

THE EU-CARIFORUM EPA: REGULATORY AND POLICY CHANGES AND LESSONS FOR OTHER ACP COUNTRIES

SYNOPSIS

This note assesses the state of play of EPA implementation in the CARIFORUM region. It shows that the regulatory, legislative and policy changes necessary for EPA implementation in the areas of trade in goods and services are at varying stages of implementation among member states, with many countries being very far from fully implementing the agreement. No country is near completion with regards to these changes.

A major reason for the slow implementation is that CARIFORUM countries are not receiving the financial and technical support for implementation which was anticipated in 2008 when the Agreement was signed. They are therefore facing debilitating financial and human resource constraints. To compound their already weak financial positions, the European Union's proposed differentiation policy will further reduce bilateral financial assistance to these countries.

CARIFORUM states will therefore continue to strain under the weight of EPA implementation, which will only further delay the process by way of the regulatory and policy changes necessary for the EPA to be fully implemented, and therefore fully operational.

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I. INTRODUCTION AND PURPOSE

1. The European Union (EU) and CARIFORUM (CARICOM¹ countries plus the Dominican Republic) economic partnership agreement (EPA), hence-forth called the CARIFORUM-EU EPA, signed in 2008, is an international, legally binding trade arrangement. Its signatories are legally bound to undertake wide ranging domestic policy changes by establishing and implementing effective, predictable and transparent policies and regulatory frameworks for trade and investments to take place between them.
2. The EPA is a fairly large legal document. It demands radical reforms and adjustments at the domestic level which will facilitate not just the tariff liberalization dimension, but also a services dimension which goes beyond the scope of the World Trade Organization (WTO) requirements. There are also trade related issues including the 'Singapore issues' of (investment, competition policy and government procurement.
3. This paper begins with a general overview of the reality of the EU-CARIFORUM EPA, and the challenges which still prevent benefits accruing to CARIFORUM countries. This section serves to temper great expectations towards the Agreement. It then moves on to speak to the policy and regulatory changes CARIFORUM countries are legally bound to make at the national and regional level and the progress being made by CARIFORUM countries in their implementation in order to be fully compliant with the requirements of the EPA Agreement..
4. It should be noted that the research does not present an exhaustive coverage of all that needs to be done by these countries, it however highlights the most fundamental and immediate changes necessary for the EPA to be implemented and become operational. The research will not speak specifically to the socio-economic impact of tariff cuts, such as the negative impact it can have on government spending, and the resultant impact of the raising of consumption tax to compensate for the loss in tariff revenues, a course many

¹ CARICOM countries are: Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, St Lucia, St Kitts and Nevis, St Vincent and the Grenadines, Suriname, Trinidad and Tobago

countries would be forced to take. As of now, the period of implementation is too narrow to conduct an impact assessment that would give an accurate picture.

5. This examination of the CARIFORUM region will draw on the experience of nine member states. They are: Jamaica, Barbados, Dominica, St Vincent and the Grenadines, Suriname, Guyana, St Lucia, St Kitts and Nevis, and Antigua and Barbuda. All CARIFORUM countries have signed, and some have ratified the EPA. See table 1 below.

Table 1: CARIFORUM countries' ratification status

CARIFORUM Country	Ratification Status	Date of Ratification
Jamaica	Not ratified	
Barbados	Not ratified	
Guyana	Ratified	May 10 th 2012
St Vincent and the Grenadines	Ratified	November 2012
St Lucia	Not ratified	
Suriname	Not ratified	
Trinidad and Tobago	Not ratified	
Antigua and Barbuda	Ratified	December 15 th 2008
Dominica	Ratified	June 12 th 2009
Dominican Republic	Ratified	October 29 th 2008
Belize	Ratified	May 31 st 2011
Bahamas	Not ratified	
Haiti	Not ratified	
St Kitts and Nevis	Not ratified	
Grenada	Not ratified	

Note: situation as of August 2013

6. All countries however, whether or not they ratified the Agreement, were to begin making the necessary regulatory, policy and legislative changes toward EPA implementation, beginning in 2008. All have begun implementation except Suriname: the country's legal system does not allow for the implementation of any legal agreements until extensive consultations have been under-taken at the national level, which includes all stakeholders, and the agreement is ratified and published in the country's legal journal. A prominent lawyer and trade expert has noted that Suriname's actions ought to be mirrored by other CARIFORUM member states as these countries' national laws and constitutions do not provide for provisional application of international agreements and therefore does not allow for provisional application of the EPA.

PURPOSE OF THE STUDY

7. It is hoped that the study will provide useful information to African and Pacific countries on the verge of signing EPAs as to what policy and regulatory changes they might be expected to make at the national level, should they do so. The deadline given by the European Parliament for these countries to sign stands at 1 October, 2014, after which, without a signed EPA agreement, they will no longer be able to trade with the EU under the current preferential market access (Market Access Regulation 1528/2007) in the area of goods. Therefore, highlighting the implementation experience of the EPA by CARIFORUM can allow African and Pacific countries to make a more informed decision in their negotiations with the EU.

8. Some of the implementation challenges mentioned are experienced by all CARIFORUM states, such as the lack of financial resources to properly staff EPA implementation units, or to allow for the hiring of consultants to properly incorporate the necessary regulatory, policy and legislative changes into the country's legal system. Others are sub-regional, and relate to the small size of most CARIFORUM countries. For example, larger countries such as Jamaica have a fairly well established Fair Trading Commission regulating competition in the country since 1993, with Barbados, Guyana and Trinidad and Tobago following in the early to mid-2000s. The micro-states of the Organization of Eastern Caribbean States (OECS²) that have signed the EPA on the other hand, are still at the initial stages of developing competition laws. Their small size and small markets did not initially require the creation of competition authorities of the size and scope dictated by the EPA. However, given the requirements of the Agreement, this will have to be done. Their unique situation however is such that, such institutions as competition authorities and competition commissions which are better established at the regional level due to a lack of scale economy at the national level will take time to develop. This is due to the time it takes to coordinate national positions when creating regional institutions.

² The countries are St Lucia, St Vincent and the Grenadines, Dominica, Antigua and Barbuda, Grenada, and St Kitts and Nevis.

II. GENERAL OVERVIEW OF THE REALITY OF THE EU-CARIFORUM EPA

9. The CARIFORUM-EU EPA was sold as a development agreement, which aimed to cater to the socio-economic development of CARIFORUM states and their successful integration into the world economy. Proponents of the EPA have sought to dispel fears about any negatives for CARIFORUM countries that might be associated with the Agreement. For example, in the area of goods, European representatives have sought to dispel the fear of a flood of European goods and firms into CARIFORUM markets by stating that “the Caribbean does not present many European companies with the type and volume that is needed to support their industries” (Europa, 2012). This would imply that the fear of a flood of European goods into CARIFORUM countries is unwarranted.
10. Additionally, two CARIFORUM countries, St Lucia and Guyana, have noted that their goods imports from the EU prior to the EU-CARIFORUM EPA were not by any means substantial, and, since the EPA, they have not witnessed a significant increase in European goods and firms. This appears true, as data³ shows that in 2007, Guyana’s imports from the EU amounted to US \$ 1.9 million, as against its imports from the rest of the world which stood at US \$ 1 billion. In 2011, the figure was an amount of US \$ 1.5 million from the EU, as against US \$ 1.6 billion from the rest of the world. The data shows that EU imports into Guyana declined after the EPA was signed, while increasing from the rest of the world.
11. Regarding a loss in tariff revenue, it has been argued that given the time-frame of 25 years to reduce tariffs, the products committed for early tariff removal are those with already low tariffs, therefore, any tariff shortfall will be miniscule at the outset and have very little, if any impact on tariff revenues. Also, more than half of the imports from the EU have been entering the CARIFORUM region duty free even before the EPA. Besides, tariffs will not be reduced on the most sensitive products of CARIFORUM countries.
12. Therefore, the thinking behind the proposition for the EPA, especially coming from regional think-tanks such as the Caribbean Policy Research Institute (CAPRI) (see CAPRI, 2010) implies that the benefits significantly outweigh the costs. The loss in tariff revenue is

³ Source: ITC Trade Map

purported to be minimal to the point of being negligible, while the opportunities are tremendous (see Jamaica Observer, 2013).

13. However, a number of issues are overlooked. There are two main reasons why the benefits of the EPA are exaggerated, and its costs underestimated: 1) the removal of tariffs to European goods in CARIFORUM has larger implications for CARIFORUM states in multilateral trade than what is immediately obvious, 2) there are market access issues in both the areas of goods and services which CARIFORUM goods and services suppliers continue to grapple with, which prohibit them from benefiting from the EPA, 3) lack of adequate financial assistance to undertake capacity development in CARIFORUM countries to increase exports to the EU. Each of these issues will be examined below.

IMPLICATIONS OF THE MOST FAVOURED NATIONS PRINCIPLE AND IMPACT ON FUTURE FTAS

14. There is a fundamental reason to not take comfort in the fact that CARIFORUM countries do not import most of their goods from the EU, and thus would not face a great tariff shortfall. This is because the EU-CF EPA agreement may quite possibly have set the standard for future free trade agreements (FTA) between CARIFORUM and other major economies. For example, the CARICOM-Canada FTA being negotiated must be concluded by January 1st 2014, when the current preferential non-reciprocal agreement between Canada and the region (CARIBCAN) ends.
15. If better treatment is granted to the Canadians under the new agreement, under the MFN clause within the EPA, CARIFORUM states will have to also provide this treatment to the EU. Added to this, an eventual renegotiation between CARICOM member states and the United States (US) to end the current trade arrangements (Caribbean Basin Economic Recovery Act and the Caribbean Basin Trade Partnership Act) might also include this MFN factor. Over time, therefore, the CARICOM market will be pried open even further to European goods. Furthermore, these regions are each other's largest trading partners, and may insist on being treated equally by way of trade with CARICOM.

16. Losing tariffs on especially US imports may pose a significant problem for CARIFORUM states, since these countries import significantly more from this country than they do the EU. For example, in 2010, Jamaica imported US \$ 1.8b in total goods from the United States, but only a fraction (US \$ 353,308m) of that amount from the EU⁴.
17. Regarding deeper market access for CARIFORUM goods and services providers, the current reality may be sobering for those who hold the optimistic view concerning the benefits of the EPA, particularly for two reasons: 1) The promise of assistance toward capacity building and EPA implementation to allow CARIFORUM states to take advantage of the EPA has not been forthcoming in the manner anticipated by the member states prior to signing the agreement. This is further aggravated by the EU's new differentiation policy⁵ to possibly be introduced with the 11th European Development Fund (EDF), where upper-middle to high-income countries will not be recipients of the EDF. 2) In addition, financial aid in real terms over the period allocation (2014-2020) is predicted to be on the decline. Hence, CARIFORUM member states may see a significant reduction in an already meager aid-for-trade flow to the region through the 11th EDF as compared to previous periods of EDF allocation⁶. This will be discussed further below.

'ACCESS' WITHOUT ENTRY

18. CARIFORUM services providers and goods exporters continue to face many obstacles to penetrate the EU market. In the area of goods, traditional exporters from CARIFORUM continue to face non-tariff barriers, including technical barriers and sanitary and phytosanitary barriers.
19. Additionally, in the services area of the movement of natural persons (mode 4), where member countries believe they have a distinct advantage through professional services

⁴ Source: ITC Trade Map

⁵ Differentiation involves granting development cooperation to countries based on their needs, capacity, country commitment and performance, and potential impact. This policy will, in effect, phase out bilateral development grant assistance to countries in middle-or higher income categories (See ECDPM, 2012)

⁶ The EDF was created in 1958, to provide aid to developing countries of the Africa, Caribbean and Pacific regions. It is funded by direct contributions from EU countries, and is generally renewed every five years.

such as accounting, engineering, architecture and tourism, areas the EPA has prioritized, benefits are yet to materialize. This is primarily because the Mutual Recognition Agreements⁷ (MRAs) necessary to allow access of CARIFORUM independent services providers to the EU market are still not yet in place. In fact, the only professional area where discussions for negotiations have started is that of architecture. This means that after four years of signing the EPA, each territory has not recognized the skills, qualification and licenses of the independent services providers of the other, which is a necessary ingredient for movement to occur.

20. However, this issue is not expected to be rectified in the near future. This is because the EU has suggested that CARIFORUM countries create a common regime for these professional areas before negotiations begin. However, these countries in large part have different domestic regulations as it relates to licensing, certification, and registration. This uneven situation is quite embedded in the English speaking CARICOM region, and is even more so when the Spanish Dominican Republic and Dutch Suriname are brought into the equation, as these countries operate by an even more varied set of domestic regulations. Moreover, as noted by one country, the EU requirement of a common regime for these professional services is just the first step in penetrating the EU market. Having negotiated an MRA⁸ with the EU, CARIFORUM countries might have to undertake further requirements on the ground in the different EU member states before they start practicing in areas which are regulated in these countries, such as accounting, engineering and architecture-areas of priority in the CARIFORUM-EU EPA⁹.

⁷ An MRA in services is meant to facilitate the cross-border recognition of the academic and professional qualifications of professional services providers in the territories of the parties to the agreement.

⁸ The MRA is itself a very long and laborious process of comparing education and training systems, and implementing specific rules for each profession (see UNCTAD, 2005).

⁹ Research shows that even in the EU, intra-EU movement of people regime is not functioning optimally. A study conducted by the European Commission revealed several issues plaguing intra-EU movement of people. These vary from a lack of efficient recognition of qualifications within the EU, to a lack of consistency on the health and safety implications of certain professions which are dealt with on a case-by-case basis by the authorities in many countries (see European Commission: Proposal for a directive of the European Parliament and of the Council amending Directive 2005/36/EC on the recognition of professional qualifications and regulations on administrative cooperation through internal market information system). CARIFORUM states, once MRAs are signed between themselves and the EU, may face similar issues in penetrating the EU market, which may serve as barriers.

21. Furthermore, there is a glaring imbalance where Mode 4 is concerned. As it stands, the EPA does not allow for the movement of unskilled workers. Given that CARIFORUM countries for the most part have surpluses in labour, the export of unskilled, or even semi-skilled labour would be a major advantage to these countries. However, this area is relegated in the regulations governing EU immigration policies, which is a non-trade area and falls outside of the EPA.

22. The cultural and entertainment sector is an area where CARIFORUM countries see great potential from which to extract economic growth. However, CARIFORUM entertainers in the cultural services category, which have a long history of penetrating the EU market, will now be faced with a new regional registration and certification requirement regime that might make access more difficult. This proposed regime came about because the EU pressed for a means of certification for entertainers and cultural practitioners who did not have a university degree (the standard requirement for most professionals under the agreement). This however, might limit the access of CARIFORUM entertainers to the EU market.

NO MONEY COMING

23. That financial and technical assistance is critical if CARIFORUM states are to undertake the policy and regulatory changes mandated by the agreement was recognized by the member states of the EU. This is clearly why the agreement in a number of areas speaks to cooperation aimed at reinforcing regional and national initiatives. This is aimed toward improving regulatory capacity, laws and regulations in CARIFORUM countries to fulfill the requirements of each of the Agreement's chapters. For example, cooperation is scheduled in the Agreement in areas of customs and trade facilitation (Chapter 4), the elimination of technical barriers to trade (Chapter 5), and in building capacity in sanitary and phytosanitary Measures (Chapter 7). Additionally, it was recognized that cooperation was required in investment, trade in services and e-commerce (Title II), and regarding trade related issues of competition and intellectual property and innovation, government procurement and environmental protection.

24. However, disappointingly, for a development agreement which speaks to cooperation for capacity development to such an extent, the language in which these are expressed are quite vague. For example, not much mention is made of specific methods of cooperation, except in the areas of information exchange, joint initiatives in mutually agreed areas, training and the facilitating of information and dialogue. Also, there is a glaring absence of specific commitment toward funding from the EU. However, as mentioned, it has become quite obvious that many of these regulatory and policy changes require funding out of the reach of CARIFORUM member states.

25. This is not to say that no funding is made available by the EU. Financial assistance is currently being provided through the Economic Development Fund (EDF), as well as through the United Kingdom's (UK) Caribbean Aid for Trade and Regional Integration Trust (CARTfund) and the Germany Development Agency (GTZ) among others. Additionally, a new source of funding, launched on March 22, 2013 called the *Standby Facility* has made available €3.54m to CARIFORUM states to build their capacity to implement and take advantage of the EPA. However, besides being inadequate to serve the purposes of implementation in all CARIFORUM states, it has been recognized that both the cumbersome and bureaucratic process of accessing funding from these mediums, especially from the EDF, are counter-productive. Coupled with the difficulties CARIFORUM state agencies and private sector agencies encounter when preparing and completing result-focused applications which meets the appraisal criteria for funding from the CARTfund and GTZ. In both cases, the opportunities of increasing capacity toward EPA implementation are diminished.

26. Importantly, impending changes regarding EDF funding could also affect EPA implementation and the cooperation aspect of the EPA agreement. The new differentiation scheme, meant to graduate some ACP countries from bilateral development finance, which will be implemented by the EU in the 11th EDF of 2014-2020, as outlined in the EU's recently adopted Agenda for Change (2011, 9) will very possibly see some CARIFORUM members receiving little or no funding. According to World Bank classification data of 2013, eight (8) CARIFORUM countries fall within the category of upper middle income

economies¹⁰, with four countries- Trinidad and Tobago, Barbados, St Kitts and Nevis and The Bahamas being categorized as high income economies. Belize, Haiti and Guyana are categorized as low-income countries. This is illustrated in Table 2 below:

Table 2: CARIFORUM countries by Category according to World Bank Data

High-Income Countries	Upper Middle Income Countries	Low Income Countries
1. Bahamas 2. Barbados 3. Trinidad and Tobago 4. St Kitts and Nevis	5. Dominican Republic 6. Antigua and Barbuda 7. Dominica 8. Grenada 9. Jamaica 10. St Vincent and the Grenadines 11. St Lucia 12. Suriname	13. Guyana 14. Haiti 15. Belize

27. Should the differentiation regime be applied to the CARIFORUM region, almost all member states with the exception of Haiti, Guyana and Belize, will be graduated from bilateral assistance (ECDPM, 2012: 11). This is a major concern for CARIFORUM countries, as it will either further stall EPA implementation (CARICOM Secretariat, 2013), or divert funding from government revenue in order to facilitate implementation in countries which have already been severely affected by the 2008 financial economic crisis, and are currently experiencing unsustainable public finances, as is the case with countries such as Grenada and Jamaica. The EU’s response to CARIFORUM’s concerns was to signal its intention to take into account the vulnerability of the small island developing economies in its application of differentiation. However, they have not indicated how they propose to do so.
28. But whether or not these countries are graduated, a decrease in bilateral aid from the EU seems inevitable. The European Commission’s initial proposal of €34.276m for the 11th EDF covering the period 2014-2020, was subsequently reduced by EU Member States in February 2013 to €26.984m. This is €7.3 billion less (See Europa Council, 2013).

¹⁰ Antigua and Barbuda, Grenada, Jamaica, Dominica, Dominican Republic, St Lucia, St Vincent and the Grenadines and Suriname.

Additionally, EDF money for this period will see a yearly decrease of 20 % compared with the period 2008-2013 due to projected inflation in the EU. This means that measured in real terms, i.e. taking into the account that a euro in the future will buy less than a euro now, the yearly committed EDF amount drops from €3,339m to €2,732m. Table 3 illustrates this.

Table 3: Estimated amount of funding from EDF for ACP: => 20% decrease

EDF	EUR mln	Period	Per year (in current euros, mln)	Correction for inflation (2005 = 1) ¹¹	Contribution per year (in 2005 euros, mln)	78.4% to ACP national and regional programmes
10 th	22,682	2008-2013	3,780	0.88	3,339	2,615
11 th	26,984	2014-2020	3,856	0.71	2,732	2,139

Note: assumption is that allocation key of 78,4% for ACP is maintained for 11th EDF. If the allocation to ACP would be lower, the decrease in EDF funding will be higher.

29. Assuming that 78.4 % of the EDF money would be allocated to ACP national and regional programmes in the 11th EDF (based on the allocation key of the 10th EDF), €2.1 billion per year would be available for all ACP national and regional programmes during 2014-2020 (in 2005 euros). Also assuming that seven EPA regions would get an equal share (if the differentiation policy is not used-where more aid is given to countries most in need, i.e. least developed countries), what we see is a figure of €305.57m per year per region (in 2005 euros). What this means is that all ACP countries will be receiving less money part of which would be used for EPA implementation.

¹¹ **Note:* Correction for inflation: 1 euro in 1997 can buy more than 1 euro in 2017 because of inflation. In this table, the GDP deflator was used as a measure for inflation, derived from UNCTADStat tables ('Nominal and real GDP, total and per capita, annual, 1970-2011', comparing 'US Dollars at current prices and current exchange rates in millions' with 'US Dollars at constant prices (2005) and constant exchange rates (2005) in millions'), the middle year. The deflator was extrapolated from 2012 to 2017 using the average increase between 2000 and 2011.

III. LEGALLY BINDING COMMITMENTS TO BE UNDERTAKEN BY CARIFORUM COUNTRIES

30. As earlier mentioned, a number of regulatory and policy changes are necessary under the CARIFORUM-EU EPA in order to give effect to the agreement. For example, areas as *Customs and Trade Facilitation* will require legislative amendments, as well as the creation of new legislations including custom amendments to facilitate the import and export of goods under the new trading regime. The compulsory nature of these changes are revealed by the creation of a Special Committee on Customs Cooperation and Trade Facilitation (Article 36) which will, *inter alia* monitor the implementation and administration of the chapter's provisions. It is important to note that trade facilitation is still being negotiated at the multilateral level; CARIFORUM countries have however signed an EPA which has locked-in some of these commitments.
31. The area of *Investment, Trade in Services and e-commerce* (Title II) will also necessitate domestic regulatory and policy changes particularly in the areas of immigration, telecommunications services, data processing (in financial services) and e-commerce.
32. Changes are also necessary regarding the movement of EU services suppliers as well as investors (including graduate trainees) into the CARIFORUM region, as well as to facilitate the movement of services suppliers of the Dominican Republic into CARICOM countries. The latter is to satisfy the regional preference clause which states that what one country member of the CARIFORUM gives to the EU, it must give to all other members of CARIFORUM. These changes will come on the heels of previous revamping of immigration policies in CARICOM states to facilitate the movement of people under their on-going regionalization project-the CARICOM Single Market and Economy (CSME)-a revamping which is still ongoing, and has thus far proved burdensome for the capacity of many CARICOM states. This represents a double burden, as they have to meet the obligations of their own regional integration projects and that of the EPA simultaneously.
33. Importantly, regulations and policies concerning the trade related measures of the Singapore issues outlined above which were not previously a priority for CARIFORUM states as it relates to international trade, will need to be created. Thus, for example,

institutions governing public procurement will have to be built from the ground up in most states. Areas in trade and investment will also need to be created, except in states such as Guyana which has noted that the institutions and practices governing its current Bilateral Investment Treaties (BITs) can be recycled and used to service the EPA where feasible.

34. Regarding data-protection (Article 107), CARIFORUM states must also install the necessary legislations to permit EU financial services suppliers, in the course of their business, to transfer data into and out of the territory, where such data is required for data processing. Additionally, measures must be put in place at the regulatory and policy level to ensure the protection of the privacy and fundamental rights of freedoms regarding the transfer of personal data.
35. Regarding the progression of these policy and regulatory changes in CARIFORUM states, as recently as 2011, reports were that CARICOM states were not very advanced in their preparation towards full implementation. In fact, short of signing the agreement, many had not yet begun the implementation process. A number of CARICOM states have established EPA Implementation Units mandated with the task of coordinating the full implementation of the agreement. These countries are Antigua and Barbuda, Belize, Dominica, Grenada, Guyana, St Kitts and Nevis, Barbados, Trinidad and Tobago, St Lucia, the Dominican Republic and St Vincent and the Grenadines.
36. What has been observed at the outset, though, is that even in economically larger and better endowed CARIFORUM countries such as Barbados, these units operate on very limited resources due to government financial constraints amid other pressing economic issues such as employment and social services including health and education. Suffice to say, then, that for other member states with lower levels of development, the cost of establishing units which are fully equipped and capable of facilitating national EPA implementation are not in line with their infrastructural, human resource and financial reality. In fact, the inability to establish, fully staff, and operate an efficient implementation unit is a clear indication of the inability to undertake the over-all regulatory, legislative and policy changes necessitated by the EPA.

IV. TOWARD EPA IMPLEMENTATION: OVERVIEW OF CARIFORUM STATES' REGULATORY, LEGISLATIVE AND POLICY CHANGES.

37. A two-day meeting was held in Trinidad and Tobago on May 7-8, 2013, to allow for Caribbean legislative drafters to consider and refine draft model bills intended to give effect to the provisions of the CARIFORUM-EU EPA. The meeting was designed to benefit legislative drafters who are tasked with preparing legislations to give effect to the provisions of the agreement. It is clear from this that work to reform the national legislations are currently not advanced, and as indicated above, in some states may not yet even have begun. This gives the general indication that legislative and by extension other regulatory and policy changes are not progressing rapidly.
38. CARIFORUM states are at varying stages of policy and regulatory reform toward implementation, as the table below illustrates.

Table 4: State of Play of Regulatory and Policy Changes in 8 CARIFORUM Countries.

Country	Goods/Focal Points	Government Procurement	Competition Policy	Investment Measures, Trade in Services and E-Commerce
Jamaica	✓	✓	✓	⊙
Barbados	✓	⊙	✓	✓
Dominican	⊙	⊙	⊙	⊙
St Vincent and the Grenadines	✓	⊙	⊙	
Suriname	☒	☒	☒	☒
Guyana	✓	✓	⊙	⊙
St Lucia	✓	⊙	⊙	⊙
St Kitts and Nevis	⊙	✓	⊙	⊙
Antigua and Barbuda	✓	⊙	⊙	⊙

✓ Where regulatory and policy changes have been fully implemented.

⊙ Where regulatory and policy changes are in the process of being implemented.

☒ No movement toward implementation.

39. The remainder of this paper will provide a break down of different categories of trade related issues, using tables at various stages to illustrate the articles requiring changes, and then later outlining the state of play in the various CARIFORUM countries regarding these changes.

GOODS

40. Articles 9-22, 27-36 and 37-43 lay out the rules and conditions governing trade in goods under the EPA. The articles in this agreement that indicate regulatory obligations on CARIFORUM states are Articles 16, 27, 49 and 55. The requirement of each article is outlined in table 5 below.

Table 5: Regulatory Requirements at the National Level for each Article.

Article	National regulatory and Policy Changes Required
Article 16	Preparation and enactment of legislation for prescribing of zero duties on originating products
Article 27	The discontinuance of discriminatory application of all laws, regulations and requirements affecting the internal sale between originating imports and like domestic products
Article 49	Contact points to be established for the exchange of information
Article 55	The establishment or designation of national competent authorities for implementation of SPS measures of the agreement.

CUSTOMS DUTIES AND NATIONAL TREATMENT

41. In the area of trade in goods, many countries are not advanced regarding regulatory and policy changes toward EPA compliance to take into consideration the phased tariff liberalization commitments. All nine CARIFORUM countries studied, except Guyana, are still under-going work with regards to custom legislations, administrative procedures and trade facilitation measures which would facilitate the necessary reductions in tariffs to fulfill the requirements of *Article 16*. Jamaica and Barbados however have gone ahead with

the necessary tariff cuts, even though, for both countries, the lack of progress with the Customs Act had delayed the process. For Jamaica, the first set of tariff cuts were due in 2011, with the second cuts due for 2013. Both sets of cuts were made in 2013. For Barbados, tariff cuts were similarly late, and have been made without the necessary legislative measures in place.

42. Guyana is further advanced in the area of customs duties and national treatment than are Jamaica, Barbados and the other member states that were studied. Guyana has made all necessary amendments to its customs legislations to the satisfaction of EPA requirements, and is also up-to-date with its tariff reduction requirements. In fact, regarding the scheduled reductions in tariffs, Guyana has an automated computerized system at its custom departments, where tariff cuts are automatically made at the required dates.
43. However, more than half of the countries studied - St Lucia, St Kitts and Nevis, Dominica, and Antigua and Barbuda, St Vincent and the Grenadines and Suriname are yet to make tariff cuts. All countries mentioned are currently undertaking the consultations to determine the legislative changes necessary to facilitate the regulator changes to fulfill the requirements for Article 16, except Suriname. For the latter, as previously mentioned, extensive national consultation must be conducted, and the agreement must first be ratified then published in the country's legal journal before tariff reductions can take place.
44. Article 27 requires the discontinuance of discriminatory application of all laws, regulations and requirements affecting the internal sale between originating imports and like domestic products.
45. Jamaica, Barbados and Guyana have removed all discriminatory duties and charges according to the requirements of Article 27. They also do not maintain quotas or internal taxations applicable to EU products. This however is not the same for other countries. St Lucia, Dominica, Antigua and Barbuda and St Kitts and Nevis, St Vincent and the Grenadines and Suriname have not yet removed import restrictions such as quotas on EU products. These countries, at the time of writing had consultations on the ground to begin

the necessary regulatory, legislative and policy changes toward implementation of Article 27 stated above.

IMPLEMENTATION OF NATIONAL COMPETENT AUTHORITIES FOR SPS (ARTICLES 55) AND THE ESTABLISHMENT OF POINTS OF CONTACT

46. Most of the nine countries studied have designated contact points to facilitate trade in goods using government agencies which were already in existence. For example, in countries such as Jamaica, St Vincent and the Grenadines, Guyana, Antigua and Barbuda and St Lucia the national Bureaus of Standards are responsible for dealing with such issues as technical barriers to trade. The Ministry of Agriculture in these countries has been mandated with the responsibility for Sanitary and Phytosanitary (SPS) measures. The Ministry of Health in St Vincent and the Grenadines and Guyana has also been tasked with dealing with SPS measures. This fulfills the requirements of Article 55. The study has no information regarding this, concerning Barbados, St Kitts and Nevis, and Dominica. However, it is quite likely that these states will adopt this method. Again, Suriname cannot be included due to non-ratification and hence is not implementing the EPA.

GOVERNMENT PROCUREMENT

47. In the area of government procurement, Articles 165-182 of the EPA agreement govern this issue. Articles 167, 170, 171, 174, 175, 177, and 178 require the creation or renewal of existing legislation to fulfill the requirements of the EPA in this area. The relevant articles and the mandated changes are outlined in Table 6 below.

Table 6: Articles showing Legislative, Regulatory and Policy Changes of Public Procurement

Article	Required legislative, Regulatory and Policy Changes
Article 167	Publishing of Laws, regulations, regulatory judicial decisions, administrative rulings as well as individual procurement opportunities in the appropriate publications.
Article 170	CARIFORUM states to enact new or amend legislation to give effect to this Article concerning <i>Selective Tendering</i> .

Article	Required legislative, Regulatory and Policy Changes
Article 171	CARIFORUM states to enact new or amend existing legislations to give effect to this article concerning <i>Limited Tendering</i> .
Article 174	CARIFORUM states to enact new or amend existing legislations to give effect to this article concerning the <i>Qualifications of suppliers</i>
Article 175	CARIFORUM states to enact new or amend existing legislations to give effect to this article concerning the <i>Negotiations (between procuring agencies)</i> .
Article 177	CARIFORUM states to enact new or amend existing legislations to give effect to this article concerning the <i>Information on Contract Awards</i> .
Article 178	CARIFORUM states to enact new or amend existing legislations to give effect to this article concerning <i>Bid Challenges</i> .

48. In the area of government procurement, CARIFORUM countries on average are not advancing with regard to the necessary changes. Of the countries studied, Jamaica, Guyana and St Kitts and Nevis are the most advanced member states where this area is concerned. In Jamaica, government procurement is governed by a series of acts and regulations. Jamaica is therefore using these pre-existing institutions to give effect to each of the Articles. Guyana has an advanced government procurement system which has pre-existing institutions that cater to bidding by international as well as CARICOM international businesses operating in the country. St Kitts and Nevis is the only country of the Organization of Eastern Caribbean States (OECS¹²) which has introduced regulations in line with the EPA requirements for government procurement, and which meets its transparency requirement.
49. The other countries studied - Dominica, Antigua and Barbuda, Grenada, St Lucia, Barbados and Suriname, on the other hand, have not progressed rapidly in this area. Barbados for example, is currently undertaking an International Development Bank (IDB) funded project to modernize its government procurement practices to the satisfaction of the EPA. The reason no progress has been experienced in these countries is due specifically to financial and human resource constraints.

¹² The members of the OECS that are party to the CARIFORUM-EU EPA are: Antigua and Barbuda, Dominica, Grenada, St Kitts and Nevis, St Lucia and St Vincent and the Grenadines.

COMPETITION POLICY

50. CARIFORUM states, under Article 127, are to ensure that within five years of signing the agreement (signed in 2008), they have established competition bodies at the national or regional level in compliance with article 125 (1). Such bodies are to give effect to Article 28, which speaks to the *Exchange of Information and Enforcement Cooperation*. CARIFORUM member states should also ensure that by the end of the fifth year of signing the agreement (2013), any existing state monopoly of a commercial nature be brought under the competition policy.
51. To date, of the nine countries, only Jamaica and Barbados have fully established competition bodies. Independent fair trading commissions exist in both countries, as well as modern competition legislations.
52. Guyana will need to make further changes to upgrade its competition policy, by adding capacity to its national Competition and Consumer Affairs Commission. St Lucia, as well as the other countries of the OECS will rely on the OECS Competition Commission, which will serve as the National Competition Authority for OECS member states to comply with Article 127 of the agreement. However, the OECS Competition Commission is not yet operational.

INVESTMENT MEASURES, TRADE IN SERVICES AND E-COMMERCE

53. Title II of the Agreement deals with Investment, Trade in Services and E-Commerce. It ranges from Articles 60-121. Articles 86, 72, 81, 82, 83, 84, 95, 70, and 107 require necessary legislative and policy creation or changes to be made by CARIFORUM states. These are outlined in the table below.

Table 7: Required Regulatory and Policy Changes in Investment Measures, Trade in Services and E-Commerce

Article	Required Regulatory and Policy Changes
Article 86	Establishment of entry points to provide upon request specific information to investors and services suppliers of the EU.
Article 72	Instituting such measures to ensure investors do not flout international labour and environmental laws.
Articles 81-84	The entry of services suppliers, investors, graduate trainees and employees of firms of the EU operating in CARIFORUM.
Article 95	Regulatory Authority for telecommunication services separate from and fully capable of regulating the sector.
Article 70	CARIFORUM states to implement policies and enact legislation, where necessary, which facilitate the grant of MFN treatment to EU services providers.
Article 107	CARICOM states to facilitate data transfer and adopt adequate safeguards for the protection of privacy concerning the transfer of data

In these issue areas, CARICOM states are at different levels of regulatory and policy changes as will be noted below.

IMMIGRATION POLICIES

54. With regards to immigration policy, Jamaica is still outstanding regarding the liberalization of various professional categories of services professionals where mode 4 is concerned, which would facilitate the entry of EU services suppliers. More work needs to be done at the national level to ensure that qualifications in various areas are expanded to include non-Jamaicans where the sector has been liberalized. To be fully compliant in this area, Jamaica, as well as other CARIFORUM countries will need to conclude work on Mutual Recognition Agreements with the EU.

55. Guyana notes that its immigration policy is currently flexible enough to accommodate the immigration requirements of the EPA. Barbados, too, has made all the necessary legislative and regulatory changes to its Immigration Act to facilitate access to EU investors and services suppliers in areas liberalized to the EU.
56. For the remainder of the nine countries, mainly the OECS countries, not much has been reported in this area. There are therefore outstanding regulatory and policy changes yet to be made to immigration policies to satisfy the requirements of the EPA. St Vincent and the Grenadines, for example, is currently examining the various categories of services providers under Mode 4, to modify its immigration regime to meet their commitments under the EPA.

INFORMATION, COMMUNICATION AND TECHNOLOGY AND E-COMMERCE

57. In the area of Information, Communication and Technology and E-Commerce, CARIFORUM countries are required under Article 107 to implement safeguards to protect the privacy and ensure the rights and freedoms of individuals regarding their personal data. Jamaica and Barbados are the only two countries of the nine studied, to have moved toward legislation in this direction, as well as to regulate the collection, processing, storing, use and disclosure of personal data. Efforts are being made to ensure that resulting work will conform to the requirements of the EPA. No other country of CARIFORUM has reported any progress in this area.

ESTABLISHMENT OF ENTRY POINTS FOR INFORMATION FOR EU INVESTORS AND SERVICE SUPPLIERS

58. Under Article 86, countries are required to establish entry points to provide upon request specific information to investors and services suppliers of the EU. As many CARIFORUM countries have over the years been seeking foreign investors, these countries all have investment promotion agencies which have been carrying out inquiry point functions even before the EPA agreement. For example, the Jamaica Promotions Corporation (JAMPRO) acts as the agency to fulfill Articles 86 by serving as a point of inquiry for EU investors and services suppliers. Invest Barbados, and the Barbados Tourism Investment Inc. serves this

mandate for Barbados, while the InvestSVG serves the island of St Vincent and the Grenadines.

BEHAVIOUR OF INVESTORS

59. Under Article 72, CARIFORUM states are expected to take measures necessary through domestic regulations to ensure that investors act in accordance with core labour standards required by the International Labour Organization (ILO), as well as in accordance with international environmental obligations. CARIFORUM states for the most part have signed onto United Nations (UN) and ILO conventions governing labour, as well as various multilateral environmental agreements such as the Basel Convention and the Convention on Biological Diversity. However, countries have various laws to give effect to these conventions dealing with environmental protection. For example, St Vincent and the Grenadines has fifty environmental legislations, while St Lucia currently has one (the Biosafety Act).
60. What has been observed however, throughout CARICOM, is that some countries, such as St Vincent and the Grenadines and Guyana have fragmented and poorly implemented legislations and environmental policies due to insufficient institutional arrangements. Especially in the case of Guyana, labour and environmental laws are not being adhered to by foreign investors operating in the country. These countries therefore will have to strengthen their environmental policies to meet the requirements of the EPA.

REGULATORY AUTHORITY (FOR TELECOMMUNICATION SERVICES)

61. Under Article 95 of the Agreement, a regulatory authority for telecommunication services should be created which is legally distinct and functionally independent from any supplier of telecommunications services. It should also be sufficiently empowered to regulate the sector to ensure market liberalization and competition. Regarding this, countries are all at different levels of advancement. Jamaica for example, has not yet established a single regulatory authority. Currently, the sector is being regulated by three separate entities,

with plans to merge all three into one body in the near future. Barbados on the other hand, has a fully operational and independent telecoms regulatory body.

62. Five countries (St Lucia, Dominica, Grenada, St Kitts and Nevis and St Vincent and the Grenadines) of the OECS will be utilizing the Eastern Caribbean Telecommunications Authority, with National Telecommunications Regulatory Commissions in each of the five states to complement its work on the ground. It is therefore fair to assume that by way of regulation of telecommunications services, CARIFORUM states are generally advanced.

V. CONCLUSIONS

63. The regulatory and policy changes required for EPA implementation in CARIFORUM countries are at varying degrees of completion. Five years after the agreement was signed, no state has fully completed all the regulatory and policy changes required for implementation. The reason for this is clear. CARIFORUM states are struggling with the financial and human resource capacity required to undertake such a broad international legal agreement. Added to this, legislative requirements inevitably take time due to the usually lengthy process of passing legislations through the parliamentary process.
64. As a further drawback, CARIFORUM countries are not receiving the financial and technical support which was anticipated for implementation in 2008 when the agreement was signed. Financial aid received thus far is inadequate for the purpose of EPA implementation. To compound their already weak financial position, the EU's proposed differentiation policy, if passed, will result in a further reduction in financial assistance to CARIFORUM states. Twelve of the fifteen CARIFORUM members are considered upper-middle and high income developing countries, and thus will face graduation from bilateral financial assistance.
65. CARIFORUM states therefore will continue to struggle under the weight of EPA implementation, and having no further recourse, will only further delay the process by way of regulatory and policy changes toward full implementation. This is especially so given the fact that for the most part, these countries are faced with pressing social issues

such as unemployment, as well as obligations toward other sectors such as education and health. For obvious reasons, the latter issues cannot be given equal priority with the former.

66. That CARIFORUM states see a trade-off in making the required changes to satisfy the EPA Agreement, in return for a greater level of market access in the EU market is yet to prove to be an exchange worth making. Nothing demonstrates this fact more than the lack of buy-in from the private sector especially in CARICOM countries. Besides having problems regarding the financial and personnel commitments for implementation, CARICOM governments are faced with a blatant lack of interest on the part of the private sector to move toward the EU market. Countries such as St Vincent and the Grenadines, as well as Barbados and Jamaica note that they will have to undertake EPA sensitization campaigns, in order to solicit a greater level of interest from the business community. This of course, will require additional funding.

References

- ✓ CaPRI. *The Economic Partnership Agreement: Toward a New Era of Caribbean Trade*. Kingston: Guango Tree House, 2013.
- ✓ CARICOM Secretariat. CARIFORUM DG; ACP-EU Parliamentarians Assembly Should Address EU's Differentiation Policies. 14 February 2013
- ✓ Europa. *EU Head dismisses misconceptions about EPA*. http://eeas.europa.eu/delegations/barbados/press_corner/all_news/news/2012/20120827_1_en.htm
- ✓ Richardson, Julian. "No European Trojan Horse : Caribbean not Being Bamboozled in Free Trade Agreement, says EU." *Jamaica Observer*, 14, December, 2012
- ✓ UNCTAD. *Moving Professionals Beyond National Borders: Mutual Recognition Agreements and the GATS*. UNCTAD, 2005.



**Chemin du Champ d'Anier 17
Case postale 228, 1211 Geneva 19
Switzerland**

**Telephone: (41 22) 791 8050
Fax: (41 22) 798 8531
Email: south@southcentre.org**

**Website:
<http://www.southcentre.org>**