

**A FORK IN THE ROAD?
THE EFFECT OF THE EPA ON THE CSME¹²**

Norman Girvan

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When I accepted Professor Downes's kind invitation to do this lecture, I could not have known of course that former PM Owen Arthur was due to deliver one on virtually the same topic shortly beforehand. This is a happy coincidence, as it provides an opportunity to expose two almost diametrically opposing viewpoints on the subject from two individuals who have been closely associated with the regional integration movement for many years; the one from an academic viewpoint and the other from a position of political responsibility.

Owen Arthur and I go back many years, he was in a manner of speaking, my student and then my colleague during his ten-year stint in Jamaica. There is between us a bond of mutual respect and certainly, on my side of admiration, for his excellent stewardship of the Barbadian polity and society during 13 years of economic and social progress and his sterling leadership of the drive to create a CSME. As such he was instrumental in constituting an Advisory

¹ The assistance of Ms Annita Montoute and of Mr. Deidron Lewis in preparing material used in this lecture is gratefully acknowledged.

² Detailed source references are not supplied in this text. However most of the supporting material can be found in "[The EPA: A Critical Evaluation](http://www.normangirvan.info/the-epa-a-critical-examination-norman-girvan-powerpoint-presentation-230308/)", available at <http://www.normangirvan.info/the-epa-a-critical-examination-norman-girvan-powerpoint-presentation-230308/> and elsewhere at <http://normangirvan.info>

Group of Havelock Brewster, Clive Thomas and I on regional initiatives, most notably the establishment of a Regional Development Fund and Regional Development Agency. And I have a personal gratitude for his support for me as Coordinator of the preparation of the Single Development Vision and the Role of the Single Economy that was approved by the Caricom Heads in February 2007.

Why then should we have such major differences on the EPA? In this lecture I shall set out my own position and that of several colleagues on the EPA, positions that have been set out in several commentaries but which, judging from some responses, continue to be the subject of misunderstandings, real or contrived. I must register one other word of appreciation to the former PM, for the courtesy and spirit of civilized exchange with which he expressed himself in his lecture regarding the views of myself and several colleagues who have also been, so to speak, voices of dissent. That I can feel confidence in disagreeing with him on what is, in effect, his own home ground, speaks much for the culture of openness and tolerance of opposing views that characterizes this society and that is the very essence of democratic governance.

Rather than responding directly to the points made in Mr. Arthur's speech, I plan to present my position by a different route. The question I wish to pose is whether the Caribbean, or more precisely the countries that presently make up the Caribbean Community, are at one at one of those moments in historical time when we are confronted by two alternative paths of development that lead in altogether different directions. One such moment was at Emancipation, or if you like the years immediately preceding and

following that event, when the paths had to do with the nature of the societies that would be constructed on the basis of free labour. Another was in the years between the labour uprisings of the 1930s and the collapse of the WI Federal initiatives in the early 1960s, when the choices were about the forms to be taken by responsible government and political independence. The choices in the current moment, and the paths that they represent, are about dealing with globalization—not whether to deal with it--but how.

The real title of my lecture is therefore “A fork in the road?” One path leads to greater differentiation, fragmentation and loss of autonomy for the region—autonomy here referring to the space, however limited, to shape its own future. That path is represented by the kind of EPA that has been negotiated on our behalf (notwithstanding the diligent efforts and long hours put in by the hardworking team at the CRNM, with whom, I would like to emphasise, I have no quarrel)--not the fact of an EPA, but the particular shape and content that it takes, as well as the course to which it commits us in other trade negotiations and in economic policies.

The other path leads to greater integration, gradual convergence of core living standards and citizens’ economic social and political rights, and greater autonomy, that is to say greater capacity to chart our own way in this world with dignity and self-determination. That path is represented by the CSME, with all its defects, delays, deficits of participation and implementation and other imperfections; by the Single Development Vision, by the Report of the Technical Working Group on Governance and Mature Regionalism, and earlier by the Report of the West Indian Commission Time for Action. Its roots go back even further, lying as they do in the work of

regional scholars including Willy Demas, Alister McIntyre, Lloyd Best, the UWI integration scholars, and Arthur Lewis, and the generation of political and labour leaders that invented West Indian nationalism from the 1930s to the 1950s.

INTEGRATION AND SELF-DETERMINATION

Let me start with the path represented by the Single Development Vision for the Community. It was the result of a process lasting two years, which drew on reports by regional experts and international organizations, national plans and the sub-regional development plans, and multi-stakeholder involvement culminating in the Caribbean Connect Symposium on the CSME in June of 2006, attended by over 300 regional stakeholders and featuring over 30 technical presentations. The synthesis Report was called a *Towards a Single Development Vision and the role of the Single Economy*. It was adopted as I said by the Heads of Government in February 2007 and finally approved at their meeting in July 2007 as the framework for the development of the Community and the road map for the implementation of the Single Economy. It represents what can be called Caricom's own agenda. The spirit of the Vision is captured in the Mission Statement.

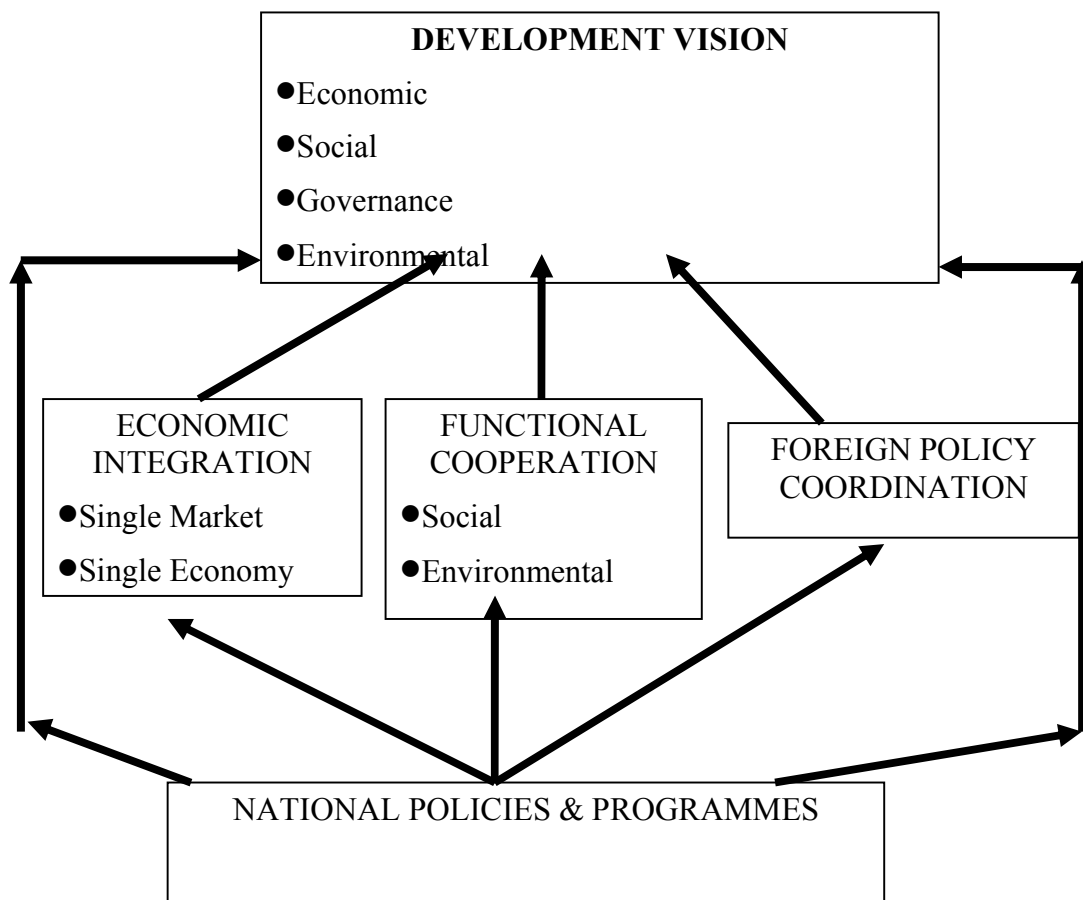
MISSION STATEMENT

We envision a Caribbean Community in which every citizen has the opportunity to realise his or her human potential and is guaranteed the full enjoyment of their human rights in every sphere; in which social and economic justice is enshrined in law and embedded in practice; a Community from which poverty, unemployment and social exclusion have been banished; in which all citizens willingly accept a responsibility to contribute to the welfare of their fellow citizens and to the common good; and one which serves as a vehicle for the exercise of the collective strength of the Caribbean region, and the affirmation of the collective identity of the Caribbean people. in the world community.

Its content speaks to the various dimensions of sustainable development—economic, social, cultural, and environmental and governance. The economic dimension has as its objective self-sustaining growth based on strong international competitiveness and innovation, a full-employment economy; and spatially equitable economic growth within the Community. The main drivers of regional economic transformation are identified as the energy sector; agriculture, forestry and fishing; manufacturing; sustainable tourism; and other export services. There is to be an enabling environment to encourage and facilitate private sector activities in these drivers and in key supporting areas like finance and air and maritime transport. It calls for common policies in foreign trade; human resource utilisation; fiscal, monetary and incentives policies; transport; investment; financial services;

capital market integration; competition; regional quality infrastructure; small and medium enterprises; and corporate governance³.

The Development Vision was seen as a complement to national plans and strategies through the synergies available from integrated markets, common policies, functional cooperation and pooling of bargaining power.



³ Most of these are also called for under the terms of the Revised Treaty.

And finally, there is a ‘road map’ for the completion of the CSME between 2007 and 2015 as a stepping stone to the realisation of the Vision. There is a Phase 1 that goes from 2007 to 2008 which focuses on the consolidation of the Single Market and initiation of Single Economy through such priority measures as the Caricom Investment Code and the Financial Services Agreement, extended categories of free movement of labour and implementation of free movement of service providers. Phase 2 is from 2009-2015 and consists of the completion of Single Economy through the implementation of common policies in the most important sectors including Energy, Agriculture and Sustainable tourism; and the harmonisation of macro-economic policies and of the regulatory environment.

GOVERNANCE AND POLITICS

So that’s the Vision and that is one path. I want to emphasise that this path is not an alternative to globalization; it addresses international competitiveness and innovation and identifies key sectors and activities for exporting to extra-regional markets. What it does is to seek to reconcile the demands of globalization with the need for social equity and the securing of greater autonomy through the collective strength of the members of the Community.

At the same time it became clear to some of us that in order to attain the objectives of the Vision there would need to be an overhaul of the way in which the Community carries out its business—the governance

arrangements—to address the implementation deficit and the participation deficit. There would need to be Implementation of the *Rose Hall Declaration on Governance and Mature Regionalism*, adopted by regional Heads of Government in 2003, based on the recommendations of the Technical Working Group on Governance (TWG) particularly:

- i. The automatic application of decisions of the Conference of Heads of Government at the national level in certain defined areas.
- ii. The creation of a CARICOM Commission with Executive Authority in the implementation of decisions in certain defined areas.
- iii. The automatic generation of resources to fund regional institutions and,
- iv. The strengthening of the role of the Assembly of Caribbean Community Parliamentarians (ACCP).

To address the participation deficit there would need to be much greater popular participation and popular involvement in the regional project. I differ from the TWG in that I don't think it is enough merely to strengthen the role of the ACCP. The late Lloyd Best used to say that the main problem with Caricom is the absence of regional politics. To put it another way, we are trying to build regional integration on the basis of national and insular politics.

We would need to have something like a regional political movement, somewhat like the New World Group and other similar movements in the 1970s; and perhaps a system of directly elected delegates to some sort of regional assembly that has some clearly defined political function; elected not on a party political basis but perhaps representing sectors of the community or interest groups. Such a body would have to have some real responsibility within the system of governance of the Community other than one that is merely deliberative or consultative. For example, it could scrutinise the budget of the Caricom secretariat and other Community institutions. It could monitor the progress of the implementation of the Charter of Civil Society, the CSME, the Single Development Vision and the regional development plan.

DEVELOPMENTAL REGIONALISM

It needs to be said, however, that this path to development involves going beyond the ‘Open Regionalism’ that underlies the original conception of the CSME, with all its neo-liberal connotations, to a kind of ‘Developmental Regionalism’ that is tailored to our needs; one in which there is selective development of regional clusters identified through an iterative process of technical analysis and stakeholder negotiation—such as what took place at the Caribbean Connect Symposium.

Such developmental regionalism has implications for foreign trade agreements in the WTO, the EPA and bilateral trade agreements. To the extent that it involves selective tariff protection, subsidises of one kind or

discrimination in favour of regional firms and the like, it involves departure from the evolving rules of the game in the multilateral trade environment. A point made in the Vision is that the region will need to seek to maximise the policy space it secures for trade agreements while taking into account the parameters established by these agreements.

I call this the path of managed participation in globalization through integration and the maximization of policy space.

CHARACTER OF THE EPA

Now I turn to the EPA. The first thing that strikes one is that Caricom's Development Vision is not a part of the EPA. There is a reference in the Preamble about the Parties being 'desirous of facilitating the Caricom Development Vision', but there are a whole lot of other things in the Preamble as well and there are no further references to the Development Vision in the EPA. It looks very much to me like a pro forma reference. In any case as you go through the EPA you see where the measures and policies it requires and its prescribed implementation time-lines are not those of the Development Vision.

It is interesting that former PM Mr. Arthur should have said in his lecture that there is a practical difficulty in judging the EPA on the strength of its Development Dimension because "**the Caribbean and the European Union do not share a Common Development Vision**". And he went on to say that

“...in the prevailing intellectual and ideological climate, it has been virtually impossible to call upon a Grand Design for Development, subscribed to by all, to provide the architecture around which the EPA has been constructed”.

This is a very frank and, I believe, significant admission. But I think we need to go further, and recognise what is the underlying vision of the EPA, the logic that informs its key measures, policies and priorities. And the clues to this, I would argue, are found in Article 1 (b) and (c) of the Agreement, where it speaks of ‘establishing and implementing an effective, predictable and transparent regulatory framework for trade and investment between the Parties and in the CARIFORUM region’ and ‘promoting the gradual integration of the CARIFORUM States into the world economy’. It is, in a nutshell, the logic of the Washington Consensus, ‘the ideology and policy paradigm that has dominated approaches to development since the 1980s’—these are Mr. Arthur’s words—supplemented by the strategic objectives of the EU’s ‘Global Europe’ project. I will come back to the Global Europe project later.

In summary the EPA provides for the nearly full reciprocal trade liberalization over a period of 25 years, the majority within 15 years, for considerable liberalization in services, and contains a host of other WTO-plus commitments in Intellectual Property, Investment, Competition Policy, transparency in Public Procurement, Trade Facilitation and Customs Administration, and extends into e-commerce, the environment and social aspects. It is vast, it is wide-ranging, it is detailed and I don’t think that more than a handful of people in the region fully understand the Agreement in all

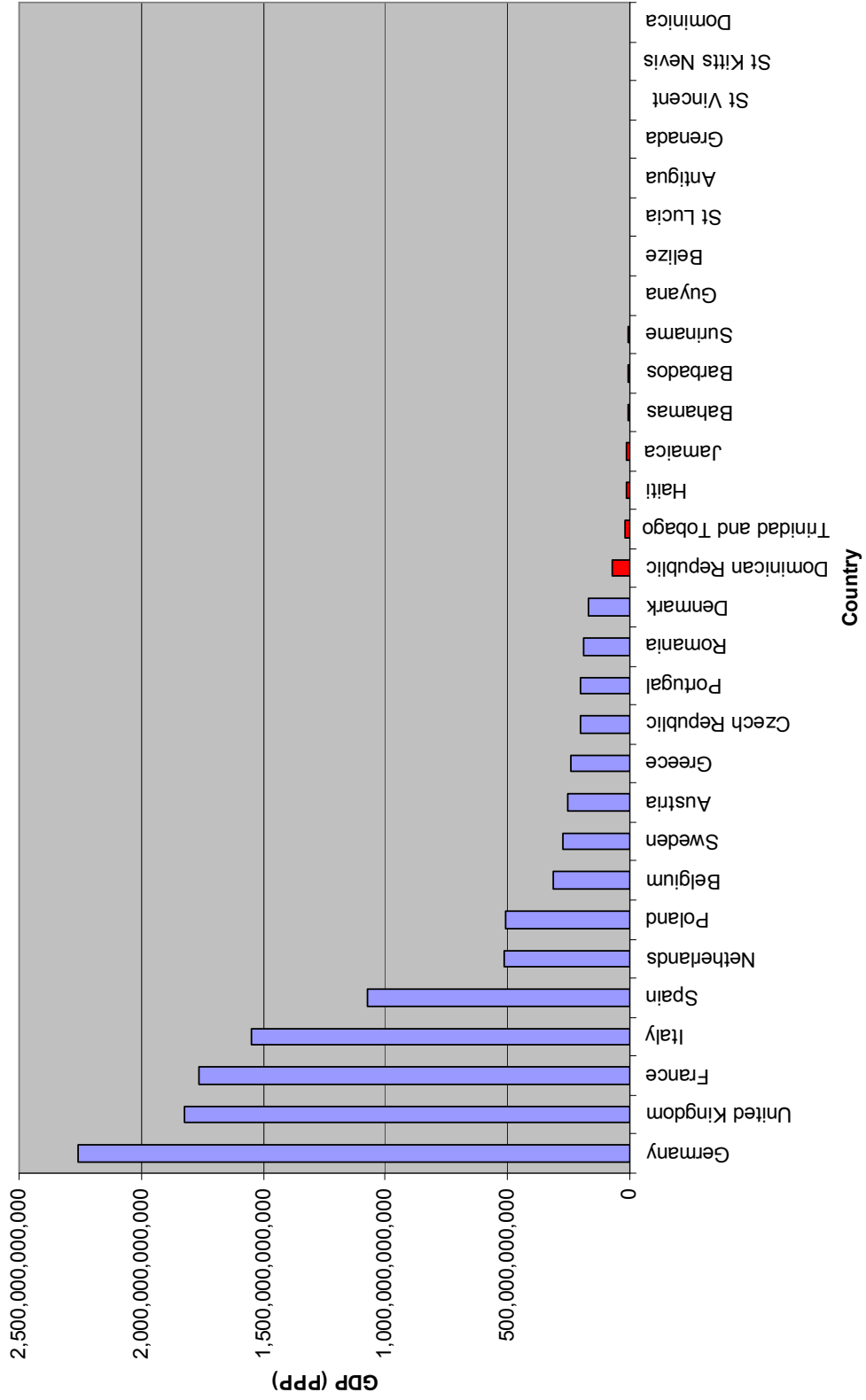
its ramifications. I have been studying it myself for some time and I still don't.

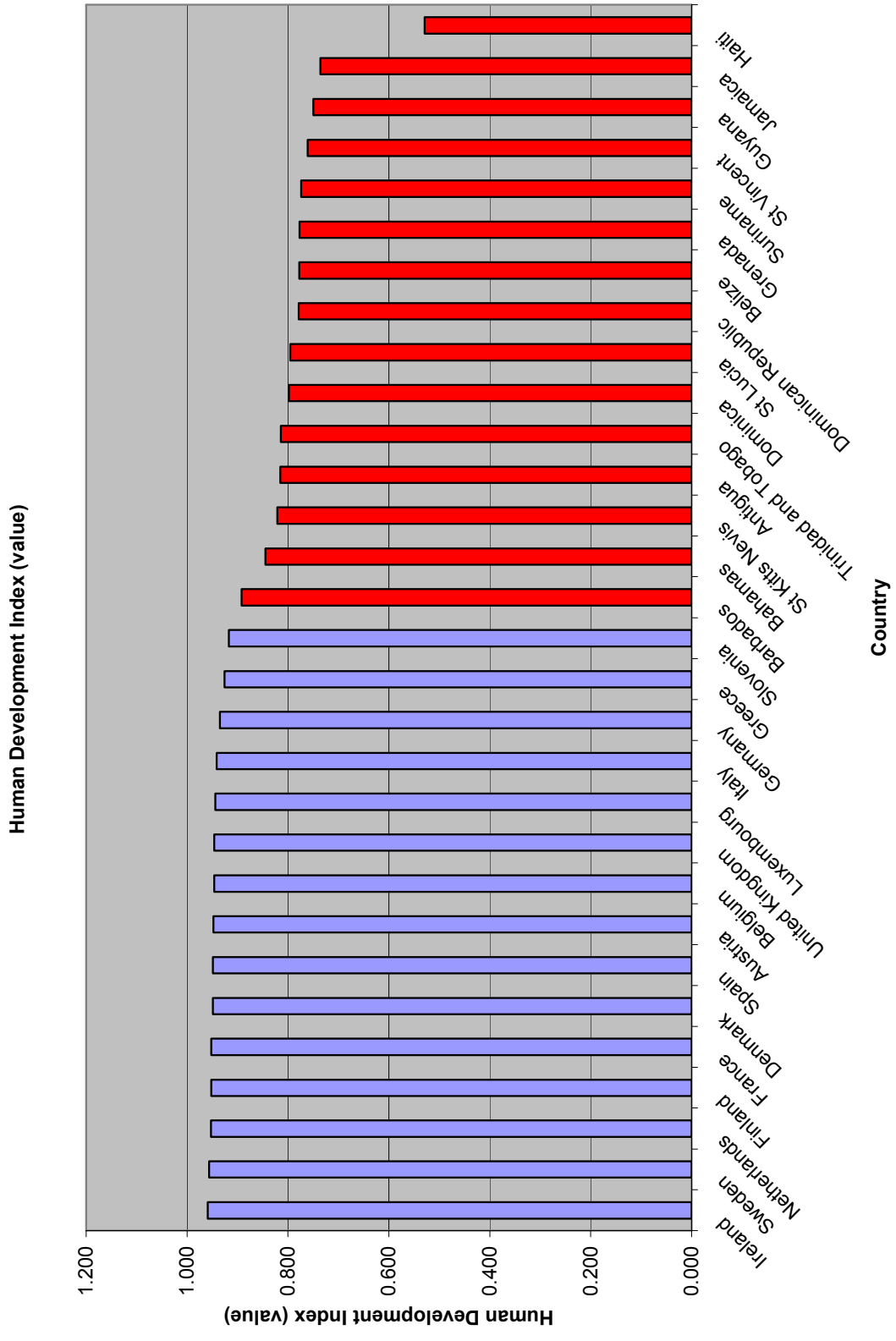
But before going into further detail I would like to draw your attention to two features of the economic landscape that will, in my view, have a bearing on how the EPA plays out economically. One is the wide asymmetries in size and levels of development and degree of competitiveness between Europe and the Caribbean. The other is the wide differentiation that exists within the Caribbean.

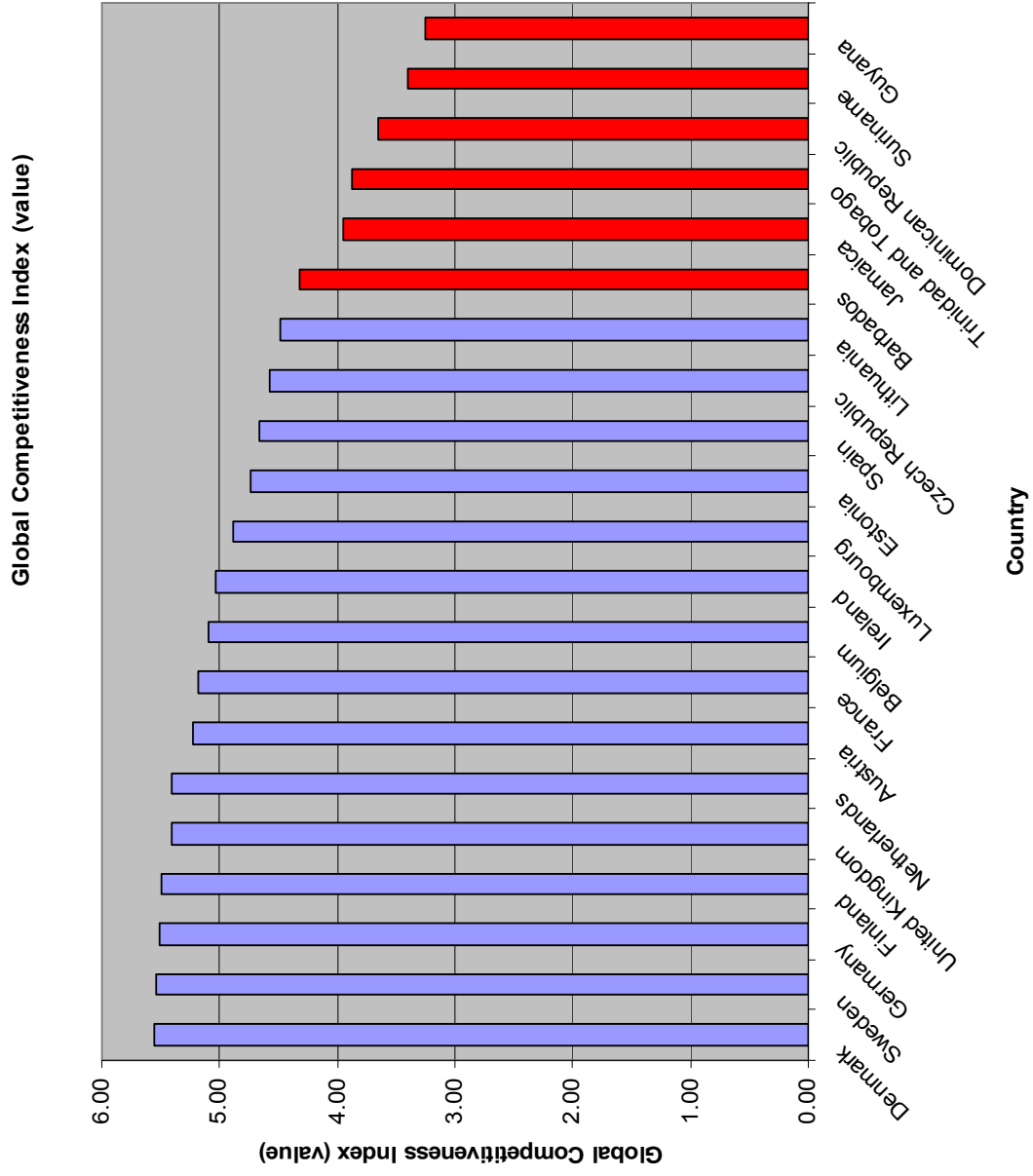
ASYMMETRIES BETWEEN EUROPE AND THE CARIBBEAN

Asymmetries are critical to determining the effects of a reciprocal trade and investment agreement; the degree to which different partners will be able to take advantage of the opportunities provided; the distribution of probable benefits from the arrangement. And when we look at the EU on the one hand and Cariforum on the other hand we see vast asymmetries. Some of these are dramatised in the three charts that follow, which show the 15 leading EU member states in aggregate GDP, in Human Development, and in Global competitiveness, and compares them with the 15 Cariforum countries.

GDP (PPP) 2006







We see asymmetries of size: the EU's 27 member states have 490 million people; about 20 times Cariforum's 25 million. The EU's \$12 trillion economy is 88 times the size of CF's. We see asymmetries in level of development. The average per capita income of this aggregation is 4.5 times that of CF's. Let us look at Human Development. As you know the UNDP's Human Development Index (HDI) is a composite of per capita income, education and health. These are reasonably good indicators of the actual and potential productivity of the average person in a country's population. The 15 best performing EU countries all exceed the best performing CF country—Barbados—in human development (Barbados, it should be noted, actually does better than the nine lowest member states of the EU; the majority of these being newly joined countries from the former Soviet Bloc, not shown in the Chart).

Let us look at competitiveness, as measured by the Global Competitiveness Index (GCI) of the World Economic Forum. The 15 best EU countries all score higher than the six CF countries for which we have a GCI--Barbados, the Dominican Republic (DR), Guyana, Jamaica, Surinam, and Trinidad and Tobago (T&T).

So we see these vast disparities. In Europe, they recognise that these disparities within their Union need to be addressed by making large public investments in the poorer members, in their physical and social infrastructure, in the training of their labour force, in providing easy credit to their firms, especially small and medium enterprises, to finance their investment in plant and equipment and technology. The investments are financed by funds provided by the richer countries of the EU; they call them

‘structural funds’, ‘social cohesion funds’. This serves to trigger private investment including foreign investment; so the poorer countries benefit from trade expansion as well as the more advanced countries. Ireland, Spain, Portugal, Greece, Malta—they have all benefited from these funds and seen their level of development draw closer to that of the richer countries.

And this is what we need to look for in the EPA, for if you don’t have these resource transfers and you have reciprocal free trade, the poorer countries in the arrangement are going to fall further behind, and you don’t get development.

OPPORTUNITIES FOR EXPORTING GOODS

Now some people argue that the huge EU economy represents great opportunities for us to sell to Europe, especially in niche markets for goods and services, because a relatively small increase in our market share in Europe will translate into a huge increase in export value. And this is true. But this overlooks two important factors. One is that having formal access to EU markets does not guarantee sales. There are rules of origin (ROOs), there are technical barriers to trade (TBTs), and there are Sanitary and Phytosanitary Standards (SPS). To penetrate the EU markets also requires investment in marketing, in distribution, business contacts and knowledge of distribution networks. It requires production capacity. The fact is that the Caribbean as part of the ACP has had DFQF access to EU markets for 97% of their exports since 1975 under the Lome agreement, but their exports of non-traditional products to Europe have hardly grown.

Besides the NTBs, there is competition with other ACP producers with same level of access, and with non-ACP Least Developed Countries under the EU's 'Everything But Arms' scheme, most of not all of which are lower-cost producers than we are. We are also competing with Asia; and with other Central and South American producers with which the EU is negotiating trade agreements.

So any agreement that truly addresses the development needs of the Caribbean—and this is what the EPA is supposed to do—should address NTBs, should address the problems of production capacity, should address the challenge of establishing market presence in Europe, should address the ability to compete and sell successfully of local firms. Above all it should address the need for resource transfers for physical and social infrastructure and to equip firms especially SMEs to develop their production and marketing capabilities for export to European markets.

And this is what is lacking in the EPA. Its not that these subjects are not covered in the Agreement. They are. There are lots of references to development support and to support for local firms. They are in the first chapter on Trade Partnership for Sustainable Development; they are in the Agriculture and Fisheries Chapter; they are in the chapter on Innovation. The problem is that all these references not quantified, they are not time-bound, and they are not legally binding. They are at the discretion of the Europeans. Of course there have been support measures for the sugar and banana and the rum industries. These have been negotiated independently of the EPA. What one would have liked to have seen are concrete programmes of

assistance for local and regional firms to develop their production and supply capacities to enter and compete successfully on the European market; to address the problems that have constrained exports in the past.

The chapters on TBT and SPS contain no concrete commitments to make these more user-friendly or to assist firms to satisfy these standards. There are references to the WTO agreement and promises about what might happen in the future. Regarding Rules of Origin, we are told that these have been relaxed for certain products like garments and textiles and dairy products. We are told that regional cumulation of value added criteria has been extended to goods imported from Central American countries—not surprisingly, as the EU is now negotiating with the Central Americans. I am not clear however, that the complicated ROOs that have effectively hindered exports in the past have been satisfactorily addressed. There is provision for review in five years time and this suggests that there is a lot more to be done.

OPPORTUNITIES IN SERVICES

Let us turn to services. This was one of the areas of interest to CF as most of our economies have shifted into services. The EC has reportedly liberalized without quota restrictions access to 90 percent of their service sectors to CF. 29 sub-sectors have been listed as being open to movement of natural persons of CF employed to Contractual Service Suppliers, and 11 sectors for self-employed Independent Professionals.

Services liberalized for Contractual Service Suppliers from the Caribbean (Art 83)

- | | |
|---|--|
| 1) Legal advisory services in international public law and foreign law | 15) Market Research and Opinion Polling |
| 2) Accounting and bookkeeping | 16) Management consulting |
| 3) Taxation advisory | 17) Services related to 16 |
| 4) Architectural | 18) Technical testing and analysis |
| 5) Urban planning and landscape architecture | 19) Related scientific and technical consulting |
| 6) Engineering | 20) Maintenance and repair of equipment, including transportation, |
| 7) Integrated Engineering | 21) Chef de cuisine |
| 8) Medical and dental | 22) Fashion model |
| 9) Veterinary | 23) Translation and interpretation |
| 10) Midwives | 24) Site investigation work |
| 11) Services provided by nurses, physiotherapists and paramedical personnel | 25) Higher education services (privately-funded) |
| 12) Computer and related | 26) Environmental |
| 13) Research and development | 27) Travel agencies and tour operators' |
| 14) Advertising | 28) Tourist guides |
| | 29) Entertainment services other than audiovisual services |

Services liberalized for Independent Professionals (IPs) (Art 83)

- 1) Legal advisory services in international public law and foreign law
- 2) Architectural services
- 3) Urban planning and landscape architecture services
- 4) Engineering services
- 5) Integrated Engineering services
- 6) Computer and related services
- 7) Research and development services
- 8) Market Research and Opinion Polling
- 9) Management consulting services
- 10) Services related to management consulting
- 11) Translation and interpretation services

This looks good on paper but here again the Devil is in the detail, in this case the details of eligibility criteria.

There are a number of points here. One is the necessity for Mutual Recognition Agreements (MRAs) for professionals wishing to take advantage of this access. Now how will this work? According to the EPA the professional associations (PAs) of each Party will first have to negotiate a draft MRA between them. Does this mean that the PA in each CF country will need to negotiate a MRA with the PA of each EU state in which it wishes to do business? This is not clear. What will be involved in attempting to get agreement on MR in say, accounting or law or architecture with a country like Italy or France or Germany, with a different language and systems of training and accreditation? What about less developed countries of CF where PAs are weak or non-existent?

Mutual Recognition Agreements

Necessary for all individuals providing services (CSS and IPs) Article 85)

1. Caveat: Nothing in EPA shall 'prevent Parties from requiring necessary qualifications and/or professional experience in territory concerned'
2. Professional bodies to be encouraged to jointly develop recommendations on MR for Trade and Development Committee (TDC) within three years
3. Priority to accounting, architecture, engineering and tourism.
4. TDC reviews to determine consistency with EPA
5. If approved by TDC, Parties negotiate MRA 'through their competent authorities'
6. Agreement must conform with WTO particularly Article VII of the GATS.

Second, the draft agreement must be submitted for approval to the EC to ensure it is consistent with the EPA. How long will this take? The Brussels bureaucracy has been described by one knowledgeable commentator as being worse than any in the Caribbean. Then the MRA has to be actually negotiated with the competent authorities of each Party. Who decides who are the CAs? Is this an EC wide negotiation or one with each member state? That is not clear either.

Employees of CSS – conditions of access

1. Must be working with a firm with a service contract in an EU member state not exceeding one year's duration
2. Must have at least 1 year's working experience with the supplying firm as well as 3 years' professional experience
3. With certain exceptions*, must possess a university degree or equivalent qualification and professional qualification required in receiving state. Mutual recognition agreements necessary.
4. Stay limited to cumulative period of six months in any 12-month period or duration of contract, whichever is less
5. Access limited to performance of contract
6. Number limited to what is necessary to fulfill contract as determined by local laws
7. Other 'discriminatory limitations' are allowed, including limitations on the number of employees permitted entry as a result of 'economics needs tests' in the receiving countries.
8. Other conditions are specified in Annex 4.

** Fashion model services, chef de cuisine services, and entertainment services other than audio-visual .*

Conditions of access of IPS (Art 83)

1. Must be engaged in the supply of a service on a temporary basis in the other Party and must have obtained a service contract not exceeding 12 months.
2. At least 6 years professional experience.
3. A University degree or equivalent qualification and professional qualification required by local regulations. Mutual recognition agreements necessary
4. Stay limited to cumulative period of 6 months in any 12 month period or duration of contract, whichever is less.
5. Other 'discriminatory limitations' are allowed, including limitations on the number of employees permitted entry as a result of 'economics needs tests' in the receiving countries.
6. Other conditions are specified in Annex 4.

Third, there is the matter of economic needs tests, that EU member states are allowed to impose, in essence, this is saying that each EU country will

decide whether it needs the particular skill or not. They will take those that they need for as long as they need them, and that's it. But we are told that there is no quota restriction.

And fourth, there is a blanket caveat that says that EU member states are allowed to impose other restrictions, including in the form of number of etc. That sounds very much like the right to impose quotas to me.

What are we to make of this? My guess is that some CF countries that have well developed PAs and registration and certification systems, and a surplus of skilled professionals that are also in short supply in some EU countries, may be able to get some natural persons into Europe for temporary stays, if the host country PA is interested in getting its people here (otherwise there is no incentive for them to negotiate an MRA), and if the PA in the CF country makes the necessary investment of time, resources and effort to negotiate the MRAs and if the EC is cooperative in approving the MRA. How many people in the Caribbean will be able to take advantage of this, and when?

On the specific matter of entertainers, where the CF has an obvious interest, the Cultural Industries Network has said that they have had no difficulty in the past securing the right to perform in Europe on ad hoc basis. The right conferred under the EPA will now require that they be employed to a CSS and they be registered with some local entity. Presumably that registration system will have to meet with EC approval. Who will decide? What about the countries that do not have registration systems in place for entertainers—I am told the majority. What will be involved in setting up such systems,

how much will it cost, and who bear the cost? As I said, the devil is in the detail.

COMPETITION FROM IMPORTED GOODS AND SERVICES

Now when we turn to the ability to compete on the side of imported goods and services what do we see? Here is where the differences in size, levels of development and degrees of competitiveness could be decisive. The EPA requires 87% liberalization of goods imports over 25 years with the majority—82%--in 15 years. In the case of services, and 75% of MDC service sectors and 65% of LDC service sectors, it seems this is more or less immediate, with a built-in agenda to negotiate on further liberalization in the future. What can one expect? How far will CF firms, SMEs, service providers be able to compete with EU firms on their own market?

Those who believe that liberalization in and of itself will generate suitable market responses from the local private sector without carefully phasing and carefully calibrated assistance for adjustment to these firms have to have much greater faith in the operation of market forces than I do. The experience of Jamaica in the 1990s for example, when agriculture and manufacturing imports were substantially liberalized suggests the opposite.

DIFFERENTIATION

The second contextual factor that I mentioned was the existence of differentiation within the Caribbean. The Charts on pages 14-16 give an

indication of this as well. The Cariforum group has the country with the highest HDI in the developing world—Barbados—and one of the lowest – Haiti. In terms of PCI PPP the gap between the richest and poorest countries in the group widened from 7.8 to 1 in 1990 to 11:1 in 2006. Excluding Haiti the gap narrowed somewhat, from to 6.75 to 1 to 4.2 to 1 between 1990 and 2006. Nonetheless it is still very wide.

There are other indicators that are needed to capture the intangible property that I would call the capacity to respond to changes in the competitive environment, the capacity to shift resources into new activities, to adapt institutions, to set new goals and objectives and pursue them with vigour and resourcefulness. It is function of the general level of education, of human and social capital, of the quality of institutions, of social cohesion, of the quality of leadership at all levels of the society. Intuitively we know that there are marked differences within the region on this score, Barbados being ahead of the rest. Indeed I believe that the HDI and the GCI are reasonably good proxies for capturing what is in reality a multi-sided quality.

The reason why differentiation becomes important is because the EPA is structured in a way that facilitates the more advanced countries taking earlier and faster advantage of its opportunities than the others and thereby pulling even more ahead. To understand the potential for this we need to look at the legal formulation of rights and obligations in the EPA.

Article 233 of the EPA states that for the 'purposes of this Agreement the CARIFORUM states agree to act collectively' but goes on say that the term

'Party' shall refer to the CARIFORUM States acting collectively or the EC Party... (But that) 'Where **individual action is provided for or required to exercise the rights or comply with the obligations under this Agreement reference is made to the "*Signatory CARIFORUM States*"** (My emphasis).

I had an assistant go through the text of the EPA to pull out instances of use of the terms 'Party', 'Parties' and 'Signatory CARIFORUM States' in the EPA text. What came out of this was very interesting. The areas of agreed Cariforum collective action appear fall mainly into two categories. First, obligations of a general nature; for example 'The Parties agree that the Cotonou Agreement and this Agreement shall be implemented in a complementary and mutually reinforcing manner' (Article 2:2). The second main category of collective action relates to the Dispute Settlement Procedures.

References to 'Signatory CARIFORUM States', on the other hand, appear to relate mostly to obligations of a specific, time-bound nature. For example,

“...Moreover, the Parties and the Signatory CARIFORUM States shall not otherwise apply internal taxes or other internal charges so as to afford protection to like domestic products” (Article 27:1),

and

“...the Parties and the Signatory CARIFORUM States agree to put in place a system of binding rulings on customs matters, notably on tariff

classification and rules of origin, in accordance with rules laid down in their respective legislation” (Article 31:2 (f)).

Furthermore—and this could be very significant—the schedule of tariff reduction commitments by Cariforum countries on imported goods, and of market access commitments on service sectors; is structured by country. This seems to make them, from the legal point of view, a set of bilateral obligations that each Cariforum State undertakes with every other and with the EC. The reason that has been given for this, is that it avoids a situation where all Cariforum could be penalized for the non-compliance of any one country. But the downside is that it severely undermines the principle and practice of collective regional responsibility on the part of the Caribbean Community. Indeed, I believe that one of its unintended consequences could well be to put every CF country, objectively, in a race with every other in terms of implementation of the obligations and accessing the rights under the EPA.

We need to think through the consequences of this for the the integrity of the regional integration movement and for the distribution of the costs and benefits of the EPA. I come back to this later.

HOW DID ALL THIS COME ABOUT?

The EPA was negotiated under a mandate from the CPA to be WTO compatible, and to contribute to sustainable development and poverty

reduction. The waiver to allow the non-reciprocal trade preferences granted under Lome to stay in place expired on Dec 31 2007.

The Cotonou Partnership Agreement 2000

- *Art 36(1) of the CPA: In view of the objectives and principles set out above, the Parties agree to conclude new World Trade Organisation (WTO) compatible trading arrangements, removing progressively barriers to trade between them and enhancing cooperation in all areas relevant to trade.*

The Regional Trade Agreement clause of the WTO under which the EPAs are negotiated requires that ‘substantially all trade’ between the parties be liberalized? But what is substantially all trade? There is nowhere written in the WTO what percentage is necessary to meet this requirement and what is the phasing necessary. I am reliably informed that up to the conclusion of the EPAs there is no precedent that could be referred to either. The EC argued that it means 90% of trade and that the bulk of this should be within the first 15 years. They agreed that nothing less would meet WTO approval and they have always invoked the principle of WTO ‘approvability’ in a manner that serves their own negotiating objectives. In the final analysis as it came down to a matter of power relations in the negotiations and the EC

prevailed. Here we need to look at three other aspects of the negotiations as they evolved from 2000 to 2007.

The first is the splitting of the ACP into 6 groups for the purpose of EPA negotiations. As many commentators have noted this broke the unity of the ACP grouping which had been cemented back in 1975. And it gave tremendous leverage to the EC in the negotiations. The ACP must be rueing the day when they agreed to this as now a lot of people are complaining about the agreements and the heavy-handed tactics of the EC especially of Commissioner Mandelson but no one seems to be able to do anything about it.

Even then the ACP did have the option, at least theoretically, of insisting in the Phase 1 negotiations, which were all ACP, that legally binding commitments be made by the Europeans that would be the basis or template for Phase 2, when the separate EPAs were negotiated. For example, on additional development assistance to bolster supply capacity, and action on NTBs and non-inclusion of 'WTO-plus' issues. But Phase 1 completed in 2003 with statements of general principles of a non-binding nature. By this time the game of divide and rule was well advanced, for in 2001 the Europeans gave LDCs including those in Africa DFQF access under the EBA initiative, which split the ACP even further.

A second factor that played a decisive role was the EC argument that the only alternative to the EPAs was to subject the exports of ACP countries other than LDCs to higher tariffs under the GSP scheme. The point of contention is the interpretation of Art. 37(6) of the CPA, which commits the

EC to provide countries that are not in a position to sign EPAs with 'a new framework for trade which is equivalent to their existing situation and in conformity with WTO rules'.

Article 37(6) of the CPA

- Art 37 (6). '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 2004 the EC determined that the only alternative was the GSP, which involves tariffs that would be damaging to the economies of most ACP exporters. In the Caribbean for example bananas, sugar, manufactured goods, alumina, and citrus would be affected. Everyone who followed the course of the negotiations in the closing months of 2007 is in absolutely no doubt that the threat of imposition of GSP tariffs played a decisive part in the signing of the agreements in Africa, the Caribbean and the Pacific in November-December. In the case of the Caribbean the banana exporters and the manufacturers openly lobbied the governments prior to the Heads of Government Conference in December, which authorised the final

concessions on market access. But there are different views as to the validity of the EC argument.

Dr Chris Stevens of the ODI in London has been researching EPAs for the better part of the last 10 years and is regarded as one of the leading experts on the subject. In his Report published in March 2007 he concluded that “application of the Standard GSP regime does not fulfill the commitment made by the EU in Article 37 (6) of the Cotonou Agreement”.

The GSP-plus controversy

Study prepared by Dr Chris Stevens, ODI

- ***“The report concludes that application of the Standard GSP regime does not fulfil the commitment made by the EU in Article 37 (6) of the Cotonou Agreement. It would result in the EU taxing ACP exports, generating revenue that compares unfavourably with aspects of Union-level aid, and is likely to result in the complete cessation of some ACP exports to the EU with significant adverse economic effects.***
- ***Another conclusion is that application of the Standard GSP would not put the ACP on a level playing field with other suppliers to the EU. In many cases competitors receive more favourable, non-reciprocal access than would the non-LDC ACP. The ACP would be disadvantaged compared to some other developing countries, increasing the likelihood that exports will slump.”*** (Dr Chris Stevens, The Costs to the ACP of Exporting to the EU under the GSP Final Report March 2007. London: Overseas Development Institute; Executive Summary.)

Dr Lorand Bartels, a Trade Lawyer based at Cambridge University who has been researching WTO and EPA legal issues, issued a paper on 21 November 2007 in which he identified three legal options for ACP countries’ maintaining market access into the EU after the expiry of the WTO waiver without having signed an EPA.

The 'Cotonou Waiver' Deadline Controversy

Opinion of Dr Lorand Bartels, Trade Lawyer, Cambridge University

Summary of Options for maintaining market access into the EU after December without having signed an FTA

- 1. Notifying a very basic agreement
- 2. Requesting GSP Plus
- 3. Requesting a Waiver

I have spoken to many people involved in this subject and there is no evidence that the ACP, including the Caribbean, availed itself of these arguments or seriously considered challenging the EC assertion by appealing to fellow ACP members, EU member states, NGOs etc. at the patent use of trade power by the EC trade directorate. The result was that by the closing months of the negotiations the bargaining power in the negotiations had shifted decisively to the EU. The EU Council adopted decisions that effectively put the threat of trade disruption over countries that did not have EPAs in place on December 31, 2007. They were in a position to dictate terms and this is exactly what they did.

Don't take my word for it. Let me quote some Reports on the question of how the EC handled these negotiations:

Report of the Cotonou Monitoring Group on review of the ACP guidelines and the EU negotiating mandates

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

Cited by Clive Thomas, Design and Architecture of the EPA, Stabroek News 24/02/08

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(2) Report of the Select Committee on International Development of the UK Parliament on progress of the EPAs (2004-2005)

- Condemned the negotiations for being non-transparent and conducted away from effective public scrutiny
- "Without special and differential treatment, the agreements will not be fair." "
- Advised of potential conflict with ACP regional integration efforts.
- 'Appalled at the cynical, manipulative way the EU was handling the negotiations, comparing it to a game of poker, where the winner-takes-all. It also stressed the unequal power relation.

Clive Thomas, 'Design and Architecture'...Stabroek News 24/02/08'

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Declaration by ACP Ministers, 13th
December 2007,

“The European Union’s mercantilist
interests have taken precedence
over the ACP’s developmental
and regional integration interests”

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At a Conference held last week on the Mona Campus, Sir Alister McIntyre was moved to say that he was ‘astounded at the document that came out of the EPA negotiations’. For those of you who are too young to know, let me say something about Sir Alister’s credentials. He is quite simply the Caribbean’s most eminent and experienced international economist of his generation. As Secretary General of Caricom he was present at the founding meeting of the ACP in 1975 and together with Sir Shridath Ramphal helped to engineer the original Lome agreement. He went on to become Deputy Secretary General of UNCTAD—the United Nations Conference on Trade and Development. From the late 1980s to late 1990s he was Vice Chancellor of the UWI and when the CRNM was set up he was appointed as its senior economist. Now in retirement, he remains an Honorary Associate of the CRNM. And he is astounded by what resulted from the EPA negotiations.

Why did he say this? Sir Alister made four observations. He pointed out first, that the ACP had DFQF access to Europe under Lome since 1975 and had failed to enjoy significance export expansion because the problem is production capacity, which the EPA did not address; second, that there was no additional development assistance available under the EPA, third, that the Caribbean had failed to maintain the alliance with the African countries and fourth, had failed to make potentially good alliances with individual EU states.

Let me return to the subject of the expiry of the WTO waiver. Once again there are two points of view: the EC argued that the date of December 31 2007 was cast in stone and the critics argued that there was flexibility. Certainly at the time the deadline was fixed in 2001 it was expected that the Doha Round of WTO negotiations would have been concluded before the end of 2007, by 2005 in fact and that this agreement would become the reference point for WTO compatibility in the EPAs. The missing of the Doha deadline could have been grounds for arguing for an extension of the waiver, by even a year or two, to allow more time for the negotiations to be complete to the satisfaction of all concerned. And even if the deadline had remained in place, there are many who believe that a de facto rollover could have been secured, or at least that it would take some time for any legal challenge to be mounted and adjudicated.

The WTO waiver 'deadline'

- (The Cariforum EPA) has not yet been notified to the WTO, despite the fact that EU preferences are being granted under the EPA Regulation. And yet the WTO Transparency Decision provides that such preferences may only be granted once an agreement is notified to the WTO. Clearly, this is not in compliance with this Decision. What is also striking, I think, is how this relaxed attitude to WTO obligations, now that there is an initialled text, compares to the frenetic pressure to initial agreements before 31 December 2007 (pressure also reflected in the EPA Regulation). *It does tend to make that pressure look a little manufactured.*

Dr Lorand Bartels, Brussels Seminar, 13/02/08; (my emphasis)

Again, quoting Sir Alister McIntyre, he informed the gathering last week that he checked this point with a friend in the WTO whether it wouldn't be possible to 'stop the clock' on the WTO waiver. According to him his source responded, "We are all sinners here", meaning that such rules are often broken and a blind eye is turned. We also have a legal opinion of the aforementioned Dr. Lorand Bartels, a trade lawyer based at Cambridge England. In a paper presented at a seminar in Brussels on February 13 Dr Bartels observed that the EC had not yet notified WTO of the CF EPA, the need for which had been the main argument for bringing it to conclusion in December, which, as he put it, "tends to make that pressure look a little manufactured".

THE EPA IS ‘WTO-PLUS’

However the matter does not end there. One feature of the EPA that is of considerable concern is that it is a ‘WTO-plus’ agreement, and it is WTO-plus in ways which seem to restrict, or better still orient, the kind of policies that CF governments will be required to follow in the future.

There are chapters on Competition policy, on Public Procurement, on Investment and Current Account payments, on Innovation and Intellectual Property and Customs Administration and Trade Facilitation. In the WTO the first three are known as the ‘Singapore Issues’, and they are subjects that the developing countries as a whole, including the ACP countries, had explicitly rejected for inclusion in the scope of the Doha Round. Their reasoning was that inclusion of disciplines in the scope of the agreement would compromise their freedom to adopt policies for national development, for example policies favouring their national firms and industries. They argued that outstanding issues from the 1993 Marrakech agreement that set up the WTO should be resolved, and that the Doha Round should be confined to the built in agenda of services, agriculture and trade in industrial goods. The EPA also contains chapters on e-commerce, the Environment and Social Aspects that I have not had the time to look at.

A cursory look at the chapters on these subjects in the EPA shows that they commit the CF countries to legally binding obligations in a wide range of issues. Take for example the chapter on Competition Policy. According to a brief published by the Geneva-based South Centre “The EU’s strategy is to achieve international convergence on competition policy on the basis of the

European model – rules that would prevent other governments from allowing domestic cartels, monopolies, “unfair” trade practices and would prevent or make it more difficult for governments to give state aid to their domestic firms or provide other support that would protect their firms from international competition’. For example Article 127 contains a binding obligation to introduce competition laws and institutions within 5 years of the Agreement’s coming into force.

In the chapter On Innovation and Intellectual Property, the comment has been made that Section 1, which is CARIFORUM’s main interest, “largely provides for non-binding commitments and declarations and measures that will be defined during implementation”. On the other hand Section 2, which is the EC’s main interest, “mainly establishes binding standards of Intellectual Property protection that must be implemented by the Parties; and that can be easily verified and assessed for purposes of ensuring compliance” (Comment from the South Centre). An example of binding standards is the requirement to establish a system for the registration of trademarks found in Article 144.

Let us look at Public Procurement. Title IV Chapter 3 of the EPA sets out detailed obligations with respect to transparency of public procurement for contracts of over SDR 130,000 for Supplies & Services and SDR 5 Million for works. It is one of the most detailed chapters of the EPA, with 8 articles, 72 paragraphs and 58 sub-paragraphs. One example of the many binding commitments applying to CF states is taken from Article 167.

The Public Procurement Chapter

- General Objective
- Definitions
- Scope
- Transparency of Government Procurement
- Methods of Procurement
- Selective Tendering
- Limited Tendering
- Rules of Origin
- Technical Specifications
- Qualification of Suppliers
- Negotiations
- Opening of tenders and award of contracts
- Information on contract awards
- Time Limits
- Bid challenges
- Implementation
- Review Clause
- Cooperation

Example of detailed provisions

Article 167.3 – 3-4

- *“For each procurement covered by this Chapter, procuring entities shall, save as otherwise provided, publish in advance a notice of intended procurement. Each notice shall be accessible during the entire time period established for tendering for the relevant procurement.*
- *The information in each notice of intended procurement shall include at least the following:*
- *name, address, fax number, electronic address (where available) of the procuring entity and, if different, the address where all documents relating to the procurement may be obtained;*
- *the tendering procedure chosen and the form of the contract;*
- *a description of the intended procurement, as well as essential contract requirements to be fulfilled;*
- *any conditions that suppliers must fulfil to participate in the procurement;*
- *time-limits for submission of tenders and, where applicable, any time limits for the submission of requests for participation in the procurement.*
- *all criteria to be used for the award of the contract; and*
- *if possible, terms of payment and other terms.”*

The CRNM has said that the Public Procurement chapter does not commit CF to offering market access to the EU in Public Procurement. The question

then arises as to why go to the trouble of including a Public Procurement chapter with such onerous binding obligations? Either the Europeans expect to get some business opportunities out of this, or it is a ‘foot in the door’ – the matter of market access will be re-opened during the implementation of the Agreement, with the procedures having been established through compliance with the EPA’s obligations.

On Investment and Services, allow me to refer to an unsolicited comment that came to me from a Professor of Law at the University of Auckland in New Zealand, who looked at the CF EPA as a possible model for a comprehensive EPA by the Pacific States. She concluded that the Pacific States should definitely not use it a model. Why? She says that in Investment and Services the EC has secured ‘state of the art’ rules and commitments from Cariforum that it hasn’t been able to achieve at the WTO; and that exceed even the controversial benchmarks proposed by the EC in the GATS 2000 negotiations. Some of the obligations, she says, are even more onerous than those imposed on the tiny Pacific state of Tonga at the time of its entry to the WTO. She finds that the development rhetoric in the GATS and the Cotonou Agreement, especially their promises of ‘flexibility’ and ‘asymmetry’, are diluted or absent from the operational parts of the EPA⁴.

When you juxtapose this with the stringent conditions attached to Caribbean service providers getting into the EU market, you have to ask yourself who got the better deal. You have to ask yourself, is what we are getting from this Agreement worth what we are giving up?

⁴ Jane Kelsey, [The Investment-Services Chapter of the Cariforum EPA](http://www.normangirvan.info/the-investment-and-services-chapter-of-the-cariforum-epa-by-prof-jane-kesley/). Available at <http://www.normangirvan.info/the-investment-and-services-chapter-of-the-cariforum-epa-by-prof-jane-kesley/>

Then there is the matter of ‘regional preference’⁵. Article 238(2) of the EPA obliges Cariforum states to give to each other the same concessions that they give to the EU. The problem is that Caricom has an agreement with the Dominican Republic that exempts the OECS countries and Belize, in their capacity as LDCs, from certain obligations; and these appear to be compromised by 238(2). Does the EPA abolish the Special and Differential Treatment for the Caricom LDCs that is fundamental to the architecture of the Treaty of Chaguaramas? This matter needs to be thoroughly investigated.

Finally, we have to mention the matter of the ‘Most Favoured Clause’ in the EPA. Article 19 says that Cariforum countries must grant Europe the same treatment they grant to any ‘major trading economy’ in subsequent free trade agreements. A similar clause was inserted in the Interim EPAs initialed by African countris. The provision was, in effect, imposed on the ACP by Europe in the final stages of negotiations. It is cleverly constructed, because it defines a ‘major trading economy’ in such a way as to include China, Brazil, India, and the Southern Common Market (Mercosur) in South America.

Almost immediately Brazil voiced an objection. In a statement to the WTO General Council in February Brazil has said that this clause will undermine South-South Cooperation, because ACP countries will know that anything they give Brazil in any future trade agreement, they will have to give to Europe. Brazil is also saying that it goes against the spirit of GATT’s ‘Enabling Clause’, which guarantees Special and Differential Treatment for Developing Countries.

⁵ Thanks to Pamela Coke-Hamilton of the Shridath Ramphal Centre at UWI Cave Hill, for bringing to my attention the issue of ‘regional preference’ and pointing out to me the omission of this and of the ‘Most Favoured Nation’ clause, in the discussion that followed the lecture.

Quite frankly I believe the Brazilians have a point. Do we not have a strategic interest in diversifying out trade and investment relations towards the emerging economies of the South? Should we not retain our right to do negotiate with the rapidly growing economies of China, India and Brazil as developing economies, without giving the same treatment to the EU? In any case this MFN clause is poised to become a contentious matter. If it remains in the EPAs, it could mean that the EPAs may not have smooth passage in the WTO.

WHY WTO-PLUS?

Why were these WTO-plus chapters included? The EC argued that by binding CF governments to adopt these practices this would facilitate and the development impact of the EPA by providing the right environment for private especially foreign investment. A CRNM release echoes this argument and some have also argued that these chapters provide for development cooperation from Europe.

The problem is that these promises of development cooperation are stated in broad and general terms that are difficult to enforce because they are not quantified and time bound or consist of specific enforceable measures. And it is by no means certain that by binding policies in this way private and foreign investment will be forthcoming on the scale required to make a difference to the rate of development.

POLICY CONSTRAINTS AND THE CSME

On the other hand what these obligations do is to bind CF governments now and into the future over a whole range of policies that impact on development and that are yet to be put in place for the CSME. For example what will they imply for the development of energy, domestic agriculture, food security, manufacturing and non-tourism services? Have we done a consistency test between the nature of these policies and what would be required and desirable to complete the CSME, the Caricom Investment Agreement? The Caricom Financial Services Agreement, the Caricom Competition regime, IP regime, services regime, public procurement regime and so on?

Of course a lot of this problem is of Caricom's own making because the Community has been dilatory in completing the CSME and in adopting the kind of governance arrangements that are needed to bring it to speedy conclusion. There is a sense in which we have no one to blame in this matter but ourselves. But this that a good enough reason to hand over policy determination to an agreement negotiated with the Europeans and in which the DR will also be part? I have heard it said that the commitments made in these disciplines are commitments that we would have made been willing to make in any case to one another as part of the CSME. I am sorry but this sounds suspiciously like an argument of convenience to me.

The very inclusion of these commitments responds to the EU own stated agenda for trade agreements, and the details contain provisions that are obvious interest to the Europeans, for instance in IP, Competition and public

procurement. And once they become part of this legally binding treaty, it seems to me that Caricom will have no choice but to adapt its regimes for these subjects to the requirements of compliance with the EPA. In fact why bother to go to the trouble and expense of having CSME regimes for these subjects at all? The policies, laws and practices will have been changed to suit the EPA. And what meaning is left of the CSME? We would have surrendered our autonomy in policy making in these areas to the requirements of EPA compliance, and with it much of our ability to pursue a development path of our own making.

THE ‘GLOBAL EUROPE’ STRATEGY

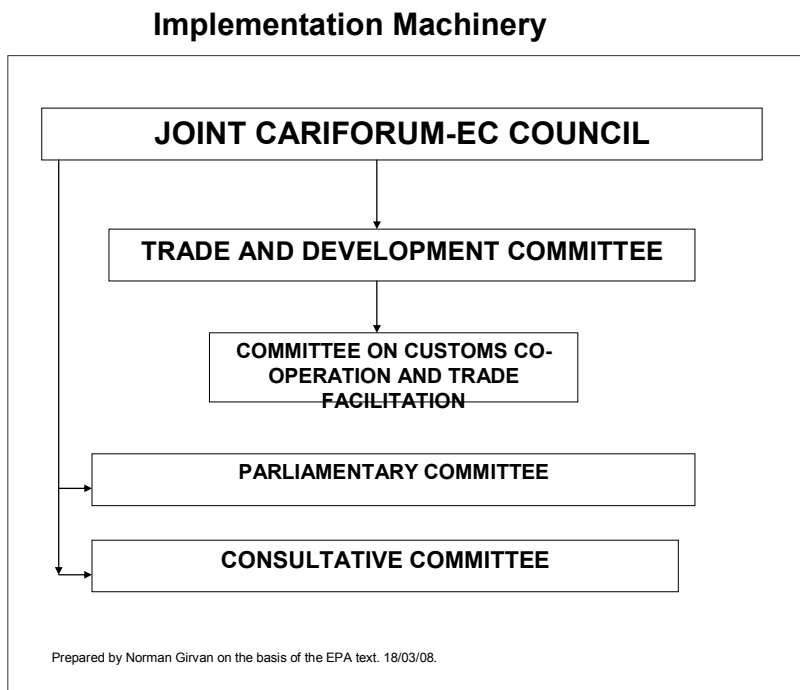
What we can say with some certainty is that these WTO-plus disciplines are an explicit objective of the EU’s Global Europe project. Unveiled in 2006 and strongly associated with the DG Trade Peter Mandelson, the Global Europe strategy calls for the EU to “pursue bilateral trade agreements with major emerging economies to secure new and profitable markets for EU companies’ exports and investments and access to energy and others resources’, BTAs will aim to include

- Rules securing European investments
- Stronger Intellectual property rights coverage and enforcement provisions, including geographical indications
- Reduction of non-tariff barriers to EU exports and investments, e.g. in application of anti-dumping mechanisms, national treatment, competition policy
- Opening up of public procurement markets

- The European Services Forum, a coalition of EU service firms, has also lobbied strongly for the inclusion of services in BTAs

INSTITUTIONAL MACHINERY FOR IMPLEMENTATION

The last aspect of the EPA that I want to draw your attention to is institutional machinery for implementation, monitoring, and enforcement. This is very elaborate. At the apex is a Joint EC-CF Council. Most of the functions of implementation are to be carried out by a powerful Trade and Development Committee.



Joint EC-Cariforum Council

Part V Articles 227-229

- Composition: Members of the Council of the EU, members of the EC, and representatives of the CF states.
- In matters where CF states agree to act collectively “One representative of the CF states will act on their behalf”
- Responsible for operation and implementation of the Agreement and to “ensure that the Objectives are fulfilled”
- Decisions are by consensus and are binding and Parties “shall take measures to implement them”
- Other responsibilities set out in 19 paras.

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Now a controversy has erupted as to whether this machinery is at variance with the Treaty of Chaguaramas. For example will the powers of the Joint Council and of the Trade and Development Committee supersede those of the Heads of Govt, which has no legally binding force and enforcement machinery, and those of COTED, the Caricom Council for Trade and Development? What happens if there is conflict? The Preamble to the EPA says ‘having regard to the Treaty of Chaguaramas’ but what does this mean? The Treaty and its Organs are not referenced in the Chapters on Dispute Settlement, on Institutional Provisions and on General and Final Provisions.

For example Article 241.1 is on relations between the EPA and the Cotonou Agreement. It says that if there is a conflict between the EPA and Title II Part III of the Cotonou Agreement, the EPA shall prevail. Article 242 is on relations of the EPA with the WTO Agreement. It says that the EPA cannot

require the Parties to act in a manner that is inconsistent with the WTO Agreement.

Why is there no Article on relations between the EPA and the Treaty of Chaguaramas? In the case of conflict, which Treaty shall prevail, the EPA or Chaguaramas? Can the EPA require Caricom states to act in a manner that is inconsistent with the Treaty that sets up the Community? The answers to these questions are not clear. This is one of the many reasons why I believe that the EPA should not be rushed into law.

Remember too that the Treaty of Chaguaramas is a very generally worded document. It sets up certain organs of governance and it provides for the governments to develop and adopt common policies. The details of these policies are not spelled out. Most are to be determined in the course of implementation. On the other hand the EPA is very precisely worded. Policies are spelt out in great detail and many are time-bound. In many instances it may not be possible to determine that the EPA is in conflict with the Treaty because the Treaty is not specific as to what measures shall be adopted, while the EPA is. Then there is the matter of the Dispute Settlement Provisions. How do these provisions square with those of Treaty of Chaguaramas, with the role of the Caribbean Court of Justice?

EFFECT ON REGIONAL INTEGRATION

So what do we end up with? In 15 years time, a duty-free zone with the DR and the EU trading bloc in which goods and services and investment in

commercial presence move freely, policies in a whole range of subjects have been harmonised with the EU, presided over by institutions for monitoring and enforcement with legally binding powers, and with individual states each in a legal relationship with the EC, with the DR and with each other with regard to compliance, implementation and access to benefits, such as they are.

Is this a scenario for regional integration, for coherence, for convergence of levels of development; or is this a scenario for intra-regional competition, for fragmentation, for greater unequal development among countries in the region and for continued loss of autonomy and subordination to the European agenda and EU firms? And once these concessions are given to the EU what is to stop the Canadians and the Americans from demanding the same?

Is this the kind globalization that we want? Some people will benefit to be sure. Some firms and industries, some professionals and service providers. But how equitably will these benefits be spread, among groups and countries in the region?

CAN THE EPA BE CHANGED?

Can anything be done at this stage? A month ago Brewster, Lewis and I made a proposal to Renegotiate the EPA. There was a technical component and a political component; I am going to reverse the order of presentation.

First, the governments must come clean with the population. Tell them that what was initialled was under duress. It needs to be reviewed and renegotiated to be more supportive of development and regional integration. Seek broad support for this position from stakeholders. Make genuine attempts to re-build the alliance with the Africans and the Pacific. There is a lot of disaffection with the Interim EPAs in Africa, South Africa, Nigeria and Senegal are against them and others only signed because of pressure. There is a lot of talk about re-negotiation. Just this morning I got a paper from the ODI-ECDPM that's says that the interim Agreements are messy, they're unlikely to stand the test of time, and its in the interest of all to re-negotiate and re-specify them so that they are is genuine local ownership and they are durable. The same applies to the Cariforum EPA. Appeal directly to the EU member states and to the NGOs. They can be powerful allies. Seek to bring pressure on the DG Trade. Divide and rule can work the other way too you know!

So the technical part of our proposal says, tell the EC we wish and intend to conclude a trade agreement that is WTO-compatible, in conformity with the WTO rules; but that a WTO-plus EPA can only be contemplated if and when there is agreement on these other issues in the WTO, or perhaps, when they are settled within Caricom itself⁶. Tell them we need to calibrate the import liberalization commitments with the development of production capacities and the targeted assistance for this. Fix a realistic deadline for

⁶ The legal scope for renegotiation of the EPAs initialed in December 2007 and the policy options were discussed at a Commonwealth-ACP meeting in Cape Town, RSA on April 7-8, 2008. The results are summarised in [Cape Town Outcomes](http://www.normangirvan.info/cape-town-outcomes-an-evaluation-meeting-on-the-initialed-epas/), available at <http://www.normangirvan.info/cape-town-outcomes-an-evaluation-meeting-on-the-initialed-epas/>

this. Get the CSME and the Single Development Vision back on track and deal decisively with the recommendations of the TWG on governance.

The proposal was sent to COTED at its meeting in the Bahamas in early March. No one seems to know if it was tabled at the Heads. At any rate, we have no information that it was given serious consideration. The CRNM dismissed it--their response is on record—and by all accounts the Ministers and Heads were not in receptive frame of mind. They agreed to complete their internal consultations in order to facilitate signing and provisional application of the EPA by June 30, 2008.

The prevailing view seems to be that if there are thorny issues in the EPA, these can be worked out in the course of implementation. But how much scope will there be to change this agreement once it becomes legally binding? There is a Revision Clause, but it seems to provide for revision in one direction only—by extending its scope.

How much scope is there for revision of the EPA after it is signed, ratified and brought into force ?

Revision Clause Article 246

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.” (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.” (i.e. in 2020. Emphasis added)*

A FORK IN THE ROAD?

So we are back with the question where I started—are we not at fork in the road? My candid answer would have to be that we are already past the fork, that choices are being made which foreclose other options; choices which take us on a path of further fragmentation, widening uneven development and further loss of autonomy.

The signs are not good for Caricom unity and coherence, on the EPA or on other critical issues. Some leaders are praising the EPA, at least one has complained about it; many have simply gone silent. The signing has been put off from April to some time prior to June 30, in order to give countries time to properly review it. But what is the purpose of the Review, if not to

change objectionable features? And if it is to be changed, how can it be signed and brought into force by June? No one seems to have the answer. Meanwhile, no action seems imminent on the report of the TWG on Governance.

Meanwhile, PM Golding is reported to have said that the Caricom Single Economy requires a high degree of policy coordination, and to the degree that this requires some form of political integration, Jamaica will ‘get off’ because his government has a mandate that ‘we are not going there’. Does this mean that Jamaica is not committed to the completion of the Single Economy? At the same time PM Manning has commissioned a study of political union between Trinidad and Tobago, Grenada, St. Vincent and the Grenadines and possibly St. Lucia. Does this mean the constitution of another sub-group within Caricom? The answers to these questions are not clear. Dominica has announced that it is joining ALBA, the Venezuelan-led Bolivarian Alternative for the Americas; and some people are saying this is inconsistent with its membership of Caricom.

So there are all these cross-currents; with no clear sense of direction in the evolution of the Community and in its dealings with the rest of the world; nor do we seem to have an obvious political champion of integration with sufficient standing and clout among his peers to revitalise the integration movement. Can civil society come to rescue? Perhaps.

IN CONCLUSION

I realise that I am ending on a rather negative note. But I have to call it as I see it. Yet I am heartened by several signs that we can see throughout the region. More and more people are asking questions about the EPA and demanding answers. They are agitating about high food prices. They are agitating about crime. They are agitating about Constitutional Reform. They are agitating about the environment. They need to start agitating about the pitiful state of the regional integration movement. They need to link these issues together and they need to network more across the region. The Internet is a powerful tool. It may be that what is needed to salvage the Community is more pressure from below. I thank you for your attention.