

***Reflections on the CARIFORUM-EC, Economic Partnership Agreement:  
Implications for CARICOM \****

**(Appearing in: M. Chuck-A-Sang and K. Hall (eds), 2009. CARICOM: Policy  
Options for International Engagement)**

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***Revised  
August 2009***

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\* This Paper is substantially revised from an earlier version (mimeo) entitled: *CARICOM Perspectives on the CARIFORUM-EC, EPA*. It forms part of a larger work: *A First Look at the Political Economy of North-South Regional Trade Agreements: The Case of the CARIFORUM-EC, Economic Partnership Agreement*

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# ***Reflections on the CARIFORUM-EC, Economic Partnership Agreement: Implications for CARICOM\****

## ***Introduction***

This paper offers basically from a CARICOM perspective, a strategic appraisal of the external trade policy changes encapsulated in the CARIFORUM-EC, Economic Partnership Agreement (EPA). This has been recognised as the first “full and comprehensive” EPA among the six that are being negotiated by the European Commission, (EC) and the African-Caribbean-Pacific (ACP) group of countries. At this point, the EPA is both a *legal* agreement and an *instrument* designed to promote specified development objectives. Ultimately, its strengths, weaknesses, as well as the opportunities it will create and the threats it will face, will unfold during its implementation. How this is actualized will be a principal determinant of its success in attaining those objectives.

The first Section contrasts key forecasted long-run benefits of the EPA with front-loaded implementation costs that are already occurring in the Region. Section II assesses why this is the case. Section III comments on the EU assistance commitments in the Agreement. Section IV assesses the consultations process in CARICOM during the negotiations and draws attention to some important issues of economic governance. The final Section (V) considers a number of contextual and related issues important for the future of the Region under the EPA.

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## ***I: Forecasted Long-Run Benefits and Front-Loaded Costs***

### ***I.1: Long-run benefits***

Without even the limited assurance of: 1) any supporting long-term quantitative economic and trade assessment, or the customary computable general equilibrium multi-sector multi-country model projections of the likely effects of trade policy changes, 2) any of the standard social impact assessment studies, 3) quantitative estimations by the EU of the difference in the margins of preference on offer at the WTO and those on offer to the CARIFORUM-EC, EPA 4) revenue or other estimations of the likely impact on CARIFORUM States in a situation where subsequent trade negotiations take place with the Region's primary trading partner. It has nevertheless been confidently asserted (speculated) that, with the EU's offer of substantial market access for CARIFORUM's goods and services in the Agreement, and the expectation of foreign direct investment (FDI) flows to the Region that with built-in *reciprocity*, after full liberalisation kicks-in (in about two and a half decades) the agreed to development and trade-related measures in the EPA would have secured for CARIFORUM 1) substantial trade-creation following the dismantling of barriers to trade 2) deep-rooted development reforms 3) a sustainable path for regional integration and development 4) an endogenous capacity to contain, if not eradicate poverty and other deep-seated social and economic ills besetting the Region 5) an economic regime in which trade will be routinely at the service of development, and 6) such other economic reforms are in place that this would demonstrate to the world the earnestness of the Region in meeting its EPA objectives, thereby ensuring that it becomes a substantial net private capital-importer and also recipient of official resource inflows. This modernisation is crucially dependent on the coherence of policies in CARIFORUM, as well as EU's development assistance, and the provision of assured access to EU markets for goods and services as the EPA intends.

We are also assured that despite 1) the absence of a CARIFORUM Customs Union area 2) substantial liberalisation of *trade-in-goods* (56% of EU imports in 5 years, 61.1% in 10 years and 82.7% in 15 years, 83.7% in 20 years and 86.7% in 25 years) 3) as well as *trade-in-services* (based on the W120 list of services, immediate sectoral coverage of 50-62%, and tariff-line coverage of 75% for CARICOM developed countries and 65% for

lesser developed countries, with 80% for the Dominican Republic), 4) the removal of export duties (within 3 years), 5) the removal of “other duties and charges” (within 10 years) 6) the existence of trade-related provisions (Singapore issues) in the EPA and, 7) the EU’s “denunciation” of the Sugar Protocol, a substantial foreign exchange earner that, there are adequate safeguards and protections from economic disaster. These protections take the form principally of 1) improved rules-of-origin for CARIFORUM exports 2) a 3 year moratorium and phase-in periods for meeting CARIFORUM’s obligations; 3) safeguard mechanisms, such as the designation of sensitive industries/sectors, and “zero for zero treatment” of agricultural subsidies; and, 4) not explicitly linking market access opportunities for the EU to agreements seeking to build institutional capacity of the region in trade-related areas (Singapore issues) for example, government procurement.

A list of proposed reviews, safeguards, exclusions, and sensitive items, (with long-term phase-in periods of up to 25 years) is included in the EPA, as well as transitional arrangements for rice and sugar, the only two products not immediately assured of duty free and quota free entry to the EU market. Assurances are repeatedly given that the EU is not seeking as its main goal market access opportunities in the trade-related areas. Its concerns are primarily to build regional institutional capacity and skills.

In addition to immediate duty free quota free access to the EC market and improved rules-of-origin, aid is also offered to support the process through the 10<sup>th</sup> EDF and aid-for-trade. However, as we shall see, no *incremental* aid is clearly associated with the EPA.

Taking the above at its face value for the time being, what has not been identified, (and this requires little forecasting/speculation) are the significant front-loaded costs already being attached to the EPA in CARICOM. Some of these costs are listed below. As can be seen they are simultaneously economic, political, diplomatic and geo-strategic. Consider the following examples of front-loaded costs:

## ***I.2: Front-loaded costs***

Eight (8) of these costs are indicated below. Space prevents a full analysis of each of these, but based on the observations made in this sub-Section readers should not find it too difficult to envision the fuller-range of considerations involved.

### *Sugar Protocol (SP)*

Reduced to five main sugar producers at the time of the signing of the EPA, CARICOM's sugar exports to the EU still remain a considerable foreign exchange earner, source of employment, and provider of rural livelihoods. The Sugar Protocol (SP) has been a mainstay of this achievement. The SP is usually referred to as a "preference" arrangement between the EU and the ACP group of countries. This is not correct. It is an indefinite commercial Treaty agreed to in 1975 between the EU and the ACP for the commercial supply *on penalty*, of definite annual quantities by eligible Member States of sugar (a total quota of 1.34 million tones for the ACP) at agreed negotiated prices. The CARICOM Region was allotted its own quota within the overall quota, with prices negotiated annually. Befitting its commercial nature the SP was a bankable guarantee, which regional cane sugar producers used to finance on-going production. The SP provided its guaranteed supplies of sugar to the EU at agreed prices at a time when the world faced acute primary product shortages and an explosion of many commodity prices including sugar.

Legally, neither the EU nor the ACP could have unilaterally abrogated the Treaty (SP). CARICOM however agreed to Europe's "denunciation" of it in 2007 so as to facilitate the establishment of the EPA and simultaneously, Europe's reform of its overall internal sugar production and marketing arrangements. This reform included a price fall of 36 percent over the period 2006/2010 with later adjustments over the period 2013/15. Based on the Region's quota (443,000 tonnes), the estimated annual financial cost of the full 36 percent price cut is approximately US 100 million dollars. For Guyana, the largest quota producer, the amount is US\$40 million (equivalent to G\$8 billion, annually).

The EPA provides for CARICOM's sugar quota up to 2009 to increase by 30,000 tonnes or about 7 percent. (As a Member of CARIFORUM, the Dominican Republic's quota is placed at 30,000 tonnes.) Total sugar revenue earned from the SP if this quota were to be filled will substantially decline as this compares very unfavorably to the 36 percent price reduction. As a matter of detail provision is made for the intra-regional reallocation of any quota shortfalls among regional producers. However, after the 2009 delivery period, there will be no fixed quota. Unlimited access will be provided at the EU price then in force, which will in all probability be lower. As mentioned a further round of price adjustments in the EC is also due over the 2013-2015 period.

Interestingly, as part of its domestic sugar production and marketing reforms to which the EPA is accommodating, the EC is paying producers of sugar in its French Overseas Territories, 2 billion Euros for the period 2007-2013 to cover an output of about 280,000 tonnes (see Thomas, Clive and Haraksingh, Kusha, 2006).

#### *Special Preferential Sugar (SPS)*

The SPS was introduced in 1995 to meet EU's sugar needs following the expansion of refinery capacity consequent to the entry of Portugal and Spain to the EU. The erosion of this quota began as early as 2001, after the granting of Everything But Arms (EBA) preferences by the EU to LDCs. The original ACP quota was 325,000 tonnes and this has fallen to less than half that amount. CARICOM's share of the quota was originally set at 38 percent of the total and this too has fallen by half. The Region's largest sugar producer, Guyana's share averaged 5-6 percent of its exports of sugar to the EU. With the EPA and the accompanying EC sugar reform programme the SPS quota has been terminated.

#### *The African Caribbean Pacific Group (ACP)*

The ACP was established in 1975 as a tri-continental political grouping under the Georgetown Agreement. Its main objective was to promote solidarity and unified action across a wide array of small, vulnerable and poor states. As a consequence, it forged common positions on several global development issues, particularly in regard to the

responsibilities of OECD countries and the international financing institutions. The ACP operated with a Secretariat to facilitate the work of its political bodies such as its Council of ACP Ministers.

The CARIFORUM-EC, EPA indicates that after all the EPAs are in place, much of these activities will now be located within the six separate regional EPAs where there are substantial organizational and institutional provisions (see Part V of the CARIFORUM-EC-EPA-Institutional Provisions). This would obviously reduce the political, economic and geo-strategic weight of the ACP. Indeed in some quarters its further continuation might be in question. When asked about this, the current Secretary-General responded as follows:

“Could EPAs eventually be a substitute for the ACP-EU Partnership-Agreement? Do EPAs signal the forthcoming disappearance of the ACP as a group? Can the ACP Group foster its relevance?”

The Secretary General’s first response was:

“This is for the two partners to decide” (Kaputin, Sir John, 2008)

It seems very likely that the future role of the ACP could be confined to routine and bureaucratic matters emanating from the several EPA operations such as reporting, information gathering, dissemination, and promoting cross-EPAs dialogue. At this stage of negotiations at the WTO and other major inter-governmental fora this could well turn out to be a significant loss. If the ACP is reduced in any significant way this would reduce organised voices in support of the poor, marginalized, and vulnerable economies in the global trading regime. Given its origins in CARICOM, this would also be a great dis-service to past diplomatic efforts. (See Section 4)

#### *Small Island Developing States (SIDS)*

SIDS is a major political achievement for small, poor, vulnerable economies. Like the ACP, it was originally hosted in CARICOM (Barbados in 1995). SIDS and its related global Alliance of Small Island States (AOSIS) have since been recognized within the United Nations system as a formal grouping. SIDS also has standing as a grouping at the WTO. The Barbados Plan of Action (1995) was extended at the Mauritius Summit (2005) as testament to the hard work of many SIDS countries at the United Nations, led by

CARICOM in consort with the G77 Group of Non-aligned Countries and China. In the WTO, SIDS urges that small, poor, vulnerable economies, should be recognised as *intrinsically disadvantaged* in the global trading regime. It is however, not yet recognised as a “category” of developing countries with all that implies. There is little doubt that signing on to an EPA, before the Doha Development Round and the many Singapore and other development issues are resolved at the WTO, is a major diplomatic setback.

#### *Sacrificing multilateralism for expedient bilateralism*

As we shall see more fully later in the text, the net trade policy effect of the CARIFORUM-EC, EPA is to prioritize bilateral modalities for trade negotiations with developed countries over international multilateral negotiations at the WTO, at a time when the Doha Round is still incomplete. The recent “kick-start” to the WTO negotiations with the submission of texts by the respective Chairs of the Agriculture and NAMA bodies might well indicate that there has been poor timing in reaching this Agreement. Indeed, as we shall argue, bilateral negotiations with other developed countries are likely to continue. First, because the USA is the Region’s primary trade partner. Second, with the Dominican Republic (DR)-CAFTA-USA Free Trade Area already in place, bilateral negotiations with the USA is now almost certain. Third, Canada has already publicly signalled its intentions to negotiate an RTA with CARICOM/CARIFORUM.

#### *CARICOM Integration*

The CARICOM integration movement itself has already been prejudiced in several ways by the EPA both in its *trade and development dimensions*. A few examples of these are briefly indicated below:

- 1) Without a prior DR-CARICOM agreement on 1) customs union area, 2) trade in services and, 3) trade-related measures, the Region has put the “cart before the horse”. With the EPA in place, subsequent agreement can only now be framed within it. Some argue, mistakenly, that with a 3-year phase-in period before starting implementation of the EPA, there is time to work on a DR-CARICOM agreement. Surely, the reality is that the shape and character of any such

agreement are already locked-in to the EPA, to which the two Parties are now legally bound.

- 2) Similarly, without any treaty defined operational framework agreement for services and trade-related issues in CARICOM, the Region is exposed to having these indirectly imposed through the modalities of the EPA. Both from a development and integration perspective this is very poor sequencing, logically, such actions cannot be treated as benign or the by-product of an EU effort to develop the Region's capacity in services. The commitments made under the GATS in the EPA are far reaching: legal, strict, specific, time bound, and most importantly subject to the disciplines of the Dispute Avoidance and Settlement provisions of the EPA (see Part III of the EPA and Chapters 4 and 5 of Part II, Title IV.)
- 3) The already referred to suggestion of a recent "kick-start" to the WTO Doha Development Round of negotiations is based on key players, including the USA, expressing 'cautious optimism'. It is reasonable to expect that benchmarks of WTO-compatibility in areas other than trade-in goods would be best established multilaterally at the WTO and certainly not as the product of North-South bilateral negotiations with the EU and, as is likely later, the USA and Canada. Moreover, because in the EPA individual CARICOM states have bilateral trade liberalisation schedule with the EU, the CARICOM common external tariff (CET) regime no longer applies over the phase-in periods to 2033. It is further the case that the EPA agreement does not make it pellucidly clear that in event of any conflict between the EPA and the Revised Treaty of Chaguaramas the latter prevails.
- 4) As we shall see later, the institutional arrangements in the EPA also undermine economic governance in CARICOM.(see Part III) One example of this is that EPA institutions legally embody levels of supra-national authority that Members

of CARICOM have been loathe to cede to its own bodies in pursuit of regional integration.

#### *Developing Countries Coalitions at the WTO*

During the on-going negotiations at the WTO, CARICOM has helped to forge several coalitions among developing countries. These are now diplomatically undermined with the initialing of the EPA. Indeed the position is that while the EU promotes bilateral trade arrangements exclusively as part of its wider global multilateral project (Global Europe) at the WTO; CARICOM has reversed this by promoting expedient bilateralism at the cost of multilateralism. (See Part III) This point is related to the already observed impact on SIDS and the ACP, but its effect is felt in other fora, for example, the G77. The 14 CARICOM countries in the WTO, while insignificant in global economic and trade terms, are not numerically inconsequential as part of negotiating blocs of developing countries.

#### *Sacrificing the search for a Cotonou plus agreement*

The original intention to transform the Cotonou Agreement into a WTO compatible trade arrangement by January 1, 2008 was constrained by Europe's seemingly unchallenged conviction (accepted by regional negotiators) that Europe knows best what CARICOM's development priorities, needs, and capacities are. There is wide legal consensus that there was no legal compunction for trade in services and trade-related measures to be included in the EPAs in order to meet the WTO-waiver deadline. As Wamkele Mene points out:

“The prevailing legal opinion has always been that there is no WTO requirement to conclude an EPA with disciplines on new generation issues in order for it to meet the test set forth in Article XXIV of GATT. Indeed, the Commission itself has not refuted this legal interpretation. As such, South Africa could not accept the notion that unless the EPA includes new generation issues, it is not ‘full and comprehensive’ and therefore will not be notifiable under Article XXIV of the GATT, as the Commission claims.”\* (Wamkele, Mene, TNI, January 2008)

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\* Of note, Wamkele Mene wrote on behalf of South Africa's entire Negotiating Team. The position he represents has been indeed affirmed by the coming into existence of five (5) Interim or Two-step EPAs and only one comprehensive EPA (CARIFORUM-EC, EPA).

The prime concern for us is that the original Cotonou Agreement embraced 1) non-reciprocity, recognizing that trade relations between the EU and the Region did not exist on a level playing field and, 2) an element of “indemnification” for colonial excesses (such as slavery, indenture and the rapacious plunder of local treasure and natural resources). Arising out of the latter, provision was made for relatively substantial amounts of development assistance. Under the EPA there are a plethora of best-endeavour, good-faith clauses, but when it comes to specific identifiable sums of finance to support cooperation there is none. (See Part II)

For convenience, the two Schedules below list 1) the immediate “casualties” of the EPA and 2) the unresolved WTO-issues on which agreement was reached in the CARIFORUM-EC, EPA.

***Schedule 1: Casualties of the EPA***

- | <i>No.</i> | <i>Item</i>   |
|------------|---|
| 1.         | African-Caribbean Pacific (ACP) Group of Countries established 1975   |
| 2.         | The Sugar Protocol (est. 1975)  |
| 3.         | Special Preferential Sugar (est. 1995/1996)   |
| 4.         | Small Island Developing States (SIDS)   |
| 5.         | Original Cotonou plus Goal  |
| 6.         | * Coalition around <i>unresolved</i> WTO issues (Singapore, separately listed, Schedule 2)  |
| 7.         | Multilateralism   |
| 8.         | CARICOM as an autonomous, development-oriented open integration process creating the basis for effective integration into the global market |
|            | *See Schedule 2   |
|            | <i>Source:</i> Thomas, C.Y., (2008)   |

***Schedule 2: Unresolved WTO Issues in the EPA***

- | <i>No.</i> | <i>Item</i>                                |
|------------|--|
| 1.         | Trade in Services (GATS, Article 5)        |
| 2.         | Investment (Trade-related)                 |
| 3.         | Intellectual Property Rights               |
| 4.         | E-Commerce                                 |
| 5.         | Competition Policy                         |
| 6.         | Technical Barriers to Trade (TBTs)         |
| 7.         | Sanitary and Phyto-sanitary Measures (SPS) |
| 8.         | Current and Capital Payment                |
| 9.         | Environment                                |

10. Social Factors (as Trade conditionalities) (e.g., crime control, financing of terrorism, money laundering)
11. Government Procurement
12. Special and Differential Treatment (and Preferences) (mainly SIDS)
13. Safeguard Mechanisms (including sensitive products)
14. Subsidies (Agriculture)

*Source:* Thomas C.Y. (2008)

## ***II: Why Has This Occurred?***

### ***II.1: Design and Architectural Flaws***

How did these casualties of the EPA come about? I believe the answer lies in *three* principal situations. One is that the empirical evidence does not support several theoretical propositions built-in to the provisions and omissions of the EPA (without necessarily implying support for any counter-proposition). Secondly, several of the supposedly “certain” evaluations, assessments and interpretations on which the EPA is based are in strong dispute, lacking strong consensus among trade policy and developmental analysts and scholars. Thirdly, several fundamental design and architectural flaws are embedded in the EPA including, those to be found in its negotiating modalities. In recent writings I have referred to these as the *contentious planks* on which the EPA rests. These are listed below and briefly introduced.

#### ***Schedule 3: Contentious Planks***

<b>Number</b>	<b>Item</b>
1.	Reciprocity – trade liberalisation – WTO-plus arrangements and “WTO-compatibility” in the context of 1) status of regional integration 2) incomplete Doha round and 3) asymmetrical development capacities
2.	Perceived wisdom: Preferences as uniformly harmful
3.	The Doha (development) round and Special and Differential Treatment (SDT) for small states
4.	Responsibility, accountability and functional autonomy (the EU Trade Commission and CRNM)
5.	Shaping reality: The “Global Europe” project and the role of EPAs
6.	One-size-fits-all: negotiating for a complex Region
7.	The EU carve-out and carve-up. Legal construct (CARICOM) and negotiating abstraction (CARIFORUM)
8.	“Interim” (two-step) EPAs
9.	The “WTO waiver deadline: 31/12/07”
10.	Development aid, and “aid-for-trade” Adjustment measures vs compensating EU access and entry to CARIFORUM markets
11.	The Sugar Protocol as a special case
12.	Promoting CARICOM integration with the EPA as baggage
13.	Negotiating other external trade agreements with developed countries
14.	Coping with the world economy then and now, post-WTO and EPA

*Source:* Thomas, C.Y. (2008)

The first of these is the EPA's emphasis on reciprocity and trade liberalisation between asymmetrical regions while the regional integration framework has not been completed for WTO-plus (Singapore) issues and the Doha (Development) Round is still incomplete. The theoretical premise underpinning this position that trade always promotes growth is not supported by adequate empirical data. The second is the firm view that preferences have been and will remain invariably dysfunctional, inefficient and backward-looking. In the absence of a single marginal analysis of the value of preferences to the Region based on counterfactual or with-without cost-benefit measures, this claim is contestable and remains unsubstantiated (see Clive Thomas, 2005 and 2008). A partial study of the Sugar Protocol in Guyana arrives at very different conclusions (see Weatherhead 2004) as well as US reviews of its previous preferences-granting regimes. Indeed positive reviews of its experiences have helped to foster the United States' Africa Growth Opportunity Act 2000 as well as very recent indications of commitment to further support along the lines of the original preferences-granting Caribbean Basin Initiative. (See Report of the US International Trade Commission 2008)

The third contentious plank is the still unresolved issue at the WTO of Special and Differential Treatment (SDT) for small, vulnerable and relatively poor countries. The case has been argued at the WTO and elsewhere as we saw in Section 1.1 that these economies are *intrinsically disadvantaged* and therefore SDT should be embodied *substantially* in the rules, procedures and obligations of the WTO, and not remain perfunctory and mainly as best endeavour obligations as is the case presently. While the matter remains unresolved at the WTO, it appears in the EPA as definitely settled. Indeed the SDT provisions of the EPA are not qualitatively improved from those at the WTO.

The contentious planks relating to design and architecture flaws of the negotiating modalities of the EPA, undermined the search for a "partnership of equals". These include:

- The *relative autonomy*, which both the EU Trade Commission and the Caribbean Negotiating Machinery (CRNM) have been able to exercise over the negotiating

process despite their protestations that stakeholder consultations drove the process (plank 4);

- The not much discussed *Global Europe* project advanced by the EU as the guiding force behind the formation of the six ACP-EPAs (plank 5); and, the negotiating asymmetry inherent in the failure of CARIFORUM States to project a clear CARIFORUM objective preference function or *Project Caribbean*. Although made up of generally small and vulnerable countries the Region is heterogeneous in resource structures, development capacities, levels of living, and geo-strategic interests and this therefore makes a “one-size-fits-all” negotiating mandate difficult to accomplish to everyone’s “reasonable satisfaction”. (plank 6);
- The further complication is that CARIFORUM is a negotiating abstraction carved out of various European ex-colonial territories in the Caribbean. CARICOM however, has been established by the Treaty of Chaguaramas (1973) and comprises independent English-speaking Caribbean states. A full CARICOM-Dominican Republic framework for the matters covered in the EPAs has not been the subject of prior agreement (plank 7)

The eighth contentious plank on which the EPA rests is the EU-imposed sub-divisions of the ACP political grouping into six separate negotiating EPAs. This created practical scope for “divide and rule” tactics to be used. In point of fact, several observers believe the EU did resort to this tactic especially when it invoked the spectre of impending GSP duties on non-LDCs as the December 31, 2007 deadline approached. Ninth, legally the WTO waiver deadline of December 31, 2007 did not require more than a trade-in-goods agreement to establish compatibility and thus extend the Cotonou Agreement, if it was mutually agreed for the countries to pursue this route.

The “aid-for-trade” proposal and its relation to the EPAs is the tenth contentious plank. It is, to say the least, unclear whether this is a financially appropriate and viable addition of

additional finance for the purposes of meeting adjustment and development costs occasioned by trade liberalization under the EPA. Eleventh, is the very special case, the Treaty establishing the Sugar Protocol has been “mutually” treated as a preference-arrangement, which it is not. ACP governments and sugar producers were clearly pressured by the EU to permit its “denunciation” of the Treaty. Twelfth, concretizing an autonomous-driven regional integration process has been pre-empted by the EPA.

Finally, how will CARICOM handle impending external trade negotiations with the USA considering that the USA is the Region’s primary trading partner , and (13) a political economy assessment of the role of “leadership, vision, political will, and peoples involvement” in something as profound and far reaching in its consequences for the Region (14).

Several of these contentious planks are discussed further in this study. However, central to all is the observation of Timothy Kondo (2007) that the draft EPA, which formed the basis of negotiations for his region and the EU was prepared by the EU. Marc Maes (2007) reiterated this more generally when he said:

“The texts that the Commission has tabled have reflected the Commission’s approach to global trade. They do not reflect the interests and needs of ACP countries”.

## ***II.2: Critiques of the Process***

This study does not seek to deny or even contest the right of the EC to pursue in its own deliberate judgement its interests when designing the EPAs. However, within Europe its tactics and *modus operandi* have come under severe criticism and censure from Europeans. At the time of Britain’s Presidency of the EU, and the appointment of Peter Mandelson as EC Trade Commissioner, the Select Committee on International Development of the United Kingdom Parliament, reviewed the on-going EPA negotiations for which purpose it interviewed key officials including those at DFID and DTI. In its Sixth Report it expressed four concerns of enormous significance to our present review of the EPA.

First, it condemned the negotiations for being non-transparent and conducted away from effective public scrutiny in parallel to the Doha Round of negotiations. Thus the Report laments:

“The lack of public scrutiny over the negotiation process between one of the world’s more powerful economic actors, the EU, and 79 of the world’s poorest economies, the African, Caribbean and Pacific group of states (ACP). Outside of a small trade circle, very little notice is being taken of these negotiations which are running parallel to the WTO’s Doha ‘development’ round”.

Second, the Committee noted that it was unfair to the ACP for the EU to push an agreement through without *special and differential treatment* and pressed for the developing status of the ACP countries to be guaranteed. Thus the Report states:

“The negotiations will fundamentally alter the trade relationship between the EU and the ACP. In particular, the ACP group, which used to be the most preferred trading partner of the EU, will be moving from non-reciprocal preferential access to reciprocal trading arrangements with the EU. Because of slow progress at the WTO, the EU cannot guarantee to offer the ACP states consideration of their development status in these new Partnership Agreements. Without special and differential treatment, the agreements will not be fair”.

Third, the Committee advised of potential conflict with regional integration efforts in the ACP states. It advised that ACP positions at the WTO were being subverted by the piecemeal, region-by-region mode of negotiations, which the EU had foisted on the process:

“Any agreement offered to the ACP must have a developmental component; should not conflict with regional integration processes; should not demand liberalisation in sectors where the EU has not itself liberalized; and should not seek to put onto the agenda in regional negotiations, issues which the ACP group has previously rejected as the all ACP level”.

Finally, the Committee was appalled by reports of the cynical, manipulative way the EU was handling the negotiations, comparing it to a game of poker, where the winner-takes-all. It denounced the abuse of the unequal power relation in the process:

“That the EU is approaching the negotiations with the ACP as if they were playing a game of poker. The Commission is refusing to lay its cards on the table and to dispel the ACP’s fear that it stands to lose more than it will gain ... The ACP is negotiating under

considerable duress and the EU approach emphasizes the unequal nature of the negotiation process”.

Of further note, on the eve of the official launch of the EPA negotiations, the *Cotonou Monitoring Group* requested a review of the ACP guidelines and the EU negotiating mandates, and in its report an early indication of what the Select Committee subsequently noted can be found. The review stated:

“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, in accordance with WTO rules, 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.”

The review went on to observe that the EU negotiating directives virtually assumed *a priori* that reciprocity was accepted as the goal of the ACP since there was really no provision for effective alternative trade arrangements, even though this was listed as an option under the terms of the Cotonou Agreement.

### ***II.3: Lessons Not Learned***

Crucial lessons could have been drawn from the experiences of the precursors to the EPA (the Lomé Conventions and the Cotonou Agreement). Had these been adequately embraced into the framing of the EPA, there might have been greater acceptance and much less controversy. My personal judgement is that while it can be said that the EC mis-managed the overall negotiating process, it was nevertheless able to get away with much of this because of the asymmetric negotiating capacities across the six EPAs. This circumstance gave the EC room to balance the simultaneous pursuit of its mercantilist self-interest in the EPAs (especially vis a vis other developed regions and emerging economies like Brazil, China and India), while simultaneously promoting its multilateral vision as enshrined in its Global Europe project, and the claim that the EPAs represent a “partnership among equals”. (See Part III)

However, the experience of previous economic arrangements between the EU and CARICOM reveals some disturbing occurrences. The first is that while the EPA was originally envisaged as the *successor arrangement for trade* in the Cotonou Agreement (2000-2020), which provided for renegotiation of its trade aspects after eight (8) years in order to meet the WTO-waiver deadline, three features were initially expected to remain embedded in the Cotonou Agreement. One was the *moral* recognition that the funding arrangements of Cotonou were partial indemnification for Europe's brutal colonial exploitation of the ACP countries. Second, owing to the vast disparities in economic, technological, and financial capacities of the two areas in the negotiations, these could not be expected to depend *principally* on market-based trade liberalisation modalities *and simultaneously* produce mutual gains for the Parties. To secure mutual gains, the previous arrangements had embraced *non-reciprocity* and this was expected to continue. Third, the Cotonou Agreement *politically affirmed and promoted the ACP* as a major grouping of developing countries, including a large number of small vulnerable ones in the global community.

The second disturbing occurrence to be drawn from past experiences is that no sooner had the "ink dried" on the Cotonou Agreement in 2000, when a year later the EC announced in 2001 the "Everything But Arms Agreement" (EBA). The EBA offered *in principle* to the Least Developed Countries (LDCs), *non-reciprocal duty free access* to the EC market for all exported goods except arms. As it became evident however, this was a morally suspect concession, portrayed by the EU as "generous oil development". When the EBA was put under scrutiny it was seen to be making offers largely at the expense of non-LDC exports from ACP countries to the EC! We have already noted the effects of this on the Special Preferential Sugar (SPS). This development produced a huge outcry and loud condemnation of EU duplicity in the CARICOM region.

A third disturbing occurrence is that concurrent with the EPA negotiations, the EU was deeply involved in shaping the WTO and promoting a European vision of its evolution. On several issues this met stern opposition from developing and emerging economies at the WTO. CARICOM countries were of course deeply involved in the WTO

negotiations, negotiating in supposed solidarity with other developing countries, especially SIDS. Whether we like it or not the EPA contradicts several positions taken by SIDS during the Doha Round of negotiations.

A fourth disturbing occurrence is that the Caribbean Regional Negotiating Machinery (CRNM) was established to handle external trade negotiations and negotiated the EPA on behalf of CARICOM. It was surprisingly established independent of the CARICOM Secretariat, which is the Region's main institutional focus in the area of trade policy reform within the Region. Finally, *two* key economic lessons must be drawn from past experiences. These refer to two *intractable problems*. One is that legal access to overseas markets for CARICOM's exports (except perhaps the traditional ones) is far removed from effective determination of sales in these markets. This reflects the weak development capacity of the area, and still remains an intractable problem. Secondly, ensuring that available EU resources/aid to fight poverty and develop regional economies *translate* into effective development results is also an intractable problem, which speaks to Europe's continuing inability to effectively manage and disburse aid.

### ***III: Re-packaging Aid***

#### ***III.1: Cotonou Funding***

The success of the EPA requires more than improved market access, trade liberalization and strengthened rules for regulating trade and trade-related relations. This is indeed a truism, given the circumstances of the global economy and the drivers of change in global markets. The EC itself has recognized this in its official publications (See EC, 2007) and has tried to infuse it, unsuccessfully we shall argue into the CARIFORUM-EC, EPA. As we noted earlier in Section 5, the development dimension of the EPA substantially hinges on the provision of development assistance to boost CARIFORUM's institutional, infrastructural, regulatory and productive capacities at the national and regional levels so as to reduce its supply side constraints, overcome structural weaknesses and promote a sustainable expansion in exports both to the EU and the Rest-of-the-World. The question that arises is: how likely is the development assistance to be forthcoming in a timely and effective manner?

The EC in its approach to financial-assistance for ACP countries appears to be torn by two contradictory tendencies. On the one hand there is a realisation that its past colonial excesses are in no small measure responsible for much of the development predicaments which many poor countries and regions face around the world. This has no doubt inspired in large measure its Cotonou funding. And, on the other hand, the EU sees the need to pursue its economic self-interest vigorously at the global level, while seizing whatever mercantilist options arise. In the process, the EU has earned a suspect reputation as a provider of development assistance. While undoubtedly quicker than other developed economies to promise new envelopes of aid funding and to promote new delivery mechanisms, its actual track record in effective aid delivery is poor. This as we pointed out is one of the sad lessons of both the Lomé Conventions and the Cotonou Agreement. Regional governments, private sectors, and civil society groups all view EU aid to CARICOM as burdened by two defects namely, 1) an overly bureaucratic, cumbersome and protracted delivery mechanism and 2) seemingly benefiting principally those European consultant firms, which have mastered the craft of negotiating the EU's serpentine aid bureaucracy.

The problem that causes the greatest concern is that signing on to the EPA is not legally tied to any specific EPA financing. Indeed, no specific incremental funds attached to the EPA are provided or, for that matter, promised. What is promised is that with the funds *already committed* by the EC to the European Development Fund (EDF) arising from the Cotonou Agreement, and its companion Aid-for-Trade proposals, laid at the WTO in 2005, the EU will make a best endeavour effort to support the financing of the development dimension of the EPA. The details are that under the 10<sup>th</sup> EDF, the EU is pledging overall 23 billion Euros to the 79 ACP countries over a seven year period. This averages 3.3 billion Euros annually and most importantly it is pledged under the Cotonou Agreement, not the EPA. Of this amount, 165 million Euros are promised to the Region, of which 132 million Euros go toward CARIFORUM and the remainder (33 million Euros) go towards the EPA. From the sum of 132 million Euros, 85 percent will go to the focal areas of the regional integration indicative programme and the remaining 15 percent goes to non-focal areas such as social issues and vulnerabilities. Overall, the EU

will also make a best endeavour effort to steer 60 percent of the 10<sup>th</sup> EDF, which came into force on July 1, 2008 (1.3 billion Euros) to the EPAs.

Many readers may find it hard to believe that given the way EU assistance to the EPAs is being advertised that there is no incremental funding attached to the EPA. In a published interview Louis Michel, the then EU Development Commissioner made this clear. When asked: “Will there be additional financing beyond the EDF to accompany EPA’s?” The EU Development Commissioner Louis Michel replied as follows:

“This is a question I am often asked. I have to say that as far as the EDF and the Commission are concerned, there will be no further financing”. (Trade Negotiations Insight, February 2008, P.4)

In the same Interview the EU Development Commissioner further pointed out:

“We must emphasise that the countries that have not signed an EPA have not been *penalised*. They will benefit from the same financing within the EDF framework. This financing is allocated on the basis of development criteria which are independent of the position they take in relation to the EPA”. (My emphasis, *ibid*, P.4)

Some details on the EDF will be useful at this stage. First, the EDF is the established source of financing that came into effect with the first Lomé Convention. This funding has been provided on a “voluntary” basis by EU members in the sense that it falls outside the normal EU budgetary process. Second, this funding was provided on a 5-year cycle through the four Lomé Conventions and up to the Cotonou Agreement. Third, each 5-year cycle had originally commenced on the date of signing of the agreement between the EC and ACP but with the Cotonou Agreement (2000) the date of ratification or its legal entry into force by EU members became the starting date. Harrison (2008) who has written on the EDF process points out that the shift in the starting date to ratification by EU Parliaments produced delays, with the result that the 9<sup>th</sup> EDF “has nominally run from 2002 to 2008”.

There were, however, more significant changes to the practice of making available EU funding to the ACP. Prompted no doubt by long delays between aid commitment and delivery (as Harrison points out there were cases of delays for as long as 17 years) the EC

shifted to a “use it or lose it” modality for dispensing funds through the EDF. Starting with the Lomé Convention funds committed to an ACP country or region could not be “de-committed”:

“Under the Cotonou Agreement this approach changed, with the EU setting an end date by which NIP/RIP funds needed to be legally committed ... If by this date the funds had not been legally committed, then they could be de-committed”. (Harrison, 2008)

The procedure would be to retire the funds to the general reserve from where they “could be used at the discretion of the EC, subject to approval by the joint ACP-EU Council of Ministers”. (ibid, 2008)

Harrison’s concern is two-fold. One is to show that changing EU practice in making funds available has cost the ACP region to lose potential resources through slippages in the EDF financing cycle. Second, given the EU’s global commitments to provide aid to developing countries, there has been a considerable shortfall between publicly declared intent and actual commitments. Basing the expectation of EU’s financing on its commitment at the G8 Gleneagles Summit (0.39 percent, 0.56 percent, 0.70 percent of Gross National Income by 2006, 2010, and 2015 respectively) the EU’s aid allocation directed to EDF funding should show a far more substantial increase, based on the EDF share of the EU’s development financing.

The significance of the above discussion is to draw attention to the fact that based on the EU’s track-record statements of good intent could hardly be enough in such crucial areas of the EPA as its development financing obligations, its certainty and its modes of delivery.

### ***III.2: Aid-for-Trade***

A similar tendentious situation exists with regards to the EU’s celebrated ***Aid-for-Trade proposal***. That proposal was put to the WTO in 2005. What the CARIFORUM-EC, EPA provides are only best-endeavour, good-faith statements about linking this previously and separately promised Aid-for-Trade to the EPA. Like the EDF no additional specific

financing is committed to the proposal in the text of the Agreement. Moreover, the EU Aid-for-Trade proposal is clearly not EPA-inspired in its origin. It is indisputably WTO-inspired and was first made at the time of the Hong Kong Ministerial (2005). It remains at the WTO as part of the EU's efforts to kick-start the Doha Round of Negotiations. Indeed, it is not linked directly to the successful conclusion of that Doha Round. As Barbara Specht (2007) observes:

“The Aid-for-Trade [proposal] is thus not a substitute for the successful conclusion of the Doha Development Agenda, nor is it linked to the successful conclusion of the EPAs” (Specht, Barbara, 2007)

On October 15, 2007 the Council of the EU agreed to the Aid-for-Trade proposal the EC and Member States were to be committed. The details of the Proposal are that the EU is offering 2 billion Euros per year beginning in 2010. Half of this amount would be supplied by the European Commission from *already* available funding (another re-packaging) and the other half would come from Member States. Currently the European Commission provides 840 million Euros and the Member States 300 million Euros for Aid-for-Trade. The hope is that Member States would increase to 600 million Euros by this year, reaching the one 1 billion Euros target by 2010.

As pointed out the provision of this funding is not dependent on the successful conclusion of the Doha Round of negotiation. The financial commitments are expected to be attained by 2010 and refer only to *trade-related assistance* where the EU has taken the lead among the G8 countries. No effective financial promises have been made in regards to the wider *aid-for-trade agenda*.

This basic reservation apart, there are other concerns over the provision of EU assistance. One is, the absence of specific, legally binding, time-bound provisions for the *delivery* of assistance through *clearly specified delivery* mechanisms. This vagueness of the EU development assistance is accompanied with a liberal dose of laudable objectives and good-faith/best-endeavour provisions. This however, heightens the contrast to the specific, time-bound, legal provisions of the trade dimension of the EPA, which impacts

CARIFORUM severely. Further, the aid-for-trade proposal appears to be more a demand-driven modality than a supply-directed one. In other circumstances this would be fine, except that attached to the proposal are numerous caveats, which provide the EU with lots of opt-out opportunities, if it so desired.

The most disconcerting aspect of this EU's re-packaging of aid envelopes is that the development dimension of the EPA can only be made secure if the EU's commitments were legal, time-bound, specific and subject to the legal provisions of the Dispute Avoidance and Settlement provisions in the EPA. The main objectives of the Aid-for-Trade proposal have been stated as:

- Promoting the more effective use of trade in promoting growth and employment, reducing poverty and meeting the development objectives of the EPA
- Improving access to global markets by addressing supply capacity and trade-related infrastructure
- Assisting with the implementation of trade reform and its required adjustments
- Assisting regional integration
- Assisting liberalisation and adjustment into the global trading system

In the strategy for achieving these objectives emphasis is placed on 1) the volume of resources 2) its quality 3) its implementation and 4) monitoring and reporting.

Originally five categories of Aid-for-Trade were identified in the original WTO proposal, with the first two combined as the trade-related assistance, which is emphasised in the EPA. These are:

- 1) Trade policy and trade regulation (for multilateral trade negotiations and legislative implementation)
- 2) Trade development (including the business climate/support services/institutions)
- 3) Trade-related infrastructure
- 4) Productive E capacities
- 5) Trade-related adjustment

## ***IV: Consultations, Economic Governance and Global Europe***

### ***IV.1: The Consultation Process***

It has been widely advertised by the Caribbean Regional Negotiating Machinery (CRNM) and the EC Negotiating Body that highly successful stakeholder consultations took place during the negotiations. Details of the many regional Meetings give the impression that once the CRNM as the negotiating entity for CARICOM agreed to proposals at the bargaining table then *ipso facto* it could be assumed that regional stakeholders' ownership was assured. This is a very contentious assumption, since the content, form, and other modalities of the consultations were flawed.

The CRNM claims:

“The process of negotiations of the EPA began years ago and involved a wide range of stakeholders. These stakeholders included State representatives, the private sector and non-state actors [...] Several fora were established to formulate regional negotiating positions. National positions which were formulated through national consultations, as well as the positions of regional sectoral interests and regional NGOs, were systematically harmonised and refined into coherent regional negotiating positions. This coordination activity took place through a series of meetings which were open to officials from all Member States, the regional secretariats, regional private sector and the NGO community. This forum of the Technical Working Group (TWG) convened at least 29 meetings since the official launch of the EPA negotiations in 2004. Of that total, 11 were devoted to market access issues in goods. Consultations on services were also considerable as 8 TWGs were convened. Through these processes, the ensuing dialogue and exchange of positions through proposals and research papers would have engendered continuous consensus building”. (CRNM Website)

There was however, a large gap between the CRNM's rather formularistic description of the consultation process and the reality of those consultations. One finds that just as there were marked negotiating asymmetries between the EU Negotiating Body and CRNM, similar asymmetries existed between the CRNM and CARICOM Member States including the various national and regional private sector bodies.

During the process several weaknesses emerged, the most important being that the *scope* of the consultations was limited to two options. One was the EPA and the other was, failing that, the EU's resort to the General System of Preferences (GSP) duties in order to satisfy the requirements of the WTO-waiver to 31/12/07. The choice for those who challenged the EPA concept was reduced therefore to the lesser of two evils. No effort was made to explore outside the EPA box for non-EPA, non-GSP options, within the evolving framework of the Doha Development Round. As it turned out it was left to think-tanks in Europe and the USA to explore these options and make public their findings.

A fuller analysis of this is taken up in Section V. The point I wish to make here is that the methodology of CRNM's consultations was flawed, by its own deliberate avoidance of consideration of options other than the two on offer by the EU. The Region therefore, was largely reactive to EU positions. Realizing this, the EU was insistent that it had no "Plan B" in event the WTO-waiver deadline was breached. In the absence of counterproposals from CARIFORUM (or for that matter other ACP-EPA groupings) other options were effectively foreclosed and the only ones that remained were those of an EPA or the imposition of GSP duties on non-LDCs, leaving LDCs to resort to EBA status if they desired.

A second weakness was that participation at the regional Meetings was low and from all reports the level of stakeholders understanding of the EPA was also low. Sacha Silva, the Commonwealth Secretariat/IDB Advisor to the Region on the Market Access Offer describes the situation as follows:

"The second goal was to conduct, country-by-country consultations across the public and civil society sectors[...]in many countries, turnout was low and understanding of the EPA limited among the various stakeholders, even after two rounds of country consultations which were eventually conducted" (Sacha Silva, Trade Negotiations Insight , February 2008, p9)

A third weakness was that Member States' technical capacity to contribute was very unevenly distributed. It is reported that in some smaller states there was not even a single full-time person assigned to this task!

A fourth weakness was available human resources were over-stretched. An unfortunate ritual of "musical chairs", therefore took place as the same person was asked to perform multiple roles at varying levels of authority not only at varying times during the process, but at times even during the same Meeting!

Fifth, as the negotiating process unfolded it became evident that a "one-size-fits-all" approach was unfeasible. The uneven negotiating capacities of Member States were not due to lack of interest or commitment but indeed reflected a more fundamental variation in their size; development levels; and, long-run resources, structural transformation and development goals. Thus for example, relatively resource-rich commodity- exporting economies like Belize, Guyana, Jamaica, Suriname and Trinidad and Tobago's have strategic economic interests dissimilar from the more service-intensive economies like Antigua and Barbuda and Barbados. Indeed, even within the former grouping, energy-rich exporting Trinidad and Tobago has a different commodity outlook than say Belize and Guyana to whom for example, the Sugar Protocol is most crucial. Such variations are exceptionally difficult to harmonize in one negotiating body, especially when operating on a unanimity principle. This situation added to the complexity of the task and to the emergence of the *relative autonomy* of the CRNM.

It seemed also as if the CRNM and the EU were impatient when these *structural weaknesses* slowed the process. If the goal was a satisfactory EPA and not pre-established deadlines, then these structural weaknesses, which stemmed from genuine regional unevenness of the countries negotiating, might have been better accommodated. The process was instead more "deadline-driven" than "goal-driven" so that lagging states ended up in a situation where *de facto* they were forced to surrender their negotiating authority to the CRNM. Meanwhile unwisely, the CRNM was in haste to sign the "first full comprehensive EPA".

There were also other considerations. One in particular was the *relative autonomy* referred to above. It is almost a natural law that large organizations created by the state and dedicated to operate in areas of complex and technical matters, develop relative autonomy in relation to the State. Where many States are involved as the originating body, this phenomenon manifests itself more strongly. Experience has also shown that adept leadership can expand the “degrees of freedom” for relatively autonomous action by large organisations in relation to their State sponsors. Thus the EU Trade Commission has played a significant autonomous role in shaping the views of Member States about the evolution of the global economy and Europe’s role in this, the so-called *Global Europe* project. The CRNM, although far less so, has also been able to expand its authority over the negotiating process because of relative autonomy. The CRNM was definitely aided by having to deal with several states with limited capacities to cope with a process heavily driven by timelines.

The EU has touted the EPAs as a breakthrough in economic partnership arrangements between rich and poor countries, with the objective of putting trade at the service of development. As the WTO-waiver deadline became imminent in the last quarter of 2007, the EU put enormous pressure on the six negotiating regions to conclude EPAs. As we now know, only one full EPA was achieved and the remainders are Interim EPAs. In the circumstances the CARIFORUM-EU, EPA clearly helped the EU to “save face”. The all-ACP response to EU pressure was fierce. Thus the ACP Council of Ministers at their 86<sup>th</sup> Session on December 13, 2007 declared that they:

“Deplore [d] the enormous pressure that has been brought to bear on the ACP States by the European Commission to initial the interim trade arrangements, contrary to the spirit of the ACP-EU partnership” (ACP Council of Ministers, Declaration, December 13, 2007).

Finally, there is an obvious contradiction in the CRNM responding to regional critics by claiming on the one hand that EU pressure was intense, and that given the deadline date of 31/12/07 and the threat of the imposition of GSP duties, there was no alternative for the Region and *simultaneously* claiming that the Agreement is eminently satisfactory. The Region cannot at one and the same time claim full partnership status and ownership

of the Agreement and on the other that it took action, defensively! A similar contradiction arises on the part of the EU. For the sake of convenience, simplicity, and speed it was easier for the EU to treat CRNM *acceptance* of proposals, as signifying full stakeholder *ownership* of the details behind these proposals. There was no incentive to challenge this, given the pressure of deadlines the process faced. In this regard, and in retrospect, the EU clearly exercised poor judgement.

#### ***IV.2: EPA Fall Out: Governance in CARICOM***

The decision to create a specialized agency (CRNM) to pilot the negotiations with the EC was made as part of a broader remit to have that agency deal with all issues related to external trade negotiations. This was necessary at the time, given the fiasco attending the preceding WTO negotiations, where there was no effective CARICOM coordination. The revealed weakness of that decision is its failure to locate the CRNM properly within the governance framework arrangements of CARICOM and, in particular, to specify unambiguously its relations to the CARICOM Secretariat. That failure resulted in a “dual-headed” arrangement, which has over the years systemically hampered the integration of external trade negotiations and the promotion of the Caribbean Single Market and Economy. While there is clearly an organic relation between the two, the “dual-headed” arrangement unintendedly militates against it. This contradiction has not produced, so far, discernible public conflicts between the two bodies. But if unambiguous priority is to be given to the regional integration process, then the CRNM must necessarily be reporting directly to the CARICOM Secretariat, which has not been the case thus far.

As a consequence the just concluded EPA has included in it administrative and organisational arrangements, which give EPA institutions a greater degree of “sovereignty” over the domestic economic affairs of CARICOM, than the Treaty of Chaguaramas, which established the Secretariat and organs of CARICOM does. Since EPA bodies are jointly controlled by the EC and CARIFORUM Member States this is clearly unacceptable. In addition, there is the vexations issue of funding. Both the CARICOM Secretariat and the CRNM are largely externally funded. I have always found

it anomalous that the Region's political leaders would advocate CARICOM as their topmost priority, and yet do not feel compelled to ask their constituents to fund the process! Apart however, from this general concern there is a more specific concern, which arises from the fact that the Region has the CRNM routinely requesting funding for its negotiations from the very countries with which it is negotiating.

As far as I am aware no spoken or written directives have been given by the EC to the CRNM or CARIFORUM States, but clearly there is a conflict of interest on the part of both Parties to the Agreement as the arrangements were *not* arms-length. How much this may have led to self-imposed restrictions on the scope of CRNM actions we will never know. Once again the fault of this situation does not lie entirely at the door of the CRNM, but speaks volumes to the quality of economic governance, which generally prevails in the Region.

### *Next Steps*

After initialling the EPA in December 2007 the legal steps required by CARIFORUM to put the EPA into operation were 1) formal Ministerial signature by March 15, 2008 and, 2) putting in place the administrative and legal instruments in order to make the EPA operational by April 15 2008. However, at the CARICOM Heads of Government Summit (March 7-8, 2008), it was decided to reschedule the formal signing to June. Later this was shifted several times and finally on October 16, 2008, 13 CARICOM Member States signed at an official ceremony in Barbados Later Guyana signed on October 20 in Brussels. Haiti is yet to sign. The events surrounding these occurrences will be discussed in the next (final) section. it should be noted that, the initial reasons given for the postponement were technical and related to the completion of the legal text and its translation into other CARICOM languages. However, later it emerged that some CARICOM Governments were having second thoughts on the EPA in its present form (particularly Guyana), which occasioned the delays until October.

It is not much referred to, but the EU also had two steps to take to move from initialling to the formal signing of the Agreement: 1) A Council decision to authorise the signature

of the initialled Agreement and, 2) Assent of the European Parliament. After that the Parties to the EPA had to *notify* the WTO.

The institutional framework for the next steps, including provisions, bodies and scope of operations are *legally* specified in the text of the EPA (Part V). Institutional Provisions Articles 227-232. At the apex is a ***Joint CARIFORUM-EC Council***. This is the highest organ and has overall responsibility for actualizing the EPA in all its aspects including supervision, monitoring, trouble-shooting and reviewing the EPA. This Council is at Ministerial level and will be comprised of representatives of Signatory CARIFORUM States and Members of the Council of the European Commission (EC) and the EC itself. Chairmanship of the Joint Council alternates and the Council reports to the Council of Ministers under Article 15 of the Cotonou Agreement. The Joint Council has powers to make binding decisions on matters where CARIFORUM agrees to act collectively. These decisions are adopted by the Council. Recommendations can also be made to it. For matters not agreed to for collective decision these require the agreement of individual CARIFORUM States for adoption. The Council is scheduled to meet at regular intervals of at least two (2) years. As a general rule, all major issues arising within the framework of the EPA can be addressed by the EPA *including* any other bilateral, multilateral or international questions of common interest and affecting the trade between the Parties to the Agreement. In this and other regards the Council seemingly has more authority over the Region's external trade than CARICOM organs.

There is also a CARIFORUM-EC ***Trade and Development Committee*** comprised of senior officials of the Parties to the Agreement. This body services the Council and assists it in the execution of its responsibilities. It is thus responsible for ensuring that disputes are resolved and that the opportunities afforded by the agreement for trade, investment business ventures are effectively utilized. In this regard it has responsibilities for securing both the development and trade objectives of the EPA.

The Chairmanship of the Committee alternates similar to the Joint Council. This Committee can establish Special Committees as needed. It is also required to meet

regularly, at least once a year in alternating locations of the European Union or a Signatory CARIFORUM State. Finally, this body has the responsibility to pursue development cooperation and other related functions in regard to development as part of its remit to ensure the proper application of the provisions of the Agreement and overseeing the elaboration of the Agreement.

There are also two other non-specialist Committees, namely the CARIFORUM-EC Parliamentary Committee and a CARIFORUM-EC Consultative Committee. The former comprises representatives of the various Parliaments that are Party to the Agreement and the latter organizations of civil society. The CARIFORUM-EC Parliamentary Committee meets to exchange views and cooperates with the Joint Parliamentary Committee under Article 17 of the Cotonou Agreement. Like the other Committees the Chair alternates. This Committee has to be informed of the decisions and recommendations of the Joint Committee and in turn it may make recommendations to the Joint Council and the Trade and Development Committees.

The Consultation Committee is expected “to promote dialogue and cooperation between representatives of organizations of civil society, including the academic community, and social and economic partners”. In this regard it functions to assist the Joint Council; which body selects the Members of the Consultative Committee. The Consultative Committee may make recommendations to the two higher bodies: the Joint Council and the Trade and Development Committee.

#### ***IV.3: The Global Europe Project***

The EU has promulgated a ***Global Europe*** project, which it says defines and motivates its actions in the global economy. From this vantage point the moral duplicity, intellectual dishonesty and contradictions inherent to several of the EU’s actions previously reviewed in this study are best understood.

The two instances of Government Procurement and the Most Favoured Nation stipulations of the EPA discussed in Sections 11 and 12 make unconvincing the EU claim

that it is only altruistically concerned about promoting the development goals of CARIFORUM, even at the expense of its own interests. Those who would present these provisions as benign and the well-intentioned pursuit of CARIFORUM/CARICOM's well-being need to convince us of this beyond a reasonable doubt. This may sound cynical but the Global Europe project outlined below leaves little doubt in my mind about the EU's guiding purpose.

### ***“Projectionism” and the Global Europe Project***

In recent years the EU's ***Global Europe*** project has been mainly articulated through the writings and commentaries of Peter Mandelson, the former EC Trade Commissioner. On the occasion of the Alcuin Lecture at Cambridge University, (February 8, 2008), the theses behind this Project were further elaborated as indispensable actions the EU must pursue in order to secure what he terms as the sustenance of the “openness boom”. It is argued that the “rising tide of global prosperity” rests on this boom. It is further urged by Mandelson that such a vision should inform indefinitely ***all*** of Europe's future external trade and development agendas.

In essence the Global Europe project assesses that the two decades long “openness boom” is here to stay. It concedes to its critics that the “openness boom” faces two fundamental long-run challenges. Firstly, “environmental damage”, and second, “risky political consequences”. It is nevertheless, advanced that the EU's role is to resolutely promote continued global openness. Disengagement from this pursuit, or an inward-looking Europe, would be calamitous at this stage. Moreover, the project urges that in the face of the political challenges posed by the huge gains, which states like Russia and China are receiving from the boom, graver political risks would follow if the EU turned inwards.

Mandelson proposes that a coherent EU response should be rooted in the notion of “projectionism”, not protectionism. By this is meant, enhancing Europe's capacity to ***project*** its interests and values onto the world as steering modalities even as globalization

continues to advance rapidly in the 21<sup>st</sup> Century. In the lecture, the EC Trade Commissioner asserts:

“Politics in Europe and a conception of the European Union that equips us to shape the openness boom not abandon it and, in doing so, project our values and our interests in a changing world”. (Mandelson, Peter. The Alcuin Lecture, Cambridge, University, February, 2008, page 2)

He then goes on to point out more bluntly:

“Asia may have pressed on the accelerator, but *we have kept a steady hand on the wheel...*The EU as a whole has prospered from the openness boom” (my emphasis. Ibid, page 3)

As a consequence the EC pursues its global trade agenda *multilaterally* through the WTO. *Bilateral* agendas, such as the EPAs [and what it terms as “*autonomous measures*” on its Website, such as the Generalized System of Preference (GSP) and the Everything But Arms Agreement (EBA)] are designed to serve, not substitute, for this global agenda.

Two crucial considerations flow from this analysis. One is it must be conceded that the EC is entitled to promote its national interests based on its world view. It is CARICOM’s responsibility to establish a clear distinction as to where the EC’s autonomous philanthropy begins and *real politik* ends. CARICOM cannot assume an invariant dispassionate objective EC in situations where its national interests and those of the EC’s diverge. Indeed, the EC has never hidden its deep intent in the EPA negotiations, no matter what its negotiators might have said to the contrary. To quote again:

“The Economic Partnership Agreement (EPAs) are not an end in themselves, but are intended to act as a stepping stone to the gradual integration of the ACP countries into the world economy” (European Commission Website, External Trade, Trade Issues)

The second consideration is that there has not been the similar provision of a coherent and sustained elaboration (for the benefit of CARICOM citizens and others) of a *Project Caribbean* with which to steer the Region’s negotiations. Implicit however, to every major action along the way, especially regional efforts to construct the CSME, is the vision of promoting an open-regionalism, which builds CARICOM as a platform for sustainable engagement in the wider global economy. Given the uneven and asymmetric

distribution of power, development levels and capacities globally, engagement in the international economy has to be sequenced and firmly rooted in the priorities of the Region. An “as is” and “where is” engagement in the present global economy poses risks for all countries but while none of these are likely to produce catastrophic results for the EU, they could very well do so for CARICOM, considering that it comprises small, vulnerable and relatively poor states. It is this perspective that has guided the analysis of this study.

Little wonder that the EC Trade Commissioner has confidently asserted that even with the Doha Development Round incomplete: “The WTO *already* (my emphasis) governs the multilateral trading system with striking effectiveness”. Can CARICOM/CARIFORUM say the same?

## ***V: The Way Forward***

### ***V.1: From Initialling to Signing the CARIFORUM-EC, EPA***

While the CARIFORUM-EC, EPA will only become fully operational after another two and a half decades we can safely say now that the opening act of the ACP-EC, EPAs saga came to a tawdry conclusion with two developments specifically in relation to the CARIFORUM-EC, EPA. One of these is legal and formal. On October 15 2008, thirteen CARICOM Member States that in December 2007 had the EPA initialled through the CRNM on their behalf, each formally signed it at a ceremony in Barbados. For different reasons, Guyana and Haiti did not sign at the ceremony, although at the time it was expected they would do so later. Guyana subsequently signed on October 20 in Brussels. As stated by the Guyana Government this was done in order to beat the deadline date of October 31 set by the EC before it levied tariffs on Guyana’s exports to the European Union under the GSP rates offered generally to all developing countries. Haiti is in a different situation. It has been given until 2010 to sign the Agreement. This was reported as being partly due to the dislocating effects of the multiple hurricanes it suffered from in 2008. However, Haiti is classed as a least developed country (LDC) and under the

existing EC Everything But Arms Agreement it is allowed to continue to export to the European Union duty free, whether it signs the EPA or not.

After heated debates, the Guyana Government had held a National Consultation on the CARIFORUM-EC, EPA, in order to arrive at the country's response to the EPA and to provide guidance to the Authorities (September 5, 2008). At the Consultation there emerged a solid consensus in favour of the Government signing on only to those parts of the EPA that dealt with "trade-in-goods". As stated by several participants in that Consultation this approach was designed to prevent the European Commission (EC) from claiming that there is a breach of the WTO waiver deadline within which the trade-in-goods arrangements under the Cotonou Agreement were to have been rectified. Technically, this deadline would have expired on December 31, 2007 if no alternative was in place. However, a WTO Member would have had to activate a complaint of the breach for it to come to formal the notice of that body. Knowledgeable persons do not believe that such a complaint would be likely, because there is abundant evidence that the EPA is the subject of active on-going deliberations between the EC and ACP countries. As a general rule, countries never bring complaints when active negotiations are still taking place.

Despite adopting this position to give legal coverage to Guyana's opposition, the EC "let it be known" (some would say threatened) that it would impose GSP tariffs on any CARIFORUM Member State's exports to Europe, if that Member State did not formally sign on the EPA, previously initialled on December 16, 2007 last by the CRNM, by October 31, 2008.

The Guyana Government held a National Consultation, which preceded the pre-planned Heads of Government of CARICOM meeting in Barbados on September 10, 2008. The positions taken at the Guyana National Consultation were reported to the Summit. However, this gathering did not support Guyana's opposition. Some of the reasons given for not doing so sounded extremely naïve, reflecting a disturbing mis-understanding of the EPA and what it represented. Thus one of the most widely circulated reasons in the

media for rejecting Guyana's position is that other CARICOM Heads had claimed that having signed on to the WTO Agreement the Region cannot reasonably reject the EPA, based as it is on the WTO! Of course, nothing could be further from the truth. The argument is that precisely because the Region has signed on to the WTO Agreement and that agreement has not yet advanced negotiations on many of the topics "negotiated" in the EPA that caution is being urged. Without the conclusion of WTO negotiations, there are no satisfactory benchmarks or yardsticks with which to guide the Region's bilateral negotiations with the EU.

As far as the EPA goes the Region is legally bound to WTO arrangements through the requirement to reach a settlement on "trade-in-goods". It is for this reason it is argued that the Region should have signed on only to the "trade-in-goods" provisions of the EPA and negotiate further on the other contentious areas such as services and trade-related matters.

An even more naïve argument circulating in the regional media, which was attributed to the Heads of Government's rejection of Guyana's position, is that many countries argued that their economies are services economies so that a "trade-in-goods" agreement is not relevant to them! It is the argument of this study that it is precisely because their economies are mainly services economies that they should restrict themselves to signing only to the technically required trade-in-goods portions of the Agreement and pursue further deliberations on the portions of the EPA, which deal with services. They could indeed have profitably used the extra time since as we noted in Section 11 the services provisions in the EPA are very weak.

At this stage it is instructive to note one important detail about the "trade-in-goods" commitment. Evidence is there that originally the EC had intended to propose to the ACP countries that if they liberalized about two-thirds of their markets to European firms, this would satisfy the WTO waiver requirement that "substantially all trade" is liberalized in the EC and ACP States negotiating EPAs. This was later raised to 80-90 percent, no doubt after Europe found the going on this requirement in the negotiations easier than they had originally anticipated!

As the debate has raged in the CARICOM Region, it became clearer each day that the length of the overall EPA text, and its highly technical nature (embracing as it does complex legal, economic and trade terminology) militated against efforts to make it the subject of intelligent democratic public dialogue and discourse. The sobering truth, which has emerged is that most lay persons have found the EPA text exceedingly difficult, if not impossible to follow and comprehend in a meaningful way in order to be able to assess its implications. This EPA experience allows us to generate some broader propositions on public dialogue. First, the sheer length, technicality and complexity of the Agreement undermine its efficacy as a subject for broad-based democratic discourse and dialogue among a population not trained in its areas of specialization. It is impossible to have broad-based informed public exchanges on any subject for which vital details are not in the possession of those who are not directly engaged in the exchanges. It is for this reason I had previously advanced the claim that no matter how important they are, when matters are overly technical and/or complex this undermines their utility as the subject for democratic dialogue.

It also demonstrates that because there is a considerable time gap between signing the EPA and its full implementation and impact, political leaders can take the soft option of practising "*moral hazard*". This occurs because decisions they take now will have consequences many years later when they may not be around or certainly not in power. If the costs of today's bad decisions will be borne by future generations, "why worry"! This sort of "*moral hazard*" has been frequently exhibited among CARICOM States. It shows up in all manner of decisions, but particularly those related to the environment and national disasters. Whenever disaster is imminent and its likely costs to the society and economy are obvious, political leaders are usually readily prepared to act. However, they just as often hesitate to secure insurance and use resources to anticipate what is not immediately apparent. In such situations they believe they are saving on expenses today by not taking corrective action. But, given the regular cycles of natural disasters, when they do occur, as they must, they bring immense costs to the country.

The evidence suggests that CARICOM Governments have not only practised moral hazard, some indeed have done worse. As Robert Buddan reminds us in a column in the online Jamaica Gleaner of July 13 2008, captioned Mendicancy Revisited, the Jamaican Government when it came to power in late 2007 took the opposite position to the one it later took on the EPA. In the maiden speech, given by Minister Kenneth Baugh at the United Nations General Assembly, he lustily condemned the European Union's approach in the final stages of the EPA negotiations. He then expressed support for the principle of Special and Differential Treatment for CARICOM-type economies, which was being advocated by Jamaica in the DOHA Development round of the WTO. Indeed, in that Speech he had labelled the European Union's approach to the EPA negotiations as inequitable and in violation of the principle of global partnership.

At about the same time Prime Minister Golding of Jamaica in a speech reported by Robert Buddan, was making statements similar to Baugh's and specifically bemoaning the pace and pre-set deadlines put out by the European Union in the EPA negotiations. Additionally he had highlighted the threat to the Region's agriculture posed by the European Union's enormous subsidies.

The second of the two decisive consequences pursuant to the signing of the EPA by CARICOM Member States is that in the circumstances surrounding the signing the Region has been able to put to rest, once and for all, the myth that, since Cotonou and with the EPAs, the EC has been promoting a "new" North-South trade model — a "partnership of equals".

In its consistent opposition to the EPA the Guyana Government pressed at the last minute for a Joint Declaration to accompany its signing. In the end this was agreed to, but it provides little more than fig-leaf cover for the many defects in the Agreement. The Joint Declaration calls for two things namely 1) a five-yearly review of the operations of the EPA 2) a commitment to give earnest consideration to the priority of promoting the CSME. This latter declaration is in lieu of Guyana's request for the legal insertion of the

requirement that if the legal provisions of the EPA text and the Treaty of Chaguaramas, establishing CARICOM conflicted, the latter would take precedence.

As we saw when examining individual chapters of the EPA, there are several provisions in the EPA for sectoral reviews with a "view to further liberalization". The reviews called for by the Joint Declaration however seem more explicitly directed at assessing the costs and implications of implementing the Agreement. However, this is not ruled out sectorally in the existing provisions of the EPA.

As both the EC and regional supporters of the EPA boast, the fact is, despite the delays and the debates after its initialling, not a single word in the signed Agreement has been changed. The reality is that the pressure/coercive tactics of the EC during the negotiations and its studied recalcitrance in the face of numerous entreaties to do better for the poor countries of the ACP were matched in the Region by its remarkably successful cooptation (not without some intended and unintended connivance) of the Caribbean Regional Negotiating Machinery (CRNM). Many observers feel that the CRNM has not been discomfited by the widespread accusation that it was acting as a "lobbyist" for the EC.

History will show that, the craven irresponsibility and rank opportunism displayed by several CARICOM political leaders have created the perfect back-drop to these occurrences. As pointed out above the practice of moral hazard has become endemic to the Region. Indeed, one may ask: how can it be otherwise? Lacking vision and an independent understanding of the dynamic processes at work globally, regionally and nationally, several political leaders have become easy prey to the EC and CRNM's offerings of 18<sup>th</sup> and 19<sup>th</sup> century economic beliefs masquerading as modernity. The failure to consider the redistribution aspects of the CARIFORUM-EC, EPA is staggering.

To be fair, the EC ought not to be the main target of criticism for what has transpired. The EC has a binding duty and obligation to protect and promote the commercial interests of its Members, collectively and separately. It has done this brilliantly with the EPA. My criticism is directed solely at its sophistry and pretension when it claims that it

has been pursuing exclusively, in an altruistic manner, the needs and priorities of CARICOM and CARIFORUM.

*Do Not Forget*

The Region should never forget that the CRNM was created as a regional inter-governmental organization to promote its external trade relations. Since these relations derive from the Member States' needs, priorities and capacities collectively, the process of regional integration must in all circumstances take precedence. This is a logical imperative, which the CRNM seems not to have fully accepted and which through neglect, the political leadership of CARICOM has allowed to persist. Thus instead of responding to stakeholders' concerns over the EPA with an open frame of mind in a self-critical way, the CRNM has allowed its political function as lobbyist for the EC to take hold. Every disagreement has been put down as "misperception" or simply cast aside as "coming from persons who are against trade liberalization". While one would have expected the EC to resort to such political ploys and distractions being an outside agency negotiating with the Region, one cannot accept that an agency directly responsible for pursuing the Region's external trade negotiations should be engaged in such foolishness.

Since its publication, I think I have read most of the published and un-published papers on the CARIFORUM-EC, EPA and never once have I come across an author who based his/her argument on being against trade liberalization. All critiques have accepted the inexorable global drive in this direction and place the effort of CARICOM, to create an open regionalism, as a needed platform for global engagement. The EPA is a mercantilist instrument that promotes EC interests and creates regimes for the distribution of its benefits primarily to the EU. The collateral damage that mercantilist agreements generate as income and trade redistribution occurs eventually becomes the source of their undermining.

In conclusion let me note that Guyana has been very shabbily treated by CARICOM'S political leadership. Time will show that the EPA, even before it was formally signed on to, drove a major wedge into the political, economic and social fabric of CARICOM. The

long term transformational significance of Guyana for a self-respecting and sustainable CARICOM region should not be underestimated because its economic and political performances in recent decades do not compare with the best in CARICOM. There can be no meaningful self sustaining CARICOM Region if Guyana and all its resources are not at its strategic heart.

After signature the full EPA is officially entered into force pending ratification by Member States, by October 31, 2008. Between signature and ratification it had been provisionally applied.

### ***V.2: Leaders Proclaim: The Signing of the EPA as “The Dawn of a New Era”***

With the signing of the CARIFORUM–EC, EPA on October 15, 2008 by 13 CARICOM Member States, the EC now boasts in international development circles that the Agreement is not only a genuine “partnership of equals” but that it is the “first genuinely comprehensive north-south trade and development agreement in the global economy” (ICTSD, Editorial, Trade Negotiations Insight (TNI), Vol. 7 Number 8, 2008). Concurrently, on the occasion of the formal signing of this agreement, the then Minister of Foreign Affairs, Foreign Trade and International Business of Barbados spoke on behalf of CARICOM Member States. This speech has been widely circulated and also reprinted in TNI Volume 7 Number 8, November 2008 with the title: The Dawn of a New Era: Caribbean Signs EPA with EU. By reputation the speech has been lauded as a masterly exposition in support of the Agreement and an eloquent rebuttal of regional critics of the EPA. It is certainly well-written, but unintendedly reveals some of the key flaws of the Agreement and thus calls into question the decision by CARICOM’s political leadership to proceed with its signing in the present form. Let us review the central propositions in this speech.

Speaking on behalf of his colleagues, the Ministers made it very clear that ultimately:

“Our signature of the EPA agreement on October 15, represents a fundamental signal to the rest of the world that Caribbean countries are *maturely and decidedly breaking with a long loved past that has now passed*” (my emphasis) (Sinckler, 2008).

Myself and to the best of my knowledge, other critical analysts of the EPA have never sought to represent the Region as having “a long loved past” with Europe. If anything, our position is to the contrary. If in the past the Region had secured some advantages in regard to its economic relations with Europe, this was never put forward, as the Minister seems to be doing as a past that was loved “enjoyed and longed for to continue”. Europe’s relations with the Caribbean have always embodied fierce inequalities just as indeed the present EPA does. To suggest otherwise is an alarmingly provocative misreading of both Caribbean historical experiences and the analytical perspective of critics of the EPA. After all, the legacies of Caribbean-European relations are too entangled with episodes of colonial excesses, human bondage, and other brutal forms of economic exploitation to be considered in an endearing manner as a long loved past. It is remarkable that such a misleading characterization could be foisted on the several serious constructive critics of the EPA in the Caribbean and elsewhere.

The Minister also based his case on the need to be pragmatic and practical rather than theoretical and ideal. As he puts it:

“Clearly there are those who ... will always say we have not got enough and to keep on negotiating until you get all you want. But surely they too understand that this is impractical and *the reality of the agenda set for us* does not allow us that luxury” (my emphasis) (ibid, 2008).

This statement, perhaps unintendedly, confirms what critics have been pointing out: the EPA agenda has been set *for* the Region and not *by* the Region. This is a very important acknowledgement, which no doubt led to the further acknowledgement that “with the signature of the EPA the Region embraces an uncertain future”. As the Minister puts it, this means that the task before the Region:

“Is *to set in motion* a CARIFORUM – wide process at both regional and national levels to create effective mechanisms and structures ... to take advantage of the opportunities which this EPA presents” (ibid, 2008).

In support of this, he goes further, to indicate that Barbados had established an EPA Coordination and Implementation Unit, along with several other CARICOM Member States. Remarkably, he then describes the purpose of those bodies to be:

“Charged with the *responsibility of studying the entire agreement* and devising strategies and programmes to enhance the capacity of Ministries and private sectors to implement, engage and exploit this agreement (my emphasis) (ibid, 2008).

This statement certainly raises several concerns. If at this level of Government it is admitted that there is still a need *to study the entire Agreement* is distressing. It is reasonable to ask: How can an indefinite trade Agreement not yet studied in its entirety be signed on to by responsible Authorities? This is another remarkable, if again unintended, admission of the correctness of many of the criticisms directed at the CARIFORUM, EC, EPA attendant to its negotiation.

### ***Development Support***

Underscoring the imprecision and lack of specific time-bound commitments to provide development support in the Agreement the Minister is reduced to urging the EU to honor its best-endeavor commitments on this score. The speech emphasizes the need for:

“The timely delivery of necessary financial support will be vital if the EPA is to achieve the objectives which both sides set out in their negotiating mandates” (ibid, 2008).

It is evident from the statement above why the Minister very early in his speech had referred to the “uncertainty which the Region has embraced with the signature of the EPA!” In fact it must have been somewhat embarrassing, for the spokesperson for CARICOM, on such an occasion, to have to urge:

“Our EU partner must be reminded of their commitment to provide development support to buttress regional integration, facilitate the implementation of the EPA commitments, and improve supply capacity and competitiveness” (ibid, 2008).

From the standpoint of critics of the EPA, it is against everything that the Region should stand for that the Minister would have to use such an occasion to plead that the EU’s Aid for Trade (AfT) facility be used as a source of “additional funding for the implementation of a CARIFORUM EPA”. As I have been at pains to point out in this study the AfT is not

an EPA-specific proposal. Indeed it was formally laid at the WTO by the EC in an effort to mobilize developing countries support at the Hong Kong Ministerial. In making this plea on the occasion of the signing of the CARIFORUM-EC, EPA the Minister, as spokesperson for CARICOM has explicitly acknowledged the wisdom in the many criticisms of the Aft and the EPAs, as being vague, imprecise, non-specific, and not legally time-bound.

While proclaiming that the CARIFORUM – EC, EPA contains a “declaration that the region will benefit from an equitable share of [the EU’s Aft resources]” the Minister goes on to admit:

“It must be pointed out that to date, the modalities governing access to the AFT resources of EU member states have not yet been properly elaborated despite the fact that these were to have been in place since the end of last year ... Failure to satisfactorily do so or to meet those commitments to their fullest extent will not only compromise the implementation of this agreement and permanently damage our future relation” (ibid, 2008).

There is, when all is said and done, the faintest trace of a threat to EU– CARICOM relations. Alas, this is too late!

The aim of my critiques of the CARIFORUM-EC, EPA has been to secure improvements to its arrangements. I sincerely believe that those who have been publicly associated with critiques of the EPA process share the same position. In that spirit I would hope that this examination of the proclamation of the “dawn of a new era” would encourage CARICOM leaders to distance themselves from such embarrassing excesses especially on the auspicious occasion of the formal signing of the EPA text.

When all is said and done the CARIFORUM-EC, EPA was formally signed (October 2008) even as the private housing market bubble had burst in the United States leading to a gargantuan credit crunch, financial crisis, and recession worldwide. Indeed, the data show that the US was in a formal recession since the ending of 2007. The spread of these occurrences from the US to the rest of the world, and to Europe in particular, was

brehtaking in its speed, scope, depth and complexity. From this standpoint, the signing of the EPA could not have been worse timed.

The ramifications of these effects on CARICOM Member States will be formidable since their main markets for goods and services are in disarray, remittances from its diaspora are declining, portfolio losses to CARICOM firms and wealthy individuals will be considerable and investment flows to the Region, including official development assistance are in jeopardy! There are of course many other negative outcomes, but enough has been indicated here to show that the EPA has come into effect in a most discouraging economic environment for all parties concerned.

### ***V.3: Operationalizing the EPA: Major Impediments (Drawbacks)***

In Section 4.1, I introduced Schedule (1) listing 14 major contentious areas in the design of the EPA. I suggested that these could be grouped around three conceptual/methodological/architectural weaknesses in the design of the Agreement, namely:

- 1) The lack of empirical evidence in support of several theoretical propositions embedded in the provisions of the EPA as well as in determining those areas of consideration deliberately excluded from the EPA. These include 1) the fairly cavalier treatment of *reciprocity* in the context of very asymmetrical Parties to the Agreement 2) the limited treatment of *special and differential treatment* and 3) its implicit support for early *preference-erosion*. It also accounts for the weak treatment of concrete financial assistance and the presentation of this as an issue that properly falls outside a traditional trade agreement.
  
- 2) Many of the evaluations assessments and interpretations of the Caribbean development dilemma, which infuse the Agreement, are either in strong dispute over their interpretations or lack consensus among regional experts. As case in point the diagnosis and linked aims and objectives of the “development dimension” as presented in the Agreement and therefore the type of development cooperation the EPA provides.

- 3) Fundamental flaws in the design and architecture of the Agreement (including its negotiating modalities) and the assumption of regional stakeholder involvement during the process of negotiations. There is as well the proclaimed goal to make the Agreement a “partnership of equals”.

All these areas of contention are found in the legal text, which frames the Agreement. The analysis that has followed to this point has also revealed that in the operationalizing of the Agreement there are serious impediments and contradictions to be overcome. These can be grouped into six (6) categories and it would be useful at this stage to recap on these. First, lacking any economic trade policy assessments, social impact assessments, calculation of the margins of preferences between the EU offers at the WTO and in the EPA, or assessment of the implications of giving MFN treatment to the USA and Canada, the Region’s trade policy will continue to evolve in the dark, with potentially catastrophic consequences. The EU is a very secondary trading partner of CARICOM. It has accounted for less than one-eighth of the Region’s export trade and below that for its foreign direct investment inflows. There has been clearly no calculated portrayal of alternative options for the Region as it goes forward, even though those that were indicated above as missing if available would not by themselves provide conclusive results. They are necessary if not sufficient calculations that need to be made. In the following Section (18) we address the issues centering on CARICOM-USA trade relations.

The second categories of drawbacks/impediments are those posed by poor sequencing. Thus the Agreement clearly pre-empts and/or will likely terminally complicate the regional integration process, if as expected that is to be driven by the formation of the Caribbean Single Market and Economy as the platform of open-regionalism for the engagement of CARICOM States in the global economy. Lacking a CARICOM – Dominican Republic customs union, similarly pre-empts/fatally complicates the consolidation of CARIFORUM, which as we saw is an EC construction, formalized by the EPA process. It also creates serious issues for the Region’s trade relations with its

primary trading partner (the United States), which has displayed a different approach to trade and financial relations with our mainly small, vulnerable poor economies. Similarly, by engaging in any of the Singapore issues, the Agreement severely compromises the Region's relations with its various coalition partners in the WTO negotiations who rely on the small vulnerable economies (SVEs), (SIDs, Africa Group and the ACP as well). The multilateral route to trade liberalisation had hitherto been advanced by the Region as the best strategy going forward, given its smallness and vulnerability.

The third group of drawbacks/impediments flows from the treatment of the Region's development problems, and consequently the nature of the development cooperation agenda. As we saw in Section 5 the fundamental development issues confronting the Region stem from 1) its vulnerability 2) small size 3) diseconomies of scale in the provision of key public services, basic services and infrastructure and 4) its susceptibility to exogenous shocks whether economic/man-made (social/political)/natural. From this a number of operationalizing impediments flow such as the disjuncture between market accesses offers to the Region (as in Cotonou) and capability of enterprises to effectively enter those markets. It is for this reason that we also believe that the failure of the EPA to lock-in definitive time-lines and benchmarks as operating modalities for development cooperation and assistance is grave. It is not satisfactory to argue that other trade agreements are not specific in areas of financing, since other trade agreements do not aspire to be a "partnership of equals". Along with these considerations there are others: issue of MFN operation, the use of National Treatment as a development tool, the separation from the basic Cotonou approach, despite assertions to its countries.

Fourth, altogether the safeguard provisions of the Agreement are not as solid as they should be, given 1) the asymmetry between the Parties to the Agreement 2) the excessive subsidisation of European agricultural exports, and 3) potential EC non-tariff barriers to trade emerging as operationalizing constraints during the Agreement.

Fifth, there is the question of economic governance. The non arms-length relation between the CRNM and the EC must be conclusively terminated. It would be poor

economic governance if this is allowed to continue, particularly when organisations of the EPA (the Joint CARIFORUM-EC Council and the Joint Council on Trade and Development) seemingly have more authority over the trade policies of CARICOM than the established bodies of CARICOM itself. Finally, the Agreement makes little earnest effort to accommodate or to contain preference erosion in the Region's traditional agricultural sector. Despite mammoth EU agricultural subsidisation of its own agriculture and its persistence in the face of global pressures at the WTO, the EU expects the Region's traditional agriculture to adjust to open market situations in the next few years.

The Schedule (...) below summarizes these observations:

***Operationalising the EPA: Main Drawbacks/Impediments***

<b>Category</b>	<b>Drawbacks/Impediments</b>
<b>1. Accompanying Assessments</b>	<ul style="list-style-type: none"><li>• No trade policy assessment</li><li>• No social impact assessment</li><li>• No calculations of EU margin of offers at the WTO vs EPA</li><li>• No quantitative assessment of implications for trade with our primary trading partner (USA)</li></ul>
<b>2. Sequencing: No revealed Coherence</b>	<ul style="list-style-type: none"><li>• Pre-empts/complicates CSME-driven open regionalism</li><li>• Pre-empts/complicates CARICOM-DR, regional trade agreement</li><li>• Pre-empts/complicates CARICOM-USA (and Canada relations)</li><li>• Added complication of CAFTA-USA, FTA</li><li>• Pre-empts/complicates Doha Round partnerships and negotiations (Singapore issues, SVEs, SIDs, G33 etc.)</li></ul>
<b>3. Misspecification of Development Problem and Development Cooperation</b>	<ul style="list-style-type: none"><li>• No frontal engagement with issues of 1) vulnerability 2) small size 3) susceptibility to economic/man-made/natural shocks 4) dis-economies in key public services, basic services and infrastructure</li><li>• No lock-in of definitive timelines/benchmarks for assistance (cooperation)</li><li>• The disjuncture between improved market access offers and effective enterprise entry into markets</li><li>• There is <i>no</i> EPA specific financing</li><li>• National Treatment as a development tool</li><li>• Despite assurances to the contrary, discontinuity with Cotonou</li><li>• MFN and South-South relations</li></ul>
<b>4. Safeguard Mechanisms</b>	<ul style="list-style-type: none"><li>• Safeguards weak when compared to WTO positions on SSM etc</li><li>• Misspecification as to why safeguards (SSM)!</li><li>• Underestimates EU subsidies and non-tariff barriers to trade in goods and services</li></ul>
<b>5. Economic Governance</b>	<ul style="list-style-type: none"><li>• Continuing non-arms length relations between CRNM and the EC</li><li>• Overriding Authorities of EPA organs over CARICOM organs</li><li>• Reversal of some CARICOM institutional advances</li><li>• No clear legal expression of primacy of the Treaty of Chaguaramas over the EPA</li></ul>
<b>6. Erosion of Traditional Agriculture</b>	<ul style="list-style-type: none"><li>• Inadequate provisions</li><li>• No commercial buy-out of Sugar protocol and falling EU prices</li><li>• Preference erosion for bananas</li></ul>

#### ***V.4: Conclusion***

In conclusion, I pose the question: given the many defects of the Agreement, which few should be considered the gravest? Because the EPA is both a documented agreement that warrants immediate analysis and a *long-run instrument* through which policies, programmes and activities are to be implemented, the final verdict must await its actualisation. However, among the deficiencies, four are likely to become *progressively* burdensome.

#### ***Regional Integration***

First, the EPA is likely to progressively hamper CARICOM's efforts at promoting open regionalism, utilizing the Region's markets and resources as the platform for liberalisation and its progressive engagement in the global economy. To start with, as we saw CARIFORUM is an EC inspired abstraction given legal form in the EPA. This construct is not a CARICOM initiative and indeed prior to the EPA there was not even a CARICOM-Dominican Republic customs union area. Additionally, CARICOM has not yet created within its integration framework regimes for services, investment, intellectual property, public procurement, competition and other trade-related areas. The construction of an EPA with agreements on these matters not yet already in place constrains CARICOM's capacity to direct their outcomes. The Region has in effect, put the cart before the horse. This weakness will become progressively grave, and will be, in all likelihood, aggravated by the consideration that organizational structures of the EPA have more sway over CARICOM affairs than CARICOM's own Secretariat, organs and other bodies.

#### ***Financing and the Development Dimension***

Second, the most insecure aspect of the EPA is its *development dimension*, which rests largely on the definite provision of EU development assistance to boost CARICOM/CARIFORUM's institutional, infrastructural, and regulatory capacity at the national and regional levels, in a manner designed to promote a sustainable expansion of the Region's exports to the EU and the rest of the world, because, as I have revealed no additional funding is provided through the EPA. Promised EC assistance through the 10<sup>th</sup>

EDF and the Aid-for-Trade proposal is not contingent on signing an EPA. Furthermore, the EPA lacks specific, legally binding, time-related provisions for the delivery of assistance through clearly specified mechanisms that are subject to its disputes resolution procedures. This is in sharp contrast to the detailed trade and trade-related commitments made by CARIFORUM/ CARICOM. As time progresses the implementation and adaptation costs of the EPA will rise, putting a heavy premium on external support.

### ***Global Europe***

Third, the global Europe project as documented by the then EC Trade Commissioner, reveals the grand designs behind the EPAs. In the cases of Government Procurement and the Most Favoured Nation (MFN) provisions we saw that the Global Europe, project explicitly targets Government Procurement as the last major frontier for EU firms to penetrate in the developing world and the MFN principle is an undisguised counter to what the EC calls “competitive new players”. These are defined as countries or regions with a market share of at least 1% or 1.5%, of world trade, respectively. Several emerging economies from the South are captured (or are soon to be captured) by this definition.

The absence of a parallel CARICOM Project further exposes the Region to being continuously reactive to the EC’s and other similar external demands from developed countries, post EPA. The Region’s Authorities lack an intellectual base to guide their actions. This does not have to be a unified view of CARICOM’s development that is shared by each and every citizen. Such an outcome would be ideal. What is required is that the Authorities leading the integration/external trade negotiation process should, like their EC counterpart and its Global Europe Project, articulate a strategic vision, within which their decisions and policy recommendations are framed so as to encourage creative dialogue. The absence of this will be to the progressive detriment of the Region.

### ***Political Economy***

The final issue is that, ultimately, the political economy of the EPA is rooted in the EU and other developed states seeking to find a way around the impasse created by the stalled Doha Development Round. It should be remembered that the EC Trade Commissioner has stated that the “WTO already governs the multilateral trading system with striking effectiveness”. CARICOM is in no position to claim the same. The EU therefore sees the EPAs as a circuitous, but necessary route towards establishing hegemony of the WTO “as is”. On this important matter CARICOM and the CRNM have given no direction and indeed one can expect that after the EPA will come further bilateral deals with the USA and Canada! After that, however, the scope for CARICOM to pursue open regionalism and contribute to a multilateral approach to global trade reform will be effectively zero.

The Region is locked-in to an EPA-development path, unless the other five Interim EPAs still being negotiated can provide space for new options. So far this does not seem likely, as Europe and its allies in the ACP are not disposed to consider any option but theirs. And, the present constellation of economic, social and political power among the Parties to the “partnership” makes slim, the prospects for other options.

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