

## RENEGOTIATE THE EPA

**By Havelock Brewster, Norman Girvan and Vaughan Lewis**

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Below we list several areas of concern that we have identified. Some relate to process and others to content. We conclude by setting out some options that may be available to the region.

### A. With regard to process

The central point of the Statement is that the EPA is a treaty that is legally binding, of indefinite duration, will be very difficult to amend once it is in force, covers a wide range of subject areas that have hitherto been within the jurisdiction of domestic or regional policy, and which few people in the region know about or understand, notwithstanding the efforts made at stakeholder dialogue and consultation. It is therefore desirable that adequate time and effort be put into public explanation and discussion and a review of the provisions of the agreement before it is cast into stone from the legal point of view

### B. With regard to content

Our specific concerns with the EPA are listed below. The list is not exhaustive, as examination of the agreement is on-going.

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component of the Cariforum EPA has taken a back seat to the trade and investment liberalization component.

2. In order for a reciprocal trade agreement between partners of highly unequal levels of development to bring the poorer partners closer to the level of the richer, adequate resources must be transferred to them to build up their productive capabilities in infrastructure, human capital, and enterprise plant, equipment and technology. In the absence of this existing inequalities are likely to be worsened by the process of trade liberalization, as the economically more advanced partners are in a much better position to take advantage of the opportunities. In Europe the need for such resource transfers has been met by the generously endowed 'structural funds' and the 'social cohesion funds'; through which countries like Ireland, Spain and Portugal have been able to significantly accelerate their rate of development.

However resource transfers are not part of the legally binding obligations of the EPA. And the resources provided by the European Development Fund under the Cotonou Agreement are woefully inadequate. They amount to €165mn under the 10<sup>th</sup> EDF, which, when shared between 15 countries over the five-year period, amounts to € 2.2 M per country per year. EDF funds are also notoriously slow in negotiation and disbursement and the EC has signaled that the priority will be EPA implementation.

3. The effect or potential effect of tariff elimination on items representing 82.7 percent of imports from the EC needs to be carefully evaluated with respect to government revenue, income, production and employment; and country by country. If the net economic effects are negative then this contradicts the stated objective of the EPA to reduce poverty and a case may be made for either (a) a longer transition period or (b) compensatory resource transfers to cushion these effects. In the absence of this kind of information we are going into this binding arrangement with our 'eyes wide shut'.
4. The Caribbean has had duty free quota free (DFQF) access to European markets for the majority of its exports since 1975 under the Lome accords. But growth of non-traditional exports to EU markets has been insignificant. 'Market access' does not automatically convert to 'market presence'. There are major complaints from the private sector about restrictive Rules of Origin and onerous Technical Barriers to Trade (TBT), including Sanitary and Phytosanitary Standards (SPS). These obstacles have not been satisfactorily addressed by the EPA.

One example (and this is not necessarily the only one) is that the EPA Rules of Origin exclude a number of sugar-based products from 'cumulation' of value added at least until 2015. This will obviously inhibit the growth of regional sugar-based industries for export to Europe.

5. Cariforum firms, especially SMEs, need targeted product-specific and firm-specific assistance to raise their supply capabilities and competitiveness to enable them to meet competition from duty-free imports from Europe and to take advantage of new export opportunities. This is absent from the EPA.
6. The many references to development cooperation in the EPA are not quantified and time-bound. This leaves the way open for the EC to decide what to support, when and by how much without any legal recourse available to Cariforum countries. As mentioned above, the EC has already signaled that the priority use of the limited EDF funds will be EPA implementation.
7. The opening of 29 service sectors and 11 professional services in the EU to Cariforum service providers is highly conditioned. Service firms must have a contract of no more than one year's duration and their employees must have been working with the providing firm for at least one year. Professionals are required to have 'mutual recognition agreements' in force between their own state and the EU state where they wish to practice. Further, their entry is subject to an 'economic needs test' in the EU member state. If they manage to overcome all these barriers their stay is limited to a cumulative period of six months in any 12 month period or for the duration of the contract, whichever is less. This is like giving with one hand and taking with another.
8. With regard to entertainers, many were already gaining entry to the EU to perform. However, the EPA provisions will now require entertainers to be registered locally. Registration systems are at best embryonic in the region and, when established, will be required to meet EC approval.
9. Additionally, no commitments have been made by the EC in respect of visa, immigration, work permit and residency regulations relating to service providers. These are very tight on the EU side and relatively relaxed on the Cariforum side because of tourism. Hence, it will still be much more difficult for Caribbean people to make casual visits to Europe, than vice versa. Such casual visits are, of course, important to scouting out business opportunities and making personal and business contacts.
10. Cariforum has committed to opening 75% of its service sectors to EU service providers for MDCs and 65% for LDCs in respect of commercial presence. This opens the way to displacement and/or acquisition of domestic firms by much larger and better endowed EU firms. The strategic implications need to be considered for the vulnerability to foreign decision-making and for the potential development of Caribbean-owned regional firms that are capable of going global.
11. The inclusion of 'WTO-plus' commitments in the EPA in services, intellectual property, competition, public procurement, investment and e-commerce is not necessary to secure approval of the EPA under WTO rules, which require only WTO compatibility. They will require Cariforum states to adopt legislation,

- regulations, practices, policies and that will be onerous in terms of money and scarce technical manpower. The costs of compliance have yet to be quantified. The EC is promising development support for these purposes but it is not clear why this should be a Cariforum priority.
12. The WTO-plus commitments pre-empt and proscribe Cariforum governments' policies in key areas of development policy. They also pre-empt the pending CSME regimes in these areas. It would have been more desirable to craft CSME regimes that reflect Caricom's own circumstances, priorities and development objectives before making commitments to the EU.
  13. 'National treatment' requirements in the EPA, which forbid governments from discriminating in favour of local and regional firms, need to be carefully inventorised and evaluated, as they may prejudice the ability of governments to foster the development of local and regional firms capable of competing globally.
  14. The dynamic of the EPA is integration with the EU economy (and the Dominican Republic) in goods, services, capital and economic policies. This effectively sidelines the CSME. The CSME is not an alternative to integration with the world economy but was being developed as a platform for more efficient production and exporting to the world economy and for pooled bargaining power. This path to dealing with globalization will be ruled out by the EPA.
  15. The institutional requirements for EPA implementation and governance are huge and will be demanding on the scarce money and manpower of Cariforum states. Also they endow Joint Committees set up with the Europeans and the DR with powers to make legally binding decisions. Cariforum states will have veto powers but the EC will hold the upper hand because of the leverage of market access and development 'assistance'. The powers may supersede Caricom's own organs of governance
  16. The Parties to the EPA are the EC and 15 Cariforum states 'acting collectively'. Caricom as such is not a Party to the EPA. At the same time, in many instances in the text of the Agreement, the rights and obligations are those of the 'Signatory Cariforum states'. These arrangements carry implications for the integrity of Caricom integration which need to be carefully considered. It is not clear that the Caribbean Community, under its present governance arrangements, has the legal power to act collectively like the EC does; a matter that is among the subjects addressed by the Report of the Technical Working Group on Governance on Managing Mature Regionalism. Hence where Cariforum states agree to act collectively, Caricom will need to make arrangements to establish joint positions among their membership, and also with the Dominican Republic. As such they may be represented by a single representative on key EPA implementation bodies such as the Joint Council and the Trade and Development Committee. Where States have individual rights and obligations, or where joint Caricom and joint Cariforum positions do not exist at the time, bargaining power in implementation

- and on-going negotiations will be tilted even more heavily in favour of the EC; and Cariforum states will be placed in competition with one another. This could lead to a widening of intra-regional inequalities, as some countries are less well endowed than others to take advantage of the EPA. Regional disintegration rather than integration could easily result
17. There are several other questionable and disadvantageous provisions in the EPA that will doubtless become evident as the details of the agreement are examined.
  18. The EPA provisions establish a precedent for up-coming trade agreements to be negotiated with the US and Canada.
  19. It might have been better for Cariforum, or at least Caricom, to have negotiated an EPA limited to what was necessary for 'WTO compatibility', with carefully calibrated import liberalization attuned to the development of local production capacities and with specific commitments for assistance targeted at key infrastructure inputs, firm-level technical support and establishing market presence in EU markets. Inclusion of WTO-plus areas in services, competition, public procurement, and investment could be deferred pending WTO agreement in these areas, or at least pending completion of the relevant CSME regimes.

### C. With regard to options

It will evidently be politically difficult and economically risky to adopt a change in approach to the EPA at this stage. Nonetheless, there may still be a 'window of opportunity' as the agreement, though initialed, has not yet been signed by Ministers or given provisional application (scheduled for April 15), nor has the EC sent formal notification to the WTO. Also as far as we know the EU Parliament has not yet given its assent for signing at the EC level.

Once there is EC Parliamentary assent, Ministerial signature, WTO notification and Provisional Application and the formal ratification processes begin, it will be virtually impossible to change what has been agreed. At the very least, revision would be a difficult and time-consuming process as agreement of all the Parties would be necessary.

Caricom would therefore need to weigh the political costs and economic risks of seeking to change the EPA now; against the longer-term political and economic costs of adopting the EPA in its present form (which are still unquantified).

In this regard, it is important to bear in mind that African countries that initialed only 'Interim' EPAs in December 2007, have been given until the end of 2008 to complete their EPA negotiations; and that there is considerable pressure for the terms of these Interim agreements to be re-negotiated.

Below we set out a possible course of action for Caricom.

1. Caricom could signal to the EC that it has every intention of concluding an agreement that meets existing WTO rules and obligations, but that it cannot proceed to the signing and provisional application of the initialed EPA; as there has been inadequate time for public consultation and official evaluation of its developmental impact and its implications for its own regional integration process.
2. Caricom could signal to the EC that, in concluding a WTO-compatible agreement, it is not prepared to include any WTO-plus provisions at this time, and until either (i) agreement is reached in the WTO on these subjects, or (ii) the relevant Caricom regimes are completed; whichever is earlier. A Review clause that triggers negotiations on these subjects under the above conditions may be included in the agreement.
3. With respect to the trade in goods, Caricom could request additional time of up to the of 2008 to review the market access commitments under the initialed EPA with respect to their likely fiscal and employment impact, to propose amendments, and to propose targeted infrastructure and firm level support for the development of supply and marketing capabilities.
4. The above would need to be supported by appropriate diplomatic and political action aimed at mobilizing support from (i) the Caribbean public, (ii) other ACP countries (around a collective position on the issues) (iii) EU Member states, the EU Parliament and EU Civil Society and (iv) The Caribbean Diaspora; in order to bring pressure on the EC Trade Directorate and Trade Commissioner. The support of the Dominican Republic is also important.

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