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LC/CAR/L.177
10 October 2008
ORIGINAL: ENGLISH

REVIEW OF CARIFORUM-EU EPA IN DEVELOPMENT COOPERATION AND WTO COMPATIBILITY

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Acknowledgement

The Economic Commission for Latin America and the Caribbean (ECLAC) Subregional Headquarters for the Caribbean wishes to acknowledge the assistance of Dr. Anthony Gonzalez in the preparation of this report.

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LIST OF ACRONYMS AND ABBREVIATIONS

ACP	Africa, Caribbean, Pacific
ADB	African Development Bank
AfT	Aid for Trade
ALADI	Latin American Integration Association
ASEAN	Association of South East Asian Nations
CARICOM	Caribbean Community
CARIFORUM	Caribbean Forum of ACP States
CDB	Caribbean Development Bank
CDE	Centre for the Development of Enterprise
CDF	CARICOM Development Fund
CIDA	Canadian International Development Agency
CRIP	CARIFORUM Regional Indicative Programme
CRTA	Committee on Regional Trade Agreements
CSME	CARICOM Single Market and Economy
CSS	Contractual Service Suppliers
CU	Customs Union
DAC	Development Aid Committee
DDA	Doha Development Round
DFQF	Duty-free, Quota-free
DOM	Overseas Departments
EAC	East African Community
EC	European Commission
ECDPM	European Centre for Development Policy Management
EDF	European Development Fund
EIA	Economic Integration Agreement
EIB	European Investment Bank
ENT	Economic Needs Tests
EPA	Economic Partnership Agreement
ESA	Eastern and Southern Africa
EU	European Union
FTA	Free Trade Agreement
FTAA	Free Trade Area of the Americas
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GLOBALGAP	Global Good Agricultural Practices
GNI	Gross National Income
GSP	Generalised System of Preferences
GSTP	General System of Tariff Preferences
HAACP	Hazard Analysis and Critical Control Points
ICT	Information and Communication Technology
IDB	Inter-American Development Bank
ILO	International Labour Organization
IPs	Independent Professionals
LAC	Latin America and the Caribbean

LDCs	Least Developed Countries
LDCs	Less Developed Countries (of CARICOM)
MDC	More Developed Country (of CARICOM)
MERCOSUR	Southern Common Market
MFN	Most Favoured Nation
NAMA	Non-Agriculture Market Access
NGO	Non-Governmental Organization
NIP	National Indicative Programmes
OCT	Overseas Countries and Territories
ODI	Overseas Development Institute
OECD	Organization for Economic Cooperation and Development
OECS	Organization of Eastern Caribbean States
RIP	Regional Indicative Programme
RPTF	Regional Preparatory Task Force
RSA	Republic of South Africa
RSP	Regional Strategy Paper
RTA	Regional Trade Agreement
SAT	Substantially-All Trade
SDT	Special and Differential Treatment
SFA	Special Framework for Assistance
SME	Small and Medium Enterprise
SP	Sugar Protocol
SPS	Sanitary and Phytosanitary Measures
SPs	Special Products
SSM	Special Safeguard Mechanism
SVEs	Small, Vulnerable Economies
TBT	Technical Barriers to Trade
TDCA	Trade, Development and Co-operation Agreement
TF	Trade Facilitation
TFTACBSU	Trade Facilitation Technical Assistance and Capacity-Building Support Unit
TOR	Terms of Reference
TRI	Trade-Related Infrastructure
TRIMS	Trade-Related Investment Measures
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TRQ	Tariff Rate Quota
TSA	Tourism Satellite Accounts
UNDP	United Nations Development Programme
WIRSPA	West Indian Rum and Spirits Association
WTO	World Trade Organization

Introduction

The Cotonou Agreement which succeeded the Lomé IV Agreement and was signed in Cotonou in June 2000 established a comprehensive framework to govern social, economic and political relations between the Africa, Caribbean, Pacific (ACP) grouping and the European Union (EU). At the centre of the partnership are objectives relating to economic development, the reduction and eventual eradication of poverty, and the smooth and gradual integration of ACP States into the world economy. In order to accomplish these objectives, the Cotonou Agreement provides for the conclusion between the ACP and the EU of "new World Trade Organization (WTO) compatible trading arrangements, removing progressively barriers to trade between them and enhancing cooperation in all areas relevant to trade" (Article 36.1).

The conclusion of economic partnership agreements (EPAs) represented one way to achieve a WTO compatible instrument and had to be negotiated during the period starting from September 2002 until 31 December 2007 to replace the trade provisions of the Cotonou Agreement. After three and half years of negotiations, CARIFORUM and the European Commission (EC) finally concluded a comprehensive EPA with the EC on 16 December 2007 when an Agreement was initialed.

The EPA Parties agreed to sign it later after a review of the provisions at both the national and regional levels. In CARIFORUM, various comments have been made from governments, Non-governmental organizations (NGOs), the private sector and the labour movement about the strengths and weaknesses of the EPA. This review comes in this context and is confined to the development cooperation provisions and the question of WTO compatibility and consistency with the Doha Development Agenda (DDA) negotiations and existing WTO provisions on special and differential treatment.

According to the Terms of Reference (TOR) on development cooperation "this review is intended to examine the implications of the EPA for the Caribbean as well as to inform the preparation of an implementation plan for CARIFORUM". The researcher/consultant has been asked to undertake the following:

- Review the EPA in relation to the development cooperation measures identified in Article 7 and Article 8 of the Chapter on Trade Partnership for Sustainable Development in the agreement;

- Assess the provisions made for financial and technical assistance to facilitate adjustment and implementation of the EPA;

- Assess the form and type of technical assistance to support institutional and policy reforms;

- Examine the commitments made by the EU to meet the costs of adjustment (such as tariff reduction and fiscal effects) and identify any alternative revenue streams available to Caribbean Community (CARICOM) States that could offset import tax liberalization;

- Assess the instruments and their effectiveness for disbursing financial assistance.

In clarifying the TOR, it was agreed that in the fourth indent, the intention was not to identify country specific alternative revenue streams but to look at fiscal reform broadly in the context of trade liberalization and indicate to what extent the costs of adjustment could be mitigated by successful fiscal reform. The focus would also be mainly on CARICOM.

It was also made clear that the emphasis should be on the provisions of development cooperation which does not include an examination of the broader aspects of the development dimension as special and differential treatment in all the various aspects of the EPA agreement and the WTO.

It is also understood that the development cooperation dimension is just one input in the myriad of other development inputs that come from domestic and international sources. The task therefore, is to assess the contribution that this input can make in the broader framework of development.

The study also proceeded on the assumption that the Cotonou Agreement bears the major share of development cooperation with the EU and that the EPA development component is intricately linked to the Cotonou Agreement even though it can go beyond Cotonou.

As regards WTO compatibility, the consultant was asked to undertake the following:

- Examine the WTO compatibility of the EPA (Article XXIV of the WTO);

- Discuss the compatibility of the Most Favoured Nation (MFN) Clause in the EPA with the Enabling Clause of the WTO;

- Examine the extent to which the EPA builds on the DDA;

- Examine how the EPA relates to the WTO provision of Special and Differential Treatment (SDT) for treating with asymmetries (e.g. in import liberalization);

- Compare the flexibility in implementation of WTO commitments with flexibility in implementing EPA commitments (with reference particularly to exclusions and transitional arrangements) in areas of relevance to CARICOM trade;

The methodology for both exercises comprised essentially a review of the literature and consultation with practitioners and experts in the field, where needed, along with some statistical calculation where feasible in the time frame.

Chapter I

PART 1: REVIEW OF EPA –DEVELOPMENT COOPERATION

A. NATURE AND SCOPE OF THE DEVELOPMENT COOPERATION PROVISIONS

According to Art. 7, development cooperation is an essential factor for the realization of the objectives of this Agreement and can take financial and non-financial forms. Areas of cooperation and technical assistance are set out in the individual chapters of the EPA and cooperation shall be implemented within the framework of the rules and relevant procedures provided for by the Cotonou Agreement, in particular the programming procedures of the European Development Fund (EDF), and within the framework of the relevant instruments financed by the General Budget of the EU.

Art. 8 stipulates that development cooperation shall focus on technical assistance to build human, legal and institutional capacity in the CARIFORUM States so as to facilitate compliance with the commitments set out in this Agreement; assistance for capacity and institution building for fiscal reform; support measures aimed at promoting private sector and enterprise development, in particular small economic operators, and enhancing the international competitiveness of CARIFORUM firms and diversification of the CARIFORUM economies; the diversification of CARIFORUM exports of goods and services through new investment and the development of new sectors; enhancing the technological and research capabilities of the CARIFORUM States so as to facilitate development of, and compliance with, internationally recognized sanitary and phytosanitary measures and technical standards and internationally recognised labour and environmental standards; the development of CARIFORUM innovation systems, including the development of technological capacity; and support for the development of infrastructure in CARIFORUM States necessary for the conduct of trade.

It was also agreed that CARIFORUM should establish a regional development fund to mobilize and channel EPA-related development resources from the EDF and other potential donors.

The development cooperation priorities, further specified in the individual chapters of this Agreement, shall be implemented according to the same modalities mentioned above. The priorities are outlined in detail from the Agreement in Annex 1. In summary form they are:

(a) Customs and trade facilitation**:** The application of modern customs techniques; introduction of procedures and practices; and the automation of customs and other trade procedures.

(b) Agriculture and fisheries: Improvement in the competitiveness of potentially viable production; development of export marketing capabilities; compliance with and adoption of quality standards; promotion of private investment and public-private partnerships in potentially viable production; compliance with national, regional and international technical, health and quality standards for fish and fish products; strengthening the scientific and technical human and institutional capability at regional level for sustainable trade in fisheries products, including aquaculture; and the process of dialogue.

(c) Technical barriers to trade**:** Appropriate arrangements for the sharing of expertise; development of centres of expertise within CARIFORUM; development of the capacity of enterprises, in particular CARIFORUM enterprises to meet regulatory and market requirements; and developing and adopting harmonized technical regulations, standards and conformity assessment procedures based on relevant international standards;

(d) Sanitary and phytosanitary (SPS) measures**:** Reinforcement of regional integration and the improvement of monitoring, implementation and enforcement of SPS measures; establishment of the appropriate arrangements for the sharing of expertise, to address issues of plant, animal and public health, as well as training and information events for regulatory personnel; development of the capacity of enterprises, in particular CARIFORUM enterprises, to meet regulatory and market requirements; and cooperation in the international bodies.

(e) Investment, trade in services and E-commerce: Improving the ability of service suppliers of the signatory CARIFORUM States to gather information on and to meet regulations and standards of the EC Party at European Community, national and sub-national levels; improving the export capacity of service suppliers; facilitating interaction and dialogue between service suppliers of the EC Party and of the Signatory CARIFORUM States; addressing quality and standards needs; developing and implementing regulatory regimes for specific service sectors at CARIFORUM regional level and in Signatory CARIFORUM States; establishing mechanisms for promoting investment and joint ventures between service suppliers of the EC Party and of the Signatory CARIFORUM States; and enhancing the capacities of investment promotion agencies in Signatory CARIFORUM States.

(f) Tourism**:** The upgrading of national accounting systems with a view to facilitating the introduction of Tourism Satellite Accounts (TSA) at the regional and local level; capacity building for environmental management in tourism areas at the regional and local level; the development of Internet marketing strategies for small and medium-sized tourism enterprises in the tourism services sector; mechanisms to ensure the effective participation of signatory CARIFORUM States in international standard setting bodies focused on sustainable tourism standards development; programmes to achieve and ensure equivalency between national/regional and international standards for sustainable tourism; programmes aimed at increasing the level of compliance with sustainable tourism standards by regional tourism suppliers; and tourism exchange programmes and training, including language training, for tourism services providers.

(g) Competition**:** The efficient functioning of the CARIFORUM Competition Authorities; assistance in drafting guidelines, manuals and, where necessary, legislation; the provision of independent experts; and the provision of training for key personnel involved in the implementation of and enforcement of competition policy.

(h) Innovation and intellectual property**:**

- *Cooperation in the area of competitiveness and innovation***:** Promotion of innovation, diversification, modernization, development and product and process quality in businesses; promotion of creativity and design, particularly in micro, small and medium enterprises, and exchanges between networks of design centres located in the EC Party and the CARIFORUM States; promotion of dialogue and exchanges

of experience and information between networks of economic operators; technical assistance, conferences, seminars, exchange visits, prospecting for industrial and technical opportunities, participation in round tables and general and sectoral trade fairs; promotion of contacts and industrial cooperation between economic operators, encouraging joint investment and ventures and networks through existing and future programmes; promotion of partnerships for research and development activities in the CARIFORUM States in order to improve their innovation systems; and intensification of activities to promote linkages, innovation and technology transfer between CARIFORUM and European Community partners.

- *Cooperation on science and technology***:** Joint initiative to raise the awareness about the science and technology capacity-building programmes of the European Community; joint research networks in areas of common interest; exchanges of researchers and experts to promote project preparation and participation to Seventh Framework Programme (FP7) and to the other research programmes of the European Community; joint scientific meetings to foster exchanges of information and interaction and to identify areas for joint research; the promotion of activities linked to advanced science and technology studies which contribute to the long-term sustainable development of both Parties; the development of links between the public and private sectors; the evaluation of joint work and the dissemination of results; policy dialogue and exchanges of scientific and technological information and experience at regional level; exchange of information at regional level on regional science and technology programmes, and dissemination of information on the international dimension of the FP7 of the EC and its eventual successors, and about the science and technology capacity-building programmes of the European Community; and participation in the Knowledge and Innovation Communities of the European Institute of Technology.

- *Cooperation on information society and information and communication technologies***:** Dialogue on the various policy aspects regarding the promotion and monitoring of the information society; exchange of information on regulatory issues; exchange of information on standards and interoperability issues; promotion of cooperation in the field of Information and Communications Technology (ICT) research and in the field of ICT-based research infrastructures; development of non-commercial content and pilot applications in domains of high societal impact; and ICT capacity-building with, in particular, the promotion of networking, exchange and training of specialists, especially in the regulatory domain.

- *Cooperation on eco-innovation and renewable energy***:** Projects related to environmentally-friendly products, technologies, production processes, services, management and business methods, including those related to appropriate water-saving and Clean Development Mechanism applications; projects related to energy efficiency and renewable energy; promotion of eco-innovation networks and clusters, including through public-private partnerships; exchanges of information, know-how and experts; awareness-raising and training activities; preparation of studies and provision of technical assistance; collaboration in research and development; and pilot and demonstration projects.

- *Intellectual property***:** Reinforcement of regional initiatives, organizations and offices in the field of intellectual property rights; support in the preparation of national laws and regulations for the protection and enforcement of intellectual property rights, in the establishment and reinforcement of domestic offices and other agencies in the field of intellectual property rights; identification of products that could benefit from protection; and the development by trade or professional associations or organizations of codes of conduct.

- *Public procurement*: Exchange of experience and information about best practices and regulatory frameworks; establishment and maintenance of appropriate systems and mechanisms to facilitate compliance with the obligations of this Chapter; and creation of an on-line facility at the regional level for the effective dissemination of information on tendering opportunities, so as to facilitate the awareness of all companies about procurement processes.

- *Environment*: Technical assistance to producers in meeting relevant product and other standards applicable in European Community markets; promotion and facilitation of private and public voluntary and market-based schemes including relevant labeling and accreditation schemes; technical assistance and capacity building, in particular to the public sector, in the implementation and enforcement of multilateral environmental agreements, including with respect to trade-related aspects; facilitation of trade between the Parties in natural resources, including timber and wood products, from legal and sustainable sources; assistance to producers to develop and/or improve production of goods and services, which the Parties consider to be beneficial to the environment; and promotion and facilitation of public awareness and education programmes in respect of environmental goods and services in order to foster trade in such products between the Parties.

- *Social aspects***:** Exchange of information on the respective social and labour legislation and related policies, regulations and other measures; the formulation of national social and labour legislation and the strengthening of existing legislation, as well as mechanisms for social dialogue, including measures aimed at promoting the Decent Work Agenda as defined by the International Labour Organisation (ILO); educational and awareness-raising programmes, including skills training and policies for labour market adjustment, and raising awareness of health and safety responsibilities, workers' rights and employers' responsibilities; and enforcement of adherence to national legislation and work regulation, including training and capacity building initiatives of labour inspectors, and promoting corporate social responsibility through public information and reporting.

- *Protection of personal data***:** Exchange of information and expertise; assistance in drafting legislation, guidelines and manuals; provision of training for key personnel; assistance with the establishment and functioning of relevant institutional frameworks; and assistance with the design and implementation of compliance initiatives aimed at economic operators and consumers in order to stimulate investor and public confidence.

The scope of the development provisions is set out in a horizontal way in the agreement which follows the standard Organization for Economic Cooperation and Development/Aid for Trade (OECD/AfT) definition of trade development needs[1]. It covers trade policy and regulations, (i.e regional and multilateral negotiations, standards, implementation of the EPA agreement, trade policy and planning); trade-related infrastructure (i.e transport and storage, communications, energy, trade facilitation, etc); trade development (i.e trade promotion strategy and implementation, market analysis and development); productive supply-side constraints, (i.e banking and financial services, research and development and innovation; business and other services, agriculture, forestry, fishing, industry and mining, tourism etc.); and trade adjustment (adjustment resulting from EPA trade liberalization). It seeks to draw a distinction between "trade" and "non-trade" development aspects leaving Cotonou to deal with the "non-trade" aspects. Such a distinction is never practical as it is always difficult to draw the boundary especially in areas such as trade infrastructure where even basic services as water, heath and education can be considered as trade-related.

Defining scope at this stage is, however, problematic as the full implications of the EPA are not known. This is best seen in attempts at outlining perspectives on adjustment where agreement on the sectors and products is not possible since the future impact of trade liberalization cannot be clearly predicted especially when the agreement has long transitions going over ten years and up to 25 years along with exclusions. Fiscal adjustment is a bit clearer but even here the transitions and exclusions make the impact more variable.

There is no doubt that too broad or too narrow a definition of the development provisions could pose problems for its successful implementation but. insofar as EPA is complementary to Cotonou, the scope for such interpretations is very restricted. A boundary must, however, be set in order to ensure that EPA-related trade development needs get some adequate treatment. Certain limits would have to be expected if EPA trade development aid and general Cotonou development aid are to be kept separate.

In general, the trade needs of Caribbean countries can be expected to appear in all aspects of the scope, however determined. The exclusion of any sub-category without a proper examination of the trade needs of beneficiaries as well as the alternatives could seriously impair the benefits of the EPA.

The above-mentioned specific areas of cooperation are indicative of an effort to put a development component in all provisions of the trade disciplines. Along with the other development provisions of the Cotonou Agreement, it seeks to strengthen the EU development input into the broad stream of measures geared to move Caribbean economies higher up the value chain and diversify their trade and production base.

[1] The following categories, building upon the definitions used in the Joint WTO/OECD Database have been used in the WTO AFT Task Force Report. WT/AFT/1**,** 27 July 2006

B. DEVELOPMENT NEEDS

The Caribbean has been involved in the identification of regional trade development needs over a long period of time and especially since the 1970s with the creation of CARICOM in 1973 and the coming into effect of Lomé I in 1975 with its EDF regional programme. These efforts were amplified later with regional programmes in many donor aid schemes as theInter-American Development Bank (IDB), the United Nations Development Programme (UNDP), the Canadian International Development Agency (CIDA), etc., and the five-year recurring EDF regional programmes. Recently, under the Free Trade Area of the Americas (FTAA), an exercise was undertaken to identity regional trade development needs both at the national and regional levels. The WTO AfT scheme also brought to the fore the significance of identifying trade development needs and to this end, according to the WTO AfT Task Force, countries were asked to put in place "a regional AfT committee to deal with the regional dimensions …. that would come up with a plan for the implementation of trade strategies and identified priority projects and programmes".

EPA trade development needs are being targeted at the national, regional and subregional levels. At the national level, the process of identifying needs passes through the national indicative programming exercise which is a joint CARIFORUM country/EC operation. At the regional (CARIFORUM, CARICOM) and subregional (Organisation of Eastern Caribbean States - OECS) levels, the regional programming exercise brings together all the countries under the guidance of CARIFORUM where viable regional projects are identified. Regional and subregional needs are generally identified based on plans, projects and policies already being implemented or to be implemented at the national and regional levels. The institutional mechanism for identifying these needs involves a process which starts at the national level with each government consulting its national stakeholders and coming to the CARIFORUM official level first with sectors of interests on the basis of which CARICOM/CARIFORUM initiates some technical work on possible regional projects. This work is then circulated to the region`s stakeholders and at a later stage national governments come with regional projects and plans. Through an iterative process, a regional selection is then made. Some priority is usually given to the role of regional institutions.[2]

As for the priority areas for intervention, in the category of Trade Policy and Regulations, Caribbean economies will not be able to take advantage of the trading opportunities arising from EPA trade liberalization unless they to build sustainable capacity for trade policy formulation and implementation. Many of them lack the human and institutional capacity to articulate and develop trade policy and implement it successfully over the long term. In addition, meeting EPA obligations and conforming to accepted standards and practices become problematic for many due to the absence of adequate institutional, financial and technical support. The EPA is expected to generate high implementation costs in trade facilitation, SPS, Technical Barriers to Trade (TBT), Trade-Related Aspects of Intellectual Property Rights (TRIPS) and customs. Some countries would also have to establish domestic regulatory mechanisms and institutional frameworks to support services liberalization. These costs involve, inter alia, the establishment of standard setting institutions,

[2] Even though CARICOM has adopted a Single Development Vision in April 2007 and is expected in 2008 to adopt a Strategic Development Plan, this process will hardly change since the CSME has not brought the institutional development and coherence in planning needed at the central level to make such a plan operational. Its indicative nature however, could be useful for regional programming.

certification agencies, and testing laboratories. Such costs of implementing are prohibitive for many Caribbean countries.

The high cost of tailoring goods for the EU market – e.g. special labeling and packaging, re-tooling factories – acts as a barrier to exports to the EU. Even though training programs have been implemented, especially by the Centre for the Development of Enterprise (CDE), EU certification still entails sizeable capital costs not currently covered by Cotonou programmes. Some obvious cases where standards compliance continues to be a major problem are fisheries, furniture and dairy industries. Exporters have been calling for a regional lab for testing and certification to be established within the region according to the various EU standards (e.g. Hazard Analysis and Critical Control Points (HAACP), Global Good Agricultural Practices (GLOBALGAP)) relating to export products, especially food products.

Other areas in trade policy formulation and implementation would involve the training of trade officials, analysis of negotiating proposals, support for national stakeholders to articulate commercial interest and identify trade-offs, dispute settlement issues, and institutional and technical support to facilitate implementation of trade agreements.

In ***trade adjustment*** CARICOM countries must first determine how to operationalize adjustment assistance by examining what adjustment costs will emerge from the EPA. Adjustment costs would relate essentially to loss of tariff revenues, and loss of employment and output due to increased import competition in the domestic sector affecting sensitive import-competing industries. An assessment, particularly of the latter, is complex and problematic as a result of the fact that CARIFORUM States are liberalizing at a modest pace involving lengthy transitions and exclusions. Domestic industries will however, be exposed by the reduction/elimination of protective trade barriers to more import competition and this could cause fundamental economic restructuring and unemployment. A significant loss of government revenues can also be expected especially in CARIFORUM countries heavily dependent on trade taxes. Replacing revenues from duties by other tax income sources will require considerable institution-building efforts. It is also well known that the quality of the local labour force is a major obstacle to adjustment and development and specific vocational training programmes will be required.

With respect to t***rade-related infrastructure***, Caribbean countries experience a wide range of trade-related infrastructure (TRI) problems which need to be ameliorated. Examples include physical infrastructure (e.g. roads, ports, sea transport, telecommunication, energy and electricity, water supply and sanitation, etc.), and trade support institutions - (e.g. customs, trade finance, marketing and distribution, research, standards and monitoring, etc). Upgrading transport facilities including the port facilities is of particular importance. Many firms in the region see this as a major impediment to their competitiveness.

The focus has to be on the more directly-related aspects of infrastructure necessary for trade development that would allow meaningful programming and the establishment of a budget. Emphasis should also be placed on sustainable trade-related infrastructure. As small countries, Caribbean countries are particularly vulnerable to high infrastructure costs and the difficulties in developing and maintaining infrastructure. The boundary between trade-related infrastructure and general infrastructure has to be flexible to avoid the exclusion of infrastructure that would be directly pertinent to trade development. The region has to be allowed the scope to show the relevance of investing in a particular type of infrastructure for its trade development.

The trade development category would include accessing business and transport information; market intelligence; identifying the requirements for new export goods; intellectual property protection issues; product design and quality assurance; formation of strategic alliances and partnerships; customs procedures and trade facilitation; effective use of information and computer technology; investment promotion, analysis and institutional support for trade in services, business support services and institutions, public-private sector networking, e-commerce, trade finance, and trade promotion.

The removal of productive supply-side constraints in small Caribbean economies facing the risk of marginalization in world trade despite enhanced market access would be a decisive category. Such countries are very likely to experience contraction of major national export sectors due to multilateral liberalization and preference erosion. Targeted support would be needed: (a) to enhance export-production capabilities and competitiveness in commodities, manufactures and services sectors, including through diversification (vertically and horizontally) into alternative and dynamic exports, as well as; (b) to facilitate entry into and beneficial participation in global supply chains to the key markets.

Support would need to cover, inter alia, investments in new activities by making available (at reduced cost) credit for start-up producers and Small and Medium Enterprises (SMEs), extension services and technology facilitation for producers, reduction of input costs for small producer/business start-ups, export marketing facilitation (including the logistics of getting goods from points of production to points of sale in export markets, as well as export promotional activities) tailored to the needs of producers in specific export sectors, formation of sector/subsector specific producers associations and cooperatives for information sharing on best practices for success in the specific sector, for input procurement and for output marketing, etc. The traditional sectors as rum, rice, bananas and sugar are now enjoying such restructuring support and there are many others in manufacturing, services, fisheries that would require such assistance.

The availability of concessional financing is a key concern across the Caribbean given the high interest rates plaguing many countries. The overly stringent requirements that EU bodies such as the European Investment Bank (EIB) place on intermediary banks within the Caribbean, which often restrict the potential loan portfolio to all but the largest investments, is also a source of concern. The latter should be made to take into account the special needs of SMEs and especially those that are attempting to export.

A private sector trade programme directed to the private sector as it attempts to take advantage of the new trading opportunities should be examined. The focus could be on institutional development for exporters in order to develop private sector groupings, especially in terms of moving from broad industry groupings into product- and sector-specific associations beyond the major industries (i.e. poultry, sugar and bananas) where associations currently exist.

C. ESTIMATING THE COSTS OF EPA

An adequate estimate of the costs of implementation, fiscal and economic adjustment, restructuring and competitiveness that stem from the EPA can only be done when needs are clearly articulated and then converted into projects and programmes on which costs are calculated on the basis of feasibility studies. It would be useful however, to have some preliminary idea of what this is likely to be.

In table 1 below some figures are given as a gross order of the magnitude of expected adjustment costs of EPA. They are sizeable and relate to the loss of tariff revenue, employment, production, and support for export development. These are rough estimates that would need to be further refined, specified per country and compared to benefits that can accrue from regional trade opportunities and increased exports to the EU market.

The area of fiscal adjustment will be critical. In general, import duties as a percentage of total tax revenue range between 7.6% and 50.2%. On average, with the exception of Guyana and Trinidad and Tobago, the level of dependence seems to be 10% and above. Bahamas is the highest followed by Belize, Suriname, Antigua and Barbuda, St Kitts and Nevis, Saint Lucia, Grenada, Dominica and St Vincent and the Grenadines in that order with Barbados and Jamaica around 10%.

The Less Developed Countries (LDCs) of CARICOM are highly dependent on trade taxes as a source of government current tax revenues as compared to the More Developed Countries (MDCs) which rely less on trade taxes as a source of current tax revenues. The revenue implications of trade liberalization are most significant for the former countries where import duties could account for more than 20% of government revenue in some cases. The scope in the EPA to put sensitive revenue items in baskets with the long time-frames as well as exclusions will certainly cushion the negative impact and allow time for reform. More importantly, the estimation of revenue loss must be related to possible tariff substituting tax measures and fiscal reform as a whole. The ability of countries to offset, with alternative sources of revenue, reductions in their trade tax revenues will be determined.

The capacity to adjust to the revenue implications of the reduction and elimination of tariffs is, however, likely to vary from country to country. Some countries rely primarily on other revenue sources. These countries have already shown a capacity to expand revenue through non-trade taxes such as income taxes, value-added taxes, and other taxes on goods and services. Many of these countries are already in the process of implementing fiscal reform programmes to address fiscal problems and have already undertaken substantial reforms of their domestic tax regimes[3]. These countries may not have much difficulty adjusting to the revenue implications of tariff reduction and eventual elimination, and could adjust to the loss of import duties from tariff elimination, particularly given the long transition periods.

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[3] New Approaches to Taxation and Tax Administration in The Eastern Caribbean Currency Union, Volume 1: A Framework for Tax Reform, prepared by The Tax Reform And Administration Commission.

The expected revenue loss as shown in table 1 in CARIFORUM countries is significant and would most likely have to be compensated through non-EPA resources since the total trade-related needs will exceed the allocations of the EDF.

Table 1. Estimated costs[4] (in millions of euros)

Region	Fiscal Adjustment	Export Diversification	Employment Adjustment	Skills/Prod Enhancement	Total Adjust. Costs
Caribbean	355	189	134	195	873

Source: C. Milner 'An assessment of the overall implementation and adjustment costs for the ACP countries of Economic Partnership Agreements with the EU', in Grynberg, R. and A. Clarke (2006). *The European Development Fund and Economic Partnership Agreements,* Commonwealth Secretariat Economic Affairs Division.

D. ADEQUACY OF THE FINANCIAL AND TECHNICAL ASSISTANCE

1. Volume of financial and technical assistance

There are six sources of funding available to support CARIFORUM implementation of an EPA. They are: (a) National Indicative Programmes (NIPs); (b) CARIFORUM Regional Indicative Programme (CRIP); (c) All-ACP Facility; (d) General Budget of the EC; (e) EC and member State AfT Programme[5]; and (f) Other donor agencies comprising bilateral and multilateral organizations including the United Nations system.

As for NIPs, some CARIFORUM States have already identified EPA implementation as a focal sector in their respective 10th NIPs. According to the EC, 12 out of 15 CARIFORUM countries are using the opportunity offered by the 10th EDF National Programmes to prepare for the challenges of tomorrow and this represents a total of €454 which is 75% of the total national allocations of €600 million. The EC further intimated that almost all the National Indicative Programmes include activities linked to the EPA with five countries identifying Competitiveness as the focal sector of their NIP, three countries choosing Governance, and three countries selecting Infrastructure[6].

[4] For details on the estimation methodology, see C. Milner 'An assessment of the overall implementation and adjustment costs for the ACP countries of Economic Partnership Agreements with the EU', in Grynberg, R. and A. Clarke (2006). *The European Development Fund and Economic Partnership Agreements,* Commonwealth Secretariat Economic Affairs Division.

[5] The EPA contains a Joint Declaration on Development Cooperation that identifies EDF and EU member States' Aid for trade commitments as sources of EU development support.

[6] CARICOM Secretariat: Remarks by Louis Michel, EU Commissioner on the occasion of the Special Meeting of Cariforum Heads of Government on EPA Related Issues, 4 October 2007, Montego Bay, Jamaica, Press Release 228/2007, (05 October 2007)

CRIP constitutes a second envelope available for EPA implementation. The 10th CRIP amounts to €132 million with CARIFORUM Ministers deciding in October 2007 to allocate about 30% of the CRIP to EPA implementation. This regional envelope of €39.6 million will be complemented by reserving all of the incentive tranche of €33 million to EPA implementation. This means that €72.6 million will be allocated directly for EPA implementation and commitments. €92.4 million will go to the conventional CRIP which, in the absence of an EPA, would have been €132 million. 85 percent of this 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. Resources available through NIPs and RIPs are programmed in favour of strategic sectors identified through the national and regional development strategies whereas additional resources are to enable the CF States to support the costs that will be brought about by EPAs.

The focal area of the CRIP is Regional Economic Integration/Cooperation and EPA Capacity Building with major interventions in (i) OECS Economic Integration and Trade; (ii) CARICOM Economic Integration and Trade; (iii) Intra-CARIFORUM Economic and Social Cooperation; (iv) CARIFORUM/DOM/OCT/EU/LAC Economic Cooperation and Trade, (v) EPA Participation and Commitments; and (vi) Human Resource Development/Capacity Building. The non-focal area addresses vulnerabilities & social issues – 15.0% of total with major interventions in (i) Disaster and environment management; (ii) Fight against illegal drugs; (iii) Support for Non-State Actors; and (iv) Institutional Support/Programme Implementation.

As regards "EPA Participation and Commitments", the aim of this programme is to build capacity to meet EPA commitments and exploit the opportunities through effective participation in the EPA. The Regional Preparatory Task Force (RPTF) had been entrusted with the task of developing a work program with specific interventions that would reflect identical needs in the CARIFORUM states and be complementary to the NIPs.

Table. 2: Specific CRIP EPA allocation

(i)	30% of the original RIP (€132 Million)[7]	€39.6 Million
(ii)	Additional €30 Million	€33.0 Million
	Total for EPA Support	**€72.6 Million**

Source: CARICOM Secretariat: Remarks by Louis Michel, EU Commissioner on the occasion of the Special Meeting of Cariforum Heads of Government on EPA Related Issues, 4 October 2007, Montego Bay, Jamaica, Press Release 228/2007, (05 October 2007)

It is clear that projects and programmes directly and indirectly related to the EPA would arise in NIPs and in the "non-EPA" part of the CRIP. The task of the Regional Preparatory Task Force (RPTF) would be to ensure that the EPA section of the CRIP (€72.6) million comprise programmes and projects that are not replicated in the NIPs and "non-EPA" parts of the CRIP. Linking also the EPA programme to the previous EDF programmes, in particular the 9th EDF would also make the 10th EPA CRIP programme more rational.

[7] CARIFORUM: Decision of CARIFORUM Ministers in October 2007

€39.6 million have been diverted in favour of EPA implementation and the question must be raised as to whether this diversion and the pressure of EPA implementation on CRIP and NIP could possibly undermine development efforts engaged by CARIFORUM out of their conventional CRIPs and NIPs. A baseline for additionality has, therefore, to be defined along with an accounting and reporting framework that would track additionality and ensure that resources in the conventional NIP and RIP programmes are not diverted for EPA implementation. One way to ensure this is to establish that directly-related EPA programmes should be funded through the EPA CRIP which should mobilize additional resources from the other sources.

The All-ACP facility of €2.7 billion under 10th EDF represents an additional source of funding. It could particularly be a source of funding for trade adjustment and competitiveness. The West Indian Rum and Spirits Association (WIRSPA) rum project was sponsored under this envelope and substantial support for the traditional sensitive products of the region have been assisted from this facility. According to the EC, a total of €680 has been allocated through this facility. Under the Special Framework for Assistance (SFA) to Banana Growers, by 2008 €230 million for the restructuring of the banana industry (1999-2008) will have been committed. Adjustment of the rum sector has been supported to the tune of €70 million. The rice sector has received €24 million out of an allocation of €70 million. The sugar sector will receive a total of €350 million for the period 2007-2010, and this assistance will be extended during the period 2010-20138.

The general budget of the EC is another possible source of funding that has been used in the past to fund very selective projects. Projects that fall under this type, which could include science and technology and innovation, would have to be identified.

Another source of funding is the EU AfT which is a €2 billion per year facility beginning 2010 for LDCs and some other developing countries. It comprises EC AfT resources and AfT resources of individual EU member States. The European Commission would supply 50% and the other half would come from member States. Currently the European Commission provides €840 million and the member States €300 million for AfT. The hope is that member States would increase to €700 million reaching the one €1 billion target by 2010. Roughly half of the total amount, €1 billion, is expected to go to the ACP under a commitment made by the EU.

While the Caribbean share has to be based on estimated needs and identified projects whose costs are estimated, it may be reasonable to expect that its share could be around 10% of the ACP share which could be around €100 million per year. The modalities for accessing these funds are still to be developed. EU member States have indicated some preference to channel resources through ACP-regionally owned funding vehicles, such as the CARICOM Development Fund (CDF).

Other donor agencies comprising bilateral and multilateral organizations including the United Nations system, and especially those historically involved in the region, could be expected, either directly or through co-financing, to expand the pool of available resources.

[8] CARICOM Secretariat: Remarks by Louis Michel, EU Commissioner on the occasion of the Special Meeting of Cariforum Heads of Government on EPA Related Issues, 4 October 2007, Montego Bay, Jamaica, Press Release 228/2007, (05 October 2007)

The adequacy of the volume of funding has to be assessed in terms of the costs of the EPA and the availability of additional funds. The rough estimate of €873 million in table 1 falls far short of the €33 million offered. Bearing in mind that some of that amount would come from the conventional Regional Indicative Programme (RIP) and NIP, then at least half would be expected from other sources, especially the EU AfT and the All-ACP facility.

Historically EDF CRIP resources to the region have been on the decline in real terms. CRIP figures from the 7th to the 10th EDF are as follows:

- 7th EDF: Original €90 Million (+15 Million additionally for performance)= 105 million;

- 8th EDF: Original €90 Million;

- 9th EDF: Original €57 Million plus a substantial amount from the All-ACP Facility.[9]

- 10th EDF Original €132,178,313 (out of which 39.6 million) plus an additional 33 million for EPA) = 165,178,313.

The original 8th EDF was the same as the 7th and the 9th EDF was drastically reduced. The original 10th EDF allocation is basically restoring the real value of the 8th. Furthermore, over the period of the 5th to 10th EDFs there was a gap of about five years and an entire EDF was lost caused by late ratification of the various Lomé and Cotonou Agreements.[10] The annual level of EU nominal funding has been affected by this shifting of the starting date. The annual average aid allocation under the EDF over the preceding 15 years under the periods covered by the 6th EDF, 7th EDF , 8th EDF, 9th EDF and 10th EDF is shown in table 3. The average nominal aid allocation rose from 1985 to 2000. It falls drastically however, for the period from 2000 to 2015, falling by some 37%.

[9] It should also be noted that the under the 9th EDF there were other all ACP and other Community funded programmes (e.g. banana, sugar, and rum) which could be added to this sum.

[10] In 2000 the EC took the decision to move the start of the 9th EDF from the date of signing of the agreement (2000) to the date of ratification of the agreement by EU member States and its legal entry into force. With the 10th EDF only commencing upon the ratification of the financing instrument, ratification in all member States will most likely not be completed before 2010 at the earliest. This implies that the five years of the 10th EDF would run from 2010 to 2015. This will also mean that *de facto* there will have been no 10th EDF for the period from 2005 to 2010.

Table 3: Nominal EDF allocations and rolling annual average allocations[11]

EDF	Period of EDF	Grant Allocation	'Rolling' 15 year annual average
4th	1975-1980	€ 3,000 million	
5th	1980-1985	€ 4,542 million	
6th	1985-1990	€ 7,400 million	€ 996.1 million[1]
7th	1990-1995	€ 10,800 million	€ 1,516.1 million[2]
8th	1995-2000	€ 12,967 million	€ 2,077.8 million[3]
9th	2002-2008	€ 13,500 million	€ 3,726.7 million[4]
10th	2010-2015	€ 21,966 million	€ 2,364.4 million[5]

Source: The mystery of the ``lost`` 10th EDF, European Research Office, Jan. 2007

1 Annual average nominal allocation of the sum of the 4th, 5th and 6th EDFs.
2 Annual average nominal allocation of the sum of the 5th, 6th and 7th EDFs.
3 Annual average nominal allocation of the sum of the 6th, 7th and 8th EDFs.
4 Annual average nominal allocation of the sum of the 7th, 8th and 9th EDFs.
5 Annual average nominal allocation of the sum of the 9th and 10th EDFs

In real terms, the 10th EDF is far less than the value of the 9th EDF. Some research has shown that if the EU is to meet its stated objective of the United Nations target of development assistance constituting 0.7% of Gross National Income (GNI) in 2015, the 10th EDF should be €26.8 billion in value. At the Gleneagles G8 meeting, the EU member States committed themselves to moving from the current level of 0.38% of GNI, to 0.39% in 2006, 0.56% in 2010 and 0.70% in 2015.

The main consequence of this decline in funding is that the pursuit of EPA implementation would divert significant resources from the financing of traditional development infrastructure projects into EPA implementation. Pressure on the original EDF allocations has already led to them being topped up through the All-ACP facility as in the case of the 9th EDF and the 10th EDF with the incentive tranche.

The Caribbean region does not have a problem of absorptive capacity. The 8th EDF resources were fully committed before the deadline and the region received additional 7th EDF resources on the basis of its performance. In the case of the 9th EDF, the resources were all programmed by the end of 2007 and there was a financing gap.

It is clear that the needs arising from EPA would have to be dealt with as part of the EU AfT Strategy12 and the All-ACP Facility as the EDF CRIP would be inadequate. It has been suggested that the EU has reported to the OECD only on its AfT efforts in the first two categories of support for trade policy and regulations and trade development as classified in the Joint WTO/OECD database even though the EU decided that its AfT strategy will cover the wider AfT agenda and adopted the six WTO categories[13]. The implication is that the €2 billion commitment included in the strategy may be only for the first two categories, and either there is no clear financial allocation for the others or the additional AfT resources from the EU will have to be spent on the other categories

[11] The mystery of the "lost" 10th EDF, European Research Office, Jan. 2007
[12] ECDPM. EU Strategy on Aid for Trade: Enhancing EU support for trade-related needs in developing countries.
[13] ECDPM. The New EPAs : Comparative Analysis of their content and the challenges for 2008. Final Report. Christopher Stevens, et al, March 2008

such as trade-related infrastructure, building productive capacity, trade-related adjustment and other trade-related needs.

The actual scope of AfT still, therefore, has to be clarified in general and specifically for this region, and this has implications for the availability of funds. There will also be the need for adequate definitions and reporting of different categories[14]. This clarification is even more important since the allocations for categories (1) "support for trade policy and regulations", and (2) "trade development" alone are likely to be insufficient to adequately respond to the trade-related needs of partner countries.[15] AfT needs in all the different categories both at country and regional levels have to be estimated to identify where the financing gaps are. In the area of revenue loss, a fair amount of AfT resources will be needed either in the form of direct replacement of import revenues (e.g. via budget support) or through fiscal reforms and the strengthening of administration systems.

But in addition to proper AfT definitions, calculations and reporting, a predictable flow of EPA resources from the various sources will depend on how trade-related support from the EDF is adequately defined, calculated and categorized. Within the NIPs and CRIP there is overlap. In the CRIP, for example, besides EPA support, other areas, in particular OECS Economic Integration and Trade, CARICOM Economic Integration and Trade, CARIFORUM/DOM/OCT/EU/LAC Economic Cooperation and Trade and Human Resource Development/Capacity Building would be going to also address EPA needs.

2. Appropriateness of instruments and effectiveness of aid disbursement

Since the EPA shall be implemented within the framework of the rules and relevant procedures provided for by the Cotonou Agreement, in particular the programming procedures of the EDF, and within the framework of the relevant instruments financed by the General Budget of the European Union, Art. 58 of Cotonou would lay down the eligibility criteria. The latter would comprise mainly of ACP States; regional or inter-State bodies to which one or more ACP States belong; and joint bodies set up by the ACP States and the Community. Other entities eligible for financial support, subject to the agreement of the ACP State or States concerned, are national and/or regional public or semi-public agencies and departments of ACP States, companies, firms and other private organizations and private operators of ACP States; enterprises of a Community member State, ACP or Community financial intermediaries; local decentralised authorities from ACP States and the Community; developing countries that are not part of the ACP Group where they participate in a joint initiative or regional organizations with ACP States. Non-State actors from ACP States and the Community which have a local character shall also be eligible for financial support provided under this Agreement, according to the modalities agreed in the national and regional indicative programmes.

In Article 59, the scope and nature of financing support which covers projects, programmes and other forms of operations contributing to the objectives are set out and are within the

[14] AfT definitions and categories in the ACP-EU case are discussed in Part I of Martí D. and F. Rampa (2007), *Aid for Trade: Twenty lessons from existing aid scheme*s, ECDPM Discussion Paper 80

[15] ECDPM. The New EPAs : Comparative Analysis of their content and the challenges for 2008. Final Report. Christopher Stevens, et al, March 2008

framework of the priorities established by the ACP State or States concerned at both national and regional levels. According to Article 60, the scope of financing may include, inter alia, depending on the needs and the types of operation considered most appropriate, support to measures which contribute to attenuate the debt burden and balance of payments problems of the ACP countries; macroeconomic and structural reforms and policies; mitigation of adverse effects of instability in export earnings; sectoral policies and reforms; institutional development and capacity-building; technical cooperation programmes; and humanitarian and emergency assistance including assistance to refugees and displaced persons, short-term rehabilitation measures and disaster preparedness.

Article 63 allows the methods of financing for each project or programme to be determined jointly by the ACP State or States concerned and the Community by reference to the level of development, the geographical situation and economic and financial circumstances of these States; the nature of the project or programme, its economic and financial return as well as its social and cultural impact; and in the case of loans, factors guaranteeing their servicing.

Financial assistance may be made available to or through on-lending and co-financing operations. Financial assistance can be used to support debt relief and structural adjustment as well as short-term fluctuations in export earnings and sectoral policies. Support for the latter is provided through a range of instruments including sectoral programmes; budgetary support; investments; rehabilitation; training; technical assistance; and institutional support.

Financing forms inter alia, include projects and programmes; credit lines, guarantee schemes and equity participation; budgetary support, either directly, for the ACP States whose currencies are convertible and freely transferable, or indirectly, from counterpart funds generated by the various Community instruments; the human and material resources necessary for effective administration and supervision of projects and programmes; sectoral and general import support programmes which may take the form of: (a) sectoral import programmes through direct procurement including financing of inputs in the productive system and supplies to improve social services; (b)sectoral import programmes in the form of foreign exchange released in installments for financing sectoral imports; and (c) general import programmes in the form of foreign exchange released in installments for financing general imports covering a wide range of products.

Direct budgetary assistance in support of macroeconomic or sectoral reforms is granted where: (a) public expenditure management is sufficiently transparent, accountable and effective; (b) well-defined macroeconomic or sectoral policies established by the country itself and agreed to by its main donors are in place; and (c) public procurement is open and transparent. Similar direct budgetary assistance is granted gradually to sectoral policies in substitution for individual projects.

The instruments are quite varied and can be used to support a wide range of interventions. Since the vast majority of the EDF is in grant form, the terms and conditions can also respond to particular projects and programmes according to the need. Import programmes or budgetary support can also be used to support eligible ACP States implementing reforms aimed at intraregional economic liberalization[16].

[16] The EC has indicated a significant increase of the use of Budget Support as a delivery mechanism in 11 out of 15 Caribbean countries that represents a total of € 340 million, or 57% of the national allocations. If the Regional Programme is taken into account, this figure goes up to over 60%. (CARICOM Secretariat: Remarks by Louis Michel, Ibid.)

The impact of tariff reduction/elimination on 86.9% of the value of imports from the EU over 25 years has to be assessed for each country in terms of output, employment, revenue, rural development, gender, and the appropriateness of the funding judged in terms of the reforms. In terms of industrial adjustment and restructuring at the firm level, concern for the access of SMEs to finance has been raised. In general on-lending operations from EDF/EIB are available but the question arises as to how appropriate these mechanisms are for dealing with EPA.

Alongside the need for improvements in instruments is the issue of the effective delivery of the resources. The EDF has a poor record as reflected in the long delays between commitment and disbursement. This matter has to be addressed as it affects the timely flow of resources. Even though the EU subscribes to the Paris Declaration on aid effectiveness, making it work in practice has always been problematic. Better use has to be made of these principles and processes by both the EC and the CF countries. There is generally an issue of ownership and the EU would need to take steps to strengthen ownership in CARIFORUM countries and their organizations to improve on the pace of identifying EPA priorities without sacrificing good technical analysis of the limitations and adequate CARIFORUM participation in the programming and consultation with all stakeholders concerned.[17]

As for alignment of donors with the partner countries' development strategies and instruments, there is already a sound historical basis for policy alignment, i.e. decisions on allocation and programming on the basis of national and regional priorities. The use of nationally- and regionally-owned instruments for delivery, however, has been lacking[18]. Nationally-owned instruments through which trade-related support could be channeled such as budget support, infrastructure programmes, trade facilitation schemes, income support programmes, price support in agriculture, SME funds, road funds, national development banks, commercial private sector funding schemes, etc could be employed. Regionally-owned instruments such as the Caribbean Development Bank (CDB) and the CDF (adjusted to take care of the wider CARIFORUM), or the establishment of EPA-specific windows within existing instruments, should be better utilized. The EU has already intimated its interest in using the CDF[19] as a preferred channel[20] for disbursing EDF resources in this context. The CDF is already well underway as part of the revised Treaty of Chaguaramas and there is agreement to get this fully established in two years.

With respect to results management and mutual accountability, both parties have committed themselves to monitoring. Mutual accountability would benefit from enhanced monitoring. It would also assist, along with the WTO AfT monitoring mechanism, to measure aid effectiveness, additionality and an adequate mobilization of trade-related support. The EPA makes provision for monitoring the implementation of the agreement generally and in the respective departments. The specific monitoring of EPA development cooperation will most likely follow the EDF monitoring

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[17] Mackie, J., 2006. EDF Management and Performance. Paper presented at the ECDPM seminar 'The Cotonou Partnership Agreement: What role in a changing world?' Maastricht, 18-19 December 2006.

[18] Eurostep 2006, An assessment of the Programming of EC aid to ACP countries under the 10th EDF. Brussels

[19] With regard to the establishment of the Regional Development Fund, Decisions have been taken as to scope, method of operation and capitalisation.

[20] EC support for a regional development fund as a channel of funding: rapidity, additionality (through the support of other donors) ownership of the region on the best use of the funds, flexibility etc is visible in the remarks by Louis Michel. (CARICOM Secretariat, Ibid)

system with annual operational reviews, mid-term reviews and end-of-term reviews. These reviews will provide opportunities to assess the nature and level of interventions and allocate resources accordingly in light of evolving circumstances.

There is also the issue of donor coordination which would assume new importance given the range of Aft donors coming on the scene. Donor coordination is already problematic in view of the desire of each donor for control. The holistic design of the project in a coherent framework is a key step in making donor coordination effective along with the harmonisation of practices, procedures and requirements of the various donors.

EU trade-related assistance currently falls short of the above benchmarks, as identified in the Paris Declaration, although there has been improved internal processes to review aid management. Dialogue is crucial to effectiveness and the EPA establishes several joint mechanisms to facilitate such a dialogue.

E. CONCLUSIONS AND RECOMMENDATIONS

The process of EPA implementation involves, in the first instance, the preparation of a draft Regional Strategy Paper (RSP) and a draft RIP in consultation with stakeholders, including ministers, which are then presented to the EC and subsequently negotiated by a sub-committee of CARIFORUM officials before being finally approved by CARIFORUM Ministers.

The RPTF, which is a joint CARIFORUM-EC mechanism, was established in 2006 during the negotiations with a view to translating proposals for development support into projects with a financing proposal. Ten meetings were held in the process. The CARIFORUM-EC Trade and Development Committee will now succeed the RPTF and will build on the RPTF work programme that includes designed projects through technical studies and financing proposals. So far, these interventions have largely focused on building CARIFORUM human and institutional capacity to honour obligations arising from implementation of the EPA. This could be visualized from the priorities identified through Terms of Reference for needs assessment, including programme design and draft financing proposals. Areas where work has advanced are technical barriers to trade, customs and trade facilitation, sanitary and phytosanitary measures, government procurement, and competition policy. Other areas which remain are: agriculture and fisheries; establishment, trade in services and e-commerce; competitiveness and innovation; science and technology; information society and information and communication technologies; eco-innovation and renewable energy; cultural industries; intellectual property; environment; social aspects; personal data protection; cooperation and dialogue on good governance

The regional process remains captive to the national process as member States put in place EPA implementation mechanisms at the national level which would be responsible for those projects that are required for EPA implementation. Member States have to identify their national coordinators, who would assist with the EPA process and advise the CARICOM Secretariat of any capacity needs. At the country level, the establishment of national AfT committees tasked with ensuring the mainstreaming of trade in national development strategies, determining country needs and priorities, assisting in matching country needs and donor responses, and identifying co-

financing or leverage funds from other larger funds is also required by the WTO. This would imply coherence in trade-policy formulation at the national level in addition to strengthened coordination between key ministries and institutions, as well as the private sector and other stakeholders.

A quick disbursing mechanism for EPA support programmes to be implemented in a timely manner would seem to require one financing agreement on the EPA component of the 10th EDF RSP/RIP instead of one financing agreement on the entire 10th EDF RSP/RIP. Disbursement will be a major challenge as it relates to the volumes that will be available for CARIFORUM countries on a predictable basis. CARIFORUM countries would need to know what non-EPA EDF (all-ACP facility, community budget, and EC and member States AfT) can be counted on in programming for coming years as well as the disbursement flows into the country at the time when they are needed.

A major task ahead would be to ensure harmony between EPA monitoring and WTO AfT monitoring. According to the WTO, monitoring and evaluation will take place on three levels. They are a global assessment of AfT flows (using data compiled by the OECD Development Aid Committee (DAC)); individual donor and agency progress on additionality and effectiveness (using self-assessments); and in-country evaluations (based on inputs from the WTO Integrated Framework and Trade Policy Reviews, national AfT committees, and other relevant mechanisms). EPA has put in place a monitoring system that could give the desired type of results-based management if adequately implemented with progress indicators.

At both the national and regional levels, a clearing-house function would have to be performed. At the regional level, sessions dedicated to specific themes and groups of countries as required by the WTO would be periodically organized to provide a platform for donors and CARIFORUM countries to discuss specific gaps which may occur in the implementation of trade-related assistance.

WTO AfT also requires an Ad Hoc Consultative Group, comprised of relevant agencies and organizations and institutional representatives of the private sector to assist in preparing the global reviews, as well as in providing follow-up support for advocacy and fund raising. EPA activities would have to be properly integrated into this.

The best models in the region and best practice generally should be identified and recommended to member States. Jamaica is known as a good example in terms of coordinating development strategies and the monitoring and evaluation of aid in general.

CARIFORUM already has a regional mechanism for the EDF but one would first have to determine if the CARIFORUM countries consider this appropriate for WTO AfT. Its scope for adjustment to take on board the new WTO AfT functions could be studied in advance and recommendations made to member States. Some degree of integration to ensure coherence and coordination would be necessary. This is particularly important as some donors, like the EC, are not making any distinction between WTO Aft and EPA trade-related support in terms of how they address needs. An SPS need for instance, would be considered the same for EPA as for the WTO.

The WTO AfT Task Force categorization is a good starting point towards identifying gaps in existing trade-related development support programmes from the various agencies. All trade-related needs in all the categories should be elaborated in the country/regional strategy papers for

EDF disbursement. Since trade-related assistance will go beyond the EDF, the volumes of assistance that will be needed from non-EDF sources must be estimated.

Some member States may wish assistance in the preparation of identified projects and programmes as was the case under the FTAA.

It should be noted that in consulting regional bodies, the WTO Director General took the IDB for the Latin America and Caribbean (LAC) region as he did African Development Bank (ADB) for Africa. The IDB is acting to coordinate the WTO AfT initiative for this region. Some form of collaboration with the IDB would, therefore, have to be established.

CARIFORUM is now in the process of preparing an EPA Implementation Road Map stipulating a schedule and plan of action to guide member States on the legislative and policy actions required at a national and regional level; a timetable for the accomplishment of each of the identified actions; and the estimated volume of resources required for EPA implementation and the possible sources of funding, including those already committed by the EU.

EPA implementation provides an opportunity to increase aid effectiveness in line with the Paris Declaration. Ownership can be strengthened as well as donor harmonization and coordination and aid management. The region is already clear on the regional agency that should be used to channel EPA and/or Aft resources and this should facilitate implementation. The EC has already held discussions with the CDB on inserting a financing window in the CDF specifically to underwrite funding of EPA implementation in CARIFORUM. There is also a small EC commitment to support the CDF and this has signaled its readiness to increase its contribution once CARIFORUM agrees to inserting an EPA-specific window within the CDF.

In some CARIFORUM quarters, the advantages of having a specific EPA Adjustment Facility which operated on a time sensitive and multi-annual basis have been discussed but was not accepted. It is however important for CARIFORUM to have a sound idea of its adjustment needs and appropriately cost them since it appears that adjustment funding will have to come from the All-ACP facility and AfT sources.

The sequencing of EPA implementation must also be appropriately done. If the Caribbean is to fully exploit the increased market access opportunities, a sustained trade development programme must be a pre-requisite. In the same way, the Caribbean's trade liberalization schedule should be dependent on the disbursement of EC assistance in revising the national taxation regimes and providing assistance to affected industries.

Chapter II

PART. 2: REVIEW OF EPA – WTO COMPATIBILITY

A: THE ISSUE OF WTO COMPATIBILITY OF RTAS

1. Goods: GATT Article XXIV and the Understanding on Article XXIV

The debate on WTO compatibility largely revolves around two views. The first is that even if the examination does not yield clear conclusions, the mere fact of having concluded an examination and adopted a report that contains no recommendations to the parties to the agreement means that such RTAs are tolerated or deemed compatible by the WTO.21 Further, the fact that such RTAs have not been subject to dispute settlement indicates that the economic facts might not support the claims made of trade diversion effects.

The second position is that the legal status and value of an RTA remains unclear in the absence of a conclusive report, and that in any event the rights of WTO members under dispute settlement procedures are preserved.[22]

Some legal weight seems to have been given to the second view in the dispute Turkey – Restrictions on Imports of Textile and Clothing Products (hereinafter, the Turkey-Textiles case) where the Panel agreed with the findings of the General Agreement on Tariffs and Trade (GATT) Panel in EEC - Imports from Hong Kong, which stated that "… it would be erroneous to interpret the fact that a measure had not been subject to Article XXIII over a number of years, as tantamount to its tacit acceptance by contracting parties".[23]

The legal status of RTAs within WTO rules remains, however, controversial since to date only one of the reports on the examination of RTAs adopted (the Czech Republic-Slovak Republic Customs Union) states clearly that the RTA is fully compatible with the relevant GATT rules.

There is also the issue of where lies the burden of proof of WTO compatibility. Again, there are essentially two views on this matter. One view is that it is the parties' responsibility to prove that they are in compliance with the relevant provisions, on the basis of the practice in international law, where the invocation of a treaty provision having an exceptional character places the burden of proof to demonstrate compatibility on the party invoking the exception.[24] The other view is that it is the task of members not party to the RTA to prove that the RTA does not comply with Article XXIV,[25] as no country would enter into an RTA with a clear intention to breach its WTO obligations by agreeing to provisions that ran counter to the obligations of Article XXIV.[26]

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[21] The view that RTAs are simply "tolerated" by the WTO has been rejected on the grounds that Article XXIV provides a right for Members to form such agreements (EC, WT/REG/M/1, para. 29).
[22] HKC, WT/REG/W/19, paras. 4-5.
[23] Panel Report on *EEC – Quantitative Restrictions against Imports of certain Products from Hong Kong*, adopted on 12 July 1983 (BISD 30S/129), para. 28, and Panel Report on *Turkey- Textiles*, adopted on 19 November 1999 (WT/DS34/R), paras. 9.172-174.
[24] HKC and Japan, WT/REG/M/16, paras. 68 and 127, respectively.
[25] The parties to the RTA would however provide sufficient information to allow the other Members to make their assessment.
[26] Hungary, WT/REG/M/16, para. 122.

In spite of the legal issues above, an examination of an RTA by WTO members is required and viewed as both promoting transparency and setting the ground for conclusions on the RTA's consistency with the relevant rules. Based on a notification which according to GATT Article XXIV:7(a) should be interpreted to mean at least, before the entry into force of the RTA[27], WTO members have been entrusted under the Committee on Regional Trade Agreements (CRTA) with examining the conformity of an RTA to Art. XXIV requirements including the additional task of considering RTAs' broader, systemic implications.[28]

The most controversial aspect of examining WTO compatibility for an RTA lies in Para. 8(b) which requires elimination be made of duties and, apart from permissible exceptions,[29] other restrictive regulations of commerce on «substantially all the trade» in originating products. Despite the inclusion of the fourth paragraph in the Preamble to the 1994 Understanding,[30] the interpretation of that expression has remained contentious. Two approaches, not mutually exclusive, are typical in that respect:

- A quantitative approach favours the definition of a statistical benchmark, such as a certain percentage of the trade among RTA parties, to indicate that the coverage of a given RTA fulfils the requirement;

- A qualitative approach sees the requirement as meaning that no sector (or at least no major sector) is to be kept out of intra-RTA trade liberalization; this approach aims at preventing the exclusion from RTA liberalization of any sector where the restrictive policies in place before the formation of the RTA hindered trade, which could be well the case if a quantitative approach was used.

Apart from calls aiming at defining RTAs' coverage as meaning that all sectors should be included, it has been suggested that the above two approaches could be bridged or complemented by:

- Characterizing an RTA's product coverage not only in terms of trade flows but also in terms of a certain percentage of tariff lines;[31]

- As a refinement to the quantitative approach, calculating the percentage of trade among the parties carried out under RTA rules of origin; and/or

[27] Conversely, it has been observed that a case-by-case approach is more appropriate to take into account the complexity of issues surrounding RTAs, in particular the political and legal difficulties related to notifying an RTA prior to its ratification.
[28] The decision to establish the CRTA, with its terms of reference, is contained in document WT/L/127.
[29] «… (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) …».
[30] «*Recognizing* also that such contribution … if any major sector of trade is excluded».
[31] A threshold has also been proposed at 95 per cent of all HS tariff lines at the six-digit level, to be complemented by an assessment of prospective trade flows at various stages of implementation of the RTA, thereby allowing the incorporation of cases where trade is initially concentrated in relatively few products.

- Exploring whether footnote 1 to GATS Article V provides a basis for some clarification of the «substantially all the trade» concept.[32]

Another compatibility requirement deals with the phasing-in of commitments. Article XXIV.8. (a) and Article XXIV.8.(b) seem to indicate that RTAs should achieve the elimination of duties and other restrictive regulations of commerce on SAT on entry into force. But many regional trade agreements do embrace significant trade liberalizing commitments that are phased in over time rather than being operative on entry into force.

The term 'reasonable length of time' in Article XXIV.5(c) has been used by some members, but this provision relates specifically to "interim agreements" within the meaning of Article XXIV.5(a) and Article XXIV.5(b). Even though it does not relate directly to commitments defining 'substantially all trade' in Customs Unions or Free Trade Agreements not notified as interim agreements, it nevertheless, reflects the common practice of phased-in liberalisation commitments in regional trade agreements.

Many subscribe to the view that 'a reasonable length of time' in Article XXIV.5.(c) as 10 years (articulated in the Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994, paragraph 3) provides an appropriate model for application to the assessment of the elimination of duties in respect of substantially all trade as it is contained in the majority of existing regional trade agreements. However, developing countries and in particular ACP countries, argue that time periods should be much longer, especially in North/South agreements[33.]

As to the calculation of SAT, there is in fact no established methodology nor any agreement among members as to how this should be calculated. The EU has long stated its view in the WTO as interpreting it in a quantitative way in relation to the proportion of trade that is covered. This has to be compared to a 'qualitative' interpretation (for example by the inclusion of all major sectors).

In the CARIFORUM-EU EPA, 92% of the value of CARIFORUM-EC bilateral trade during the period 2002- 2004 was covered. The EU liberalizes 100% of the value of its imports from CF with immediate duty-free, quota-free (DFQF) access on 1 January 2008, except for sugar and rice. The Sugar Protocol (SP) arrangements will remain in place until 30 September 2009. The national Tariff Rate Quotas (TRQs) of the six CARIFORUM members of the Sugar Protocol will be complemented during this transitional period by an additional 60,000 tonnes, shared evenly among CARIFORUM SP members and the Dominican Republic. The current rice TRQ will be doubled and then disbanded in 2009.

CARIFORUM liberalises 86.9% of the value of its imports with 82.7% within the first 15 years and 86.9% over 25 years. The Agreement will result in the liberalisation of 92% of bilateral CF-EC trade. It excludes from CARIFORUM liberalisation 493 products or 9.8% of tariff lines

[32] In referring to the need for EIAs to have substantial sectoral coverage, this footnote reads: «This condition is understood in terms of number of sectors, volume of trade affected and modes of supply. In order to meet this condition, agreements should not provide for the *a priori* exclusion of any mode of supply».

[33] ECDPM, How to make EPAs WTO compatible? Reforming the rules on regional trade agreements. Bonapas Onguglo and Taisuke Ito Discussion Paper No. 40, July 2003

equivalent to 13.1% of CARIFORUM imports. CARIFORUM will liberalize 86.9% of the value of its imports on goods originating from the European Community. The value of CARIFORUM liberalization covers 91% of the number of HS6 tariff lines. Table I highlights CARIFORUM tariff liberalization commitments measured in terms of the value of its imports from the EU.

Table I: CF Tariff Liberalization Commitments

Phasing period	Share of Imports (%)	Cumulative Share (%)	Total Trade (%)
0 year	52.8	52.8	70.0
5 years	3.2	56.0	72.0
10 years	8.3	61.1	75.3
15 years	21.7	82.7	89.3
20 years	1.9	84.6	90.5
25 years	2.3	86.9	92.0

Source: CRNM; Annex3 - CARIFORUM Schedule of Tariff Liberalisation

It should be further noted that currently 51% of CARIFORUM imports from the EU attract zero duties. An additional 1.8% of CARIFORUM imports on items attracting nuisance tariffs was immediately liberalised. As noted earlier, CARIFORUM's exclusion equates to 13.1% its EU imports and 8% of bilateral trade. The major product exclusions are live animals, fresh fruits and vegetables, dairy and cheese, wines and spirits, processed agricultural products, chemicals, furniture and industrial products. With specific reference to agriculture, 75% of the value of EU imports is excluded from CARIFORUM liberalization commitments.

Table 2. Comparison of European Commission and Overseas Development Institute (ODI) liberalisation estimates

Interim EPA	Cumulative share of imports from the EU to be liberalized by the end of the implementation period	
	European Commission	*ODI*
EAC	82%	40.5%
Comoros	80.6%	80.7%
Madagascar	80.7%	80.7%
Mauritius	95.6%	95.6%
Seychelles	97.5%	97.5%
Zimbabwe	80%	79.9%
Botswana, Lesotho, Namibia,	86% + 47 tariff lines	68.3%
Mozambique	80.5%	62.2%
Cameroon	80%	79.7%
Cote d'Ivoire	80.8%	79.9%
Ghana	80.48%	79.7%

Source: The New EPAs:Comparative Analysis Of Their Content And The Challenges For 2008 Final Report. Christopher Stevens Et Al. ECDPM, 31 March 2008

According to the definition of SAT used in EC/Republic of South Africa Trade, Development and Cooperation Agreement (TDCA),'substantially all trade' was interpreted to mean

an average of 90 percent of all items currently traded between the countries. The EU interpreted this not on the basis of total trade but on the imports each party was taking and drew an unweighted average. In the TDCA, for example, the EU and South Africa agreed to reduce to zero tariffs a group of products that, in total, accounted for 90 percent of the value of trade between them in the base year. They did this asymmetrically: the EU reduced to zero its tariffs on products that account for 94 percent by value of its imports from South Africa, and South Africa did the same on products that accounted for 86 percent of its imports from the EU.

If applied to CARIFORUM-EU negotiations, since the EU liberalizes 100% with CARIFORUM and CARIFORUM 86.9 % with the EU, then a SAT of 93.5% will be met if the same approach is taken as that in TDCA. If total bilateral trade is used it would be 92%.

CARIFORUM liberalization over 10 years to SAT in 25years will be 25.9% of EU imports with 13.1% exclusion. Comparing this to the TDCA, South Africa got 32.4 % of EU imports to be liberalized over 10 years and to SAT in 12 years. CARIFORUM will therefore have a slightly higher SAT but a much more liberal time period to achieve it. As regards exclusion, South Africa ``got`` 14% which is close to what is in the EPA[34].

As regards asymmetry in reciprocity, it should be noted however, that using trade for the period 2002-2004, CARIFORUM imports from the EU is 81% more than what EU imports from CARIFORUM. This means that CARIFORUM will be liberalizing on a much higher value of imports since 86.9% of such imports which have to be liberalized by CARIFORUM in 25 years gives a value of 57% higher than EU imports from CARIFORUM. It should be noted also that EU liberalization of CARIFORUM imports is largely nominal and without adjustment costs since around 95% of CARIFORUM exports to the EU is already liberalized under Cotonou and has been liberalized since 1975 under the first Lomé Convention.

In the TDCA, trade seemed to be evenly balanced when the TDCA was signed. Also in TDCA there is conditional liberalization on the EU side and safeguards and other restrictive measures which make it difficult to assess the degree of liberalization[35]. Comparing TDCA to CARIFORUM -EU becomes therefore somewhat problematic and caution is invited.

It was concluded in the report[36] that "there are very few cases where excluded products account for more than 10% of imports from the partner".(Table 3) However, as the report notes "there are other provisions that might arguably be treated as exclusions". The EU's TRQs in its agreements with the Czech Republic and Lithuania are cases in point. Cases where decisions on liberalisation are deferred might also fall into this, for example the 12.81 % of South African imports from the EU and 0.79% of EU imports from South Africa in the EU-South Africa FTA (TDCA) and the 0.9% of Korean imports from Chile in the Korea-Chile FTA on which decisions are deferred until the end of the DDA negotiations.

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[34] It should however, be noted that these exclusions are not final since decisions on them are deferred until the end of the DDA negotiations.

[35] ``Substantially All Trade``: Which definitions are fulfilled in practice? An empirical investigation. A report for the Commonwealth Secretariat. Robert Scollay, 15 August 2005.

[36] Robert Scollay, Ibid.

Table 3: Percentage of Excluded Products in Some RTAs

Agreement	Partner	% of Partner Imports Excluded
EU-Morocco	Morocco	12.74%
Canada-Chile	Chile	10.52%
US-Jordan	Jordan	9.33%
US-Jordan	USA	5.30%
Morocco	EU-Morocco	5.19%
Chile	Korea-Chile	4.01 %
Japan-Singapore	Japan	2.61 %
Canada-Costa Rica	Costa Rica	1.82%
EU-South Africa	EU	1.77%

Source: "Substantially All Trade": Which Definitions Are Fulfilled In Practice? An Empirical Investigation. Report For The Commonwealth Secretariat. Robert Scollay, APEC Study Centre University Of Auckland New Zealand, 15 August 2005

In terms of EU agreements, and especially those with developing countries, both the percentage distribution above 10 years to 25 years in the CARIFORUM go beyond what currently exists. Concern with lack of flexibility in Art XXIV to deal with North/South RTAs led the ACP and Small, Vulnerable Economies (SVEs) in the WTO to argue for longer transition periods in any revision of Art XXIV but change is yet to come to Art. XXIV.

If the 10-year implementation period is applied, and if SAT is defined as inclusion of 95% of the combined tariff lines of both partners, then the EPA would not meet these definitions. If the 90% definition of tariff lines is applied to each party on an individual basis, this definition would be met.

The Transparency Mechanism recently adopted in the WTO requires a factual presentation[37] of every new RTA notified. It makes no reference to SAT and is not a conformity exercise. However, the percentages of trade and tariff lines liberalized under an RTA are calculated, showing the percentage of trade and tariff lines which were already MFN duty-free under the agreement and a breakdown of these figures over the life of the agreement. Liberalization in the various sectors is also shown to determine whether certain sectors were excluded.

[37] The factual presentation is defined in the Transparency Decision (WT/L/671**,** 18 December 2006). According to para. 7(b) ``the WTO Secretariat, on its own responsibility and in full consultation with the parties, shall prepare a factual presentation of the RTA.`` Para. 9 of that Decision also states that `` the factual presentation provided for in paragraph 7(b) shall be primarily based on the information provided by the parties; if necessary, the WTO Secretariat may also use data available from other sources, taking into account the views of the parties in furtherance of factual accuracy. In preparing the factual presentation, the WTO Secretariat shall refrain from any value judgement.`` Para. 10 further states that ``the WTO Secretariat's factual presentation shall not be used as a basis for dispute settlement procedures or to create new rights and obligations for Members``.

CARIFORUM submitted a single collective schedule in its agreement with the EU. Individually therefore, the pace and content of liberalization vary considerably across countries.

2. Services: Article V

Trade in services applicable to RTAs is assessed in the provisions contained in Article V of the General Agreement on Trade in Services (GATS), entitled "economic integration". Paragraph 1 of the article emphasizes that nothing in the Agreement shall prevent the formation of an RTA provided that the RTA: (a) has a substantial sectoral coverage in the sense of number of sectors, volume of trade and modes of supply; and (b) provides for the absence or elimination of substantially all discrimination.

In a footnote to the paragraph, it is stated that an RTA cannot provide for a priori exclusion of a mode of supply. There is however, a debate on the 'a priori' exclusion of a sector. Some argue that the flexibility provided by the word "substantial" does not allow for the exclusion of a sector from an RTA. Others suggest that 'a priori' exclusion of a sector is allowed as there was no express mention of the opposite and that the rules require "substantial" and not "total" sectoral coverage.

Similar to the GATT, the definition of the word "substantial" is crucial since the GATS also requires elimination of substantially all discrimination in the RTA. Due to lack of data on services trade, it is very difficult to reach a percentage type test of "substantial".

The time for meeting the conditions for forming an RTA is flexible. A choice is given to the parties under Article V:1 either to meet the conditions at the entry into force of the RTA or in a reasonable time-frame. The definition of 'reasonable' and what criteria should be used are not clear. This is in contrast with the GATT, which explicitly provides for a period of 10 years, and so appears more stringent. The GATS does not allow for a period of time that exceeds the reasonable timeframe, unlike the GATT which grants a transition period of more than 10 years in exceptional cases.

Article 1(b) of GATS also contains more flexibility since it states that the absence or elimination of substantially all discrimination can be achieved through elimination of existing discriminatory measures and/or prohibition of new or more discriminatory measures but this choice is limited since in the end substantially all discrimination should be absent or eliminated.

The GATS also explicitly allows for special and differential treatment for developing countries. Article V:3 states that when developing countries are parties to an RTA, flexibility shall be provided for regarding substantial sectoral coverage, and especially the absence or elimination of substantially all discrimination. The extent of flexibility will be determined by the level of development of the countries concerned, both overall and in individual sectors and subsectors.

In the EPA, the EU liberalises 94% of W120 list of sectors38 while the respective figures for CARIFORUM LDCs and MDCs are 65 and 75% respectively with the Dominican Republic's

[38] WTO. Services Sectoral Classification List (MTN.GNS/W/120**,**10 July 1991).

commitments standing at 90%. [39]. The EU has opened up in sectors ranging from business services, communication, construction, distribution, environmental, financial, transport, tourism and recreation services. The main sectors that most CARIFORUM States have liberalized in the EPA are: business services (accounting, architecture, engineering, etc); computer and related services; research and development; environmental services; management consultancy; maritime transport; entertainment; and tourism. A number of the commitments will be phased-in over time in some CARIFORUM States to address national sensitivities.

As for the modes of supply, in the case of investment (Mode 3) the EU has liberalized almost all sectors for CARIFORUM firms in the EU with exclusions in a few sectors and limitations, mainly in the new EU member States. In Mode 1 (cross border trade) the EU has liberalized the vast majority of sectors, similarly in Mode 2 (consumption abroad).

In the case of the temporary movement of natural persons (Mode 4) the EU has granted market access for Caribbean professionals in 29 sectors for employees of Caribbean firms (Contractual Service Suppliers - CSS) to be able to enter the EU to supply services once they get a contract. These are subject to conditions stipulated in the Services chapter of the EPA but the stays are for up to 90 days in a calendar year. As well, the EU has liberalized 11 sectors for temporary entry by Independent Professionals (IPs) or self-employed persons. Although some conditions such as Economic Needs Tests (ENTs) remain applicable in a number of EU States, there are no quotas on the number of CARIFORUM service suppliers that can enter the EU market.

Both in terms of sectors and modes of supply there has been the elimination of substantial discrimination. In mode 4, the EU went beyond what exists in its current bilateral and multilateral commitments.

3. Conclusion

In accordance with WTO rules on RTAs in Art.XXIV of GATT 94 and Art. V in GATS, the CF-EU EPA will be examined by the WTO CRTA after its notification. On the basis of the Transparency Decision, a factual presentation will be made and questions will no doubt be raised about the percentage of trade covered, the level of exclusion both in terms of products, the sectors covered, the percentage coverage of tariff lines as well as the unprecedented length of the transitions. It is not possible to determine a priori based on WTO law and practice whether any element of this agreement would be challenged. In this regard, it is worth noting that only one RTA (Czech Republic – Slovak Republic CU) received a positive recommendation from the CRTA while many RTAs have not been tested for consistency with WTO rules and have not been challenged.

[39] The Bahamas and Haiti have been given six months within which to submit their respective liberalisation schedules.

B. MOST FAVOURED NATION TREATMENT

1. Nature of MFN Clauses in the EPA

MFN clauses in the EPA relate both to goods and services. With respect to goods, in accordance with Article 19, the EC is committed to give to CARIFORUM any more favorable treatment it gives to a third party in future free trade agreements. There are no restrictions regarding the type of agreement or the nature of the trading partner.

There are some exceptions to the general MFN rule. In the EC agreements with the East African Community (EAC) and Eastern and Southern Africa (ESA) countries, there are exceptions in so far as ACP parties to these agreements can be exempt from giving to the EC preferences granted to certain ACP and African countries as well as African regions even if these parties are major trading economies. In the CARIFORUM-EC EPA, in Article 19:5, the decision for denying an extension to the EC of more favourable preferences granted to third parties by any CARIFORUM State in a free-trade agreement is made on a case-by-case basis after consultations between CARIFORUM and the EC. The text does not indicate under which conditions the more favourable treatment may be denied to the EC. In contrast, the two other EPAs mentioned above make reference to such possible conditions.

With respect to commercial presence and cross-border supply in services in the CARIFORUM-EU EPA, Articles 70 and 79 make provision for most-favoured-nation treatment under certain conditions from the conclusion of 'economic integration agreements.' The latter is not defined but would appear to correspond to the same term as used in GATS Article V. The agreement with third parties is less than an economic integration agreement within the meaning of GATS Article V and does not cover the following:

- An internal market is created under the economic integration agreement (EIA) or the EIA requires the parties to significantly approximate their legislation with the view to removing non-discriminatory obstacles to commercial presence;

- Preferences granted under measures providing for mutual recognition of qualifications, licenses or prudential measures in accordance with GATS Article VII or its Annex on Financial Services;

- Preferences granted under international agreements relating to taxation;

- Measures benefiting from the coverage of the parties' respective MFN exemptions lists under Article II:2 of the GATS;

- Negotiated exceptions where a CF state grants more favourable treatment to a third party's commercial presences and investors than to like EC commercial presences and investors. In such a case, the parties enter into consultations to decide on whether the more favourable treatment should be denied to the EC. This is similar to the provisions of the negotiated exceptions under the goods chapter as discussed above. The text does not indicate the conditions under which a preference may be denied to the EC.

It should be noted that the MFN clauses incorporate asymmetry in so far as there are no limits on CARIFORUM enjoyment of more favourable treatment from the EU while the EU is limited to FTAs with the major trading economies. It should also be noted that preferences under agreements between CARIFORUM and third parties that are less far-reaching than FTAs within the meaning of GATT Article XXIV, such as sectoral or partial scope agreements between developing countries under the 'Enabling Clause,' are not subject to automatic extension to the EU.

As compared to the MFN clause in the Cotonou Agreement which commits CARIFORUM to grant the EU any better preferential treatment granted to other industrialised countries, the EPA MFN provision extends the scope of MFN coverage to include advanced developing countries that fall within the 1% and 1.5% thresholds for countries and regions, respectively. According to WTO data on 2005 merchandise trade, customs territories with 1% (or 1.5% for regional blocs) of world exports include China, Brazil, Honk Kong, Singapore, Mexico, Taiwan, the Association of South East Asian Nations (ASEAN) and the Southern Common Market (MERCOSUR).

All the Interim Agreements which the EU has initialed so far with other ACP countries and regions contain identical MFN provisions, like the CARIFORUM-EU EPA, in terms of language with respect to goods.

2. Concerns on the Impact on The Multilateral System

At the 5 February 2008 meeting of the WTO General Council, Brazil expressed its concerns on the impact on the multilateral system of the inclusion of MFN provisions in EPAs. Supported by China, South Africa, India and a number of Latin American countries, Brazil argued that the EPA MFN clause potentially jeopardised South-South FTAs and the possible emergence of the new General System of Tariff Preferences (GSTP). In a statement to the General Council[40], Brazil raised concerns that the MFN clauses "turn the Enabling clause upside down", will create major constraints to south-south trade, and will therefore "not help the integration of developing countries into the world trading system". More specifically, Brazil raised the following three major issues:

- The EPA MFN clause obliges "ACP countries to extend to the EU on a line by line basis, any treatment they might negotiate with third parties."

- The EPA MFN clause severely undermines the Enabling Clause and South-South trade because the MFN clause provides a disincentive for ACPs to negotiate agreements with other developing countries that may contain more favourable market access conditions than those enjoyed by the EU under the EPAs with ACP countries.

- The MFN clause will "prevent" third countries from negotiating FTAs with EPA parties and constrain South-South trade.

There is no doubt that these clauses do limit the future negotiating scope of CARIFORUM with these developing major trading partners. CARICOM, for instance, has been exploring a

[40] Brazil statement to the General Council Meeting (5th February 2008)

possible FTA with MERCOSUR and to the extent that Brazil sees no gains from having to get similar treatment as the EU, then its interest in such an agreement may wane. At present, relations with Brazil are not affected as these MFN clauses do not apply to the partial scope agreement which, for instance, Guyana has with Brazil.

The Brazilian request for clarification of the impact of the MFN clause on the multilateral system could therefore, rebound to the interests of CARIFORUM and other ACP countries in so far as it would remove the limitations imposed by these clauses. CARIFORUM supports the ACP position that has taken note of the Brazilian concerns and will follow this matter after the EPA and other Interim Agreements have been notified to the WTO.

Along with equity in the rules and commitments, EPA has also introduced a development dimension which makes granting more preferential treatment to strong EU competitors more difficult. In addition, similar MFN clauses can be found in other regional and bilateral trade arrangements, in particular in regard to services trade and investment such as the Latin American Integration Association (ALADI), Singapore-United States, Chile-United States, and Malaysia-Pakistan.

3. Consistency of the EPA MFN Clauses with WTO Law

The question of the consistency of EPA MFN clauses with the 'Enabling Clause' is still shrouded in legal controversy. Brazil and others are suggesting that the EPA MFN clauses may violate the 1979 Enabling Clause because they require developing countries (the ACP parties) to extend preferences from future south-south agreements concluded under the Enabling Clause to a developed country Member (the EU). This claim is largely based on Section 2(c) of the Enabling Clause, which states that developing countries may conclude agreements among themselves without extending the preferences arising under these agreements to other members (meaning in particular: developed country members). The EPA MFN clauses can thus restrict and counteract the very flexibilities that Section 2(c) gives to developing countries.

It is clear that the EPA MFN clauses do limit the policy space of ACP parties to grant special preferences to developing major trading countries without extending them to the EU. However, in so far as these concessions are the result of negotiation, then according to the counterargument, it is the right of the ACP to contract away their rights under the Enabling Clause especially if the ACP gained something in return. A case has been made of the ACP gaining more from the EPA as a result of accepting the MFN clauses[41].

Section 1 of the Enabling Clause embodies an exception to GATT Article I on non-discrimination and this issue has also been raised in that context. The conditions under which this exception operates are set out Section 2 of the Enabling Clause. It allows developed countries to avoid multilateralizing preferences accorded to developing countries under the Generalised System of Preferences (GSP) scheme. In addition, preferences accorded among developing countries in

[41] Federico Alberto Cuello Camilo, MFN in the CF EPA is no threat to South-South trade, Trade Negotiations Insights, Volume 7.Number 4/ May 2008

south-south agreements under Section 2 (c) also do not have to be multilateralised under the general GATT MFN clause.

The EPA MFN clauses do not contradict the Enabling Clause since when an ACP country concludes an agreement with other southern countries under the Enabling Clause, GATT Article I remains excluded by virtue of the Enabling Clause; the preferences granted under that agreement still do not have to be multilateralized, that is given unconditionally to all other WTO members. Instead they have to be granted to the EU if the FTA agreement is with a major trading economy and contains more favorable treatment than that given to the EU in a similar agreement.

But it is also argued that the Enabling Clause does not permit discrimination among developing countries and the classification of "major trading economies" violates this clause. EPA MFN clauses do not legally infringe on the rights of the ACP parties to enter into Section 2 (c) agreements with any developing country without differentiation. ACP countries therefore can freely select their developing country trading partners and enter into privileged RTAs with any one of them. The benefit for them from the Enabling Clause is that they do not have to grant these to all WTO Members, as would otherwise be required by GATT Article I. The differentiation between 'major trading economies' and other developing countries only operates within the EPA and determines the exact reach of the EPA (the extent of liberalization of ACP-EU trade), which itself operates under GATT Article XXIV.

However the matter is argued legally, the fact remains that the EPA could possibly restrict south-south trade since the CARIFORUM countries may have given away potential preferential margins that a 'major trading economy' developing country partner may wish to enjoy vis-à-vis the EU as a competitor on CARIFORUM markets. These FTAs can come either under the Enabling Clause 2 (c) or Art XXIV. In general developing countries do expect more favorable treatment than that given to a developed country by another developing country. Reference has been made to statements from officials who claim that in some sectors Brazil and India would have little interest in trading on identical terms in some sectors and products with the EU.[42] It is difficult to perceive just how this would affect the negotiating leverage of CARIFORUM especially since the extension is not automatic since CARIFORUM and the EU are committed to consult on whether CARIFORUM may deny the EU party the more favourable treatment.

The issue is therefore, complex since the EU has a long track record of granting non-reciprocity to the region and has set equitable standards in the EPA that respects the levels development among the various parties. None of the major developing trading economies have ever indicated any interests in non-reciprocal arrangements with the region, quite unlike some other developing countries in the region. There is also no indication from them of wanting to grant special and differential treatment to the small countries of this region. On the contrary, they have systematically opposed the concept of SVEs and proposals of small countries in the WTO for more flexibility, only yielding at times because of pressure from the large developed countries.

There are obviously situations where reducing a tariff for a third party major developing country but keeping it for the EU are justifiable. These may relate to cases where a tariff is kept

[42] Cheikh Tidiane Dieye and Victoria Hanson, MFN provisions in the EPAs: a threat to South-South trade? Trade Negotiations Insights, Vol.7, No.2, March 2008

high for the EU from which comes significant imports but such imports from the major trading partner may involve no risks.

The category of major trading economies is subject to change as countries and regions evolve. At present India and South Africa fall just below the criteria but with their development of exports in the future they would most likely have an export market share in excess of 1%. CARIFORUM trade relations with such third States under an FTA could also be affected by the MFN clause.

One qualification in applying the MFN clause should be noted. It is that the major trading economy must reflect the above eligibility criteria before the entry into force of the FTA. The case of India is of some interest because there was some expression of exploring FTA talks with CARICOM some time ago. India`s share of world trade varies above and below 1% and could eventually stabilize above 1%.

The manner in which the MFN clause will be applied is also not clear. Brazil points to a line-by-line tariff application along the lines of GATT but there is no criteria outlined for application in Art 19. In a context of asymmetry, it would be useful to compare the reciprocal preferences with the third State with those with the EU to determine whether there is overall more favourable treatment to the third party. This kind of evaluation could be complex as it would have to take into consideration the exclusions and transitions that both the EU and the third party grant to CARIFORUM. The speed of the liberalization process itself for CARIFORUM will, therefore, have to be assessed in both arrangements. In addition, as mentioned above, the granting of duty-free status to any product from a major trading party which may not pose any competitive risks to the EU and CARIFORUM should not automatically qualify for an extension under the MFN clause.

The above issues are not sufficiently clarified in the CARIFORUM-EU EPA and would have to come out in further deliberations.

C. EPA AND DOHA DEVELOPMENT AGENDA (DDA)

The DDA comprises 21 subjects listed in the Doha Declaration some of which are part of the Single Undertaking (with an original fixed deadline of 1 January 2005, now postponed by the July General Council with no fixed date of termination). Those that are part of the single undertaking involve negotiations are agriculture (para 13, 14); services (para 15); market access for non-agricultural products (para 16); WTO rules: anti-dumping and subsidies (para 28); WTO rules: regional trade agreements (para 29); trade and environment (para 31–33); and trade facilitation which was subsequently added after the negotiations started.

Subjects that are not part of the Single Undertaking but are being negotiated are implementation-related issues and concerns, (par 12); TRIPS (paras 17–19); and the Dispute Settlement Understanding.

Other subjects outside the Single Undertaking where important non-negotiation work is being carried out and where there are no “negotiations” that include actions under “implementation”, analysis and monitoring are: electronic commerce, general council work

(para 34); small economies, general council work (para 35); technical cooperation and capacity building, general council and secretariat work (paras 38–41); trade, debt and finance, new working group (para 36); trade and transfer of technology, (para 37); least-developed countries, (paras 42, 43); and special and differential treatment, (para 44). Issues relating to governance, aid for trade and coherence could also be included in this category.

The EPA agenda is more limited to trade in goods including customs duties, trade defense instruments, non-tariff measures, customs and trade facilitation, agriculture and fisheries, technical barriers to trade, SPS, investment, trade in services and e-commerce, current payments and capital movement; and trade-related issues including competition, innovation and intellectual property, public procurement, environment, social aspects and protection of personal data. Many of the latter areas are not part of the DDA agenda such as technical barriers to trade, SPS, investment, competition, public procurement, current payments and capital movement, social aspects and protection of personal data.

The question of how does the EPA build on the DDA has to be examined in terms of the scope for an EPA to improve on the current WTO Uruguay Round arrangements using the DDA negotiations while remaining compatible with WTO FTA rules. DDA decisions and proposals from developing countries including SVEs, for asymmetry between developed and developing countries, less than full reciprocity and special and differential treatment in the various negotiating areas which seek to make FTAs between developed and developing countries more development-friendly would have to be considered in such an exercise.

Since EPA is essentially an FTA with a development cooperation component, it would be useful to pay some special attention to the DDA Rules debate on Art XXIV of GATT and Art 5 of GATS which govern FTAs. Art. XXIV in particular at the outset of the DDA was not regarded as containing the development flexibility and legal certainty needed in North/South Agreements. The Doha Mandate states: “We also agree to negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements. The negotiations shall take into account the developmental aspects of regional trade agreements”[43]

The Caribbean with EPA in mind was anxious to reform Art XXIV in the direction of more flexibility. As part of the ACP, the Caribbean supported the ACP proposals on RTAs as contained in (TN/RL/W/155, 28th April 2004). These proposals essentially touched on, inter alia, agreement for greater flexibility for developing countries in terms of transitional periods and the degree of liberalization; the provision of SDT treatment into “substantially all trade” requirement in respect of duties, specifically with regard to meeting the SAT requirement in respect of trade and product coverage through the application of a favourable methodology and or lower/differential thresholds for developing countries; the introduction of new standards as regards ‘highly traded products’ as well as conversely, “products that members currently do not, but could trade, if it were not for protectionist measures”; the importance of asymmetrical product coverage and longer transitional

[43] Final Declaration From Doha, November 15, 2001, Ministerial Conference, Fourth Session, Doha, 9 - 14 November 2001

periods for developing countries; and preserving both the objectives and the integrity of the Enabling Clause.

Even though the ACP proposal advocated a general transition period of 18 years, the Caribbean was particularly interested in the possibility of a transitional period of 25 years for the liberalization of some very sensitive CARIFORUM products. The EU in its submissions (TN/RL/W/155) and (TN/RL/W/14) was open to considering separate and differentiated, i.e lower, SAT thresholds for developing countries and least developed countries as well as longer transition periods for weak and vulnerable economies. The EU also recognized that existing rules failed to establish fair and equitable treatment between different types of RTAs based on their potential effects on third parties. For example, no distinction was made in respect of regional trade agreements among developing countries that are relatively sizeable actors in world trade, and those between parties who represent only a small portion of world trade. In brief, the EU was willing to explore asymmetrical product coverage and longer transitional periods beyond 10 years to be invoked only in "exceptional cases" that should be limited to both a number of products and developing and least developed countries.

The WTO DDA negotiations on systemic changes in RTAs did not produce the desired results and have now been suspended due to the impasse between those who want greater flexibility and those who want greater stringency and discipline in the rules. The twin goals of developing countries of greater flexibility in asymmetry and transitional periods and legal certainty were not achieved. The DDA discussions however, were productive, especially the ACP dialogue with the EU. EPA has produced significant asymmetry in terms of product coverage and longer transition periods than in previous WTO RTAs between the EU and other developing countries and regions. It remains to be tested when examined in the WTO where it can possibly be challenged but it did respond to a search by both parties to introduce more flexibility in Art XXIV.

In agriculture, the Doha mandate calls for “substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support”[44]. Furthermore, “special and differential treatment for developing countries shall be an integral part of all elements of the negotiations”. Since agriculture is a source of livelihood, rural development and food security, most developing countries have interpreted the development round to mean SDT in the form of extra protection for special agricultural products (SPs) and the introduction of a Special Safeguard Mechanism (SSM). Although these concepts have already been selected, the designation and treatment of SPs still remains contentious as are the scope and coverage of the SSM.

WTO agricultural exporters are bent on limiting the application of SPs and SSM. Caribbean countries have sought as small countries to secure a wider treatment and selection of SPs as well as a broader application of the SSM than what has been requested generally for developing countries. Efforts to introduce the SSM in the EPA did not come to fruition and in current WTO talks there is an attempt to exclude its application in FTAs.

[44] WTO. Final Declaration from Doha: November 15, 2001, Ministerial Conference, Fourth Session, Doha, 9 - 14 November 2001

Less than full reciprocity and asymmetry in tariff reduction have been achieved to some degree as both the level of tariff reduction as well as a longer period of implementation have already been agreed to in principle although the numbers are still to be finally settled. In the EPA, agriculture accounted for a substantial part of the products excluded and those receiving lengthy transitions. The EU also agreed to eliminate export subsidies on exports to the region that have been liberalized in line with its Doha commitment to phase out all forms of export competition by 2016. The issue of substantial reduction of trade-distorting support is also another DDA quest even though for the region with special preferences in sugar, its demand for such reduction is not as vociferous as other developing countries. This issue is still under active negotiations and the reductions in domestic support anticipated in the ambition of the Doha mandate do not seem likely.

The EPA negotiations went along the lines of the DDA in so far as special protection was sought for agriculture and obtained through lengthy transitions and exclusions and protection from EU export subsidies. The absence of an SSM however, could potentially open agriculture to disruptions and the continuance of high levels of domestic support which can only be controlled in the WTO can also spill over in subsidised EU agricultural exports which could only prejudice regional agriculture. Substantial market access in the EU was achieved by the removal of the remaining tariff barriers on Caribbean agricultural exports.

In Non-Agriculture Market Access (NAMA) Products, the Doha Declaration aims "to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries…… The negotiations shall take fully into account the special needs and interests of developing and least-developed country participants, including through less than full reciprocity in reduction commitments". Flexibilities have been agreed in principle for developing countries in terms of tariff reduction although the numbers are yet to be finally decided. Levels of tariff reduction are asymmetrical as compared with those for developed countries even though the exact numbers are still to be negotiated.

Since NAMA, unlike agriculture, embodies a higher level of ambition in terms of tariff reduction, the Caribbean sought through its small economies work programme to get a special carve-out which would provide even less tariff reduction than that for the average developing country. For the first time, the WTO at its Hong Kong Ministerial in December 2005 accepted that SVEs should be entitled to special flexibilities in tariff reduction. In the EPA negotiations, sensitive industrial products have been shielded from rapid adjustment through lengthy transitions that go over 10 years and up to 25 years. This is in line with the WTO DDA small economies programme which seeks to keep bound rates at the multilateral level as high as possible on industrial products and not touch applied rates indiscriminately.

In services, the DDA did not set any path-breaking goals in SDT since the GATS embodies a positive agenda and SDT is built in the arrangement with countries being free to put up the services areas that they wish to offer. No reform of Art V was anticipated to govern RTAs in services as the flexibility for SDT in Art. 5 for developing countries is much greater than in Art. XXIV in the GATT.

In Trade Facilitation (TF), Doha recognized "the case for further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical

assistance and capacity building". The Council for Trade in Goods was asked to "review and as appropriate, clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 and identify the trade facilitation needs and priorities of Members, in particular developing and least-developed countries." WTO members also committed themselves "to ensuring adequate technical assistance and support for capacity building in this area".

Developing countries have been active in TF in trying to implement this mandate. They have submitted proposals[45] regarding transitional provisions relating to provisions applicable after signing of the Trade Facilitation Agreement; establishment of the Trade Facilitation Technical Assistance and Capacity-Building Support Unit (TFTACBSU); capacity self-assessment; notification procedure for obligations subject to a transition period; formulation of the capacity building plans; and preparation and notifications of capacity building plans.

Key elements of technical assistance and capacity-building were also examined and included obligations of developed members relating to technical assistance and capacity-building support, technical assistance and capacity-building in the transitional provisions; technical assistance and capacity-building in the phase of formulating capacity-building plans; general principles for technical assistance and capacity-building support in implementing capacity-building plans, and Joint Platform for Cooperation and Coordination. Exceptions and Dispute Settlement were also treated.

In addition as part of small economies, the Caribbean has submitted a proposal for regional enquiry points. Since TF is being dealt with in the WTO and EPA is not "WTO-plus" on TF, EPA does not go much further than in the WTO. A Special Committee on Customs Cooperation and Trade Facilitation has, however, been established to examine some TF issues and provision has been made for development assistance in TF.

As for small economies, the DDA agreed "to a work programme, under the auspices of the General Council, to examine issues relating to the trade of small economies. The objective of this work is to frame responses to the trade-related issues identified for the fuller integration of small, vulnerable economies into the multilateral trading system, and not to create a sub-category of WTO Members. The General Council shall review the work programme and make recommendations for action to the Fifth Session of the Ministerial Conference."

Small economies have made a wide range of concrete proposals in the Doha talks. They are, inter alia, in tariff reduction in NAMA; tariff reduction, SP and SSM in agriculture; domestic regulation in services; and administrative aspects concerning the establishment of regional institutions in SPSS, TRIPS and TBT. In the latter, some initial progress was made on the administrative issues but the question of national legal responsibility, for example, for notification in TRIPS, TBT and SPS still has to be clarified. The EU has been relatively sympathetic on issues of importance to small economies. The EU supported the idea of greater flexibilities for small economies in NAMA that was accepted in Hong Kong. The EU also is open to promoting stronger regional integration as indicated in the EPA which devotes a lot of attention to regional cooperation and integration.

[45] Communication from the Core Group of Developing Countries on Trade Facilitation (Tn/Tf/W/142 31 July 2006.) – General Principles on Special and Differential Treatment.

Doha considered SDT "as an integral part of the WTO Agreements" and called for all special and differential treatment provisions to be reviewed with a view to strengthening them and making them more precise, effective and operational.

In the WTO, five broad classes of SDT measures have been identified by the WTO Secretariat. The first set of measures comprises those which call upon developed countries to grant improved market access to products of export interest to developing countries. The second set of measures request developed country members to safeguard the interests of developing country members when imposing certain measures such as antidumping duties. The third set of measures allows developing country members to assume lesser obligations than their developed country counterparts. The fourth set of measures allows developing-country members longer transitional periods to comply with their obligations. Thus, under the Agreement on agriculture, for example, whereas developed country members had to implement their obligations within six years, developing country members had 10 years to comply with their obligations. These measures are couched in legally enforceable language and thus create rights and obligations for members. The final set of measures request developed country members to provide technical and financial assistance to developing country members. These measures are couched in hortatory language and do not create rights and obligations for WTO members.

It is clear that the majority of the S&D provisions in the WTO are unenforceable and have failed in their basic objective to facilitate the integration of developing countries into the multilateral trading system. It is against this background that developing countries in Doha demanded that all SDT provisions should be reviewed and made legally enforceable.

The Doha talks on SDT have not made the desired progress. In Hong Kong some progress was made on five LDC proposals concerning favourable consideration of requests for waivers for LDCs; bound DFQF market access for goods originating from LDCs; permission for LDCs to maintain existing measures that deviate from their obligations under the Trade-Related Investment Measures (TRIMS) Agreement; compliance by LDCs with obligations or commitments to the extent consistent with their individual development, financial or trade needs, or their administrative and institutional capabilities in the context of coherence arrangements with other international institutions; and further technical and financial support to allow LDCs to meet their obligations.

Agreement was reached on these five proposals with DFQF access for LDCs being the most difficult one. Consensus on the latter fell short of the aspiration of LDCs in so far as a binding commitment was not obtained and product coverage was limited to at least 97% of tariff lines. The provision remains best endeavour which means that a member that does not fulfil it cannot be brought to dispute settlement. Any developed partner due to real or perceived difficulties can also reduce its effort to 97% of its tariff lines. Furthermore, 3% of tariff lines (roughly 300 tariff lines) can exclude all the exports of a country and products of interest. Moreover, no date for a country to meet the target of 100% of its tariff lines was set on duty free, quota-free access for LDCs which is the key proposal for LDCs. The modalities for implementation of DFQF are still subject to negotiation.

Since Hong Kong, work on the outstanding 80 SDT proposals has not yielded any positive results. For non-LDCs, SDT outside the negotiating areas has not proved to be a fruitful area of

negotiations. Small economies have instead focused on their special needs and have conducted negotiations in a dedicated session on them. The same issues, to the extent that they are relevant to RTAs, have been pursued in the EPA.

D. EPA AND EXISTING WTO SDT PROVISIONS

WTO provisions of SDT for treating with asymmetries and flexibilities in the implementation of WTO commitments have been classified according to the following six-fold typology which has been developed by the WTO Secretariat[46]:

(a) Provisions aimed at increasing the trade opportunities of developing country members;

(b) Provisions under which WTO members should safeguard the interests of developing country members;

(c) Flexibility of commitments, of action, and use of policy instruments;

(d) Transitional time periods;

(e) Technical assistance;

(f) Provisions relating to least-developed country members.

This classification would be applied to the CARIFORUM-EU EPA in the identification of SDT provisions. In the WTO there are approximately 145 provisions that spread across the various multilateral agreements. In relation to the EPA more detail is given on (c) and (d) where WTO provisions are as follows:

-Re: (*c*) Flexibility of commitments, of action, and use of policy instruments: There are 50 such provisions across the following 10different WTO agreements:

- GATT 1994: Article XVIII and Article XXXVI, paragraph 8.
- Enabling Clause: Paragraphs (b) and (c).
- The Agreement on Agriculture: Nine provisions Article 6.2, (Domestic Support Commitments); Article 6.4 (Domestic Support Commitments- calculation of current total AMS); Article 9.2(b)(iv) Article 9.2(b)(iv) (Budgetary outlays for export subsidies); Article 9.4 (Export Subsidies); Article 12.2 (Diversification of export prohibitions and restrictions); Article 15.1 (differential and more favourable treatment); Annex 2, para 3 and footnote 5 (Public stockholding

[46] WTO. 2000. Implementation of Special and Differential Treatment Provisions in WTO Agreements and Decisions. Geneva Note by Secretariat

for food security *purposes);* Annex 2, para. 4, footnotes 5 & 6 *(Domestic food aid);* Annex 5, Section B (*Article 4.2 not applicable to a primary agricultural product*).

- Technical Barriers to Trade: Article 12.4.

- Trade-Related Investment Measures: Article 4.

- Subsidies and Countervailing Measures: Article 27.2 (a) and Annex VII; Article 27.4; Article 27.7; Article 27.8; Article 27.9; Article 27.10; Article 27.11; Article 27.12; Article 27.13.

- Safeguards :Article 9.2.

- GATS: Article III:4;Article V:3; Article xix:2, and Paragraph 5(g) of the Annex on telecommunications.

- Understanding on Rules and Procedures Governing the Settlement of Disputes: Article 3.12.

These provisions cover actions developing countries may take through exemptions from disciplines otherwise applying to the membership in general; exemptions from commitments otherwise applying to members in general; or a reduced level of commitments developing countries may choose to undertake when compared to members in general. The majority of these provisions are found in agreements concluded at the end of the Uruguay Round.

They are designed to facilitate the integration of trade and trade policy into the pursuit of wider development policy objectives. The main exception to individual provisions for flexibility is the GATS, where in addition to individual provisions, flexibility is built into the overall structure of the agreements which provides for flexibility on an individual case-by-case basis through negotiated commitments.

In some cases the exemption may have lapsed as in Article 9.4 (Export Subsidies) but it was agreed at the Hong Kong Ministerial in 2005 that developing country members shall continue to benefit from the provisions of Article 9.4 of the Agreement on Agriculture until the end of 2021, i.e. five years after the end-date for elimination of all forms of export subsidies. This appears not to cover developing countries including those from the Caribbean that had not scheduled any such subsidies in the Uruguay Round and clarification of this is now being sought by these developing countries. Caribbean countries eagerly sought the preservation of this provision[47].

[47] "*Article 9.4:During the implementation period, developing country Members shall not be required to undertake commitments in respect of the export subsidies listed below, provided that these are not applied in a manner that would circumvent reduction commitments:*
subsidies to reduce the costs of marketing exports of agricultural products, including handling, upgrading and other processing costs, and the costs of international transport and freight; and providing internal transport charges on export shipments terms more favourable than those for domestic shipment".

-Re: (*d*) Transitional Time Periods: There are 19 such provisions across the following eight agreements:

- Agriculture: Article 15.2. (Reduction Commitments).
- Sanitary and Phytosanitary Measures: Article 10.248 and 10.3.
- Technical Barriers to Trade: Article 12.8.
- Trade-Related Investment Measures: Article 5.2.
- Implementation of Article VII of GATT 1994: Article 20.1; Article 20.2; Annex III.1; and Annex III.2.
- Import Licensing Procedures: Article 2.2, footnote 5.
- Subsidies and Countervailing Measures: Article 27.2 (b); Article 27.4; Article 27.14; Article 27.5; Article 27.6; and Article 27.11.
- TRIPS: Article 65.2; and 65.4.

These provisions relate to time-bound exemptions from disciplines otherwise generally applicable. Some transition time periods in different agreements have elapsed. In some cases, the relevant provision, in addition to specifying a time-period, include modalities through which an extension might be sought. This is the case of Article 27.4 in Subsidies and Countervailing Measures where Caribbean countries fought for an extension of this provision. The WTO at the meeting of the General Council of 27 July 2007 (WT/L/691) adopted an extension until 2018 of procedures adopted at the Doha Ministerial Conference, which direct the Committee to extend through the end of 2007 the transition period for the elimination of export subsidies by certain developing country members (G/SCM/39).

Transition time periods were introduced in the Uruguay Round and are geared to reduce transitional costs of implementation. In Trade in Goods: Customs Duties, according to Art. 15, as compared to six years for developed countries, WTO developing country members have the flexibility to implement reduction commitments over a period of up to 10 years and Least-developed country members are not required to undertake reduction commitments. In the EPA, the EU is committed to provide full DFQF for all tariff lines immediately, save for sugar and rice which will be subject to short transition periods while CARIFORUM commits to liberalise 86.9%49 of the value of its imports from the EU over 25 years, with a three-year moratorium across the board except for vehicles, parts and gasoline which will benefit from a 10-year moratorium. Haiti is

[48] The transition time-period in question relates to longer time-frames for compliance to be accorded to products of interest to developing countries with SPS measures introduced by Members.

[49] CF liberalisation commitments would be implemented as follows: 52.8% of which 51% already attract no duty will be zero rated from the start of implementation of liberalisation commitments; an additional 3.2% in 5 years, 8.3% in 10 years; 21.7%, 1.9% and 2.3% in 15, 20 and 25 years respectively, cumulatively accounting for 86.9% of EC imports.

exempted from liberalisation of gasoline. Consequently, SDT in the EPA is with respect to both asymmetry in coverage as well as transition time periods.

Greater flexibility is provided in the event of serious difficulties in respect of imports of a given product; to modify the time schedule for reduction or elimination without, however, leading to the extension of the time periods for reduction or elimination. Special consideration has also been given to CARIFORUM LDCs and Guyana to modify the customs duty stipulated in CARIFORUM's Schedule of Commitments.

SDT in the EPA is also provided for "Other Duties and Charges". CARIFORUM has to eliminate such charges in 10 years, with the flexibility that reduction will commence after year seven. In addition, SDT applies to the treatment of export duties, where CARIFORUM States which currently apply such duties have three years within which to eliminate them[50].

As discussed above on the MFN clauses, asymmetry is also provided as the EU is committed to provide to CARIFORUM any better treatment given in an FTA with a third party whereas CARIFORUM only has to do so with regard to such treatment in an FTA with major trading economies.

As for trade defense measures, the EPA goes beyond the WTO by excluding CARIFORUM exports from multilateral safeguard measures such as antidumping and countervailing measures by using constructive remedies before definitive antidumping or countervailing duties are applied to CARIFORUM's exports to the EU.

In the area of non-tariff measures, one main SDT provision is the zero for zero treatment of EU export subsidies which allows the EU to eliminate export subsidies on all tariff lines that CARIFORUM liberalises. Another is that CARIFORUM is allowed to maintain recourse to Article 9.4 of the Agreement on Agriculture and Article 27.4 of the Agreement on Subsidies and Countervailing Measures as extended and mentioned above.

The WTO provisions of the Agreements on SPS and TBT were reaffirmed in the EPA. Consequently, the SDT provisions contained therein would apply. Further, the Parties agree to cooperate in international standard setting bodies, including by facilitating the participation by representatives of the CARIFORUM States in the meetings and the work of these bodies.

In "Investment, Trade in Services and E-Commerce", similar asymmetries exist with respect to the scope of liberalisation in Services as in the area of goods trade as discussed in the section above. CARIFORUM was also able to maintain special reservations for SMEs in several sectors, as well as the right to regulate any sector or economic activity to meet national policy objectives.

The TRIs in the EPA comprise the following areas: competition policy, innovation and intellectual property, public procurement, environmental, social aspects, and protection of personal data. On competition policy, the two sides committed to have legislation in place to address restrictions on competition in their jurisdiction within five years of the coming into force of the

[50] Only Guyana and Suriname currently apply export duties, in particular on forestry products.

EPA. While this provision is available to both the EU and CARIFORUM, the time period for implementation is more relevant to CARIFORUM given its competition authorities are still in a stage of infancy. Another SDT relates to "public enterprises and enterprises entrusted with special exclusive rights". Specifically, where such enterprises in CARIFORUM States are subjected to specific sectoral rules as mandated by their respective regulatory frameworks they would not be bound or governed by provisions contained therein.

With regard to innovation and intellectual property, the SDT provisions relate to, inter alia, transition time period, differential in Treaty compliance and measures aimed at increasing trade opportunities such a transfer of technology. Most notable in this regard are:

(a) The commitment by the two sides to implement the provisions on IP by 2014 unless determined otherwise by the CARIFORUM-EU Trade and Development Committee taking into account the development priorities and levels of development of the Signatory CARIFORUM States;

(b) Flexibility accorded to CARIFORUM to establish a system of protection of geographical indication in their respective territories no later than 1 January 2014;

(c) Exemption of least developed countries from the provisions on intellectual property, other than on equal pace with what may be required of them with regard to the implementation of the TRIPS Agreement as well as the flexibility to implement the provisions relating to standards on intellectual property and enforcement no later than 1 January 2021.

On public procurement, as regards transparency, CARIFORUM States have two years, save for CARICOM LDCs which have five years, from the entry into force of the EPA to bring their measures into conformity with any specific procedural obligation contained therein. Further, if at the end of the aforementioned implementation, a review by the Trade and Development Committee reveals that one or more CARIFORUM States need an additional year to comply with their implementation commitments, the implementation period may be extended by one year.

On Protection of Personal Data, CARIFORUM has the flexibility to implement the provisions contained therein no later than seven years after the entry into force of the Agreement.

As is evident from the above, the provisions on special and differential treatment cut across all of the thematic areas of the EPA. Some provisions are mandatory whereas others can be considered best endeavour. What is important, however, is the operationalisation of the provisions. An important element in this regard is the mechanisms provided and the resources to translate needs for support identified in the negotiations into operational ideas for trade-related and other development assistance.

In conclusion, this short survey has shown that EPA reinforces the asymmetries and flexibilities found in the WTO in a WTO-Plus arrangement. The precise suitability of the transition periods and the asymmetries in various areas could only be tested in time and it is for this reason that the EPA has a built-in review mechanism.

E. CONCLUSIONS AND RECOMMENDATIONS

In preparing an implementation plan, national and regional officials would have to take on board the decisions and implications of signing the EPA. In each respective domain, particular attention would have to be paid to putting in place the required policy, legislative and institutional changes that would yield optimal results. In the following areas that have been under examination in this section, some main conclusions and recommendations are drawn.

1. The Issue of WTO Compatibility of RTAs

So far an agreement has been initialed and the parties have declared their intention to sign this agreement soon. According to the WTO Decision on the Transparency Mechanism there has to be an early announcement of the EPA once it is signed and made public. This has to be followed by the notification of the signed agreement to the WTO which must occur before ratification since there is already a decision by the EU to apply certain parts of the agreement and the application of preferential treatment is already being applied between the parties.

In terms of the strict application of the Transparency Decision, notification should take place once there is a decision to apply the relevant parts of the agreement and before the application of preferential treatment. The EU is operating with provisional application (EU Decision[51]) at present and this has to be regularized immediately after signing. There is obviously a hiatus and CARIFORUM countries should move quickly with the EU to meet the requirements of the Transparency Mechanism. Freedom from challenge of the provisional application could be reduced the longer it takes to notify the signed agreement.

Notification of the WTO would have to follow the required WTO format and CARIFORUM would have to supply the relevant statistical information for the factual examination by the WTO Committee on Regional Trade Agreements (CRTA). Since the EPA is breaking new ground in terms of an FTA relationship between a developed region and a region of SVEs, the information has to be laid out in such a way that it would reflect the concerns of SVEs that have fought and obtained greater flexibility in tariff reduction during the Doha Round.

In notifying the EPA, the parties shall specify under which provision(s) of the WTO agreements it is notified. They will also provide the full text of the RTA (or those parts they have decided to apply) and any related schedules, annexes and protocols.

In accordance with WTO rules on RTAs in Art. XXIV of GATT 94 and Art. V in GATS, the CARIFORUM-EU EPA will be examined by the CRTA after its notification. The Transparency Mechanism requires a factual presentation of the notified EPA. It does not call for references to SAT and is not a conformity exercise. However, the percentages of trade and tariff lines liberalized under an RTA are calculated, showing the percentage of trade and tariff lines which were already MFN duty-free under the agreement and a breakdown of these figures over the life of the agreement. Liberalization in the various sectors (agriculture and industry) is also shown to determine whether certain sectors were excluded.

[51] Council of the European Union, COUNCIL DECISION on the signature and provisional application of the Economic Partnership Agreement between CARIFORUM States of the one part, and the European Community and its Member States, of the other part. Brussels, 7 July, 2008. Ref.7507/08

Questions will no doubt be raised about the percentage of trade covered, the level of exclusion both in terms of products, the sectors covered, the percentage coverage of tariff lines as well as the unprecedented length of the transitions. In countering any claims that the EPA involves a level of asymmetry in reciprocity, exclusions and transitions beyond what is reasonably expected under Art XXIV, it should be noted that using trade for the period 2002-2004, CARIFORUM imports from the EU is 81% more than what EU imports from CARIFORUM. This means that CARIFORUM will be liberalizing on a much higher value of imports since 86.9% of such imports which have to be liberalized by CARIFORUM in 25 years gives a value 57% higher than EU imports from CARIFORUM. It should be noted also that EU liberalization of CARIFORUM imports is largely nominal and without adjustment costs since around 95% of CARIFORUM exports to the EU is already liberalized under Cotonou and has been liberalized since 1975 under the first Lomé Convention.

Since the EU liberalizes 100% with CARIFORUM and CARIFORUM 86.9 % with the EU, then a SAT of 93.5% will be met if the same approach is taken as that in TDCA. Meeting the SAT requirement should therefore not be a problem.

It is not possible to determine a priori based on WTO law and practice whether any element of this agreement would be challenged. Concerns in the WTO have already been raised inter alia, about the MFN clauses, the use of FTAs to protect special preferences, and the degree of asymmetry and length of transitions. Whether these would lead to legal challenges is open to speculation.

Article V:3 states that when developing countries are parties to an RTA, flexibility shall be provided for regarding substantial sectoral coverage, and especially the absence or elimination of substantially all discrimination. The extent of flexibility will be determined by the level of development of the countries concerned, both overall and in individual sectors and subsectors.

In the EPA, the EU liberalises 94% of W120 list of sectors while the respective figures for CARIFORUM LDCs and MDCs are 65% and 75% respectively with the Dominican Republic's commitments standing at 90%. Both in terms of sectors and modes of supply there has been the elimination of substantial discrimination. In mode 4, the EU went beyond what exists in its current bilateral and multilateral commitments.

WTO compatibility would involve essentially early announcement, notification and examination of the EPA. This process takes a number of years as the EPA would join the queue of RTAs waiting to be examined by the CRTA. During this time period, CARICOM and CARIFORUM would have ample time to adequately submit the required information, disseminate information on the Agreement to WTO members and embark along with other ACP countries and regions in a similar situation on highlighting the compatibility of the EPA with WTO law and practice.

2. MFN

The Brazilian request for clarification of the impact of the MFN clause on the multilateral system could rebound to the interests of CARIFORUM and other ACP countries if it is resolved in Brazil`s favour in so far as it would remove the limitations imposed by these clauses. CARIFORUM supports the ACP position that has taken note of the Brazilian concerns and will follow this matter after the EPA and other Interim Agreements have been notified to the WTO.

It would be in the interest of the region to resolve this matter at the multilateral level where it is tied into the search for further differentiation among the developing countries by the developed countries, especially the EU and by some developing countries, especially SVEs.

Legally the EPA MFN clauses do not seem to contradict the Enabling Clause since when an ACP country concludes an agreement with other southern countries under the Enabling Clause, GATT Article I remains excluded by virtue of the Enabling Clause. The preferences granted under that agreement do not have to be multilateralized, that is, given unconditionally to all other WTO members. Instead they have to be granted to the EU if the FTA agreement is with a major trading economy and contains more favorable treatment than that given to the EU in a similar agreement.

However the matter is argued legally, the fact remains that the EPA could possibly restrict south-south trade since the CARIFORUM countries may have given away potential preferential margins that a 'major trading economy' developing country partner may wish to enjoy vis-à-vis the EU as a competitor on CARIFORUM markets.

These FTAs can come either under the Enabling Clause 2 (c) or Art XXIV. Since FTAs under the Enabling Clause are not as complete as those under Art. XXIV, MFN should relate only to FTAs under Art XXIV. This should be explored later in reviewing the EPA.

In general, developing countries do expect more favorable treatment than that given to a developed country by another developing country. Reference has been made to statements from officials who claim that in some sectors Brazil and India would have little interest in trading on identical terms in some sectors and products with the EU.[52] It is difficult to perceive just how this would affect the negotiating leverage of CARIFORUM especially since the extension is not automatic and CARIFORUM and the EU are committed to consult on whether CARIFORUM may deny the EU party the more favourable treatment.

There is no doubt that these clauses do limit the future negotiating scope of CARIFORUM with these developing major trading partners. CARICOM, for instance, has been exploring a possible FTA with MERCOSUR and to the extent that Brazil sees no gains from having to get similar treatment as the EU, then its interest in such an agreement may wane. At present, relations with Brazil are not affected as these MFN clauses do not apply to the partial scope agreement which for instance, Guyana has with Brazil. The category of major trading economies is subject to change as countries and regions evolve. At present India and South Africa fall just below the criteria but with their development of exports in the future they would most likely have an export market share

[52] Cheikh Tidiane Dieye and Victoria Hanson, MFN provisions in the EPAs: a threat to South-South trade? Trade Negotiations Insights, Vol.7, No.2, March 2008

in excess of 1%. CARIFORUM trade relations with such third States under an FTA could also be affected by the MFN clause.

CARICOM may wish to undertake a diplomatic initiative to Brazil and other developing major trading partners to explain the rationale for the MFN clauses and why they should not seriously impede the development of CARICOM trade relations with these countries.

One qualification in applying the MFN clause should be noted. It is that the major trading economy must reflect the above eligibility criteria before the entry into force of the FTA. The case of India is of some interest because there was some expression of exploring FTA talks with CARICOM some time ago. India's share of world trade varies above and below 1% and could eventually stabilize above 1%.

The manner in which the MFN clause will be applied is also not clear. Brazil points to a line-by-line tariff application along the lines of GATT but there is no criteria outlined for application in Art 19. In a context of asymmetry, it would be useful to compare the reciprocal preferences with the third State with those with the EU to determine whether there is overall more favourable treatment to the third party. This kind of evaluation could be complex as it would have to take into consideration the exclusions and transitions that both the EU and the third party grant to CARIFORUM. The speed of the liberalization process itself for CARIFORUM will, therefore, have to be assessed in both arrangements. In addition, as mentioned above, the granting of duty-free status to any product from a major trading party which may not pose any competitive risks to the EU and CARIFORUM should not automatically qualify for an extension under the MFN clause.

The above issues are not sufficiently clarified in the CARIFORUM-EU EPA and should be clarified in the review of the EPA.

3. EPA and the DDA

The EPA built on the DDA which is seeking to improve on the current WTO Uruguay Round arrangements while engaging in multilateral trade liberalization. Decisions and proposals from developing countries, including SVEs, for greater asymmetry in product coverage between developed and developing countries, less than full reciprocity, longer transitional periods and special and differential treatment in the various negotiating areas which seek to make FTAs between developed and developing countries more development-friendly reflect themselves in the EPA.

The Doha Mandate agreed to negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements and the developmental aspects of regional trade agreements. In the DDA Rules debate on Art. XXIV of GATT and Art. 5 of GATS developing countries sought greater development flexibility and legal certainty especially in North-South FTA agreements.

Even though the WTO DDA negotiations on systemic changes in RTAs did not produce the desired results and have now been suspended, the DDA discussions, however, were productive, especially the ACP dialogue with the EU. EPA has produced significant asymmetry in terms of product coverage and longer transition periods than in previous WTO RTAs between the EU and

other developing countries and regions. It remains to be tested when examined in the WTO where it can possibly be challenged but it did respond to a search by both parties to introduce more flexibility in Art. XXIV.

In agriculture, the DDA has embraced in market access important innovations as the SPs and the introduction of a SSM. Efforts to introduce the SSM in the EPA did not come to fruition even though in current WTO talks there is still an attempt to obtain its application to FTAs.

In the DDA, less than full reciprocity and asymmetry in tariff reduction have been achieved to some degree as both the level of tariff reduction as well as a longer period of implementation have already been agreed to in principle although the numbers are still to be finally settled. In the EPA, Agriculture accounted for a substantial part of the products excluded and those receiving lengthy transitions. The EU also agreed to eliminate export subsidies on exports to the region that have been liberalized in line with its Doha commitment to phase out all forms of export competition by 2016.

In NAMA, flexibilities have been agreed in principle for developing countries in terms of tariff reduction although the numbers are yet to be finally decided.

Since NAMA, unlike agriculture, embodies a higher level of ambition in terms of tariff reduction, the Caribbean sought through its small economies work programme to get a special carve-out which would provide even less tariff reduction than that for the average developing country. For the first time, the WTO at its Hong Kong Ministerial in December 2005, accepted that SVEs should be entitled to special flexibilities in tariff reduction. In the EPA negotiations, sensitive industrial products have been shielded from rapid adjustment through lengthy transitions that go over 10 years and up to 25 years. This is in line with the WTO DDA small economies programme which seeks to keep bound rates at the multilateral level as high as possible on industrial products and not touch applied rates indiscriminately.

As regards SDT, Doha considered special and differential treatment “as an integral part of the WTO Agreements” and called for all special and differential treatment provisions to be reviewed with a view to strengthening them and making them more precise, effective and operational.

The Doha talks on SDT have not made the desired progress. In Hong Kong some progress was made on five LDC proposals. Since Hong Kong, work on the outstanding 80 S&D proposals has not yielded any positive results. For non-LDCs, SDT outside the negotiating areas has not proved to be a fruitful area of negotiations. Small economies have instead focused on their special needs and have conducted negotiations in a dedicated session on them. The same issues, to the extent that they are relevant to RTAs, have been pursued in the EPA.

The DDA remains an unfinished agenda as WTO talks aim for completion and could still yield results that could rebound favourably for developing countries in North-South FTAs.

4. EPA and Existing WTO SDT Provisions

In the EPA in trade in goods (customs duties, other duties and charges, non-tariff measures, trade defense measures), investment, trade in services, e-commerce, trade-related issues, (competition policy, innovation and intellectual property, public procurement, environmental and social aspects, and protection of personal data), and MFN Clauses, SDT provisions both in asymmetry, safeguard measures, and transition time periods to reduce transitional costs of implementation have gone along the lines of those in the WTO.

The EPA, therefore, reinforces the asymmetries and flexibilities found in the WTO in a WTO-Plus arrangement. In so far as new ground is being broken in an FTA between a developed region and SVEs, the precise suitability of the transition periods and the asymmetries in various areas could only be tested in time, and it is for this reason that the EPA has a built-in review mechanism.

Annex

DEVELOPMENT COOPERATION PRIORITIES IN THE INDIVIDUAL CHAPTERS

CUSTOMS AND TRADE FACILITATION

The Parties agree to reinforce cooperation in this area with a view to ensuring that the relevant legislation and procedures, as well as the administrative capacity of the relevant administrations, fulfil the objectives of effective control and the promotion of trade facilitation, and help promote the development and regional integration of the CARIFORUM States.

Article 7

Cooperation

1. The Parties recognise the importance of cooperation as regards customs and trade facilitation measures for the implementation of this Agreement.

2. Subject to the provisions of Article 7 of Part I of this Agreement, the Parties agree to cooperate, including by facilitating support, notably in the following areas:

(a) the application of modern customs techniques, including risk assessment, advance binding rulings, simplified procedures for entry and release of goods, post release controls and company audit methods;

(b) introduction of procedures and practices which reflect as far as practicable, international instruments and standards applicable in the field of customs and trade, including WTO rules and WCO instruments and standards, inter alia the revised Kyoto Convention on the simplification and harmonisation of customs procedures and the WCO Framework of Standard to Secure and Facilitate Global Trade; and

(c) the automation of customs and other trade procedures.

AGRICULTURE AND FISHERIES

Article 7

Cooperation

1. The Parties acknowledge the importance of the agricultural, food and fisheries sectors to the economies of CARIFORUM States and of cooperating to promote the transformation of these sectors, with the aim of increasing their competitiveness, developing their capacity to access high quality markets and in view of their potential contribution to the sustainable development of the CARIFORUM States. They recognise the need to facilitate the adjustment of the agricultural, food

and fisheries sectors and the rural economy, to the progressive changes brought about by this Agreement, while paying particular attention to small scale operations.

2. Subject to the provisions of Article 7 of Part I of this Agreement the Parties agree to cooperate, including by facilitating support, in the following areas:

(a) Improvement in the competitiveness of potentially viable production, including downstream processing, through innovation, training, promotion of linkages and other support activities, in agricultural and fisheries products, including both traditional and non traditional export sectors;

(b) Development of export marketing capabilities, including market research, both for trade between CARIFORUM States and between the Parties, as well as the identification of options for the improvement of marketing infrastructure and transportation, and the identification of financing and cooperation options for producers and traders;

(c) Compliance with and adoption of quality standards relating to food production and marketing, including standards relating to environmentally and socially sound agricultural practices and organic and non-genetically modified foods;

(d) Promotion of private investment and public-private partnerships in potentially viable production;

(e) Improvement in the ability of CARIFORUM operators to comply with national, regional and international technical, health and quality standards for fish and fish products;

(f) Building or strengthening the scientific and technical human and institutional capability at regional level for sustainable trade in fisheries products, including aquaculture; and

(g) The process of dialogue referred to in Article 5.

TECHNICAL BARRIERS TO TRADE

Article 8

Cooperation

1. The Parties recognize the importance of cooperating in the areas of technical regulations, standards and conformity assessment in order to achieve the objectives of this Chapter.

2. Subject to the provisions of Article 7 of Part I of this Agreement, the Parties agree to cooperate, including by facilitating support, in the following areas:

a) Establishment of the appropriate arrangements for the sharing of expertise, including appropriate training intended to ensure adequate and enduring technical competence of the relevant standard setting, metrology, accreditation, market surveillance and conformity assessment bodies, in particular those in the CARIFORUM region.

b) Development of centres of expertise within CARIFORUM for the assessment of goods for the purpose of such goods access into the EC market.
c) Development of the capacity of enterprises, in particular CARIFORUM enterprises to meet regulatory and market requirements.
d) Developing and adopting harmonized technical regulations, standards and conformity assessment procedures based on relevant international standards.

CHAPTER 7

SANITARY AND PHYTOSANITARY MEASURES

Article 8

Cooperation

1. The Parties recognise the importance of cooperation as regards sanitary and phytosanitary measures for the implementation of this Agreement.

2. Subject to the provisions of Article 7 of Part I of this Agreement, the Parties agree to cooperate, including by facilitating support, in the following areas:

(a) Reinforcement of regional integration and the improvement of monitoring, implementation and enforcement of SPS measures consistent with Article 5 including training and information events for regulatory personnel, as well as support for public and private sector partnerships may be supported for the achievement of these objectives.

(b) Establishment of the appropriate arrangements for the sharing of expertise, to address issues of plant, animal and public health, as well as training and information events for regulatory personnel.

(c) Development of the capacity of enterprises, in particular CARIFORUM enterprises, to meet regulatory and market requirements.

(d) Cooperation in the international bodies referred to in Article 1, including the facilitation of participation of representatives of CARIFORUM States in the meeting of these bodies.

TITLE II

INVESTMENT, TRADE IN SERVICES AND E-COMMERCE

Article 56

Tourism

Development cooperation and technical assistance

1. The Parties shall cooperate for the advancement of the tourism sector in the Signatory CARIFORUM States, given the inherent asymmetries in respective levels of development of the Parties.

2. Subject to the provisions of Article 7 of this Agreement, the Parties agree to cooperate, including by facilitating support in the following areas:

   i. The upgrading of national accounting systems with a view to facilitating the introduction of Tourism Satellite Accounts (TSA) at the Regional and local level;
   ii. Capacity building for environmental management in tourism areas at the Regional and local level;
   iii. The development of Internet marketing strategies for small and medium-sized tourism enterprises in the tourism services sector;
   iv. Mechanisms to ensure the effective participation of Signatory CARIFORUM States in international standard setting bodies focused on sustainable tourism standards development; programmes to achieve and ensure equivalency between national/regional and international standards for sustainable tourism; and for programmes aimed at increasing the level of compliance with sustainable tourism standards by regional tourism suppliers;
   v. Tourism exchange programs and training, including language training, for tourism services providers.

CHAPTER 7

COOPERATION

Article 60

Cooperation

1. The Parties recognize the importance of technical cooperation and assistance in order to complement the liberalization of services and establishment, support the Signatory CARIFORUM States' efforts to strengthen their capacity in the supply of services, facilitate the implementation of commitments under this Title, and achieve the objectives of this Agreement.

2. Subject to the provisions of Article 7 of this Agreement, the Parties agree to cooperate, including by providing support for technical assistance, training and capacity building in, inter alia, the following areas:

a. Improving the ability of service suppliers of the Signatory CARIFORUM States to gather information on and to meet regulations and standards of the EC Party at European Community, national and sub-national levels;

b. Improving the export capacity of service suppliers of the Signatory CARIFORUM States, with particular attention to the marketing of tourism and cultural services, the needs of small and medium-sized enterprises (SMEs), franchising and the negotiation of mutual recognition agreements;

c. Facilitating interaction and dialogue between service suppliers of the EC Party and of the Signatory CARIFORUM States;

d. Addressing quality and standards needs in those sectors where the Signatory CARIFORUM States have undertaken commitments under this Agreement and with respect to their domestic and regional markets as well as trade between the Parties, and in order to ensure participation in the development and adoption of sustainable tourism standards;

e. Developing and implementing regulatory regimes for specific service sectors at CARIFORUM regional level and in Signatory CARIFORUM States in those sectors where they have undertaken commitments under this Agreement.

f. Establishing mechanisms for promoting investment and joint ventures between service suppliers of the EC Party and of the Signatory CARIFORUM States, and enhancing the capacities of investment promotion agencies in Signatory CARIFORUM States.

TRADE RELATED ISSUES

CHAPTER 1

COMPETITION

Article 6

Cooperation

1. The Parties agree on the importance of technical assistance and capacity-building to facilitate the implementation of the commitments and achieve the objectives of this Chapter and in particular to ensure effective and sound competition policies and rule enforcement, especially during the confidence-building period referred to in Article 3.

2. Subject to the provisions of Article 7 of Part I of this Agreement the Parties agree to cooperate, including by facilitating support, in the following areas:

(a) the efficient functioning of the CARIFORUM Competition Authorities;
(b) assistance in drafting guidelines, manuals and, where necessary, legislation;
(c) the provision of independent experts; and
(d) the provision of training for key personnel involved in the implementation of and enforcement of competition policy.

CHAPTER 2

INNOVATION AND INTELLECTUAL PROPERTY

Article 5

Cooperation in the area of competitiveness and innovation

1. The Parties recognise that the promotion of creativity and innovation is essential for the development of entrepreneurship and competitiveness and the achievement of the overall objectives of this Agreement.

2. Subject to the provisions of Article 7 of Part I of this Agreement and Article 4 of this Section, the Parties agree to cooperate, including by facilitating support, in the following areas:

(a) promotion of innovation, diversification, modernisation, development and product and process quality in businesses;
(b) promotion of creativity and design, particularly in micro, small and medium enterprises, and exchanges between networks of design centres located in the EC Party and the CARIFORUM States;
(c) promotion of dialogue and exchanges of experience and information between networks of economic operators;
(d) technical assistance, conferences, seminars, exchange visits, prospecting for industrial and technical opportunities, participation in round tables and general and sectoral trade fairs;
(e) promotion of contacts and industrial cooperation between economic operators, encouraging joint investment and ventures and networks through existing and future programs;
(f) promotion of partnerships for research and development activities in the CARIFORUM States in order to improve their innovation systems; and
(g) intensification of activities to promote linkages, innovation and technology transfer between CARIFORUM and European Community partners.

Article 6

Cooperation on science and technology

1. The Parties will foster the participation of the research and technological development bodies in the cooperation activities in compliance with their internal rules. Cooperative activities may take the following forms:

(a) joint initiative to raise the awareness about the Science and Technology capacity building programmes of the European Community, including the international dimension of 7th European Research and Technological Development and Demonstration Programme (FP7);
(b) joint research networks in areas of common interest;
(c) exchanges of researchers and experts to promote project preparation and participation to FP7 and to the other research programmes of the European Community;
(d) joint scientific meetings to foster exchanges of information and interaction and to identify areas for joint research;
(e) the promotion of activities linked to advanced science and technology studies which contribute to the long term sustainable development of both Parties;
(f) the development of links between the public and private sectors;
(g) the evaluation of joint work and the dissemination of results;
(h) policy dialogue and exchanges of scientific and technological information and experience at regional level;
(i) exchange of information at regional level on regional Science and Technology programmes, and dissemination of information on the international dimension of the FP7 of the European Commission and its eventual successors, and about the Science and Technology capacity building programmes of the European Community;
(j) participation in the Knowledge and Innovation Communities of the European Institute of Technology.

2. Special emphasis will be put on human potential building as the real long-lasting basis of scientific and technological excellence and the creation of permanent links between both scientific and technological communities of the Parties, at both national and regional levels.

3. Research centres, higher-education institutions, and other stakeholders, including micro, small and medium enterprises, located in the Parties shall be involved in this cooperation as appropriate.

4. The Parties shall promote their respective entities' participation in their respective scientific and technological programmes in pursuit of mutually beneficial scientific excellence and in accordance with their respective provisions governing the participation of legal entities from third countries.

Article 7

Cooperation on information society and information and communication technologies

1. The Parties recognise that information and communications technologies (ICT) are key sectors in a modern society and are of vital importance to foster creativity, innovation and competitiveness, as well as the smooth transition to the information society.
2. Subject to the provisions of Article 7 of Part I of this Agreement and Article 4 of this Section, the Parties agree to cooperate, including by facilitating support, in the following areas:
(a) dialogue on the various policy aspects regarding the promotion and monitoring of the information society;
(b) exchange of information on regulatory issues;
(c) exchange of information on standards and interoperability issues;

(d) promotion of cooperation in the field of ICT research and in the field of ICT-based research infrastructures;
(e) development of non-commercial content and pilot applications in domains of high societal impact;
(f) ICT capacity-building with, in particular, the promotion of networking, exchange and training of specialists, especially in the regulatory domain.

Article 8

Cooperation on eco-innovation and renewable energy

1. With a view to achieving sustainable development and in order to help maximise any positive and prevent any negative environmental impacts resulting from this Agreement, the Parties recognise the importance of fostering forms of innovation that benefit the environment in all sectors of their economy. Such forms of eco-innovation include energy efficiency and renewable sources of energy.

2. Subject to the provisions of Article 7 of Part I of this Agreement and Article 4 of this Section, the Parties agree to cooperate, including by facilitating support, in the following areas:

(a) projects related to environmentally-friendly products, technologies, production processes, services, management and business methods, including those related to appropriate water-saving and Clean Development Mechanism applications;
(b) projects related to energy efficiency and renewable energy;
(c) promotion of eco-innovation networks and clusters, including through public-private partnerships;
(d) exchanges of information, know-how and experts;
(e) awareness-raising and training activities;
(f) preparation of studies and provision of technical assistance;
(g) collaboration in research and development;
(h) pilot and demonstration projects.

Section 2

INTELLECTUAL PROPERTY

Article 27

Cooperation

1. Cooperation shall be directed at supporting implementation of the commitments and obligations undertaken under this Section. The Parties agree that cooperation activities will be particularly important in the transition period referred to in Articles 1 and 2 of the Sub-section 1.

2. Subject to the provisions of Article 7 of Part I of this Agreement, the Parties agree to cooperate, including by facilitating support, in the following areas:

a) Reinforcement of regional initiatives, organisations and offices in the field of intellectual property rights, including the training of personnel and the development of publicly available databases, with a view to improving regional regulatory capacity, regional laws and regulations, as well as regional implementation, with respect to intellectual property commitments undertaken under this Section, including on enforcement. This shall in particular involve support to countries not party but wishing to adhere to regional initiatives, as well as regional management of copyright and related rights.

b) Support in the preparation of national laws and regulations for the protection and enforcement of intellectual property rights, in the establishment and reinforcement of domestic offices and other agencies in the field of intellectual property rights, including the training of personnel on enforcement; as well as for the establishment of means of collaboration between such agencies of the Parties and the Signatory CARIFORUM States, also in order to facilitate accession and compliance by the Signatory CARIFORUM States to the Treaties and Conventions referred to in this Section.

c) Identification of products that could benefit from protection as geographical indications and any other action aimed at achieving protection as geographical indications for these products. In so doing, the EC Party and the Signatory CARIFORUM States shall pay particular attention to promoting and preserving local traditional knowledge and biodiversity through the establishment of geographical indications.

d) The development by trade or professional associations or organisations of codes of conduct aimed at contributing towards the enforcement of intellectual property rights in consultation with the competent authorities of the Parties and the Signatory CARIFORUM States.

CHAPTER 3

PUBLIC PROCUREMENT

Article 18

Cooperation

1. The Parties recognize the importance of cooperating in order to facilitate implementation of commitments and to achieve the objectives of this Chapter.

2. Subject to the provisions of Article 7 of Part I of this Agreement, the Parties agree to cooperate, including by facilitating support and establishing appropriate contact points, in the following areas:

(a) Exchange of experience and information about best practices and regulatory frameworks;

(b) Establishment and maintenance of appropriate systems and mechanisms to facilitate compliance with the obligations of this Chapter; and

(c) Creation of an on-line facility at the regional level for the effective dissemination of information on tendering opportunities, so as to facilitate the awareness of all companies about procurement processes.

CHAPTER 4

ENVIRONMENT

Article 8

Cooperation

1. The Parties recognize the importance of cooperating on environmental issues in order to achieve the objectives of this Agreement.

2. Subject to the provisions of Article 7 of Part I of this Agreement, the Parties agree to cooperate, including by facilitating support in the following areas:

(a) Technical assistance to producers in meeting relevant product and other standards applicable in European Community markets;
(b) Promotion and facilitation of private and public voluntary and market-based schemes including relevant labelling and accreditation schemes;
(c) Technical assistance and capacity building, in particular to the public sector, in the implementation and enforcement of multilateral environmental agreements, including with respect to trade-related aspects;
(d) Facilitation of trade between the Parties in natural resources, including timber and wood products, from legal and sustainable sources;
(d) Assistance to producers to develop and/or improve production of goods and services, which the Parties consider to be beneficial to the environment; and
(e) Promotion and facilitation of public awareness and education programmes in respect of environmental goods and services in order to foster trade in such products between the Parties.

CHAPTER 5

SOCIAL ASPECTS

Article 6

Cooperation

1. The Parties recognize the importance of cooperating on social and labour issues in order to achieve the objectives of this Agreement.

2. Subject to the provisions of Article 7 of Part I of this Agreement, the Parties agree to cooperate, including by facilitating support, in the following areas:

(a) exchange of information on the respective social and labour legislation and related policies, regulations and other measures;
(b) the formulation of national social and labour legislation and the strengthening of existing legislation, as well as mechanisms for social dialogue, including measures aimed at promoting the Decent Work Agenda as defined by the ILO;
(c) educational and awareness-raising programmes, including skills training and policies for labour market adjustment, and raising awareness of health and safety responsibilities, workers' rights and employers' responsibilities; and
(d) enforcement of adherence to national legislation and work regulation, including training and capacity building initiatives of labour inspectors, and promoting corporate social responsibility through public information and reporting.

Article 5

Cooperation

1. The Parties acknowledge the importance of cooperation in order to facilitate the development of appropriate legislative, judicial and institutional frameworks as well as an adequate level of protection of personal data consistent with the objectives and principles contained in this Chapter.

2. Subject to the provisions of Article 7 of Part I of this Agreement, the Parties agree to cooperate, including by facilitating support, in the following areas:

a. exchange of information and expertise;
b. assistance in drafting legislation, guidelines and manuals;
c. provision of training for key personnel;
d. assistance with the establishment and functioning of relevant institutional frameworks;
e. assistance with the design and implementation of compliance initiatives aimed at economic operators and consumers in order to stimulate investor and public confidence.