



Private Sector Trade Note (final: December 19, 2007)
What's in the EPA for the private sector?

This brief basically describes provisions in the final text of the Economic Partnership Agreement (EPA) which have direct application to CARIFORUM's (namely, CARICOM and the Dominican Republic) private sector and their agents. At this moment, negotiators have completed negotiating based on their respective mandates, and Member states can now sign the agreement.

In a nutshell: the EPA has resulted in the following:

- I. predictability in market access into the EU, the worlds largest import spending market for goods and services(including cultural services) with US\$6.4trillion spent on imports of goods and services in 2006;
- II. duty-free-quota-free(DFQF) market access for all goods meeting qualifying rules of origin from CARIFORUM other than sugar and rice, from January 1, 2008. Sugar will be DFQF from the end of September 2009 and rice from 2010(see annex 2 on agriculture for details);
- III. CARIFORUM gained 60,000 tonnes in additional sugar quota, (split equally between the Dominican Republic and CARICOM-so CARICOM's quota increase is 30,000 tonnes);
- IV. the rice quota will now be duty free, compared to the reduced duty now paid. The rice quota will also be increased by 29% and 72% over the current quota for 2008 and 2009 respectively. CARIFORUM's Rice's quota is currently 145,000 tonnes and will be 187,000 tonnes in 2008 and 250,000 tonnes in 2009, after which the quota will be eliminated (see Annex 2 for details);
- V. market opening beyond global commitments (i.e. those made in the world Trade organization-WTO) in the services sectors including creative industries, specifically entertainment (including audiovisual services);
- VI. entertainment professionals (including theater, live bands-other than audiovisual services) with qualifications will be able to perform in the EU.(In Slovenia, entertainers can stay for up to 7 days per event with a maximum of 30 days in 1 calendar year. While Belgium and Italy reserve the right to introduce future restrictions on entertainers);
- VII. The promotion of co-production treaties in the audiovisual services sector, and the granting of market access in the EU for co-produced audiovisual works where the audiovisual works are owned by nationals of the EU or CARIFORUM;
- VIII. exclusions and long phase in periods (i.e. up to 25 years) for sensitive products including (non exhaustive list) *poultry, meat, fishery products, sauces, ice cream, syrup, beverages, ethanol, rum, vegetable oils, paints/varnishes, perfumes, make up/cosmetics, soaps, shoe polish, glass/metal polishes, candles, disinfectants, sleep systems/mattresses, furniture (and parts), cotton pullovers/jerseys/cardigans.*
- IX. a commitment to allow regional firms to establish (i.e. set up operations) in the EU and facilitating European firms to establish in select sectors in CARIFORUM states, possibly fostering Joint venture and other partnership vehicles to improve competitiveness;
- X. securing access to significant resources to contribute to innovation development in the region;
- XI. protection of the market for regional government contracts;
- XII. as a consequence of the DR providing similar benefits to the EU as it provided to the US in the Central American agreement (CAFTA) the DR commits to rescind Law 173(i.e. the "agent for life" law for distributors);
- XIII. sheltering the banana industry from the many disputes mounted in the WTO in the past, including the ruling against EU preferences for the African Caribbean and pacific states;
- XIV. Export duties (i.e. duties that the exporting country charges on its own exports) on Guyana (precious stones, bauxite, unrefined cane sugar, greenheart, molasses and aquarium fish) and Suriname (some wood products, railway/tramway sleepers, Hoopwood/split poles) will be eliminated by 2011 (or three years after the EPA comes into effect);
- XV. Improvements in the rules of origin (i.e. the working processes that allow a good to qualify for duty relief under a trade agreement) in areas such as garments of knit and non-knit fabric (which can now be produced from non-originating material) and cigars and smoking tobacco (where now 40% by weight of the unmanufactured tobacco can be sourced from outside CARIFORUM-compared to 30% under Cotonou).

More specific commitments are detailed below:

1. Vision: The European Union and CARIFORUM Governments agree on a vision for the EPA which will see the creation of a business environment which stimulates business development and the establishment of a modern trade infrastructure.
2. Immediate objectives: Two of the six stated objectives directly address private sector development. One objective is to support the conditions for increasing investment and private sector initiative and enhance

- supply capacity, competitiveness and economic growth in the CARIFORUM region. Another objective of the agreement commits the parties to broaden and deepen cooperation in all areas relevant to trade and investment.
3. Cotonou Benefits: The private sector will continue to benefit from the provisions of the Cotonou agreement (including the Investment financing provisions, private sector development and financing provisions and other programmes) until its expiry in 2020;
 4. Development Cooperation: In the area of development cooperation the parties commit to:
 - a. the provision of 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;
 - b. Enhancing the technological and research capabilities of the CARIFORUM states to facilitate development of and compliance with, internationally recognized agricultural health and food safety requirements and technical standards (i.e. labeling requirements etc)...”;
 - c. The development of CARIFORUM innovation systems, including development of technological capacity;
 - d. The establishment of a regional development fund within two years of the date of signature of the agreement.
 5. Funding under the EPA: The 10th European Development Fund (EDF) programme is estimated at €165mn (from €57mn in the 9th EDF) with €132 million allocated to CARIFORUM be applied to the Regional Indicative Programme, with €33 million allocated directly to EPA participation and commitment making. As such, the €132 million would be programmed in such a way that 85 percent would go to the Focal Area of Regional Cooperation/Integration and EPA Capacity Building, and 15 percent would go to the non-focal area of vulnerabilities and social issues. A number of CARIFORUM States, such as the Dominican Republic and Jamaica, have targeted EPA implementation as one of the primary areas to be supported by their 10th National Indicative programmes. Additionally, EU member states have committed to extending development assistance of €1bn by 2010, even though geographical allocations are not yet determined. To address efficiency of delivery, the EU has proposed using two tools, budgetary support (€340mn), and the Regional development Fund. The Regional Preparatory Task Force (RPTF) provides resources to activate commitments and provisions in the text of the EPA through the *CARIFORUM Technical Cooperation Facility* (which has some €400,000 remained to be utilized) and the *Caribbean Integration Support Programme (CISP)* (which has €150,000 allocated for studies and another €75,000 for Non-State Actors). The European Investment Bank (EIB) will continue to provide €2bn in investment financing.
 6. Goods market access: The European Union has granted duty free quota free (DFQF) treatment for all CARIFORUM goods starting on the entry into force of the agreement, except for rice and sugar which will receive a two year transition period. Both rice and sugar will receive increased quotas over the transition period. However, CARIFORUM will remove tariffs from 80% of the value of EU imports into the region over a 15 year period, with sensitive goods receiving protection some indefinitely and others up to 25 years after the coming into force of the agreement. Additionally, CARIFORUM states will benefit from a moratorium of 3 years with respect to the liberalization of customs duties on all items with the exception of automobiles and gasoline. These latter items will be liberalized over a period of fifteen years and benefit from a ten year moratorium. CARIFORUM has also been successful in retaining the right to maintain other duties and charges (i.e. customs user fees, excise taxes, stamp duties, environmental levies etc) for up to 10 years with no obligation to commence the liberalization process before 7 years. The EU is also obliged to provide technical support to CARIFORUM states to enable them to liberalize the other duties and charges.
 7. Free circulation of goods: Owing to the EU being customs union with an open internal market, CARIFORUM goods will benefit from free circulation (i.e. where shipments are only charged duties at the point of entry into the customs union) once they enter into the market of any of the member states. CARIFORUM states that sign the EPA will commit to make their “best efforts” to implement a similar regime concomitant on the provision of EU technical assistance;
 8. Protection from dumping and import surges: The EPA has maintained the right of CARIFORUM states to take measures to safeguard national industries against the adverse effects of dumping (sales of goods into an export market below their normal value) and subsidization in accordance with the relevant WTO agreements. The EPA has also maintained the right of these states to implement safeguards at the multilateral level so as to protect national industries from actual or future injury from increased imports. There is however, a special bilateral safeguard mechanism which will see CARIFORUM states being able to adopt safeguard measures where serious disturbances to a region or sector of the economy occur as a result of the increased importation of EC goods. This should allow for CARIFORUM(CF) states being able to adopt safeguard measures on a much lower threshold of injury than that which obtains currently in the WTO;
 9. Non-tariff measures: all quantitative restrictions must be eliminated and internal taxes (e.g. VAT) must not be applied in a discriminatory manner. The EU commits to the elimination of export subsidies on all agricultural

- products for which CF agrees to eliminate tariffs. CF is not required to eliminate any export subsidies that are sanctioned by the WTO;
10. Trade facilitation (i.e. the operations of customs and other border agencies): Private sector will have less paperwork as a single administrative document (SAD) or its electronic equivalent is proposed to replace numerous documentary requirements and reduce red tape;
 11. Agriculture and fisheries: Firms in this sector should benefit from EU development support specifically including market development, innovation, linkage development, financing, international health standards for fish/fish products and investment promotion support (see annex 2 below for details).
 12. Technical barriers to trade (i.e. labeling and standards etc): The private sector can anticipate cooperation that will share expertise; develop centers of expertise in CARIFORUM for the assessment of goods; and develop the capacity of enterprises to meet regulatory and market requirements;
 13. Sanitary and phytosanitary measures (i.e. plant and food safety measures): The private sector can anticipate the provision of technical assistance to facilitate the enhancement of their ability to comply with international standards;
 14. Commercial presence: All CARIFORUM firms (with the exception of nuclear materials firms, arms/ammunition producers, audio visual services, national maritime cabotage; air transport services) are allowed to establish operations in the EU. (please see annex 1 below for details);
 15. Services trade: The services chapter of the agreement facilitates trade in services between CARIFORUM and the EU in sectors (please see annex 1 below for details).
 16. Temporary entry for business purpose: this provision facilitates the temporary movement of: business services sellers (agents of a service supplier) for up to 90 days in any twelve month period; contractual services suppliers and independent professionals for up to twelve months; and short-term visitors for research and design; marketing research; training seminars; trade fairs; sales and purchasing for a period of up to 90 days in any twelve month period.
 17. Mutual recognition: the parties agree to encourage the relevant professional bodies in the areas of accounting, architecture, engineering and tourism to start negotiations on mutual recognition agreements (agreements to establish mechanisms of equivalency that recognize a skill group from one country/jurisdiction as similar professionals to those in the home jurisdiction/country) no later than 3 years after the entry into force of the agreement.
 18. Telecommunications license: all licensing requirements are to be made public, and reasons for denial of a license made known in writing to the applicant upon request. Applicants for a license shall have recourse to an appeal body. License fees should be transparent and not exceed the administrative cost normally incurred.
 19. Interconnection: Any supplier authorized to provide telecommunications services shall have the right to negotiate interconnection with other providers of publicly available telecommunications networks under non-discriminatory terms and in a timely fashion.
 20. Financial services: the parties shall permit the provision of new financial services of a type similar to those that the party permits its own financial institutions to provide. The parties also commit to permit financial service suppliers to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required.
 21. International maritime transport services: these firms are allowed to have a commercial presence in the EU under non-discriminatory terms.
 22. Tourism: anticompetitive practices such as unfair prices, exclusivity clauses, and refusal to deal, tied sales, quantity restrictions or vertical integration are prohibited. CARIFORUM firms shall have access to technology for tourism. Small and medium sized firms (SMEs) participation in the tourism industry is to be encouraged. Tourism satellite accounts¹ are to be upgraded in CARIFORUM, as well as greater environmental management. Internet marketing for SMEs is also to be facilitated as well as tourism exchange programmes (including language training)
 23. Cooperation in services: mechanisms for cooperation in services will be developed to encourage greater understanding and compliance with regulatory measures, marketing of cultural services, intra-firm dialogue, joint ventures and investment promotion.
 24. Innovation and Intellectual property: The promotion of innovation (including eco-innovation), fostering competitiveness of enterprises, facilitating the commercialization of innovative products, facilitating technology transfer, cooperative research, encouraging partnerships in the creative industries, and promoting cooperation with the overseas territories and departments in the Caribbean. CARIFORUM firms will be able

¹ a statistical methodology which identifies the industries which benefit from tourism demand and shows the value added by tourism industries, the relationship between supply of and demand for tourism commodities, the number of jobs depending on tourism as well as the indirect taxes generated by the sale of goods and services to tourists and same day visitors.

- to participate in existing and future framework programmes for Innovation such as the EU's €50.5bn framework Programme 7 (FP7). The parties agree to promote creativity and design in micro, small and medium sized enterprises, and exchanged between networks of design centres. Various other cooperative mechanisms are proposed including trade fairs, promotional exchanges, joint ventures, linkages and research and development partnerships. The agreement commits to the establishment of mechanisms to recognize traditional Intellectual property rights such as trademarks, patents, Geographical indications, etc in each other's territories.
25. Government Procurement: CARIFORUM signatory parties agree to improved transparency (publication of the invitation to tender and notification of the contract award) in the award of government contracts valued above SDR 155,000 (supplies and services) and SDR 6.5mn (works) while the EU commits to transparency in the award of contracts valued above SDR 130,000 (supplies and services) and SDR 5mn(works).
 26. Personal Data protection: provisions have been agreed for the protection of personal data including enforcement provisions which provide redress in situations where personal data is stolen or otherwise compromised. This is important in certain financial opportunities such as credit card processing, and can also facilitate greater e-commerce business.
 27. Competition Policy: Provisions have been agreed which prohibit predatory pricing, collusion (cartel practices) and other unfair industry practices. However, the state is still allowed to designate monopolies. The parties also agree to cooperation to strengthen the national competition agencies in CARIFORUM.

Annex 1: Services and Establishment

The EPA contains a comprehensive section on Investment and Services as well as common rules on E-commerce. It provides a special concession for the Bahamas and Haiti to join the Agreement but they must submit their commitments on investment and services within six months.

The rules on investment will give predictability and transparency to the conditions of market access in manufacturing, mining, agriculture and forestry, and service sectors in European and Cariforum states. In the European Union (EU), Cariforum investors will get national treatment and most favoured nation treatment and vice versa. Both regions have liberalized most areas of manufacturing except for some sensitive areas in Cariforum. However, public services and utilities and other sensitive sectors have not been opened to foreign participation. And Cariforum has maintained special reservations for small and medium enterprises in some sectors. The EU also has excluded a few sectors and maintains reservations in some sectors for some of its newer member states.

The EPA also contains obligations that will ensure that investors safeguard the Environment and maintain high Labour and Occupational Health and Safety standards. Furthermore, it forbids investors from engaging in corruption to get special concessions from public officials.

In the case of Services, there are comprehensive rules in the EPA for the tourism sector as well as the following areas: E-commerce; courier; telecommunications; financial services; and maritime transport. In the case of tourism, large firms will be prevented from behaving in an anti-competitive manner in order to safeguard the interests of the mainly small firms in the Caribbean. There are also provisions for cooperation and mutual recognition of qualifications as well as technical assistance for the tourism sector.

The EPA also has special provisions for Short Term Visitors for Business Purposes in the following areas: research and design, marketing, training, trade fairs, sales, purchasing and tourism.

Finally, the Services and Investment Title provides for development cooperation from the EU to address a range of needs in the Caribbean such as developing regulatory regimes, building the capacity of regional services firms, market intelligence, interaction with EU firms, among other activities.

The EU has opened more than 90 percent of the sectors ranging from Business services, Communications, Construction, Distribution, Environmental, Financial, Transport, Tourism and Recreation services. The commitments will start when the EPA enters into force for all EU states except the new members, (Eastern and Central European states) whose commitments will start in 2011, and Bulgaria and Romania in 2014. In the case of investment, the EC has liberalized almost all sectors for Cariforum firms in the European Union with only some exclusions in a few sectors and limitations in mainly the new EU member states. In other modes of supply there has been great progress as well. In "cross border trade"(e.g. e-commerce, telephone calls) the EC has liberalized the vast majority of sectors. The same applies to "consumption abroad" (e.g. tourism).

In the case of the temporary movement of natural persons (Mode 4) the EC 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 there are some conditions (economic needs tests) in some states, there are no quotas on the amount of service suppliers that can enter the EU market. This is a very important concession by the EC to Cariforum since in the WTO and in other bilateral FTAs the EU does not have market access commitments of this kind for temporary entry.

In the case of Entertainment services, a sector in which the Caribbean is quite competitive, 25 European states will liberalize Entertainment services (CPC 9619) with some limitations in two states. This level of market access for entertainment is a first for any trade agreement of the EU and potentially a very big area for the Caribbean region. In the EPA, the activities that are being liberalized include the whole range of artists and cultural practitioners in music, dance, theatre, visual arts, as well as sculptors, authors, poets, among others. The EC offer is subject to some controls and conditions but there are no quotas or limits on the number of natural person who can enter under this commitment. Caribbean artists, musicians, and other cultural practitioners and their crews who are registered under businesses will be able to send their members or employees to almost all EU states to supply entertainment services.

The market access granted by the EU in Entertainment is complemented with a historic and innovative Protocol on Cultural Cooperation which provides for greater cooperation on all cultural fronts and with special provisions on audiovisual. In particular, co-produced audiovisual products and services involving European and Caribbean creative teams will qualify as European works and meet the cultural content rules in all EU states. When co-production treaties are completed between individual EU states and Caribbean states or regions, it will also make it possible for Caribbean audiovisual producers to access funding for creative projects. Furthermore, through the Protocol, artists and other cultural practitioners (who are not involved in commercial activities in the EU) will be able to enter European states to collaborate on projects, upgrade their training, etc. And they will be allowed to stay in the EU for periods up to 90 days in any 12-month period. Previous EU trade agreements had almost nothing on cultural cooperation. The Cariforum-EC EPA is the first to have comprehensive provisions that allow for movement of artists, musicians, and other cultural practitioners who can develop contacts that can eventually lead to commercial contracts. It is also important to note that all the market access commitments on services in the EPA are covered by the dispute settlement provisions; so if Caribbean traders or investors or business persons find officials in individual EC states renege on their commitments or making it too difficult for them to enter their jurisdiction, this can be challenged.

In terms of the level of liberalization by Cariforum compared to the EC, there is clear asymmetry as expected. The EC opened more than 90 percent of service sectors. In the case of CF, the sectoral coverage is between 65 and 75 percent; but the Dominican Republic's market opening in services is more than 90 percent. The sectors that were liberalized by Cariforum states include those that have positive development impacts and in which Member States are seeking investment or new technologies as well as sectors that are important to create economic opportunities in outsourcing contracts from European firms. To a large extent, most countries liberalized cross-border trade and investment. However, there is quite limited temporary entry (Mode 4) coverage for contractual service suppliers and independent professionals.

The main sectors that most CF states have liberalized in the EPA are: Business services (accounting, architecture, engineering, etc); computer and related; research and development; environmental services; management consultancy; maritime transport; entertainment; tourism; among others. Some of the commitments will be phased-in over time in some member states to address sensitivities at the national level. The services that CF have opened should lead to increased investment in the region in order to develop new service industries. As well, market entry can result in greater efficiencies in a range of services that are inputs to manufacturing and other services. It is expected that there will be increased trade in the short term in business services if regional firms position themselves to take advantage of outsourcing opportunities from European firms.

Annex 2: Agriculture and Fisheries

CARIFORUM was able to achieve the insertion into the Agreement of a full chapter on Agriculture and Fisheries. Chapter 5 of Title I of Part II of the Agreement sets out the objectives, which include sustainable development and exploitation, and increased competitiveness, and special mention is made of the contribution of these sectors to poverty eradication, food security and diversification. There is a commitment on the part of the Parties to engage in a process of dialogue in a range of areas, including technology, developmental experiences, investment promotion, policies and institutional issues. In addition, the EU has made specific commitments on development cooperation, which cover the following:

- 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

Export subsidies – the Agreement commits the EU to the elimination of export subsidies on all agricultural products for which CARIFORUM has agreed to eliminate tariffs. This will be done according to modalities to be agreed at the level of the Trade & Development Committee of the EPA. CARIFORUM will not be required to eliminate any export subsidies that are applied in accordance with its rights under the WTO Agreement on Agriculture and the Agreement on Subsidies and Countervailing Measures.

Commodities – Sugar, Bananas, Rice and Rum

The agreement contains an article (Article 6), which commits the EU to engage in prior consultations with CARIFORUM on any policy developments that may impact on the competitive position of the region's traditional exports on the EU market. This is particularly important in terms of any planned liberalization of the market by the EU in the context of the WTO and bilateral free trade agreements but also extends to the EU's internal regulatory framework.

Sugar – The CARIFORUM region gained **additional access** to the EU market of 60,000 tonnes (i.e. over and above the quantities available to Sugar Protocol signatories) for the period up to the end of September 2009. Of the additional amount, 30,000 tonnes will go to the Sugar Protocol (i.e. CARICOM) countries and the remainder to the Dominican Republic. While the Sugar Protocol remains in effect (up to the end of September 2009) the EU has given assurances that it will seek to ensure that any shortfalls on the SP quotas are reallocated among other CARICOM countries. This was a key demand from the CARIFORUM side. While the agreement limits, until 2015, the ability of CARIFORUM countries to “cumulate”² with each other and with other ACP States in respect of a number of manufactured products that contain sugar, the EU has committed to reviewing that list of products, with a view to reducing it, at the end of three years following signature of the agreement.

Rice – For a period of two years leading up to full duty-free and quota-free access, CARIFORUM rice exporting countries will be given quotas of 187,000 tonnes for 2008 and 250,000 tonnes for 2009. The quotas will be duty-free compared to the approximately €65 per tonne currently paid. The present quota available to the ACP (Guyana and Suriname) amounts to 145,000 tonnes and the proposed quotas for 2008 and 2009 would therefore represent increases of 29% and 72%, respectively. Further, the new arrangement makes no distinction between whole grain and broken rice, which means that CARIFORUM exporters should be better able to target the higher-priced market for whole grain rice, once supplies are available. In addition, the agreement contains a joint declaration committing the EU to keeping the licencing and other arrangements relating to the quota under review with aim of ensuring that CARIFORUM exporters obtain the maximum benefit from the trade.

Bananas – Bananas will gain full duty-free and quota-free access to the EU market from the inception of the EPA. In effect, the recent ruling of the WTO dispute settlement panel against the EU's preferences granted to ACP banana exporters will become null and void insofar as CARIFORUM banana exports are concerned since the duty-free preferences will now be protected under WTO rules governing free trade areas. The agreement also contains a comprehensive **Joint Declaration on Bananas** in which the importance of the industry to several CARIFORUM countries is fully acknowledged, and which also recognizes the need for the EU to maintain significant preferences for the product. Importantly, the Declaration also commits the EU to provide funding to assist the industry in making the necessary adjustments, including diversification initiatives, and addressing the social impacts that may arise from the new trading environment.

² Under the Rules of Origin, CARIFORUM countries will be able to incorporate raw materials from each other's production as well as from that of other ACP States and still have the final goods qualify for preferential treatment into the EU. This is referred to a “cumulation”.