commitments in Investment and Services³¹; commit governments to broad sectoral liberalisation, the establishment of sectoral regulatory frameworks with National Treatment and other similar provisions³², and allowing free movement of capital and current transactions. These constitute the EPA’s *de facto* investment and sectoral policies. Since the development of regional enterprises and of cross-border and cross-sectoral linkages within the CSME (or even intra-Cariforum) is not a specific objective of the EPA, the agreement does not provide waivers, exceptions or derogations to allow these to be encouraged. National treatment³³ expressly forbids policies favouring the development of locally-owned enterprises, including regional enterprises. Although there are several

references to support for small and medium-sized enterprises; these are stated in non-specific, non-binding terms³⁴. Hence the scope for development of CSME sectoral policies has been severely circumscribed by the EPA, and may even have been transcended.

Juridical structure

Article 228 of the RTC gives the Caribbean Community full juridical personality and the right to conclude agreements with States and International Organisations. However, Caricom as a juridical entity is not a Party to the EPA; while Cariforum is not a juridical entity. Although the EPA states that for the purposes of the Agreement the Cariforum states ‘agree to act collectively’, the substantial rights and obligations are between the ‘EC Party’ and ‘the Signatory Cariforum states’ (Article 233)³⁵. Thus, the market access commitments in goods, services and investment, and the regulatory obligations; are expressed as the obligations of individual states in the text and there are separate access schedules for each country in the Annexes. Each Cariforum state is therefore placed in a direct bilateral relationship with the EC in respect of the key operative provisions of the treaty. Besides weakening the bargaining power of individual states; this feature of the EPA is at variance with the integrity of the Caribbean Community as a body collectively responsible, in behalf of its members, for implementation of trade and integration matters and for interfacing with external trade partners. It provides an incentive for individual countries to compete with one another in accessing rights and benefits from the EC. Because of ‘Regional Preference’, it could give rise to a situation where one Cariforum country brings a complaint against another for violating a provision of the Agreement and seeks the support of EC officials in the event of a dispute. The juridical structure of the EPA therefore undermines Caricom’s own regional integration scheme and has the potential of promoting regional fragmentation.

Dispute Settlement

The RTC³⁶ establishes a number of modes of Dispute Settlement for the CSME, including the use of Good Offices, Mediation, Consultations, Conciliation, Arbitration and Adjudication. Parties are encouraged to utilise arbitration and other alternative modes before resorting to adjudication. They are obliged, first, to engage in exchange views, they may agree to Good Offices and/or Mediation; Consultations are obligatory where one Member State requests it. Conciliation is by mutual agreement with non-binding conclusions; Arbitration is by mutual agreement with decisions that are final and binding. Adjudication, the last resort, is by the Caribbean Court of Justice which has ‘compulsory and exclusive jurisdiction’ to hear and determine disputes, and to deliver advisory opinions, on the interpretation and application of the Treaty. Parties are required to comply ‘promptly’ with the judgments of the Court. But notably absent is enforcement machinery for Arbitration and Adjudication; and no time-frame is given for compliance. In tone and content, the RTC provisions envisage the amicable resolution of disputes and voluntary compliance with decisions of Dispute Settlement bodies...

In contrast, the EPA sets out mechanisms that are time-bound, follow an established sequence, and are buttressed by strong enforcement machinery³⁷. Consultation is obligatory in the first instance but if this does not produce a satisfactory result a Complaining Party may proceed directly to arbitration. Time-lines are laid down for every step of the arbitration process and for compliance with arbitration rulings. In the event of non-compliance, the Party Complained Against is obliged to offer compensation. Failing agreement on this, the Complaining Party is entitled ‘to adopt appropriate measures’ at its own discretion, except for some caveats of a general nature; and these measures may continue as long as there is non-compliance or until the dispute is settled. Trade sanctions may be employed except for disputes over the Environment and Social Aspects³⁸. All parts of the EPA are covered by these provisions, subject to certain caveats on relation with the WTO agreement.

The possibility must be considered of an overlapping of jurisdiction in Dispute Settlement. The EPA explicitly addresses the issue of overlap with the WTO machinery (Article 222), but it is silent on this issue as it relates to the RTC. Under EPAs Regional Preference Cariforum states must extend to each other the same treatment that they extend to the EU. Hence EPA commitments in respect of market access in goods, services and investment; and trade related issues; are to be simultaneously applied among all CSME participating states. CSME obligations, either established or contemplated, embrace all the above subject areas. Could a CSME-related dispute between two Caricom states be brought before the EPA Disputes Settlement machinery? Could an EPA implementation obligation conflict with a CSME implementation obligation, or vice versa; in either case, which machinery will apply? Is this consistent with the CCJ's 'exclusive jurisdiction' over disputes arising out of the RTC? These questions point to areas of ambiguity in the consistency of the EPA with the CSME and the possible undermining of the juridical integrity of the CSME arrangement.

Governance

Caricom Governance is depicted in Figure 1. At the apex is the Conference of Heads of Government ('the Conference') and immediately beneath is the Community Council of Ministers ('the Community Council'). Four Ministerial Councils are responsible for the main areas of the CSME and functional cooperation; with three specialised committees beneath them; all serviced by the Caricom Secretariat. A notable feature is the absence of supranationality. Decisions of the Conference are 'binding'; but decisions of all Caricom organs 'shall be subject to the relevant constitutional procedures of the Member States before creating legally binding rights and obligations for nationals of such States'³⁹. Thus, Caricom defines itself as a 'Community of Sovereign States'. Caricom leaders have not reached consensus on a reform of governance that would provide for automatic, legally binding effect of decisions of the Conference within member states and for the appointment of Commissioners to facilitate implementation of decisions.

The EPA establishes a structure of governance (Figure 2) with legally binding powers and detailed monitoring and enforcement machinery. At the apex is the Joint Cariforum-EC Council, a ministerial body with the power to take binding decisions on all matters related to the Agreement which decisions are obliged to take all measures necessary to implement them (Article 228)'. No limit is placed on the number of European representatives on the Joint Council, but in matters in which Signatory Cariforum States agree to act collectively, they are limited to one representative⁴⁰.

Directly beneath the Joint Council, is the Trade and Development Committee, a body composed of senior officials with responsibility to 'supervise and be responsible for the implementation and application' and 'oversee the further elaboration of the provisions of the Agreement and evaluate the results obtained'. The Committee may have powers delegated to it from the Joint Council. It has wide-ranging responsibilities in all aspects of the EPA, with fifty-four separate references in the text. In effect, it disposes of quasi-legal powers over permissible actions, interpretations and derogations by the Parties that arise in the course of implementation.⁴¹ Decisions of the Joint Council and Trade and Development Committee are by consensus, but the context will be one of asymmetrical power, heightened by the structure of the Agreement as a set of bilateral obligations between the Signatory Cariforum states and the European Commission. Also important is the Special Committee on Trade Facilitation and Customs Administration, which has specified responsibilities in the corresponding chapter of the EPA. The Consultative Committee and the Joint Parliamentary Committee have consultative and deliberative functions, with the ability only to make recommendations to the Joint Council that have no binding effect. Hence, they produce the appearance of participative and democratic governance of the EPA without the substance.

It appears that EPA governance will have a degree of effective supranational authority that is absent from Caricom governance. This is due to the wide scope of the subject areas covered by the agreement; of the binding nature of decisions; the imbalance of bargaining power; and strict enforcement machinery supported by economic sanctions.

Implementation

An estimated 359 actions remain to be undertaken by the Caricom Secretariat and Caricom member states to complete the CSME (Table). This is an under-estimate, as several of these have multiple elements; and the Protocol required by Article 239, which itself contains multiple elements, is not taken into account. The Caricom Secretariat (CCS) has been relying on donor funding, including EC funding, to assist in CSME implementation. For EPA implementation, the CCS estimates that 336 actions will be required: 90 legislative actions, 72 institutional, 110 policy actions and 64 other actions⁴². The preliminary estimate of the cost is Euro. 404 million. Eu.33 million has been earmarked for EPA implementation from the Regional Indicative Programme under the 10th EDF. EC development cooperation will prioritise EPA implementation⁴³. The resources committed for EPA implementation are inadequate even for this task, let alone CSME implementation tasks.

Hence, CSME implementation is likely to be a casualty of EPA implementation. CSME implementation measures are not legally binding, whereas EPA implementation obligations are; and the Caricom Secretariat and member states do not have the institutional capacity and financial resources to implement both.

V Sectoral issues

Trade in Goods

Caricom's 'Common External Tariff' (CET) is being implemented by means of a Harmonised System of tariff classification adopted by member states at the same time as they undertake phased reductions in tariff rates. The unweighted average tariff on industrial imports now stands at approximately 10 percent with up to 40 percent for agricultural imports. The CET "is not really *common* as it offers broad scope for tariff

suspensions and reductions, as well as for national derogations from the common tariff” (IDB 2005: 19). EPA liberalisation of EU imports will be superimposed on this somewhat complex. There are separate, country-by-country tariff reduction schedules at the eight digits level; grouped into five-year baskets, as summarised in Table 7. As each country proceeds to its target at a different rate, it appears that there will be no uniform tariff applied on EU imports applied by all Cariforum countries until the goal of a zero tariff on any given item is attained.

Regional Preference takes effect on signature of the EPA in respect of each country’s imports from the EU that are already zero-rated. For other imports it takes effect one year after signature of the agreement for transactions between Caricom MDCs and the Dominican Republic and two years after signature for Caricom LDCs. However Caricom LDCs are entitled to tariff derogations within the CSME as a result of provisions in the RTC designed to give effect to the principle of ‘Special and Differential Treatment’⁴⁴. This principle is also recognised in the architecture of the Caricom-DR FTA. The derogations for the LDCs are not recognised by the EPA. However, under Article 17 the Trade and Development Committee may vary tariff commitments for the LDCs, Haiti and Guyana, which requires agreement by the EU and the Dominican Republic. Hence, it is not clear that the special status accorded the Caricom LDCs in the RTC will survive within the EPA.

Investment, Services, and Movement of Labour

Liberalisation of investment, services, and labour are the subject of Chapter Three of the RTC. The aim is to facilitate cross-border investment, especially among small and medium enterprises; and the movement of skills within the Community. New restrictions are prohibited on the movement of services⁴⁵, the Right of Establishment, and Investment and Current Transactions; and a programme for the removal of current restrictions is mandated⁴⁶. The programme for the removal of existing restrictions in Services was implemented over 2002-2006⁴⁷ but it cannot be determined whether that all restrictions have in fact been removed in all Member states. Free movement of self-employed

service providers is awaiting finalisation of a Community-wide accreditation system; although five member states have put in place ‘simplified procedures’ for the temporary movement of natural persons. Member states have been issuing Caricom Certificates of Skills Recognition for five categories of skills⁴⁸ that were liberalised. The Caricom Single Market in Services is therefore incomplete in respect of giving operational effect to Movement of Natural Persons in Services (Mode 4).

The EPA treats Trade in Services in conjunction with Investment and Electronic Commerce. The Services sections cover Cross-Border supply, Commercial Presence and Movement of Natural Persons, (i.e. Modes 2, 3 and 4). Under Modes 2 and 3, the EC and the each Cariforum state, separately, make sectoral commitments on access which are listed in an Annex⁴⁹. A small number of sectors are excluded from possible coverage. Cariforum’s commitments have been said to ‘exceed the controversial benchmarks proposed by the EC in the GATS 2000 negotiations’⁵⁰. Negotiations are to commence within five years for further liberalisation of Services. The sectoral commitments under Mode 3 are for both investment and services in the liberalised sectors⁵¹. These appear to take effect immediately. National Treatment (68) and Most Favoured Nation Treatment (70) effectively abolish the distinction between Caricom-owned firms and those from the EU and the Dominican Republic.

The European Commission does not have the legal competence to negotiate binding commitments on Movement of Natural Persons, EU member states jealously guard the right to administer immigration and residency requirements and to issue visas and work permits. For the Cariforum EPA, the EC secured permission from 25 of the 27 EU Member states to make Mode 4 commitments in respect of ‘Contractual Service Suppliers’ (29 sectors) and ‘Independent Professionals’ (11 sectors). These commitments are highly conditioned⁵². This contrasts with the liberal provisions for employees of investors and commercial presences. ‘Key personnel’ for these firms are permitted with no precise stipulations on professional qualifications, certification and experience. They may stay for up to three years in any one instance. No limit on the numbers is allowed. ‘Graduate trainees’ are also permitted for stays of one year.

There is an evident asymmetry in favour of Europe in ease of access under Mode 4. The Caribbean is mainly interested in supplying professional services, which is highly conditioned and discretionary in access; conditions that do not apply to employees of investing firms, which is the main interest of the EU. This is compounded by the ease with which Europeans travel to the Caribbean; an incentive to tourism. Within Caricom, there are just nine firms that have engaged in cross-border investment on a significant scale. Hence, intra-Caricom movement of managerial and technical employees of investors and commercial presences within Caricom is limited. EU firms will have a huge advantage in terms of size, scope, finance, technology, management and marketing and distribution networks. Furthermore, administrative and regulatory provisions to give effect to free movement of self-employed service providers within Caricom are not yet in place. At the very least, the EPA imposes a competing set of Mode 4 obligations on Caricom states that are more precisely specified than in the RTC and are subject to specified enforcement mechanisms.

Regulatory issues

The RTC itself does not set out a regulatory framework for any of the service sectors in the CSME. For example a Caricom Investment Agreement and Caricom Financial Services Agreement have been prepared; and are due for implementation in the period 2008-2010. The EPA's Title II establishes a general regulatory framework for Investment and Trade in Services; supplemented with specific provisions for seven sectors. This covers all kinds of measures, including laws, regulations and administrative decisions; and all levels of decision-making, including central and local government and non-government agencies with delegated powers (Article 61). In its general provisions and in the seven sectors concerned, Title II effectively pre-empts future CSME Services regimes.

General provisions relate to the negotiation of Mutual Recognition agreements to facilitate the movement of natural persons (85)⁵³; to Transparency (86) and to Procedures

(87). The latter two are spelt out in sufficient detail as to facilitate enforcement. Sectoral regimes are set out for Computer Services, Courier Services; Telecommunications Services, Financial Services, Data Processing, International Maritime Transport Services and Tourism Services. Figuring prominently in these provisions are the prevention of anti-competitive practices; the definition of, and constraints on, universal service obligations; the procedures for the award of individual licenses; and the independence, powers and procedures of regulatory authorities. The provisions for Telecommunications Services, Financial Services and International Maritime Services are notable for their level of detail. In the case of Tourism Services, in which Cariforum states have an interest, the provisions for Development Cooperation and Technical Assistance (Article 117) are expressed in general terms without specific and time-bound commitments.

Caribbean negotiators argue that Title II provisions will serve to facilitate and attract foreign investment⁵⁴. However Kelsey (2008:2) suggests that the main effect of Title II 'is to establish enforceable rights for foreign investors and services firms'. The provisions are consistent with the 'Global Europe' project and the proposals to the EC Trade Directorate of the European Services Forum, a lobby group⁵⁵. Kelsey argues that the Title II rights often even contradict other EPA aspirations, for example: (i) support for local SMEs will be constrained by 'national treatment' provisions; (ii) promotion of joint ventures and local shareholdings through government regulation will be constrained by full market access commitments; (iii) government promotion of downstream processing of natural resources will be constrained by opening of resource industries, and guarantees on repatriation of profits and investment. Governments' right to regulate services is conditioned by the need to meet 'legitimate policy objectives'. What is 'legitimate' is not defined; and this phrase that has been rejected in the GATS negotiations on domestic regulation. Similarly, regulations on Universal Access may not be 'more burdensome than necessary', but this is not defined (Article 91). Such provisions open the door to pressure from EU firms with the support of EC officials to roll back the regulatory boundaries within CF states, in a context of asymmetrical power.

'Trade-related' issues

Trade Related' issues occupy approximately one-third of the main text of the EPA. The six chapters in Title IV cover Competition, Innovation and Intellectual Property, Public Procurement, Environment, Social Aspects, and Protection of Personal Data. Due to opposition from developing countries, the 4th WTO Ministerial Conference had failed to agree on the inclusion of Investment, Competition and Public Procurement in the Doha Round of WTO negotiations. These are the so-called 'Singapore Issues'. The EU and developed countries have also been pressing for extension of the scope of the WTO agreement on Trade Related Intellectual Property Rights (TRIPS); so far without success. The inclusion of these issues in the Cariforum EPA therefore represents a success for the EU in its bilateral negotiations where it had failed to achieve certain objectives in the multilateral framework. Together with Titles II and III, it gives the Agreement a substantial 'WTO plus character'. By the same token, these provisions impinge significantly on regulatory and policy regimes that are contemplated in the CSME.

Competition

The RTC treats Competition Policy in conjunction with Consumer Welfare (Chapter Eight). The objectives are the promotion of competition and economic efficiency, the prohibition of anti-competitive business conduct and the promotion of consumer welfare (169). Member states are required to set up national competition authorities; and there is to a Community Competition Commission (170), which was inaugurated in 2007. Much of the Chapter is concerned with the powers and procedures of the Commission (171-174). Anti-competitive Business Conduct, Determination of Dominant Position and Abuse of Dominant Position are defined in separate Articles (175-179). Part Two of the Chapter sets out principles and policies for Consumer Protection.

The concerns of EPA Competition policy is to ensure that all states have competition laws in force within five years, that provisions are reviewed after six years, that information will be exchanged among Cariforum and European competition agencies,

and that public enterprises are subjected to the rules of competition and non-discrimination in their transactions as between Cariforum states and the EU (EPA Title IV, Chapter 1). The CSME competition regime should, therefore, be the point of departure for EPA provisions that apply to CSME participating countries. But the provisions will constrain the ability of Caricom to fashion a Competition regime that allows scope for public enterprises to use public procurement to foster the development of local firms.

Intellectual Property

The RTC sets out very general provisions for Protection of Intellectual Property Rights (Article 66). The only specific obligation is the establishment of a regional administration for the IPRs except copyright; and this is not time-bound. More detailed provisions are made for Standards and Technical Regulations (Article 67), where a regional standardisation programme and regional standards body are called for. That body, the Caribbean Regional Organisation for Standards and Quality CROSCQ has now been established.

The EPA chapter on Innovation and Intellectual Property sets out detailed provisions for EC-Cariforum cooperation in the development of Cariforum innovation capabilities in Section 1 and for heightened IPR Protection in Section 2. However the cooperation measures in Section 1 are stated in general terms; whereas Section 2 contains specific, obligatory, time-bound measures⁵⁶. Implementation of Section 2 commitments must take place by 1 January 2014⁵⁷. The definition of IPRs is very wide in scope⁵⁸. Obligations to prevent restrictive abusive licensing practices are vaguely stated; but Cariforum states will be required to comply with the WIPO Copyright Treaty (1966) and the WIPO Performances and Phonograms Treaty (1966) and to endeavour to accede to several other international agreements. Provisions on Trademarks contain detailed obligations⁵⁹. Geographical Indications are the subject of the longest and most detailed article in this section⁶⁰. Other forms of IP are the subject of binding protection obligations⁶¹. Enforcement obligations are set out in great detail. Finally, the chapter makes it clear that

EC development cooperation will prioritise implementation of the commitments of Section 2.

The chapter faithfully reflects the objectives of ‘Global Europe’ in IPR protection; which emphasise ‘enforcement of commitments in emerging economies... (and) the protection of geographical indications (GIs) for EU exporting interests’⁶². Hence

‘The European Commission secured major concessions from the Caribbean nations by expanding the protection of geographical indications (GIs) (and) secured Caribbean commitment to the WIPO internet and IP administration treaties, protection of industrial design, trademarks and enhanced the standard for enforcement of IP rights in the Caribbean region... Cariforum states will be required to extend these standards to other WTO members at the end of the transition period, including the extension of the standards of protection under the WIPO internet treaties’⁶³.

The effect of EPA IP provisions will be the establishment by 2014 of a substantially identical set of IPR protection regimes in all Cariforum states (Haiti excepted), with EU support directed towards achieving this end. The standards established by the EPA will become the *de facto* CSME regime; rendering irrelevant any notion of designing a ‘home-grown’ CSME IP regime aimed at fostering local innovation and the transfer of technology. Thus the ‘Regional Integration’ Article (141) of the EPA, which calls for ‘deeper integration’ of IPRs and ‘harmonised levels’ of IPR protection; merely supplements the binding obligations of Section 2; as such harmonisation will be a consequence of EPA compliance.

Other subjects

Article 239 of the RTC is an Undertaking to elaborate a Protocol relating to

- (a) electronic commerce;
- (b) government procurement;
- (c) treatment of goods produced in free zones and similar jurisdictions;
- (d) free circulation of goods in the CSME, and
- (e) rights contingent on establishment, provision of services and movement of capital in the Community.

None of these Protocols has been elaborated so far; technical work having commenced only on Contingent Rights. The EPA includes detailed provisions on public procurement; with less detailed provisions on electronic commerce and on free circulation.

Public Procurement

PP has been a powerful instrument of economic development in the advanced economies. Government purchases have been used to support the growth of agricultural and industrial activities and the development of new technologies (Chang). In the CSME, public procurement could be used to foster cross-border production integration and the growth of regional enterprises. Regional governments need to have the space to employ such policies. The PP chapter of the EPA (IV-3) institutes the framework for a regional regime that circumscribes this space and opens the door to EU firms' participation in the regional PP market.

The chapter has as one of its objectives support for the creation of 'competitive regional procurement markets'. 'Regional' means Cariforum and 'competitive' should be read to mean 'open to EU firms to compete in'. The rules set out in the chapter are impressive in their detail. The coverage applies to government ministries⁶⁴ for all contracts above

stipulated value thresholds⁶⁵. All sectors are covered; with the exception of energy and the postal services for all Parties; but the EC has also excluded drinking water and transport⁶⁶. The required procedures are spelt out in minute detail for Selective Tendering, Limited Tendering, Rules of Origin, Technical Specifications, Qualification of Suppliers, Opening of tenders and award of contracts, Information on contract awards, Time Limits, Bid challenges, and Implementation. The chapter is subject to three yearly reviews and there is provision for Cooperation aimed at strengthening implementation.

CF negotiators have insisted that the aim of this chapter is to ensure transparency in public procurement and that it contains no market access commitment to the EC⁶⁷. This assertion has been contested on several grounds. First, it seems unlikely that the EC would have sought inclusion of a chapter on PP and secured such detailed rules, without the expectation that it would create opportunities for market access either immediately or⁶⁸ in the near future⁶⁹. One of the strategic objectives of the EC's Global Europe project is

Opening public procurement markets. This is an area of significant untapped potential for EU exporters in advanced and emerging economies. EU companies are world leaders in many areas such as transport equipment, public works and utilities. Many of the EU's major trading partners operate discriminatory procurement practices which impede the fair participation of EU suppliers in national procurement markets. As a result, European exporters see themselves effectively shut out from important exporting opportunities. This is probably the biggest trade sector sheltered from multilateral disciplines as it represents between 10% and 25% of GDP of partner countries. It is vital for sectors such as construction or engineering⁷⁰.

The enforceable procedures established in the EPA, supported by EC development cooperation measures, create the framework for EU firms to bid on in the future⁷¹. Third, certain provisions of Article 167 can be interpreted to grant EU firms the right to bid on Covered Procurements. For example the Parties are to treat any 'eligible supplier of the other Party... equally in accordance with the principle of open and effective competition' (167 Preamble)⁷²; they are prohibited from discriminating against a 'locally established supplier' on the basis of its foreign affiliation or ownership by nationals of the other

Parties (167.2(b) (2)⁷³. Finally, Articles 167.3 and Article 167.4 actually provide national treatment to EU firms for Covered Procurements; subject to decision by the Joint Cariforum-EC Council. This opens the door to pressure from EC Ministers and Senior Officials on Cariforum to allow EU firms to bid on contracts of particular value or interest.

Electronic Commerce

This chapter (Title II Chapter 6) is limited to stipulating that e-commerce will be subject to the highest international standards of data protection and will not be subject to customs duties; with a commitment to dialogue on regulatory issues. The main purpose was evidently to secure its inclusion in the EPA, opening the door to possible future negotiations on the subject

Free Circulation

Free circulation is problematic for Caricom since it would require a political and administrative decision on the sharing of customs revenues. No technical work is reported on the drafting of the Protocol. Article 18 of the EPA enjoins the Parties to exercise their best endeavours to ensure that customs duties are levied only once on imports originating in either party, “pending the establishment of the necessary arrangements for achieving this goal”.

VI Conclusion

Implications for the CSME of the EPA

The CSME, an incomplete project of regional integration for engagement with globalisation, has been superseded by the Cariforum-EC EPA. The EPA imposes a wider

scheme of regional integration in which Caricom member states, along with the Dominican Republic, are incorporated into a European economic zone with free movement of goods, services, and capital; and with common policies and regulatory regimes in these areas as well as in competition, intellectual property and public procurement. Its governance and dispute settlement provisions endow the EPA with stronger implementation, monitoring and enforcement machinery than that provided for the CSME. European development cooperation will prioritise EPA implementation; while implementation of the CSME will continue to be constrained by the failure of governments to provide effective institutional machinery and the necessary resources. Thus, implementation of the EPA in its present form will probably lead to the eventual abandonment of the CSME project. The probability of this outcome is heightened by the potential for regional fragmentation due to the bilateralisation of relations with the EC under the EPA and the wide differences among Caricom member states in institutional implementation and production capacities⁷⁴.

The EPA model is one of asymmetrical neo-liberal integration in which differences among countries in economic power and levels of development are largely ignored; and trade and investment liberalisation by itself is assumed to be sufficient to deliver development. Critics of the model argue that for development to take place, liberalisation must be synchronised with the development of local productive capabilities, must be accompanied by targeted resource transfers to support such development, must address the non-tariff barriers in European markets that have constrained export expansion in the past, and must leave sufficient policy space for governments to foster new activities and local enterprises⁷⁵. None of these is present in the EPA. In any case, the EPA forecloses the CSME strategy of consolidating a regional economic space as a platform for developing internationally competitive production to engage with the world economy.

How could Caricom have participated in negotiating an EPA of this kind without considering its impact on the CSME, a project in which it was simultaneously involved? The question implies that there is a major problem of coherence in the management of Caricom affairs. The empirical answers are that (i) the EPA negotiations were with

Cariforum, and the interests of the Dominican Republic and of non-CSME Caricom countries had to be accommodated; (ii) under Caricom's system of assigning specific portfolio responsibilities to different Prime Ministers, political responsibility for overseeing the EPA negotiations resided with one Prime Minister (Jamaica) and that of overseeing CSME implementation rested with another (Barbados); (iii) the technical body responsible for the EPA negotiations, the CRNM, has a position of relative autonomy in the Caricom institutional system; as it is not a part of the Caricom Secretariat, which has responsibility for CSME implementation; (v) CRNM negotiators took the view that the EPA would be a means of 'fast-tracking' CSME implementation, and that the binding of 'investor-friendly' policies would provide an incentive for foreign investment. Finally (vi) decisions by Caribbean leaders in the closing stages of the negotiations were driven by the short-term need to preserve market access for exports in Europe; which did not lend itself to consideration of long-term strategic issues.

These factors speak to major weaknesses in the institutional and governance machinery of Caricom; and the absence of a genuinely shared vision among governments about the direction that development should take and the role of regionalism⁷⁶. The main bonding agents in Caricom are a sense of common cultural identity and of common vulnerability due to small size. However, Caricom's cohesiveness and coherence as an integration grouping is handicapped by wide differences among member countries in levels of development and foreign trade structures. Decision-making tends to be characterised by a kind of 'opportunistic regionalism' in which short-term expediency plays a major part. This may be no different than the situation in many other regional groupings.

Nonetheless the abandonment of the regional economic integration project would be a severe set-back for the cause of regionalism in the Caribbean, not because the direct economic benefits of regionalism are substantial, but because of the political and psychological fall-out of the failure of the project on the credibility of regionalism as an option for engaging with globalisation from a position of greater autonomy. Thus, some kind of 'EPA disaster mitigation strategy' may be in order, which seeks to modify the

EPA at an opportune moment in order to preserve the integrity of Caricom regionalism and to retain the option for a more autonomous model of development in the future.

Can the EPA be fixed?

Should such an opportunity arise, the following elements might be considered. First, insertion of Caricom, as a juridical entity, as a Party to the EPA on behalf of its 14 independent member states, in the same way that the European Commission is a Party on behalf of the EU member states. Individual Caricom member states could have their market access schedules listed, but the relationship with the EC would be through Caricom acting on their collective behalf. This would preserve the integrity of the Community, strengthen its implementing responsibilities and strengthen the bargaining power of its member states vis-a-vis the EC and the Dominican Republic⁷⁷.

Second, deferral of consideration of the WTO-plus subjects in the EPA until they have been settled in the WTO or completed in the CSME. That would strengthen the CSME by giving it priority of implementation over the EPA in overlapping subjects, allow space for Caricom to design the CSME regimes in the light of its own development and integration objectives, provide a Caricom platform from which to conduct future negotiations in these subject areas, and provide an incentive for the EC to support completion of the CSME.

Third, clarification of the relationship between the EPA and the Revised Treaty of Chaguaramas in the text of the EPA itself. Hence, consideration could be given to insertion of a Clause to the effect that nothing in the EPA should be construed as requiring a Caricom member state to act in a manner contrary to its obligations under the Revised Treaty of Chaguaramas, or as disturbing the exclusive jurisdiction of the CCJ over CSME matters. Such a clarification would have both substantive and symbolic value; underlining the sanctity of Caricom's own integration arrangement.

Fourth, incorporation of an evaluation, review and revision mechanism into the EPA in an operationally effective and legally binding manner⁷⁸. This could be achieved by the insertion of performance indicators on the delivery of development cooperation and the realisation of development outcomes from EPA implementation. This would provide the empirical basis for periodic comprehensive reviews (three years initially, the every five years) with the possibility of substantial revision. Revision might address the nature and timing of implementation obligations by the Caribbean and Europe including those related to trade and trade-related commitments, development cooperation, non-tariff barriers, etc.). Such an approach is consistent with a true 'Partnership for Development'.

Fifth, Caricom needs to urgently address its governance arrangements to ensure timely CSME implementation as well as greater coherence between the CSME project and its external negotiations. The EPA experience is the proverbial 'wake-up call' to the Community on the dangers of delays in CSME implementation, as they provide additional opportunities for external partners to exert pressure on the content and sequencing of the Community's integration agenda.

[18/08/08]

Table 1
Basic Statistics on CARIFORUM & CARICOM

Country	Population ('000)	GDP		Merchandise Trade				
		Total	Per capita	Total	Percent total			
		US\$M	US\$	US\$M	Caricom	EU	US	Other
Bahamas ¹	327.3	5,502.0	16,811.3	-	n.a.	n.a.	n.a.	n.a.
Barbados	292.9	3,430.5	11,711.0	1,874.9	29.0%	13.8%	34.4%	22.7%
Belize	297.6	1,213.6	4,077.8	928.6	3.8%	13.7%	39.7%	42.9%
Guyana	739.1	896.2	1,212.6	1,430.6	29.7%	19.7%	21.7%	28.9%
Haiti	9,445.9	4,975.2	526.7	-	n.a.	n.a.	n.a.	n.a.
Jamaica	2,667.3	10,023.4	3,757.9	6,995.3	10.3%	13.5%	34.2%	42.1%
Suriname	455.3	2,114.8	4,645.0	1,008.9	24.3%	23.8%	30.1%	21.8%
Trinidad and Tobago	1,328.4	18,136.3	13,652.4	20,698.0	12.1%	9.2%	47.4%	31.4%
OECS²	603.8	3,680	6,094.4	2,306.1				
Antigua and Barbuda	84.1	998.1	11,868.1	528.9	15.1%	11.2%	36.8%	36.8%
Dominica	72.4	318.5	4,399.7	207.4	38.2%	13.0%	28.7%	20.1%
Grenada	108.1	524.9	4,853.8	317.1	26.8%	12.4%	37.8%	23.0%
St. Kitts and Nevis	48.4	477.4	9,865.2	284.7	16.6%	6.3%	59.0%	18.1%
St. Lucia	166.0	899.2	5,416.3	631.7	26.8%	14.8%	32.8%	25.5%
St Vincent/Grenadines	119.8	422.5	3,527.8	305.3	36.5%	15.0%	28.8%	19.6%
Montserrat ¹	5.0	39.4	7,846.5	31.0	39.0%	7.7%	39.6%	13.8%
Total CARICOM	16,157.7	49,972.0	3,092.8	34,673.8	14.3%	11.5%	41.7%	32.5%
Dominican Republic	9,614.7	31,846.0	3,312.2	-	n.a.	n.a.	n.a.	n.a.
Total CARIFORUM	25,772.4	81,818.1	3,174.6	-	n.a.	n.a.	n.a.	n.a.

(1) Not participating in the Caricom Single Market and Economy (CSME)

(2) Organisation of East Caribbean States

Notes:

Population and GDP figures are quoted from World Development Indicators Online, Year 2006

Exceptions: Bahamas GDP WDI 2003; Montserrat 2006 Population from CaricomStats.org and 2006 GDP from fco.gov.uk

Trade data obtained from CaricomStats.org, Year 2006

Exceptions: All Antigua & Barbuda - Year 2005; St. Lucia Export figures, Year 2005

Suriname Export data not available. All Data for Haiti, Bahamas, Dominican Republic not available.

Table 2 Caricom: State of CSME Implementation, 2007

Category	No. of action elements	Total required actions ¹	No. completed	% completed
A. Legal & Institutional Infrastructure	15	192	168	87.5
A1. Treaty Revision	5	60	60	100.0
A2. National Administration ³	3	48	40	83.3
A3. Enforcement, Regulation and Supporting Institutions	7	84	68	81.0
<i>A3.1 Caribbean Court of Justice</i>	3	36	35	97.2
<i>A3.2 CROSQ (Standards & Quality)</i>	2	24	18	75.0
<i>A3.3 National Standards Bodies</i>	1	12	11	91.7
<i>A3.3 National Competition Authorities</i>	1	12	4	33.3
B. Single Market	31	360	233	64.7
B4. Free Movement of Goods	5	60	55	91.7
B5. Free Movement of Services ⁴	2	24	19	79.2
B6. Free Movement of Persons	16	180	107	59.4
<i>B6.1 Free Movement of Skills</i>	7	84	53	63.1
<i>B6.2 Contingent Rights</i>	1	<i>n.a</i> ⁵		
<i>B6.3 Facilitation of Travel</i>	4	48	21	43.8
<i>B6.4 Mechanism for Accreditation & Equivalency</i>	2	24	11	45.8
<i>B6.5 Transfer Soc Sec Benefits</i>	2	24	22	91.7
B7 Free Movement of Capital	6	72	40	55.6
<i>B7.1 Removal of Restrictions</i>	2	24	12	50.0
<i>B7.2 Capital Market Integration</i>	2	24	8	33.3
<i>B7.3 Double Taxation Agreement</i>	2	24	20	83.3
B8. Right of Establishment	2	24	12	50.0
C. Single Economy	37	246	38	15.4
C9. Common External Policy	3	36	35	97.2
C10. Harmonisation of Laws	16	192	2	1.0
C11. Sectoral Programmes & Enabling Environment	6	6	0	0.0
C12. Common Support Measures	12	12	1	8.3
Total	83	798	439	55.0

Notes

1. Number of identified action elements multiplied by the number of entities (countries or agencies) required to take each element. Only 12 countries are counted. Rows 6.1, 11 and 12 relate to actions by a single CARICOM organ identified in the source document.

Source: author, compiled from CSME Summary of Key Elements from Caricom Secretariat, May 2007.

Table 3
Caricom's intra-regional exports, 1993, 2003

	US\$ M		AAGR	Share in IRX (%)		Share in total X (%)	
	1993	2003	%	1993	2003	% XG	% XGS
OECS	72	85	1.6	12	6	38.2	7.8
The Bahamas	0.4	0.1
Barbados	71	103	3.7	11	7	43.6	8.5
Belize	5	18	13.9	1	1	17.2	10.8
Guyana	35	99	11.1	6	7	18.8	13.9
Haiti	0	0.2	..	0	0	0.1	0.1
Jamaica	62	63	0	10	4	4.8	1.9
Suriname	8	40	17.5	1	3	6.3	5.7
Trinidad & Tobago	370	1059	11.1	59	72	20.8	18.1
Total Caricom	624	1467	8.9	100	100	15.2	8.0
Caricom ex. T&T	254	408	4.9			8.9	3.4

Notes

OECS: Organisation of East Caribbean States (6 countries)

AAGR: Average Annual Growth Rate, 1993-2003

IRX: Intra-regional exports

%XG: IRX share in total exports of goods of country or country group

%XGS: IRX share in total exports of goods and services of country or country group

Source: Data from INTAL, Caricom Report No. 2, Washington: IADB, August 2005; 21-23; Available at http://www.iadb.org/intal/aplicaciones/uploads/publicaciones/CARICOM_Report_2.pdf

Table 4

Caricom's domestic exports to the EU by country, 2004-2006

	Domestic exports to EU (US\$ 000)			Share in country's total exports (%)		
	2004	2005	2006	2004	2005	2006
CARICOM¹	987,065	893,925	2,037,357	11	7	12
MDCs	865,044	799,290	1,933,982	10	7	11
BARBADOS	36,275	40,549	38,717	21	19	16
GUYANA	183,173	208,307	196,641	34	38	36
JAMAICA	424,534	343,443	476,305	31	23	24
SURINAME	.	.	.			
TRINIDAD & TOBAGO	221,063	206,991	1,222,319	3	2	9
LDCs	122,021	94,636	103,375	31	26	26
BELIZE	60,686	55,667	84,357	30	28	31
OECS	61,335	38,968	19,018	33	23	15
ANTIGUA & BARBUDA	.	103	.	.	3	.
DOMINICA	7,422	6,869	7,622	19	18	19
GRENADA	10,127	5,378	1,878	42	25	10
MONTSERRAT	0	0	0	0	0	0
ST. KITTS & NEVIS	9,673	60	121	25	0	0.3
SAINT LUCIA	22,052	16,014	..	46	40	..
ST. VINCENT & GRENADINES	12,060	10,544	9,397	36	31	28

.. Not available

1. Data for Haiti and the Bahamas are not included

Source: CARICOM Secretariat, Trade Database

http://www.caricomstats.org/Files/Databases/Trade/eXCEL%20FILES/CC_EU.htm

Sourced 10/05/08

Table 5**Caricom's exports to EU by S.I.T.C section, 2004-2006**

S.I.T.C. Sections	Domestic Exports to the EU (US \$000)			Share in total exports (%)		
	2004	2005	2006	2004	2005	2006
All Sections	987,065	893,925	2,037,357	11	7	12
Food And Live Animals Chiefly For Food	386270	389299	399660	41	42	41
Beverages And Tobacco	25392	35875	42342	13	14	15
Crude Materials, Inedible, Except Fuels	304633	261117	363115	30	23	26
Mineral Fuels, Lubricants And Related Materials	21727	63724	824355	1	1	7
Animal And Vegetable Oils, Fats And Waxes	539	527	215	5	5	3
Chemicals And Related Products, Not Elsewhere Specified	143164	92464	360432	8	5	16
Manufactured Goods Classified Chiefly By Material	99320	42596	33379	14	8	4
Machinery And Transport Equipment	3546	3581	5154	5	4	5
Miscellaneous Manufactured Articles	1858	4090	8260	2	3	6
Commodities And Transactions Not Classified Elsewhere	616	652	446	1	1	1

Notes: 2004 Excludes data from Antigua and Barbuda and Suriname

2006 Excludes data from Antigua and Barbuda, Grenada, Saint Lucia and Suriname

Data for Haiti and the Bahamas are not included

Source: CARICOM Secretariat, Trade Database.

Available at http://www.caricomstats.org/Files/Databases/Trade/eXCEL%20FILES/CC_EU.htm

(10/06/08)

Table 6
GSP sensitive exports of Caricom countries

Country	GSP SENSITIVE EXPORTS			PRODUCTS*	
	% EXPORTS TO EU	% TOTAL EXPORTS	% EXPORTS GOODS & SERVICES	Large change (<20% tariff)	Moderate change (10-20% tariff)
Belize	75.1	20.7	8.5	bananas, sugar	oranges
Guyana	72.3	27.7	21.8	sugar, rice, rum	
St. Kitts & Nevis	71.5	0.1	0.0	sugar	
Jamaica	47.6	11.0	4.3	sugar (canned ackee)	
Suriname	44.8			bananas, rice	
Dominica	42	7.4	2.3	bananas	
Dominican Republic				bananas, rum	
St. Lucia	27.4	11.1	1.0	bananas	
Barbados	21.7	4.2	0.5	sugar, rum	
Trinidad and Tobago	17.4	0.4	0.3	sugar, juices,, jams	food preparations
Grenada	9.1	2.3	0.4	..	fish
St Vincent/Gren.	3.9	1.2	0.2	bananas	
Bahamas	3.4	0.0	0.0	..	
Antigua & Barbuda	1.4	0.0	0.0	anchovies	

Note: 'GSP sensitive' exports refer to items that (a) account for 1% or more of the country's exports to the EU and (b) would experience a tariff jump of 10% or more under Standard Generalised System of Preferences (GSP) treatment by the EU. The 'most problematic products'--products that would experience a tariff of 20% or more are almost all agricultural or processed agricultural products, and include beef, dairy products, fish, cereals, sugar, processed foods and beverages, and cigarettes. * Refers only to products accounting for 1% or more of exports to EU
! T&T figure is based on TTMA statement made in Trinidad & Tobago Review, that TT\$2 billion was exported to the EU in 2006, 75% of which is GSP-sensitive. \$2 B is \$317 USM which is 2.7% of T*T X for 2008 (14,110 M US)

Source: *The Costs to the ACP of Exporting to the EU under the GSP: Final Report*. London: Overseas Development Institute, March 2007; Table 5; and pp. 6-10

Table 7 Schedule of CARIFORUM Tariff Liberalization Commitments

Country	Percentage and timing of imports to be liberalised						
	Immediate	5 years	10 years	15 years	20 years	25 years	Excluded
Antigua and Barbuda	7	7	25	35	2	2	22
Bahamas	32	2	13	34	3	2	13
Barbados	48	0	2	24	1	1	23
Belize	13	6	10	27	1	3	39
Dominica	17	3	18	27	2	1	27
Dominican Republic	53	8	5	21	3	5	5
Grenada	9	14	20	25	2	3	28
Guyana	53	1	7	18	2	1	18
Haiti	60	0	1	7	2	4	27
Jamaica	56	0	1	26	2	1	13
St. Kitts and Nevis	18	16	16	17	2	2	29
St. Lucia	38	0	4	22	5	2	29
St. Vincent & Grenadines	8	7	14	30	2	2	37
Suriname	9	9	20	27	2	3	28
Trinidad and Tobago	73	0	1	18	0	1	6
CARIFORUM	53	3	5	22	2	2	13

Source: *CRNM Note on CARIFORUM Economic Partnership Agreement*, COMSEC-sponsored High Level Technical Meeting EPAs: The Way Forward for the ACP Cape Town, April 7-8, 2008

Available at:

http://www.thecommonwealth.org/doclist/159719/159720/152996/177203/high_level_technical_meeting_on_epas/

Table 8**Caricom's imports from the EU by S.I.T.C. sections 2004-2006**

S.I.T.C. Sections	Imports from the EU (US\$ 000)			Share in total Imports (%)		
	2004	2005	2006	2004	2005	2006
All Sections	2,079,906	2,079,906	1,934,573	15	12	11
Food And Live Animals Chiefly For Food	199,490	226,195	224,020	13	12	13
Beverages And Tobacco	51,364	72,796	74,056	25	28	29
Crude Materials, Inedible, Except Fuels	7,567	6,490	7,912	3	1	2
Mineral Fuels, Lubricants And Related Materials	148,334	108,494	67,205	5	2	1
Animal And Vegetable Oils, Fats And Waxes	11,100	15,766	16,188	14	20	20
Chemicals And Related Products, Not Elsewhere Specified	213,899	246,097	272,776	18	16	17
Manufactured Goods Classified Chiefly By Material	271,308	308,768	291,914	13	14	12
Machinery And Transport Equipment	1,030,414	646,548	773,327	26	16	18
Miscellaneous Manufactured Articles	140,082	180,883	179,352	11	11	11
Other	6,347	9,767	27,825	8	10	10

Key - means Nil

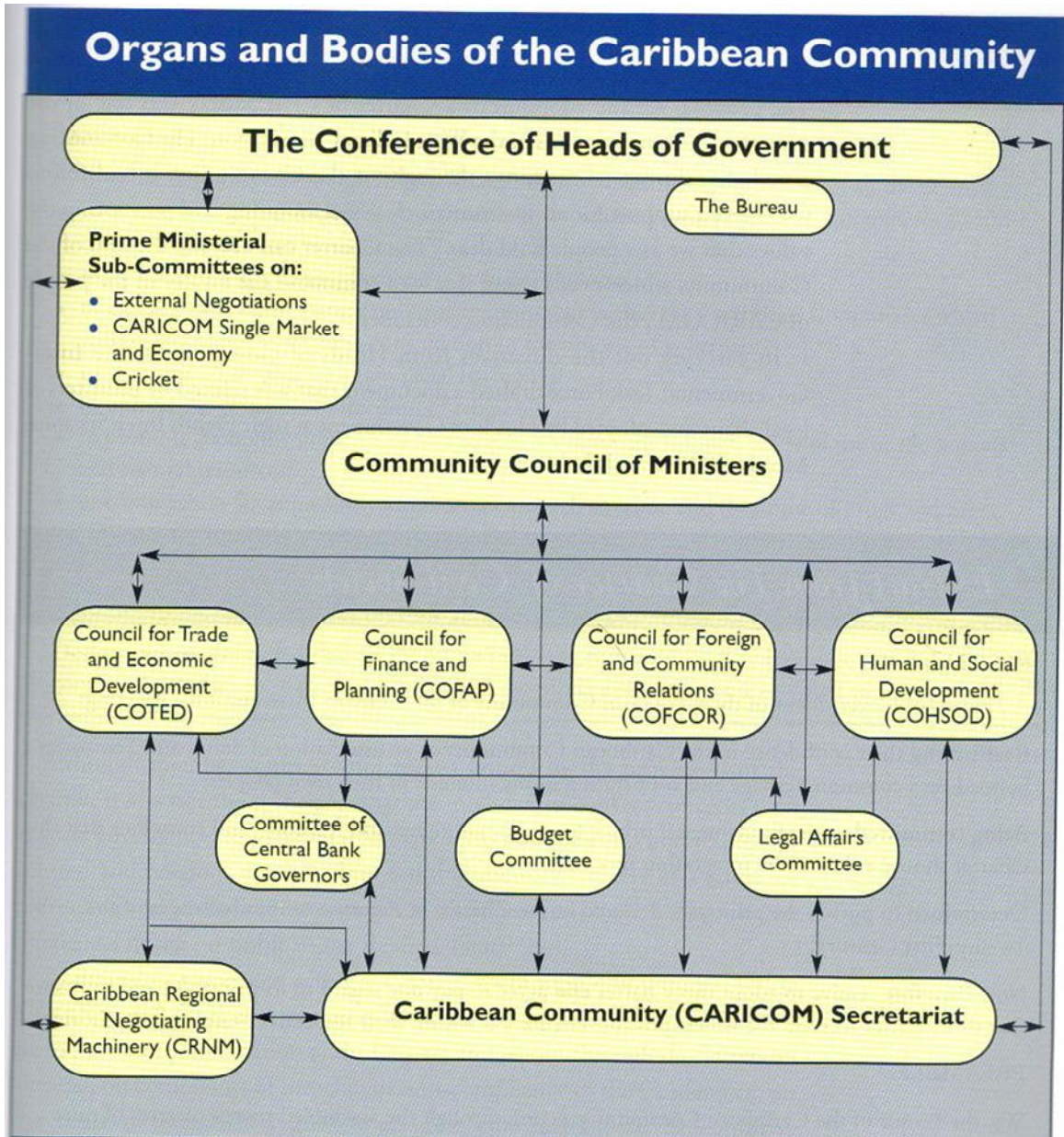
Notes: 2004 Excludes data from Antigua and Barbuda
2006 Excludes data from Antigua and Barbuda and
Grenada

Data for Haiti and the Bahamas are not included

Source: CARICOM Secretariat, Trade Database

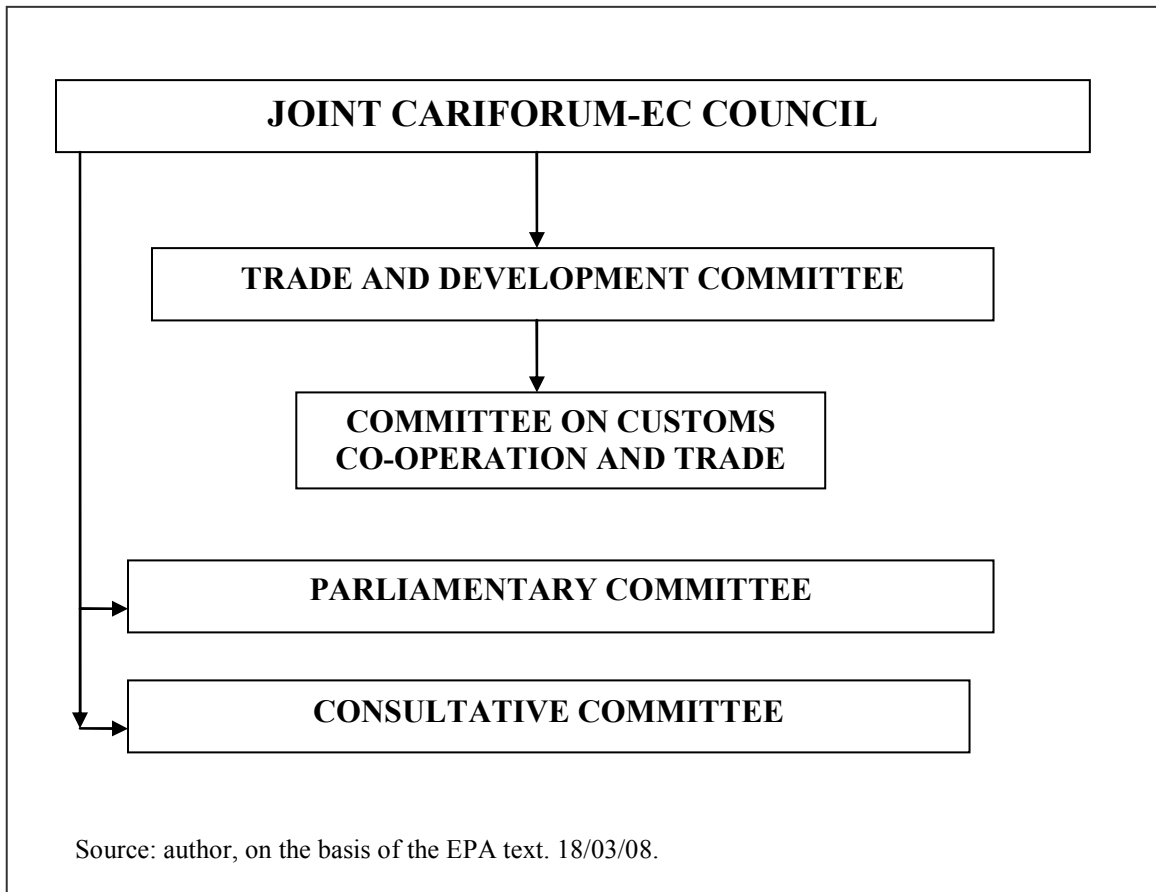
http://www.caricomstats.org/Files/Databases/Trade/eXCEL%20FILES/CC_EU.htm

Figure 1: Caricom Governance



Source: "CARICOM, Our Caribbean Community", produced by the CARICOM Secretariat, 2005, pp. 233

Figure 2. EPA Governance



Notes.

¹A shorter version of this paper is to be published as a book chapter in Alfredo Guerra-Borges (Ed.) *Cincuenta años de Integración en América Latina y el Caribe*. (Forthcoming).

² At present 13 of Caricom's 15 members participate in the CSME, the exceptions being the Bahamas and Montserrat, a British Overseas Territory.

³ Cariforum is grouping of 15 states including the 14 independent states members of the Caribbean Community (Caricom) and the Dominican Republic. See Table 1 for basic statistics on Cariforum member states.

⁴ Cotonou Partnership Agreement (2000) Article 1, Para. 2. Available at http://ec.europa.eu/development/geographical/cotonouintro_en.cfm?CFID=1537739&CFTOKEN=79115898&jsessionid=2430d0f9a00a4a205e69

⁵ Available at http://ec.europa.eu/trade/issues/sectoral/competitiveness/global_europe_en.htm

⁶ The full name is *The Revised Treaty of Chaguaramas for the Establishment of the Caribbean Community and the Caricom Single Market and Economy*, available at http://www.caricom.org/jsp/community/revised_treaty-text.pdf

⁷ Article 239 of the RTC calls for Protocols on these four subjects. These are not counted in the uncompleted actions shown in Table 2.

⁸ Norman Girvan ET. Al., *Towards a Single Development Vision and the Role of the Single Economy*. Report approved by the 28th Conference of Caricom Heads of Government, July 2007. Available at http://www.caricom.org/jsp/single_market/single_economy_girvan.pdf

⁹ Havelock Brewster, 'Mature Regionalism and the Rose Hall Declaration', CARICOM 30th Anniversary Conference on Regional Governance and Integrated Development, University of the West Indies Mona Campus. October 2003

¹⁰ *The Rose Hall Declaration on 'Regional Governance and Integrated Development'*, adopted at the 24th Conference of Caricom Heads of Government, July 2003. Appended to the Conference Communiqué available at www.caricom.org and *Report of the Technical Working Group on Governance (2007)*; available at http://www.caricom.org/jsp/community/twg_governance_report.pdf.

¹¹ INTAL, *Caricom Report No. 2*, Washington: IADB, August 2005; 21-23; Available at http://www.iadb.org/intal/aplicaciones/uploads/publicaciones/CARICOM_Report_2.pdf

¹² Havelock Brewster, 'Identity, Space and the West Indian Union' – in K. Hall and D. Benn (eds.), *Contending with Destiny, The Caribbean in the Twenty-First Century*, Ian Randle Publishers, Kingston, 2000; Mauricio Mesquita and Eduardo Moreira, *Regional Integration: What is in it for CARICOM?* INTAL-ITD Working Paper 29, 2007. Available at http://www.iadb.org/intal/aplicaciones/uploads/publicaciones/i_INTALITD_WP_30_2007_MesquitaMoreira.pdf

¹³ European Commission, *Recommendation for a Council Decision authorising the Commission to negotiate Economic Partnership Agreements with the ACP countries and regions*. Brussels, 9.4.2002. SEC (2002) 351 final; (p.1). Available at http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_112023.pdf. Sourced 25/07/08. According to one commentator the above passage constitutes an 'impressive chain of unproven, theoretical assumptions'. Havelock Brewster, 'The Anti-Development Dimension of the ECs EPA for the Caribbean', available at <http://www.normangirvan.info/the-anti-development-dimension-of-the-european-communitys-economic-partnership-agreement-for-caribbean-havelock-brewster/>. See also *Directives for the Negotiations of Economic Partnership Agreements with ACP countries and regions*, adopted by the European Union Council, 17th June 2002, www.epawatch.net/documents/doc71_2.doc, cited by Africa Faith & Justice Network, *Why the EU approach to regional trade negotiations with developing countries is bad for development*. 20/09/04 Available at http://www.bilaterals.org/article.php3?id_article=670&var. Sourced 25/07/08

¹⁴ The European Commission (EC) Trade Directorate is legally endowed with the authority to negotiate trade agreements on behalf of the European Union; and conducted the EPA negotiations with ACP countries.

¹⁵ See for example *Background to EPAs*, at <http://www.epa2007.org/upload/documents/02%20background%20to%20epas.doc>. Sourced 24/07/08;

Oxfam, *Unequal Partners*, September 2006; available at <http://www.oxfam.org.nz/imgs/whatwedo/mtf/unequal%20partners.pdf>. Sourced 24/07/08.

¹⁶ European Commission, *Global Europe: Competing In the World. A Contribution to the EU's Growth and Jobs Strategy*. (hereinafter 'Global Europe') Brussels, 4 October 2006. SEC (2006) 1230. Commission Staff Working Document. Annex To The Communication From The Commission To The Council, The European Parliament, The European Economic And Social Committee And The Committee Of The Regions. Available at http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc_130370.pdf (Sourced 31/07/08). See also http://ec.europa.eu/trade/issues/sectoral/competitiveness/global_europe_en.htm. t

¹⁷ Seattle to Brussels Network, *The new 'Global Europe' strategy of the EU: Serving corporations worldwide and at home*. 2 December 2006. Available at http://www.bilaterals.org/IMG/pdf/globaleurope_s2balert_nov06.pdf. Sourced 25/07/08

¹⁸ See for example, "Peter Mandelson speaking before the European Parliament Development Committee", Brussels, 28 January 2008; at http://ec.europa.eu/commission_barroso/mandelson/speeches_articles/sppm190_en.htm

¹⁹ Christopher Stevens, *Costs to the ACP of Exporting to the EU Under the GSP*. London: Overseas Development Institute, March 2007

²⁰ Available at http://www.crn.org/documents/ACP_EU_EPA/epa_agreement/EPA_Text%2011June08_Final.pdf. See also Caribbean Regional Negotiating Machinery (CRNM) *The EPA and a glance/* July 2008. Available www.crn.org

²¹ Cariforum could also have taken the position that consideration of additional subjects in agreement with Europe should be deferred until they had either been settled in the WTO or had been completed under the CSME.

²² The CRNM (www.crn.org) is the technical body responsible for negotiating the Cariforum EPA and other Caricom external trade negotiations. It is not part of the Caricom Secretariat and reports directly to the Caricom Council on Trade and Economic Development (COTED), the Caricom Prime Ministerial Subcommittee on External Economic Negotiations, and the Caricom Heads of Government.

²³ MDCs – More Developed Countries (Barbados, Jamaica, Trinidad and Tobago); LDCs -- Less Developed Countries, mainly Belize and the member states of the Organisation of Eastern Caribbean States (O.E.C.S.)

²⁴ Electronic Commerce, Social Aspects and the Environment are also included.

²⁵ See 'The Caribbean lost in negotiations with Europe-Jagdeo', at <http://www.stabroeknews.com/news/the-caribbean-lost-in-the-negotiations-with-europe-jagdeo/>, and documents at <http://normangirvan.info>; especially Statement of Concerned Caribbean Citizens, at <http://www.normangirvan.info/statement-by-concerned-caribbean-citizens/>; Civil Society Petition to Renegotiate the EPA at <http://www.ipetitions.com/petition/epa/index.html>; Caribbean Congress of Labour Declaration and Plan of Action on the EPA, at <http://www.normangirvan.info/wp-content/uploads/2008/07/ccl-declaration-june08-final.pdf>; Havelock Brewster, 'The Anti-Development Dimension of the EC's EPA for the Caribbean', <http://www.normangirvan.info/the-anti-development-dimension-of-the-european-communitys-economic-partnership-agreement-for-caribbean-havelock-brewster/>; Norman Girvan, 'Implications of the Cariforum EPA', at <http://www.normangirvan.info/wp-content/uploads/2008/08/girvanimplicationsepa21jan.pdf>; Havelock Brewster, Norman Girvan and Vaughan Lewis, 'Renegotiate the EPA' at <http://www.normangirvan.info/renegotiate-the-epa-havelock-brewster-norman-girvan-and-vaughan-lewis-30308/>;

²⁶ This is shown later in this paper in the analysis of sector-specific and subject-specific issues.

²⁷ Notwithstanding the fact that some concessions are made to Caricom MDCs in level of market access commitments and ability to vary commitments.

²⁸ Also included are Bahamas, a Caricom country that has opted to stay out of the CSME; and Haiti, which signed on to the CSME in 2008; but with a great deal of legislative and administrative work left to be done to reach the level of implementation of the other 12 members

²⁹ EPA Article 238

³⁰ RTC Chapter Four

³¹ EPA, Titles II and III.

³² Several examples are given in the section of this chapter on sector-specific and subject-specific issues.

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- ³³ EPA Article 27, National Treatment on Internal Taxation and Regulation; and 68 and 77, covering National Treatment in liberalise service sectors.
- ³⁴ The usual wording is ‘the Parties agree to cooperate’ or ‘endeavour to’ support SMEs. See Articles 8, 41, 43, 113, 117, 121, 132, 135, and 136.
- ³⁵ For details, see Norman Girvan, *Who are the Parties to the EPA? Definition and use of terms*. Available at <http://www.normangirvan.info/who-are-the-parties-to-the-epa-definition-and-use-of-terms-norman-girvan>
- ³⁶ Chapter Nine of the RTC. Reference is made to Articles 188.1, 189, 191-193, 201, 207, 211-215, and 219.
- ³⁷ EPA Part III. Reference is made to Articles 204-214, and 222.
- ³⁸ These exceptions will weaken compliance of EU investors with the Social and Environmental provisions of the EPA, as far more EU firms are likely to be investing in Cariforum than vice versa.
- ³⁹ Articles 28.1 and 240.1
- ⁴⁰ The Joint Council is composed of ‘members of the Council of the European Union and members of the European Commission, and, on the other hand, of the representatives of the Governments of the Signatory CARIFORUM States (228.1), but ‘The CARIFORUM States shall mandate one of their representatives to act on their behalf on all matters under this Agreement for which they have agreed to act collectively’ (228.2). As there is no schedule of matters to which such collective action applies, the composition of the Council would appear to be on ad hoc basis in which there is much room for different interpretations.
- ⁴¹ For details see <http://www.normangirvan.info/wp-content/uploads/2008/04/epa-governance-matrix.xls>
- ⁴² Information supplied by the Caricom Secretariat.
- ⁴³ See Cariforum-EC Joint Declaration on Development Cooperation attached to the EPA Protocols, at www.crnmm.org
- ⁴⁴ Chapter Seven of the RTC on Disadvantaged Countries, Sectors and Regions
- ⁴⁵ A separate article (38) mandates the removal of discriminatory restrictions on Banking, Insurance and Other Financial Services; subject to a discretionary exclusion clause (38.2)
- ⁴⁶ Articles (34, 36, 38, 39 and 40 of the RTC
- ⁴⁷ In March 2007 the CCS reported that ‘legislative and administrative action had been taken by all Member states to remove restrictions on the provision of services’.
- ⁴⁸ University graduates, artistes, media workers, sportspersons, and musicians
- ⁴⁹ Annex 4. The Bahamas and Haiti are to make their sectoral commitments within six months of the signing of the agreement.
- ⁵⁰ Jane Kelsey *Regulatory Implications of the Investment and Services Chapter of the CARIFORUM EPA* March 2008, p. 1. Available at <http://www.normangirvan.info/the-investment-and-services-chapter-of-the-cariforum-epa-by-prof-jane-kesley>
- ⁵¹ Reference is to ‘commercial presences and investors’ (EPA Article 67.1)
- ⁵² Natural persons must possess acceptable professional certification as well as between three and six years working experience; their stay is limited to six months in any one calendar year. Access is also subject to other discriminatory restrictions including as ‘economic needs’ tests and to overall caveats respecting the right of EU states to administer border controls (Article).
- ⁵³ Caveat
- ⁵⁴ CRNM, *The EPA at a glance*. July 2008, p. 23. Available at www.crnmm.org
- ⁵⁵ See *European Services Forum Position Paper on EU Free Trade Agreements*, Brussels, 28 February 2007; and ‘ESF Views on “Communication Global Europe’ A Stronger Partnership to deliver Market Access for European Exporters”’, (letter to Director General European Commission) Brussels, 7 June 2007; ESF07/16 .
- ⁵⁶ Reference is made to Articles 139, and 142-144
- ⁵⁷ Least Developed Country Parties (Haiti) are given until 2021 for certain obligations.
- ⁵⁸ It includes utility models, patents including patents for bio-technology inventions, ‘protection against unfair competition as referred to in Article 10a of the Paris Convention on INSERT, and ‘protection of undisclosed confidential information and know-how’ (139.3).
- ⁵⁹ For registration, disclosure of reasons for refusal with the right of appeal, provision of publicly available electronic data bases, application of the concept of ‘well-known trade marks’, provisions of a legal

framework for Internet use of Trademarks, best endeavour clauses on trademarks licenses and international agreements, and ‘limited exceptions’ for fair use of descriptive terms (Article 144).

⁶⁰ These cover protection in the country of origin, term of protection, generic terms, plant varieties and animal breeds, and relationship between geographical indications and trademarks. The system of protection must be established by 1 January 2014 and the Cariforum must submit a list of prospective GIs within six months of the agreement entering into force (Article 145).

⁶¹ Industrial Designs, Patents, Utility Models, Plant Varieties, and Genetic Resources. Notably; protection of ‘traditional knowledge and folklore’, which is of interest to Cariforum, is expressed only in ‘best endeavour’ language.

⁶² ‘Global Europe’ p.10

⁶³ E.M Biadgleng, ‘Negotiating Intellectual Property in the Cariforum EPA’, *Trade Negotiations Insights*, July 2008 p. 5a. GIs are a category of IP rights that Europeans are successfully using to target sophisticated consumers with their agricultural products, beverages, wines and spirits.

⁶⁴ The ministries are listed for each Cariforum state; the coverage excludes ‘other agencies of government which may fall within the portfolio of the listed entities’ (Appendix 4).

⁶⁵ For Cariforum States the thresholds are SDR 155,000 (Supplies), SDR 155,000 (Services) and SDR 6.5 million (Works). For the EC Party they are SDR 130,000 (Supplies), SDR 130,000 (services) and SDR 5 million (Works). Source: Annex 6

⁶⁶ Also excluded for both Parties are ‘sheltered programmes’ including special employment programmes.

⁶⁷ Patrice Pratt-Harrison, CRNM, private communication, 12/02/08

⁶⁸ Cited in *The New ‘Global Europe’ Strategy Of The EU: Serving Corporations Worldwide And At Home*. Brussels, Seattle to Brussels Network; November 2006

⁶⁹ Havelock Brewster, private communication, 29/02/08

⁷⁰ European Commission, *Global Europe*, (2206, op.cit.) p. 9

⁷¹ Ibid.

⁷² CF negotiators argue that whereas Article 167 requires non-discrimination among all ‘eligible suppliers’ from either Party; that ‘eligibility’ can be defined by CF governments as they wish, e.g. to favour local or regional suppliers.

⁷³ This appears to open the way for EU firms that are locally established (or joint ventures) to have the right to bid on covered procurements. Pamela Coke-Hamilton, private communication, 21/07/08

⁷⁴ Notwithstanding whatever official statements that may be made that completion of the CSME by 2015 remains an objective.

⁷⁵ See for example Havelock Brewster, *The Anti-Development Dimension of the EC’s APA for Cariforum*. Available at <http://normangirvan.info>

⁷⁶ The adoption of the ‘Single Development Vision’ by Caricom Heads in 2007 appears to have been more of a routine matter; as this was not used as a reference framework in evaluating the final form of the EPA.

⁷⁷ The Parties to the EPA would then be the EC, Caricom and the Dominican Republic; or the EC and Cariforum representing the Caribbean Community and the Dominican Republic.

⁷⁸ Existing flexibilities in the Agreement are closely circumscribed and the Revision Clause provides only for extension.