

# EPA Lessons & Canadian FTA

Norman Girvan

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# Main Points

- EPA Criticisms
- Strategic Lessons
- EPA Review Clause
- Canadian FTA

# EPA Criticisms

1. **Inadequate public consultation**
2. **Development cooperation in EPA not quantified and time-bound**
3. **Absence of concrete programmes to equip Caribbean firms to cope with competition**
4. **'National treatment' limits ability of governments to foster development**
5. **Market presence not just market access - other barriers to exporting to EU not addressed**
6. **Stringent eligibility requirements for services exports.**
7. **'WTO-plus' – inclusion of services, investment, intellectual property, public procurement, competition policy**
  - **unnecessary for WTO-compatibility**
  - **limits “policy space” of Caribbean governments**
  - **pre-empts CSME**
  - **compromises negotiating position of ACP and G77 in the WTO**
  - **compromises Caricom negotiations with US and Canada.**
8. **MFN Clause inhibits South-South trade cooperation**
9. **Regional Preference Clause**
  - **abolishes special treatment of Caricom's LDCS**
  - **merges CSME with DR**
10. **Supranational governance machinery stronger than Caricom's**
11. **Caricom not a Party to the Agreement– promotes regional fragmentation**
12. **Despite EPA, sugar and bananas still under pressure**
13. **AfT is highly uncertain in quantity, timing and allocation**

# Strategic considerations

- *There were several identifiable 'decision points' that were of critical importance in determining the course of the negotiations and their final outcome*
- *Each decision point conditioned the course subsequently taken by (a) circumscribing particular options and (b) steering the negotiations in a particular direction*
- *Issues of definition and interpretation were fundamental in the resolution of the outcome of these decision points*
- *Unequal bargaining power, together with strategies of 'Divide and Conquer' and 'Carrot and Stick' were used to great effect in deciding the outcomes*

# DP #1: THE WTO AGREEMENT -1994

- *Weakened Special & Differential Treatment (S&DT)*
- *Established **reciprocity and non-discrimination** as basic principles of the international trading system*
- *Laid the basis for the elimination of preferential trading schemes*
- *Established a comprehensive set of rules that became constant reference points in the EPA negotiations.*
- *But left considerable scope for further negotiations including over interpretation – e.g. Means of operationalising S&DT, rules governing North-South RTAs , definition of ‘substantially all trade’ in North-South RTAs*

# **DP#2. THE COTONOU PARTNERSHIP AGREEMENT - 2000**

- *split the ACP into 6 groups for EPA negotiations, undermining ACP bargaining power*
- *Established a deadline of December 31, 2007 for conclusion of the EPA negotiations, subsequently approved by the WTO waiver of November 01*
- *The wording of EPA objectives in the CPA was a compromise between the ACP's developmental concerns and the EC's 'mercantilist' objectives, which left key issues to be negotiated under the EPAs*
- *'sustainable development', 'poverty reduction', and 'support for regional integration' were ACP concerns*
- *'WTO-compatibility', 'gradual integration into the world economy', 'trade-related' were the EC's code words for their trade negotiations objectives*
- *In the subsequent EPA negotiations the EC skilfully interpreted delivery of the 'development dimension' of the EPAs to coincide with their trade negotiations objectives*
- *Article 37.6 offered a comforting assurance to ACP countries that they would not negotiate with a 'gun to their heads'. In fact it was used to do just that!*

# 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.

# DP# 3: EBA – 2001

*The EU's 'EVERYTHING BUT ARMS' initiative offering Least Developed Countries duty-free access to the EU market further split the ACP's regional groupings – for example West Africa, Cariforum (Haiti being the only LDC) and put pressure on the non-LDCs to conclude EPAs in order to maintain parity with the LDCs. The consequences of this only became evident in 2007, when several regional groups fell apart. ('Divide & Conquer')*

## DP#4: ACP Guidelines - 2002

*The adoption of ACP EPA Negotiating Guidelines in 2002 correctly anticipated all of the contentious issues – aid ‘additionality’, degree and pace of market opening, WTO-plus obligations.—but failed to set out a coherent strategy to maintain ACP unity during the separate regional negotiations. This became a fatal weakness.*

# DP#5. CONCLUSION OF ALL-ACP PHASE OF EPA NEGOTIATIONS -2003

- *ACP bargaining power was strongest in the all-ACP Phase (1) negotiations; but this phase concluded with significant points of divergence between the ACP and the EC and without a binding agreement on the content of the EPAs to be negotiated in Phase 2*
- *Among the key contentious issues left unresolved were the meaning and content of the 'development dimension' of the EPAs, the need for binding obligations on the EC for additional development assistance, and the absence of obligations to negotiate Services & the 'Singapore Issues'*
- *These issues were left for negotiation in the regional EPAs, when ACP bargaining power was substantially weaker*

## DP#6. COMMENCEMENT OF CARIFORUM-EC NEGOTIATIONS -2004

- *Cariforum approved a negotiating template that reflected the EC's agenda of inclusion of WTO-plus subject areas including investment, and inclusion of the Dominican Republic in the scheme of 'regional integration'; but without a commitment to development assistance that would address production constraints and non-tariff barriers to market presence. This predisposed the scope, coverage and architecture of the EPA that was to result*
- *On-going delay in completing the CSME and the absence of a Caricom development strategy and institutional machinery for implementation deprived Caricom of a framework for determining and defending a negotiating position that prioritised its own integration and development objectives*
- *The sharp division between trade negotiations and the CSME process with regard to political, technical and institutional responsibilities led to significant lack of coordination and coherence between the two*

## DP# 7. EC DECISION THAT APPLICATION OF THE GSP REGIME WAS THE ONLY ALTERNATIVE FOR NON-LDC ACP COUNTRIES THAT DID NOT CONCLUDE EPAS -2005

- *This decision has been argued to be in breach of the undertaking in Article 37.6 of the CPA by several European scholars (e.g. Stevens); but it was never successfully contested by the ACP*
- *It meant that non-LDC ACP countries would have to conclude EPAs in order to avoid the imposition of tariffs that would severely disrupt their export industries*
- *This gave the EC the upper hand in the finalization of the EPA negotiations with all non-LDCs – which includes all of Cariforum except Haiti*

## PROPORTION OF EXPORTS THAT WOULD BE SIGNIFICANTLY AFFECTED BY APPLICATION OF GSP TARIFFS

	% EXPORTS TO EU	% TOTAL EXPORTS	% EXPORTS GOODS & SERVICES
BELIZE	75.1	20.7	8.5
GUYANA	72.3	27.7	21.8
ST. KITTS & NEVIS	71.5	0.1	0.0
JAMAICA	47.6	11.0	4.3
SURINAME	44.8		
DOMINICA	42	7.4	2.3
DOMINICAN REPUBLIC			
ST. LUCIA	27.4	11.1	1.0
BARBADOS	21.7	4.2	0.5
TRINIDAD AND TOBAGO	17.4	2.7	0.3
GRENADA	9.1	2.3	0.4
ST VINCENT/GRENADINES	3.9	1.2	0.2
BAHAMAS	3.4	0.0	0.0
ANTIGUA & BARBUDA	1.4	0.0	0.0

2005 export data. Based on Data in the Stevens Report (see Slide)

**COUNTRY****PRODUCTS VULNERABLE TO  
WITHDRAWAL OF DUTY-FREE  
TREATMENT****Belize****BANANAS, SUGAR, ORANGES****Guyana****SUGAR, RICE, RUM****St. Kitts & Nevis****SUGAR (?)****Jamaica****SUGAR (CANNED ACKEE)****Suriname****BANANAS, RICE****Dominica****BANANAS****Dominican Republic****BANANAS, RUM****St. Lucia****BANANAS****Barbados****SUGAR, RUM****Trinidad and Tobago****SUGAR (?), JUICES, JAMS, FOOD  
PREPARATIONS, METHANOL****Grenada****..****St Vincent/Grenadines****BANANAS****Bahamas****..****Antigua & Barbuda****ANCHOVIES**

## DP# 8. Cariforum decision to push to be the first ACP region to negotiate a “Full” EPA -2007

- The reasoning was that Cariforum had leverage over the EC, which wanted to have a ‘Full’ EPA concluded to use as a model with the African and Pacific countries
- CF Negotiators also argued that this would put CF ‘first in the line’ in accessing Aid for Trade funds from the EU
- CF therefore did not pursue the option of an ‘Interim EPA’, limited to goods only; and of extending negotiations into 2008
- This became a source of ‘reverse leverage’ available to EC negotiators, who used the knowledge that CF wanted to be the ‘first’ to conclude negotiations by the deadline to secure 11<sup>th</sup> hour concessions (percent liberalization, MFN clause)
- The haste to conclude the ‘Full’ EPA meant that inadequate time was allowed for evaluation of the implications and costs of the huge implementation obligations incurred, including implications for the CSME
- The decision also furthered the split between the Caribbean and the rest of the ACP, many of which were opposed to the inclusion of the ‘Singapore Issues’

# NOTE: IMPLEMENTATION OF 'FULL' EPA

- A preliminary study undertaken by the Caricom Secretariat after negotiations were concluded and the EPA was initialled identified 336 implementation actions required; including 90 legislative measures, 72 institutional, 110 policy, and 64 other measures.
- Most of these are to be taken on provisional application of the EPA

# Oct.-Dec. 2007: The 'End Game'

- In October the EC announced that GSP tariffs would be imposed on ACP countries that failed to conclude either 'Full' or 'Interim' EPAs within the deadline
- Computers at EU ports were reportedly programmed to impose the tariffs
- EU importers began to query CF exporters about the tariffs
- Sugar, banana and manufacturing exporters pressured Caricom governments to conclude the EPA so as to avoid the tariffs
- On November 25, The President of the EC Council (Barroso) wrote PMs Golding and Arthur making it clear that there would be trade disruption if negotiations were not completed by the deadline
- In December, the Caricom Heads met and authorised conclusion of the negotiations

# Some Strategic Lessons for Caricom

- Maintain your international alliances – don't squander them for vague promises
- Beware of 'Divide and Conquer' and 'Carrot and Stick'
- Negotiate from a platform of a united economy and development strategy which informs your objectives—complete CSME & reform Caricom governance
- Always have a Plan B
- Evaluate strategic implications for other negotiating arena
- Coordinated and coherent management of the negotiations process
- Don't make long-term concessions for short-term gains, or for vague 'best-endeavour' promises whose fulfilment is at the discretion of the other Party

# Other Lessons – ‘TTS’ Syndrome

- ***‘Technification’***: conduct of the negotiations in technical terms accessible only to specialists— inhibits public understanding and political oversight
- ***‘Treatyfication’***: incorporation of the outcome into an international treaty that binds the policies of present and future governments—when the implications become evident its too late
- ***‘Sweetification’***: presentation of the agreement to decision-makers and the general public as likely to generate substantial economic benefits

# The EPA Controversy - 2008

- Concerned Citizens, prominent individuals and Civil Society organisations called for renegotiation of the EPA to
  1. Limit the scope to WTO compatibility;
  2. Make specific legally-binding provisions for EC financial and technical assistance for productive sectors,
  3. Insert legally binding criteria to measure its socio-economic impacts
  4. Include a mandatory review allowing for possible renegotiation within three year
- Guyana pressed for a 'Goods-only' EPA – similar to (1) above
- At Guyana's insistence, a Joint Declaration was inserted at the time of the EPA Signing in October 2008 that provides for a Mandatory Review and possible renegotiation within five years.

# All is not lost!

- The Mandatory Review provides an opportunity for comprehensive review and renegotiation of the EPA within 5 years—but the case will have to well prepared
- The global economic crisis calls into question some of the assumptions on which the EPA is based—for example opening of financial services sectors, ability to withstand falls in customs revenue, ability to adjust to liberalisation, early completion of the Doha Round
- EPA negotiations are continuing in Africa and the Pacific, undermining the arguments used for hasty conclusions of the negotiations
- Aid for Trade has not lived up to its promises, undermining one of the reasons given for negotiating a ‘Full’ EPA
- Preference erosion in bananas is continuing

# Lessons for the Canadian FTA

## *Move cautiously!*

- Over 80% of Caricom's exports to Canada enter duty-free under MFN and GPT treatment; only 12% enter under Caribbean
- That 12% is less than 1 percent of Caricom's total exports
- Of the 12%, 79 % comes from T&T and 65% comes from one Canadian-owned Methanol firm
- Services? – the Canadians already take what they want and need by way of selective migration
- Development assistance?—Canada is saying that this will be taken care of by their existing aid programmes
- Canadian liberalization expectations will be for greater coverage and speedier scheduling, than with the EPA.
- The EU will be entitled to demand the same treatment, under the MFN Clause—the EPA could be amended unfavourably
- The US would then be likely to demand the same treatment as the EU and Canada.
- The worst case scenario is one in which we are under pressure to liberalise with all our major trading partners, in advance of whatever happens in the WTO, with drops in revenue and intensified competition from imports and foreign service providers. Prudence suggests we should move cautiously

# Sources

<http://normangirvan.info>

– [CARIFORUM-EC Economic Partnership Agreement - EPA](#)

- [Agreement Texts](#)
- [Havelock Brewster's EPA Papers](#)
- [Norman's EPA Papers](#)
- [Other Cariforum EPA Commentaries](#)
- [Other EPAs and FTAs](#)

[www.crnw.org](http://www.crnw.org)

[www.bilaterals.org](http://www.bilaterals.org)