

The significance of the mandatory review of the Cariforum EPA provided in the Joint Declaration: Summary

Norman Girvan

In a Joint Declaration accompanying the signature of the EPA, inserted as a result of an initiative of the Government of Guyana, the European Commission and the Signatory Cariforum states attested to their understanding that,

“in the context of our continued monitoring of the Agreement within its institutions, as provided for under article 5 of the Agreement, a comprehensive review of the Agreement shall be undertaken not later than five (5) years after the date of signature and at subsequent five-yearly intervals, in order to determine the impact of the Agreement, including the costs and consequences of implementation and we undertake to amend its provisions and adjust their application as necessary.”

The key features of this mandatory review are, therefore that it is

(a) comprehensive

(b) at least five yearly, without excluding the possibility of an earlier review in the case of the first review,

(c) for the express purpose of determining the impact of the EPA, making specific reference to Article 5,

(d) includes determination of the costs and consequences of implementation, but does not exclude any other matter, and

(e) contains an undertaking to amend the provisions of the Agreement and to adjust their application, but **imposes no a priori qualifications on the scope and nature of these amendments and adjustments allowed.**

Article 5 of the EPA, to which specific reference is made, states

“The Parties undertake to monitor continuously the operation of the Agreement through their respective participative processes and institutions, as well as those set up under this Agreement, **in order to ensure that the objectives of the Agreement are realized**, the Agreement is properly implemented **and the benefits for men, women, young people and children deriving from their Partnership are maximised.** The Parties also undertake to consult each other promptly over any problem that may arise.” (My emphasis).

Since the EPA sets out wide-ranging objectives in the Preamble and in Chapter 1—including sustainable development, poverty reduction, regional integration, etc.—the monitoring that can be undertaken under Article 5 permits its evaluation by an equally

broad set of criteria. However Article 5 involves no undertaking to modify the agreement in the light of the results of this monitoring—it merely provides for consultation. On the other hand the review undertaking in the Declaration expressly links the results of the monitoring under Article 5 to the mandatory review and hence to the amendments that may be proposed. In effect, **any social or economic consequence of the EPA that relates to its stated objectives can be brought within the scope of the mandatory, comprehensive five-yearly review.**

The effect of the undertaking in the Declaration in conjunction with Article 5, therefore, is that Cariforum has a basis to 'put on the table' **any and all aspects of the EPA** for reconsideration in five years time, including **all of its contentious clauses**. In this respect, the undertaking it is a significant advance over the existing review clauses in the EPA. A close study of the existing clauses reveal that they either

- (a) refer to specific provisions rather than to its overall architecture--see list below
- (b) set prescribed limits to the amendments that may be made--e.g. Article 16 on import liberalisation and Article 179 on Public Procurement, or
- (c) in the case of the Review Clause (Article 246), is for the purpose of 'broadening and supplementing its scope', bringing Europe's Overseas Countries and Territories within its scope, 'making suggestions' for the adjustment of 'trade-related cooperation', and provide for a possible review on the expiry of the Cotonou Agreement, which is in 12 years time.

To conclude: the review undertaking in the Joint **Declaration provides Caricom with a window of opportunity for a comprehensive renegotiation of the Agreement in five years' time**. Whether this will be of practical value depends on how far the Community recognises it as such an opportunity, and on the effort that is put into the monitoring process by governments, regional organisations, the private sector, civil society and other stakeholders.

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Annex: Review Clauses in the EPA

Article 246 **Revision clause**

1. The Parties agree to consider extending this Agreement **with the aim of broadening and supplementing its scope** in accordance with their respective legislation, by amending it or concluding agreements on specific sectors or activities in the light of the experience gained during its implementation. The Parties may also consider revising this Agreement **to bring Overseas Countries and Territories** associated with the European Community within the scope of this Agreement. (Note: emphasis added).

2. As regards the implementation of this Agreement, either Party may make suggestions oriented towards adjusting trade related cooperation, taking into account the experience acquired during the implementation thereof.

3. The Parties agree that this Agreement may need to be reviewed in the light of the expiration of the Cotonou Agreement.

Article 7 .Development cooperation for regional economic cooperation and integration, as provided for in the Cotonou Agreement, shall be carried out so as to maximise the expected benefits of this Agreement. Areas of cooperation and technical assistance are set out, as appropriate, in the individual Chapters of this Agreement. Cooperation shall be implemented according to the modalities provided for in this Article, shall be kept under ongoing **review** and shall be revised as necessary according to the provisions of Article 246 of this Agreement.

Article 10. Rules of origin

For the purposes of this Chapter, "originating" means qualifying under the rules of origin set out in Protocol I. Within the first five years of the entry into force of this Agreement the Parties shall **review** the provisions of Protocol I, with a view to further simplifying the concepts and methods used for the purpose of determining origin in the light of the development needs of the CARIFORUM States. In such review, the Parties shall take into account the development of technologies, production processes and all other factors which may require modifications to the provisions of Protocol I. Any such modifications shall be effected by a decision of the Joint CARIFORUM-EC Council.

Article 16. In the event of serious difficulties in respect of imports of a given product, the schedule of customs duty reductions and eliminations may be **reviewed** by the CARIFORUM-EC Trade and Development Committee by common accord with a view to possibly modifying the time schedule for reduction or elimination. **Any such modification shall not lead to the time periods in the schedule for which the review has been requested being extended in respect of the product concerned beyond the maximum transitional period for duty reduction or elimination for that product as provided for in Annex III.** If the CARIFORUM-EC Trade and Development Committee has not taken a decision within thirty days of an application to **review** the timetable, the CARIFORUM States **may suspend the timetable provisionally for a period that may not exceed one year.** (Note: Emphasis added).

Article 23. Where an anti-dumping or countervailing measure has been imposed on behalf of two or more Signatory CARIFORUM States by a regional or sub-regional authority, there shall be one single forum of **judicial review**, including the stage of appeals.

Article 24.3 Multilateral safeguards. The provisions of paragraph 2 shall apply for a period of five years, beginning with the date of entry into force of the Agreement. Not later than 120 days before the end of this period, the Joint CARIFORUM-EC Council shall **review** the operation of those provisions in the light of the development needs of

the CARIFORUM States, with a view to determining whether to extend their application for a further period. Where an anti-dumping or countervailing measure has been imposed on behalf of two or more Signatory CARIFORUM States by a regional or sub-regional authority, there shall be one single forum of judicial **review**, including the stage of appeals.

Article 23 Customs legislation and procedures. The need to apply a single administrative document or electronic equivalent in the EC Party and in the CARIFORUM, respectively. CARIFORUM States shall continue efforts to this end, with a view to implementation at an early stage after the entry into force of this Agreement. A joint **review** of the situation shall be carried out 3 years after the entry into force of the Agreement;

Article 74. With a view to the progressive liberalisation of investments, the Parties shall **review** the investment legal framework, the investment environment, and the flow of investment between them consistent with their commitments in international agreements no later than three years after the entry into force of this Agreement and at regular intervals thereafter.

Article 85.3 . In particular, the Parties shall encourage the relevant professional bodies in their respective territories to start negotiations no later than three years after entry into force of this Agreement in order to jointly develop and provide such recommendations on mutual recognition, among others, in the following disciplines: accounting, architecture, engineering and tourism.

4. On receipt of a recommendation referred to in the preceding paragraph, the CARIFORUM-EC Trade and Development Committee shall, within a reasonable time, **review** the recommendation with a view to determining whether it is consistent with this Agreement.

85.7 The CARIFORUM-EC Trade and Development Committee shall **review** progress made in mutual recognition every two years.

87.2 The Parties and the Signatory CARIFORUM States shall maintain or institute judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected investor or service supplier, for a prompt **review** of, and where justified, appropriate remedies for, administrative decisions affecting commercial presence, cross border supply of services or temporary presence of natural persons for business purpose. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Parties and the Signatory CARIFORUM States shall ensure that the procedures in fact provide for an objective and impartial **review**.

95.4 Telecommunications A supplier affected by the decision of a regulatory authority shall have a right to appeal against that decision to an appeal body that is independent of the parties involved. Where the appeal body is not judicial in character, written

reasons for its decision shall always be given and its decisions shall also be subject to **review** by an impartial and independent judicial authority. Decisions taken by appeal bodies shall be effectively enforced.

127.2 Competition. Upon entry into force of the laws and the establishment of the bodies referred to in paragraph 1, the Parties shall give effect to the provisions of Article 128. The Parties also agree to **review** the operation of this Chapter after a confidence-building period between their Competition Authorities of six years following the coming into operation of Article 128.

134.2 Framework programmes (S&T). The CARIFORUM-EC Trade and Development Committee may make recommendations in order to facilitate the participation of CARIFORUM institutions and enterprises in the programmes referred to in paragraph 1 and shall periodically **review** such participation.

142.3 The EC Party shall facilitate and promote the use of incentives granted to institutions and enterprises in its territory for the transfer of technology to institutions and enterprises of the CARIFORUM States in order to enable the CARIFORUM States to establish a viable technological base. The EC Party shall endeavour to bring any known measures to the attention of the CARIFORUM EC Trade and Development Committee for discussion and **review**.

150.6 Following the conclusion of the relevant multilateral discussions referred to in paragraph 5, the EC Party and the Signatory CARIFORUM States, at the request of the EC Party or a Signatory CARIFORUM State, agree to **review** this Article within the Joint CARIFORUM-EC Council in the light of the results of such multilateral discussions.

Article 179. Bid challenges

1. The Parties and the Signatory CARIFORUM States shall provide transparent, timely, impartial and effective procedures enabling suppliers to challenge domestic measures implementing this Chapter in the context of procurements in which they have, or have had, a legitimate commercial interest. To this effect, each Party or Signatory CARIFORUM State shall establish, identify or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by a supplier arising in the context of covered procurement. Procuring entities shall ensure their ability to respond to requests for a review by maintaining a reasonable record of each procurement covered under this Chapter. Should a **review** by the CARIFORUM-EC Trade and Development Committee at the end of the implementation period reveal that one or several Signatory CARIFORUM EN 109 EN States need one more year to bring their measures into conformity with the obligations of this Chapter, the CARIFORUM-EC Trade and Development Committee may extend the implementation period referred to in paragraph 1 by one more year for the individual Signatory CARIFORUM States concerned.

Article 181. **Review clause**. Public Procurement

The CARIFORUM-EC Trade and Development Committee will **review** the operation of this Chapter every three years, including with regard to any modifications of coverage,

and may make appropriate recommendations to the Joint CARIFORUM-EC Council to that effect, as appropriate. In carrying out this task, the CARIFORUM-EC Trade and Development Committee may, without prejudice to Article 182, also make appropriate recommendations regarding the Parties' further cooperation in the procurement field and the implementation of this Chapter.

Article 212. **Review** of any measure taken to comply with the arbitration panel ruling

Article 214 **Review** of any measure taken to comply after the adoption of appropriate measures

Article 227.3 The Joint CARIFORUM-EC Council shall also examine proposals and recommendations from the Parties for the **review** of this Agreement.

Article 230 (b) (iv) To keep under periodic **review** the cooperation priorities set out in this Agreement, and to make recommendations on the inclusion of new priorities, as appropriate; and

Article 246.3 The Parties agree that this Agreement may need to be **reviewed** in the light of the expiration of the Cotonou Agreement.