



RNM Briefing Note on EPA Negotiations

Introduction

CARIFORUM and EC are meandering towards the completion of EPA negotiations. Significant progress in a number of technical disciplines has resulted in the completion of legal text in the following fields – SPS; TBT; Competition Policy; Sustainable Development (both Environment and Social Policies); Transparency in Government Procurement; The negotiations in Legal and Institutional Issues. Negotiations of Trade Defence Measures; Trade Facilitation; Agriculture and Administrative Cooperation are well advanced with few issues remaining outstanding.

A number of contentious issues separate us and we are relying on the EC's expression of political will so that the negotiations can be brought to successful completion. CARIFORUM's benchmark of a positive EPA, is one that catapults the region's social and economic development and thereby accords with the Cotonou objectives of promoting sustainable development and poverty eradication.

This brief presentation will seek to address four clusters of issues, *viz.*:

1. What are the positive development emerging from the negotiations;
2. Treatment of Development in an EPA;
3. What are the issues that divide CARIFORUM and EC; and
4. CARIFORUM's rationale for seeking to complete the negotiations on time.

Positive Developments in EPA Negotiations

First, the EC has resiled from its demand for the establishment of a CARIFORUM customs union on which the Region's EPA commitments will be framed. The EC vigorously maintains that strengthened CARIFORUM regional integration represents one of its major policy objectives in an EPA. Furthermore, this policy objective is articulated in the EC drive for region-wide commitments. While such region-wide commitments could have the effect of a customs union, the EC no longer insists on CARIFORUM establishing a seamless economic space protected by a Common External Tariff (CET).

In veering away from the systematic pursuit of region-wide commitments, the EC has also retreated from its demands that some amorphous entity called CARIFORUM should become a Party to the agreement and thereby assume legal commitments. CARIFORUM does not have legal personality and is indeed not even a political construct but rather an amalgamation of CARIFORUM states. The negotiations have resulted in agreement that the term "CARIFORUM Signatories" will be used in disciplines where Caribbean is willing to assume collective responsibilities and "Parties" where individual commitments will be assumed. Note however, that under no circumstances will CARIFORUM be exposed to collective sanctions arising from failure to fulfill commitments.

Second, both CARIFORUM and EC have agreed on the insertion of a development chapter that frames the nature of the commitments while making a direct reference to EU development support. CARIFORUM's formal right to access EU development support within the context of an EPA constituted one the major fault lines in the negotiations. In this context, the commitment on development cooperation as captured in the Joint Statement of the III CARIFORUM-EC Ministerial (November 2006) constitutes a breakthrough. This agreement allows for the specific identification of CARIFORUM development priorities (in each relevant technical discipline) to be supported by EU-funded programmes designed to address CARIFORUM needs.

Thirdly, the EC has dropped its demands that CARIFORUM tariff concessions are based on the principle of non-discrimination. The EC demand conforms to the MFN principle enshrined in the Cotonou Agreement (Annex 5 Article 5.1a). However, CARIFORUM's acceptance of this EC demand would have resulted in Region's market access commitments being automatically conditioned by the concessions granted by the Dominican Republic to United States under CAFTA. Application of the principle of non-discrimination would therefore have resulted in an inversion of the principle of regional integration with a non-CSME member – the Dominican Republic – determining the tariff concessions of the members of the deepest Caribbean regional integration process.

Fourthly, CARIFORUM has gained the EC's acceptance of maintaining negotiated provisions on Personal Data Protection (based primarily on CARIFORUM's proposal) as negotiated. This is notwithstanding the third party arrangement that a number of CSME States have entered into with the US in respect of the exchange of airline passenger information. The EU's philosophy and practice attaches paramount importance to the safeguarding the treatment of personal data of its nationals, more so with respect to use by third parties. Failure to secure EC concession on this issue would have jeopardised not only the Region's thrust into new generation services based on data transfer but also its traditional tourism industry.

Fifthly, both sides of the negotiations have agreed on provisions safeguarding CARIFORUM food security needs. Specifically, CARIFORUM liberalization schedule can be recalibrated in case the region's food security is threatened or impaired.

Sixthly, CARIFORUM and EU have settled on a double zero agreement with respect to export subsidies. This means that on items liberalized by CARIFORUM, the EU will not apply export subsidies. This provision is not only asymmetrical (available only to the Caribbean) but does not prejudice the region's requesting the EC to maintain export subsidies on sensitive and non-competing food imports.

Seventh, the CARIFORUM EPA provides for the establishment of an EPA Monitoring Mechanism. Such a body would comprise Parliamentarians, NSAs and Senior Officials while allowing for the tracking of EPA development objectives. Commitments – both rules and schedules - could be altered if the principal EPA aims of sustainable development and poverty eradication are not being observed.

Finally, the principle of asymmetrical obligations runs as a leitmotif throughout the EPA. CARIFORUM generally assumes commitments that are commensurate with its level of developments relative to those assumed by the EC. For example, only CARIFORUM will enjoy the right to recalibrate its tariff liberalization schedules in case of economic disturbances. Similarly, the design of trade defence measures (safeguards and countervailing duties) is skewed towards CARIFORUM in order to protect the region's domestic producers.

Furthermore, the principle of CARIFORUM commitments predicated on the delivery of EU development support is well enshrined in the agreement. If an EPA is to deliver the development benefits that all anticipate, CARIFORUM's trade capacity – in productive, institutional and in policy terms - must be strengthened.

Treatment of EPA Development Issues

CARIFORUM and the EU have agreed that an EPA is a tool for development. Development must therefore infuse all provisions of an EPA and should therefore not be reduced to development cooperation, i.e. a funding instrument in pursuit of development. CARIFORUM also views EPAs as an opportunity to transform its trade and economic cooperation with the EU into a mature and secure relation that secures the region from WTO litigation. Furthermore, the EPA Should also carve out a longstanding framework that contributes to CARIFORUM economic and social development. Only the pursuit of an ambitious, mature and pro-development compact will allow us to realize the Cotonou goal of eradicating poverty and promoting sustainable development.

There are three distinct aspects of an EPA that, when conceived holistically, appropriately crafted and fully implemented, can contribute to Caribbean sustainable development. These are:

- a) The structure of the EPA (the extent of product coverage; timeframe for tariff reductions; the special treatment to be accorded sensitive products; structure of liberalization of the trade in services; provisions on trade related issues, etc.) which has profound implications for the scale of the adjustment challenge facing the Region and cost of implementation of an EPA;

- b) The programmes and mechanisms designed to address supply-side constraints on competitive production (e.g. investment promotion; business and trade facilitation; SPS/TBT compliance capacity; improvements in production and marketing; competitiveness and innovation schemes and fiscal adjustment and diversification programmes, etc); and
- c) The financial mechanisms to address specific EPA-related development and adjustment costs. An associated element will be the management of any such financial mechanism in order to ensure the time-sensitive delivery of EU development support.

This schema combines traditional trade and investment commitments (rules and market access), provisions on development cooperation, and arrangements governing access to EU funding instruments. The consideration of EPA's development dimension must therefore fully reflect all three complementary elements.

Remaining Challenges in EPA Negotiations

Good Governance in Taxation

Despite CARIFORUM's mandate not to negotiate Good Governance (tax, judicial and financial issues), the EC continues to demand that an EPA includes binding provisions on good governance. The EC demands are with respect to waiving the use of "trade-distorting" fiscal incentives as a tool for attracting foreign investment into the Caribbean. Furthermore, the EC would like CARIFORUM countries to "cooperate" by sharing information on EU nationals who invest in Caribbean-based financial instruments. The import of such EU demands would be the immediate decimation of the fledgling offshore financial services industry in CARIFORUM states.

CARIFORUM remains unconvinced that provisions on good governance on taxation properly reside in the realm of a trade agreement. Furthermore, the legitimacy of the EC's argument would be strengthened if EU offshore financial services were first banned.

Rules of Origin

Negotiations of this discipline have been severely hampered by the absence of an EC stance. After almost two years of internal consultations, the EC articulates an orientation that supports the maintenance of the current Cotonou rules of origin. This would be complemented by the conduct of a review, the results of which are pre-determined insofar as prescribing the generic use of value added method. CARIFORUM's approach to market access remains that of coupling negotiations of tariff liberalization with rules of origin. Through this approach one can sensibly gauge the value of access the EU market. We are therefore concerned by the EU's stance that forces the de-linking of these two sets of negotiations and limits the earnest negotiation of ROO.

EC Services Offer and Support for Tourism and Culture

EC is insisting that a CARIFORUM firm be very narrowly defined and excludes branches for most activities to enjoy benefits of EPA; and they want a “real and continuous link” with any CARIFORUM economy. This is not in CARIFORUM’s interest since the Region needs to attract third country investors that may wish to take advantage of the EC market.

The EC offer on services appears comprehensive and includes contractual service suppliers and independent professionals, but it is limited to university graduates and many restrictions and limitations remain such as economic needs tests, residency and nationality requirements, particularly in the new EU Member States.

CARIFORUM has also tabled proposals on both tourism and cultural industries. These proposals seek to insert firm commitments aimed at promoting these two major industries. Regrettably, the EC’s posture on tourism smacks of disinterest while seeking to insert inert language on cultural cooperation replete with best endeavour language. CARIFORUM remains firm that an EPA must provide for development support to assist in the creation of new services exports.

EU Aid for Trade Support

CARIFORUM anxiously awaits the results of the mid-October GAERC meeting where modalities for the EU AfT strategy are to be crafted. As stated previously, a wide array of CARIFORUM commitments is predicated on the timely delivery of EU assistance. The 10th RSS has already been crafted and apportions 32% of the €164 million to EPA support. While the full extent of the cost of implementing a CARIFORUM EPA remains unknown, €52.5 million over the period 2007-2013 does not correspond to our expectations. CARIFORUM also fears that a number for EU Member States are retreating on their commitments.

CARIFORUM Demand for a Special Safeguard Mechanism (SSM)

The EC has resisted CARIFORUM demands for the insertion of an SSM. The value of agriculture to CARIFORUM economies transcends the sector’s economic contribution. Indeed, Europe inserted the term multi-functionality in our lexicon. We are therefore desirous of inserting a SSM that could be automatically triggered once pre-determined price or volumes levels are attained. The EC- South Africa Trade and Development Cooperation Agreement (TDCA) contains an SSM. We fail to fathom why the EU would be willing to grant South Africa – a country now heralded by the EU as a competitor in the field of agriculture - but not to a group of net food importers assembled under the CARIFORUM banner.

EC Demand for MFN Treatment

Most Favoured Nation (MFN) treatment constitutes the third outstanding issue separating CARIFORUM and the EC. The Europeans demand that any future concession granted by CARIFORUM in both goods and services should be

automatically conferred to the EC. MFN provisions are generally inserted in preferential non-reciprocal trade agreements as a tool to ensure that market access interest of the preference granting state is not impaired. However, there is no such precedent of such a MFN provision on goods. Furthermore, the EC has redefined the scope of MFN to include countries that have a share of 1% and more of world exports. Acceptance of such an EC proposal would pose severe challenges to CARIFORUM through any FTA signed with other developing countries such as Brazil, Mexico, India or China. In any event, the EC's approach on MFN highlights the contagion on EPA negotiations from the EU Global Europe Strategy. This strategy (published on October 4, 2006) underscores the EU's quest to secure increased market access (in goods, services and government procurement) along with enhanced compliance in intellectual property rights and competition policy.

The Case for Concluding EPA Negotiations on Time

In one sense, the deadline for concluding an EPA is motivated by the expiry on December 31, 2007 of the WTO waiver for the Cotonou trade regime. Without the completion of an EPA, a legal lacuna would arise with two available options for its resolution. First, as the preference-granting partner, the EC could seek an extension to the Cotonou waiver. The EC serial rejection of such a demarche renders it a non-starter. In addition, waivers come at a cost – often borne by the countries benefiting from the original preference. Recall that the EC request for Cotonou waiver in November 2001 led to the severe impairment of ACP preferences in both tuna and bananas.

A GSP regime constitutes an alternative to seeking an extension of the Cotonou waiver. Yet again, this option is fraught with a number of disadvantages. Most notably, the EU GSP programme does not cover major CARIFORUM exports such as rum, sugar, bananas, rice, alumina, ethanol, fish and fruit juices. According to RNM estimates, the application of EU GSP duties on CARIFORUM exports would attract the payment of €300 million. To place this in perspective, such an annual payment would represent twice that of the EU-funded six-year CRIP. Pursuit of a GSP would patently be anti-development and therefore contrary to the fundamental objectives of an EPA.

However, strategic considerations as opposed to mechanical adherence to WTO-imposed deadline provide a far more compelling motivation for CARIFORUM's interest in completing the negotiations on schedule. The EC's desire to adhere to the deadline spurs its willingness to grant CARIFORUM even greater concessions. Recent negotiation sessions have provided incontrovertible evidence of the EC resiling from formerly entrenched positions. It therefore remains the RNM's view that failure to demonstrate a willingness to complete the negotiations by the end of 2007 would remove the "incentive" the EC to meet CARIFORUM's pro-developmental demands.