

TRADE BRIEF

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ECONOMIC PARTNERSHIP AGREEMENT (EPA)

The Economic Partnership Agreement (EPA) is being negotiated between the countries of the European Union and the Forum of Caribbean Countries, CARIFORUM.

CARIFORUM includes all the countries of CARICOM and the Dominican Republic.

The objectives of the EPA are to:

1. Reduce poverty
2. Promote regional integration and economic cooperation
3. Integrate CARIFORUM States into the world economy
4. Improve capacity in trade policy in CARIFORUM
5. Increase investment and private sector initiative; and
6. Enhance commercial and economic relations

The achievement of the objectives of the EPA are based on: a commitment to sustainable development, decision making that includes principles of

ownership, participation and dialogue and a commitment to deepen regional integration, which is seen as an important component of the relationship between the EC and CARIFORUM.

The EU has also committed itself to financial and non-financial forms of cooperation to support the implementation of the Agreement.

The text of the EPA includes a section called Trade and Trade-Related Matters. The Trade and Trade-Related Matters are further divided into four titles:

- Title 1 Trade in Goods
- Title 2 Establishment, Trade in Services and E-Commerce
- Title 3 Current Payment and Capital Movements
- Title 4 Trade Related Issues

Trade in Goods

This portion of the EPA contains seven chapters which are:

1. Customs Duties
2. Trade Defence Instru-

ments

3. Non-Tariff Measures
4. Customs and Trade facilitation
5. Agriculture and Fisheries
6. Technical Barriers to Trade
7. Sanitary and Phytosanitary Measures

This publication will attempt to briefly describe all the existing text on all these issues.

Legal and Institutional Changes

The EPA will involve changes to the legal and institutional framework of all the CARIFORUM countries. The EU anticipated that significant reforms would be needed in the CARIFORUM countries and has engaged independent experts in 11 areas to assess the technical assistance needs of all the CARIFORUM countries.

WHO IS THE EUROPEAN UNION NEGOTIATING WITH?

Previous preferential trade agreements were negotiated between the European Union (EU) and the African Caribbean and Pacific (ACP) States. Interestingly, and some would argue to the detriment of the ACP, the ACP countries have been divided into 6 regions

during the EPA negotiations. These regions are: West Africa, Central Africa, East South Africa, Southern Africa, the Caribbean and the Pacific. The West Africa region has indicated that it will need two more years to complete the negotiation process. The Car-

ibbean and the Pacific are expected to sign limited EPA with the EU before the deadline on 31 December 2007.

TRADE IN GOODS

Customs Duties

The Chapter on Customs Duties outlines the Rules of Origin regime for goods traded under the EPA. It also contains in Article 6, provisions to eliminate on a phased basis customs duties on exports from one country to another. The CARIFORUM countries and the EU have agreed a framework based on 'baskets' to support tariff reductions. There are three major tariff baskets. These are 'excluded', 'zero' and 'phased'. The excluded basket comprises sensitive goods which will not be liberalized. The zero basket contains products which would attract no duty when the EPA is signed and the phased basket contains those that would be liberalized over the short and medium term. The phased basket is further divided in items that will be liberalized in the short term (5-10) years and those that will be liberalized in the medium term (11-25) years.

There is also a provision in the EPA to improve the treatment of goods traded if the EC or CARIFORUM provides more favourable treatment to another party. There is also an undertaking to cooperate on administrative matters such as verifying the status of products.

Trade Defence Instruments

This refers to anti-dumping, safeguards and countervailing duties which are usually applied to protect the local market against imports that are adversely impacting the domestic market. This section outlines the conditions under which these trade defence instruments may be used.

Tariff Measures

This chapter prohibits the introduction of new quota, import or export licenses or other measures. While the EU has committed to phase out export subsidies. The CARIFORUM States cannot introduce new agricultural export subsidies or any subsidy payment contingent on performance.

Customs and Trade Facilitation

The objective of this chapter is to ensure that there is adequate legislation and administrative capacity to

support CARIFORUM-EU trade. The chapter requires that the legislation and procedures are based on the revised Kyoto Conventions, the World Customs Organization Framework on Standards to Secure and Facilitate Global Trade and the Harmonized Standard Convention. There are also provisions to review the administrative procedures 3 years after the Agreement enters into force. The text calls for non-discrimination requirements for import, export and goods in transit and also simplification and standardization of data and documentation. There is a commitment to the progressive development of systems based on Information Technology. Countries must include rights of appeal against customs administrative actions and facilitate dialogue between customs and stakeholders on new and proposed legislation related to customs and trade issues. Like many of the other chapters, there is a commitment to work toward regional standards that are in line with international standards. The provisions of the chapter will be monitored by a Special Committee on Customs Cooperation and Trade Facilitation.

Agriculture and Fisheries

The objective of the chapter is the sustainable development of the sectors, the reduction of poverty and the integration of the sectors into the global economy. The management of the marine ecosystem should be based on the FAO Code of Conduct. It is expected that there will be progressive removal of barriers to integrate the agriculture, fisheries and food sectors of the region within an appropriate regulatory framework. The CARIFORUM States are also committed to adopting and implementing policies and institutional reforms to support the objectives of the chapter. In the event that there are food security problems, countries are limited to the measures outlined in the chapter on Trade Defence Instruments. Countries are also expected to exchange information and cooperate in several areas that includes: 1. improving the competitiveness in traditional and non-traditional agriculture and fisheries products, 2. developing export marketing capabilities (this includes improvements in marketing infrastructure and transportation), 3. compliance and adoption of quality standards includ-

ing environmentally and socially sound agricultural practices as well as standards related to organic and genetically modified foods, 4. promotion of private investment and public-private partnerships, 5. improving the capacity of CARIFORUM States to comply with international health and quality standards for fish and fish products 6. building or strengthening scientific, human and institutional capacity at the regional level for trade in fish including aquaculture. There is a special safeguard to apply duties of the volume of goods increases, or price of goods falls below a trigger level for a specific period after the EPA is signed.

Technical Barriers to Trade

This chapter is based on the WTO Agreement on Technical Barriers to Trade. There are 3 objectives: a. facilitate trade in goods while protecting health, safety, consumers and the environment b. improve capacity to identify, prevent and eliminate unnecessary barriers due to technical regulations, standards and assessment procedures and c. increase capacity to comply with each other's technical regulations and standards. There are provisions for regional collaboration on standardization.

Sanitary and Phytosanitary Measures

Like the chapter on Technical Barriers to Trade, this chapter is based on existing WTO Agreement, the Agreement on Sanitary and Phytosanitary Measures. The measures are based on standards for human health as outlined in the Codex Alimentarius; for plants, in the International Plant Protection Convention and for animals by the World Organization for Animal Health. The chapter has four principal objectives which are to 1. facilitate trade while increasing capacity in plant, animal and public health 2. reduce disruption or barriers to trade 3. assist in harmonizing intra-regional sanitary and phytosanitary measures and 4. assist countries with compliance with the sanitary and phytosanitary measures with the European Community.

INVESTMENT, SERVICES AND E-COMMERCE

The chapter does not impose any obligations on the Government to privatize the public sector. The Government also retains the right to regulate to meet policy objectives with respect to investment, services and e-commerce as well as the employment market. Interestingly, shipping companies established outside the EU or CARIFORUM but controlled by nationals also benefit from the Agreement. The establishment of a business is defined as business or professional establishment through a person or the maintenance of a branch or subsidiary office. The exceptions to the establishment provisions are mining, nuclear materials, arms, munitions, audio-visual services, national marine cabotage services and air transportation. In the areas where investment is being facilitated, such investment cannot be limited by new requirements such as economic needs tests, the number or value of transactions, participation of foreign capital or other measures which require specific types of establishment or joint ventures. National treatment should be applied to all investors.

Obligations on liberalization of access to the services sector of the economy are to be limited to a negotiated list of services. The chapter's framework for liberalization is closely based on the WTO Agreement on Trade in Services (GATS). As in the GATS, there is a list of 12 major service sectors, which are divided into subsectors. All services can be delivered through four modes.

Mode 1 cross border— the service is provided directly between countries eg banking, IT, **Mode 2 consumption abroad**— the consumer moves to another country e.g. tourist, **Mode 3 commercial presence**— there is a physical presence in the country e.g. subsidiary office or branch and **Mode 4 presence of natural persons**— persons move to the country to supply the service. Liberalization of access commitments can take place, if agreed, in one or all of the modes of delivery. No country is obligated to make an offer of liberalization in any specific sector.

THE FRAMEWORK FOR THE MOVEMENT OF PERSONS (WORK PERMITS)

The chapter also outlines the framework for the movement of persons in mode 4. It allows for the temporary stay of key personnel who are defined as either business visitors or intra-corporate transfers.

Business visitors are senior personnel responsible for setting up the business. They are not paid from within the host country.

Intra-corporate transfers are persons who have been partners for more than one year or employees who are being temporarily transferred. The employees can be managers, specialists, graduate trainees, business service sellers contractual service providers or independent professionals. The temporary entry for intra corporate transfer will be 3 years, 90 days in a 12 month period for business visitor and one year for EU graduate trainees.

With the exception of fashion models and chef de cuisine all other persons must possess a university degree or equivalent or the relevant professional qualification.

THE SERVICES SECTOR OFFER

The Heads of Government of the CARIFORUM countries agreed in Kingston in September 2007 to liberalize access to the domestic services sector in the following areas: computer and related services, research and development services, other business services, telecommunications services, environmental services, tourism and travel related services, recreational, cultural and sporting services, and transport services.

The Bahamas will have to outline its horizontal commitments, i.e. those issues that will apply across all sectors. Horizontal commitments will include the existing exchange control regulations, the national Investment policy, immigration regulations as well as any other prudential requirements.

CURRENT PAYMENT AND CAPITAL MOVEMENTS

The provisions on current payment and capital movement are dealt with under Title III of the EPA text. The CARIFORUM countries agreed not to place restrictions on current payments between EC residents and CARIFORUM states or on the liquidation and repatriation of capital or profits. There are safeguard measures to restrict capital flows for six months if there are monetary or exchange rate policy difficulties.

These measures must be reported to the Joint-CARIFORUM-EC Council as well as a schedule for their removal.

TRADE RELATED ISSUES

The Trade Related Issues have caused concern in many of the negotiating regions because they are not covered by multilateral agreements at the WTO. Additionally, it is in the implementation of these areas that countries are most likely to undergo legislative, policy and institutional reforms.

There are six trade related areas covered in the EPA.

1. Competition Policy

The countries commit to have in place within 5 years of the EPA the relevant laws and institutions to address matters related to competition policy. The chapter recognizes the CARICOM Competition Commission and the Dominican Republic Competition Authority.

2. Innovation and Intellectual Property

This chapter cover a range of issues related to intellectual property such as copyright, brand names, trademarks, industrial designs, geographical indications and plant varieties. It also address issues to improve the administration and reporting of these issues.

3. Public Procurement

The objective of the chapter is to increase transparency in the pro-

urement of goods and services by the government. The chapter outlines the procedures for open, selective and limited tendering. It outlines the creation of a regional procurement market. The rules would prohibit discrimination against CARIFORUM and EU suppliers and set out rules for valuation and bid challenges. There is also the requirement for the establishment and maintenance of on-line procurement facilities and a requirement to use international standards in technical specifications. The Bahamas would have 2 years to meet the obligations of the chapter. This chapter would be reviewed after 3 years by a Joint CARIFORUM-EC Implementation Committee.

4. Environment

Countries are committed to sustainable development and natural resource use. It encourages trade in goods and services beneficial to the environment. In the absence of national or regional environmental standards, the chapter requires the adoption of the relevant international standard. The chapter prohibits trade or comparative advantage that is achieved by lowering the level outlined in domestic legislation or failing to apply the legislation. Issues that are not resolved through consultation may be referred to a Committee of Experts.

5. Social Aspects

The chapter is based on two international agreements. The first is the International Labour Organization Convention that supports freedom of association and collective bargaining, elimination of forced labour, abolition of child labour and elimination of discrimination in the workplace. The second is the United Nations Social and Economic Council on Full Employment and Decent Work. Countries are encouraged to seek the advice of the ILO on best practices and cooperate on social and labour issues.

6. Protection of Personal Data

Countries will have seven years after the EPA comes into force to ensure that they maintain an effective data protection regime that has the required legal and administrative capacity to protect individuals.