THE EPA: IMPLICATIONS FOR CARICOM TRADE NEGOTIATIONS

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Introduction

CARICOM has long enjoyed preferential trading arrangements for some of its products in the European and North American markets. These preferential arrangements which allowed CARICOM countries to insulate their economies from full exposure to the global economy could not be sustained when the islands acceded to the World Trade Organization (WTO) and made themselves subject to the trade rules of Most Favored Nation (MFN) and National Treatment. These rules which are diametrically opposed by nature to preferential agreements, unless they were able to satisfy the provisions of Article XXIV of the GATT Agreement, effectively placed a limit on the lifetime of these preferential trading agreements.

Trade agreements were entered into with Venezuela, Columbia, Costa Rica, Cuba and the Dominican Republic with a view to expanding CARICOM export markets. However the Economic Partnership Agreement (EPA) with the European Union is the first trading arrangement which the separate nations of CARICOM have entered into which replaces a preferential arrangement. The terms of the Agreement have generated heated discussion in the region and questions have been asked regarding the implications of the agreement for the regional integration agenda, the CARICOM Single Market and Economy (CSME), the current bilateral agreement with the Dominican Republic, the proposed Canada-CARICOM Free Trade Agreement, on which negotiations have already begun, as well as the preferential arrangement with the United States of America.

In light of these concerns this paper will begin with an examination of the EPA with a view to pinpointing the contentious terms and conditions which have sparked concern among regional stakeholders. The provisions of the EPA will then be analyzed in the context of its impact on the CSME and the CARICOM-DR Bilateral Agreement. With negotiations having already begun for the conclusion of a Free Trade Agreement between Canada and CARICOM, the constraints placed on these negotiations as a result of the EPA will be looked at. The Caribbean Basin Initiative (CBI) was due to expire on 30 September 2008 and according to the website of the United States Trade Representative it has been granted a waiver to 30 September 2010. Once again the impact of the EPA on these negotiations will be considered. The paper will close with thought given to the impact on prospective agreements with the larger developing countries and a prognosis for the future.

THE ECONOMIC PARTNERSHIP AGREEMENT (EPA)

In February 1975 the European Community and over seventy African, Caribbean and Pacific nations (ACP), all former colonies
of European countries, signed the Lomé Convention. This treaty provided aid for development within the ACP countries in addition to tariff-free entry for some of their agricultural and mining exports into the Community (McQueen 1998). With the advent of the WTO it became apparent that this type of arrangement could no longer be continued on account of its preferential basis. When negotiations began for the EPA, rather than negotiating with the ACP group as one, the negotiations were conducted with the six regional groups separately, with the CARIFORUM region being the only region thus far to sign a comprehensive Agreement. CARIFORUM consists of the member states of CARICOM on one part and the Dominican Republic on the other. The negotiations were conducted by the Caribbean Regional Negotiation Machinery (CRNM) on behalf of CARICOM and the Dominican Republic and the agreement was signed on 15 October 2008. Initially the President of Guyana, Mr. Bharrat Jagdeo refused to sign the agreement citing disagreement with some of the clauses, but eventually the Agreement was signed on behalf of Guyana on 20 October 2008 after securing a promise for a five year review of the Agreement and consideration given to the Treaty of Chaguaramas should there be conflicts between the EPA and the Treaty.

Overview of the Agreement

Part I of the EPA addresses the issues of sustainable development, achievement of the Millennium Development Goals and seeks to continue the provisions under the Cotonou Agreement relating to regional interactions in terms of integration, economics and trade. Part II addresses trade and trade related matters, Investment, Trade in Services and E-Commerce. Trade Related issues such as Competition Policy, Innovation and Intellectual Property, Public Procurement, Environmental issues and the social aspects as impinged upon by the agreement. Dispute Avoidance and Settlement is addressed in Part III. Part IV governs the General Exceptions under the agreement; Part V looks at the Institutional Provisions and finally Part VI sets out the General and Final Provisions.

Critique

Prior to publication of the document, various interest groups expressed concern over the content of the agreement. Upon publication these concerns intensified to outright disagreement and calls for the leaders to desist from signing the agreement without further negotiations and alterations. The major objections and concerns include the following. The CRNM was charged with conducting the negotiations on behalf of CARICOM. The extent to which the CRNM was actually able to represent the variance in trade needs of the different islands has been questioned particularly when the different capacities of the different islands are considered. The source of funding to the CRNM is also cause for concern when the fact that the European Union provided significant funding to the regional machinery.

For example three regional academics: Havelock Brewster, Norman Girvan and Vaughn Lewis published a paper entitled “Renegotiate the CARIFORUM-EPA.” The information contained in the article was derived from a memorandum submitted to the reflections group of the Caricom Council for Trade and Economic Development on 27 February 2008. The article itself was accessed on Norman Girvan’s website, www.normangirvan.info on 20 February 2009.
The Agreement covers areas which are not strictly required for WTO conformity (Girvan 2008a, 2008b). The Agreement is a legally binding document with governance structures over the trading relationship between CARICOM, the Dominican Republic and the EC Party. The MFN provisions have serious implications for future trading arrangements with developed countries and those developing countries which can satisfy the parameters set out in the MFN provisions. Institutional Arrangements may conflict with CARICOM. Would the region now be required to extend the same treatment to other parties it may wish to negotiate with? Can the region's private sector adequately utilize the avenues available to them under the Agreement? Will they survive the challenges presented by the agreement?

CSME, CARICOM – Dominican Republic Bi-lateral Trade Agreement and EPA: Confluence or Divergence?

Thus far the single market component of the CSME encompassing the free movement of persons, capital, establishment and goods and services came into effect on 1 January 2006. The free movement of persons, the Caribbean Court of Justice (with jurisdiction limited to Barbados and Guyana), the creation of Stock Exchanges in some territories and adoption of a CARICOM passport has either been implemented or the process of implementation is in progress in the Community.

The CSME and the EPA

Conflict with the EPA arises because it contains many provisions which mirror the provisions under the CSME. The key difference is that some of the measures under the EPA come into effect almost immediately which has direct import for the measures of the CSME which are yet to be implemented. It is important to note that CARICOM as a single entity is not a party to the EPA; rather it is the constituent members of CARICOM who are members of the EPA. This creates difficulty for countries which are parties to both agreements in light of the duplication in content between the CSME and the EPA and the divergence in implementation. The level of liberalization under the EPA is far deeper and faster than that envisioned under the CSME which allowed for a sequenced managed process into trade liberalization. The Community’s Common Trade Policy is another key element of the CSME which is under threat. Article 227 establishes the Joint CARIFORUM-EC which...
granted to those other countries be granted to the EC. CARICOM thus finds itself bound by the rules of an agreement to which it was not a party. Further any new permutations of the CSME will of necessity have to be consistent with the terms of the EPA. There are also determined timeframes for implementation which must be adhered to. If the region is in breach of these timeframes then it would be in breach of its commitments under the EPA, a legally binding agreement. Implementation and monitoring of the Agreement will require financial, institutional and technical resources, which are expensive and scarce in this region. Arrangements will have to be put in place for two members of CARICOM. The Bahamas is a member of CARICOM, which has signed the EPA, but it is not a party to the CSME. This creates complications regarding the regional preference clause of the EPA and arrangements will have to be put in place to ensure compliance. Haiti is a member of CARICOM, but it is not a member of the CSME nor has it signed the EPA to date. As with the Bahamas, if and when it signs the EPA, a similar arrangement will have to be put in place to ensure compliance with the regional preference clause.

The EPA and CARICOM-DR Agreement

The FTA between CARICOM and the Dominican Republic came into force on 1 January 1999 and it covered Trade in Goods and Services, Investment and Economic Co-operation. Some of the provisions of the Agreement which are likely to be affected by the EPA include those for trade in services (MTI 2009). Under the CARICOM-DR Agreement provisions for Trade in Services was limited to an evaluation of the services sector in both parties with a view to an eventual comprehensive agreement. The EPA’s services provisions are far more sector specific, and this sector is now regulated by a legally binding agreement which carries with it an infrastructural framework to govern this aspect of trade between the parties. A CARICOM negotiated agreement has been superseded with legal application in CARICOM member states by an Agreement which was not negotiated by CARICOM. Institutional mechanisms set up under the CARICOM-DR FTA may be superseded by those of the EPA e.g., the Joint Councils. The regional preference clause has the effect of eliminating the clause under this FTA whereby the regions LDC’s were not required to extend reciprocity in trade. There will also have to be discussions as to representation pertaining to the institutional arrangements under the EPA, implementation of the provisions of the Agreement within CARIFORUM and co-ordination of policy in terms of CARIFORUM’s position on issues to be discussed under the Agreement. This newer closer relationship with the Dominican Republic would also have to be balanced with the terms of the potential new Free Trade Agreement negotiated with the United States since the Dominican Republic is already in a Free Trade Agreement with the US under the US-CAFTA-DR FTA.

IMPLICATIONS FOR CURRENT CARIBCAN NEGOTIATIONS

CARICOM trade with Canada is governed by a 1979 CARICOM-Canada Trade and Economic Co-operation Agreement and its associated Protocols, the CARIBCAN agreement which is a non-reciprocal merchandise trade assistance package and Bilateral Investment Treaties with Barbados and Trinidad and Tobago. The CARIBCAN Agreement is due to end in 2011. Currently, exports from CARICOM into Canada enter the Canadian market under varying conditions. Some enter under the MFN rules on account of measures voluntarily undertaken by Canada or
available to CARICOM via bilateral agreements. Some enter under the Canadian General Preferential Tariff available to developing countries; of note regarding this type of entry is the fact that it is unilateral and discretionary in nature. The final group enters the market under the conditions outlined in the CARIB-CAN Agreement. CARIB-CAN allows duty free entry into the Canadian market for most products with the exception of certain aspects of the garment industry and agricultural and agricultural derived products. Entry into the market duty free is conditional on rules of origin stipulations which states that the majority of the value added to the product is derived from CARIB-CAN beneficiary countries or Canada. CARICOM total domestic exports into Canada rose from CAN$519 million in 2000 to CAN$925 million in 2006 (WTO 2007). Of this amount the value of exports entering the market under MFN conditions amounted to CAN$804 million or approximately 86.5%. The value entering the market under the General Preferential Treatment stood at CAN$11 million or 1.2%. The value of goods entering under the CARIB-CAN Agreement stood at CAN$15 million or 1.2% of the total amount of CARICOM duty free exports into Canada (WTO 2007).

What can we expect?

Analysis of the impact of the EPA on the trade negotiations with Canada begins with Article 19(4), which extends MFN coverage to all countries or groups of countries controlling more than 1% and 1.5% of world merchandise exports respectively. The CRNM website indicates that Canada controls 3.4% of total world exports (CRNM 2009). Hence the MFN provisions under the EPA will be applicable here and should CARICOM extend any concessions to Canada beyond what was agreed to in the EPA, it will automatically have to be extended to the European Community as well. One immediate area of concern is in tariff liberalisation. Under the EPA CARICOM was able to secure protection for tariff lines for sensitive agricultural and non-agricultural products but, the Canadians have proposed that “all non-agricultural tariff lines and most agricultural tariff lines” (CRNM 2009), be eliminated. Further the EPA allowed for the liberalisation of these tariff lines to take place in five year increments over twenty-five years. There are thus two major concerns here: i) the areas to be liberalized, and ii) the relative pace of the liberalisation. This should be considered in light of the fact that the entire burden of liberalisation will now have to be undertaken by CARICOM unlike as in the EPA where it was shared with the Dominican Republic.

In a paper prepared for the Caribbean Policy Development Centre Workshop on Canada-Caricom Free Trade Negotiations Trinidad and Tobago, Mr. Carlos Wharton compares the EPA with the Canada-Costa Rica FTA with a view as to what to expect for CARICOM’s negotiations with Canada (Wharton 2009). The following are areas of concern:

i) Safeguard Measures – In the EPA Article 24(1) indicates that the safeguard measures to be adopted are to be in conformity with Article XIX of the GATT Agreement, the Agreement on Safeguards and article five of the Agreement on Agriculture. Article 24 (2) taking account of development objectives and the small size of the Caricom economies provides that safeguard measures will not be taken against CARICOM exports into the EC Party for a period of up to five years
(Article 24 (3)) after the Agreement comes into force. Conversely, safeguard measures can be taken against European imports into CARICOM provided they meet the conditions laid out in Article 25. The Canada-Costa Rica FTA provides such a mechanism specifically for the agricultural sector, for goods specified under the agreement and the levels under which the measure is triggered increases by 5% each year making it progressively harder to access the mechanism. In light of the developmental challenges of the CARICOM states an arrangement similar to the Canada-Costa Rica Agreement may be disadvantageous.

ii) Rules of Origin—Article 10 provides that goods are considered to have originated in CARICOM if they fulfil the requirements of Protocol 1 and it also provides for a review of the requirements for rules of origin after a period of five years. Protocol 1 sets out that goods originating in a CARICOM state have either been derived wholly from inputs from the region or from a percentage of inputs from outside of the region to which such a substantial process has been applied that the final product is classed in a different tariff line from that of the input. The Canada-Costa Rica Agreement specifies that rules of origin will be fulfilled where i) the good originates entirely in either country; ii) where non-originating materials are used it must undergo a tariff line changing process within one of the territories, where no tariff change is required it must meet the criteria of the conditions set out in Annex IV; iii) the good is produced in its entirety from originating materials and iv) where the tariff classification cannot be changed the good must undergo a process which adds between 25% to 35% depending on the method used for evaluating the value added. Carlos Wharton (2009) indicates that CARICOM producers generally favor changes in tariff headings rather than changes in value content on account of the region’s dependence on cheap sources of raw materials accessible from anywhere.

iii) Trade in Services and Investment—The EPA opens up the services trade between CARIFORUM and the European Community in specific areas outlined in Article 83(2) (General Services) and Article 83(3) (Professional Services). Entries for these services are subject to residence, educational, legal and other related entry requirements. Enumeration of the areas to be opened up is consistent with WTO standards; however the practice of Canada has been to list the areas which are barred from entry. Should this become a reality under the proposed CARICOM-Canada FTA the potential areas opened up for liberalisation would be potentially far greater than under the EPA with implications for similar provisions under the CSME as the liberalisation would not be under controlled conditions where there is a clear demarcation of the areas to be liberalized allowing CARICOM to control the pace of liberalisation of the services sector.
A Warning

In an article in the Trinidad Express, Professor Norman Girvan questions the need to negotiate an FTA with Canada at the present time given that negotiation and implementation of another trade agreement will add another layer to the already complicated trading environment for CARICOM (Girvan 2009). The actual volume of trade that enters Canada from CARICOM under the CARIBCAN Agreement amounts to 12.3% with 86.5% entering under MFN conditions. According to the article, the bulk of the exports from CARICOM under CARIBCAN are derived from one product (methanol) from one state (Trinidad and Tobago) and he queries the need to negotiate an agreement to facilitate market access for one state. The argument of the need for a framework to facilitate trade in services is met by Girvan with the counterargument that the principal services exports of the region do not need an ITA. There are already measures in place to administer the entry of certain skill sectors and the professional fields may be subject to regulatory barriers even if granted market access. Both Canada and CARICOM are constrained by existing trade agreements and hence the provisions of any new agreement will have to be negotiated in compliance with these agreements. This has implications for the phasing in period of trade liberalization given Canada’s current commitments under the FTA with Costa Rica. The period of liberalization under the EPA will be threatened should this be incorporated into any new agreement. The possibility of the end of the preferential arrangement available to the region under CBI means that the provisions of these agreements will also have to be factored into the equations in negotiations for a possible FTA with the United States of America. This will be discussed further in the next section. While it is true that these issues are purely speculative in nature at this time given that the negotiations are currently being conducted, they serve as good indications as to what can be expected under the new arrangement.

CBI: WHAT CAN WE EXPECT?

In recognition of the constraints within which the economies of the Caribbean Basin operated as well as in furtherance of its Foreign Policy Agenda in the region, the Congress of the United States of America enacted the Caribbean Basin Economic Recovery Act of 1983 (CBERA) which allowed certain items produced in Central America, the Dominican Republic and CARICOM unilateral duty free treatment on imports. To qualify for this treatment the products must have been imported directly from a designated Caribbean Basin Initiative (CBI) country into the customs jurisdiction of the United States; it must be derived entirely from inputs and production processes within the CBI beneficiary country or if inputs into production were derived from external sources the inputs must have undergone substantial transformation during the manufacturing process so that it would now constitute a new or different product. Further, in the event that the item was not derived wholly from a CBI beneficiary country it must constitute a minimum of 35% local content derived from one or more of the CBI countries or 15% minimum content derived from inputs from the United States of America. In addition to these requirements relating to the physical qualities of the products, the agreements also require that the beneficiary countries make and fulfil commitments in the areas of child labour, narcotics, corruption and government procurement. The terms of the Agreement were originally intended to last only to 1995. However the Act was amended in 1990 to be of indefinite duration and it also expanded the number of...
products eligible for duty free entry; however a number of products pertinent to CARICOM economies continued to be excluded namely those falling under the apparel and petroleum industries.

The apparel industry was removed from the exclusion as a result of a further enactment in 2000 under the US-Caribbean Basin Trade Partnership Act (CBTPA). This amendment saw a number of new products coming under the agreement ranging from the aforementioned apparel products to various implements of personal dressing and grooming to petroleum based products. These products are granted tariff treatment comparable to like products entering the US market from Mexico under NAFTA. Unlike the CBERA this aspect of the trading conditions for CARICOM products in the US market was due to expire on 30 September 2008 and according to the website of the United States Trade Representative it has been granted a waiver to 30 September 2010.

The Seventh Report to Congress on the Operation of the Caribbean Basin Economic Recovery Act indicates that for the period January to September 2007, Caricom exports into the US under the CBERA and CBTPA programs totaled approximately US$2.4 billion or 16% out of a total of US$14.8 billion total exports from CBI beneficiary countries. Conversely CARICOM exports to the US under MFN treatment totaled approximately US$4.6 billion or 31% of the total exports to the US from the Caribbean Basin (Girvan 2009). Thus the combined total of CARICOM exports to the US for that period amounted to US$7.1 billion or 47.7% of the total exports from the CBI Beneficiary countries at that time. It is instructive to note that the bulk of CARICOM’s exports already enter the US market under MFN treatment as this would impact on the tenor of the negotiations on the part of the CARICOM negotiators as they attempt to balance the interests of those regional entities already trading under MFN conditions and those trading under the preference system which CARICOM would be seeking to preserve in any new trading arrangement. CARICOM would have to mount arguments in favor of maintaining the preferences in light of these figures.

Impact of the EPA

Given that the United States is ranked as the third leading exporter in merchandise trade, controlling 8.3% of the world export volume, the MFN clause of the EPA will apply here and this will have to be factored into the negotiations for any new trade agreement with the United States together with the provisions of the CARICOM-Canada Agreement currently under negotiation (WTO 2008). The US-CAFTA-DR Free Trade Agreement eliminates tariffs immediately on the bulk of industrial and agricultural goods. Goods that do not face liberalization immediately have an extended period of up to 10 years or have been accorded preferential tariff-rate quotas (United States Trade Representative Office 2004). The release of the bulk of industrial goods from tariff treatment either immediately or within 10 years would be of concern for CARICOM on account of the fact that CARICOM was able to secure an extended schedule for its sensitive industrial products under the EPA and should an agreement be negotiated with the US with comparable terms to that of the US-CAFTA-DR Agreement, and which comes into effect prior to the time for liberalization under the EPA, the MFN clause may require that the goods benefiting from the extended time period under the EPA be liberalized under the terms of any prospective new US-CARICOM Agreement. Should the liberalization be reciprocal in nature it also holds
implications in terms of competition for similar CARICOM products and the revenues to be derived from the application of tariffs at CARICOM's border (Wharton 2009).

The current agreement governs trade in goods, but with the exception of Haiti, CARICOM's trade in services has increased across the board over the period from 1997 to 2007 (WTO 2008). In fact data available on the website of the CARICOM Secretariat indicates that as of 1999 for the following countries services account for more than 75% of their GDP: Barbados, Antigua & Barbuda, Dominica, Grenada, Montserrat, St. Kitts & Nevis, St. Lucia and St. Vincent & the Grenadines (CARICOM Secretariat 2001). In consideration of these figures it is difficult to envision any prospective trade agreement which CARICOM pursues which will not include a services component. As with the EPA any services agreement which is negotiated with the United States will have to address which sectors of CARICOM's services will be opened up to liberalization and which will be protected. CARICOM's negotiators will have to balance the terms of the services agreements negotiated with both Europe and Canada to guard against any inadvertent concessions that may come about as a result of the MFN and National Treatment rules.

It is instructive to note that the US-CAFTA-DR Agreement includes provisions for Government Procurement, Investment, Cross-Border Services, Financial Services, Telecommunications, E-Commerce, Intellectual Property Rights and the Environment. These areas are also covered under the EPA and are prime candidates for inclusion into any new agreement with the US, the template and parameters having already been set by the EPA. When the world trading environment and the current composition of CARICOM trade is analyzed it is apparent that any prospective agreement with the United States of America should include these areas for negotiation.

What Next?

At the time that the EPA was negotiated the world economy was operating under conditions of business as usual. Trade liberalization continued apace while the economies of CARICOM attempted to create the necessary policy space in the global trading environment to facilitate their continued expansion and growth despite the limits of their undiversified, small economies. Then came the Global Financial Crisis. This crisis has thus far crippled growth in the major export destinations for CARICOM products, it has paralyzed Foreign Investment flows, called into question the very structural basis of the global economy and more importantly for the region, and it has precipitated moves towards protectionism in many countries around the globe. Just how this current crisis will alter the framework for trade globally remains to be seen, but the added challenge to CARICOM is apparent when the already adversarial environment in the region pertaining to the EPA is factored in together with issues of implementation of the terms of the Agreement. The limited resources of the region will surely be taxed to the extreme as these issues are administered.

The EPA sets the template for the region's external trade negotiations. CARICOM would be foolhardy not to attempt to set up its trading infrastructure to meet the demands of the new global economy if it does not want to be left standing after the baton has already been passed. This is not the time for the region to be reactive. Should CARICOM seek to negotiate new trade arrangements with countries such as China,
Japan, Korea, Russia, Brazil, Mexico, India, and Australia, the MFN treatment clause of the EPA will be applicable as these countries already control more than 1% of world merchandise exports. Recognition of the need for new directions in Foreign Policy in light of the evolving geo-political, global and hemispheric environment necessitates that the region seek out non-traditional partners for trade. This clause may serve as a deterrent or complicating factor in any prospective negotiations which CARICOM may enter into. Brazil, which is emerging as a leading geo-political and economic force in the hemisphere and which has historically pursued developmental policies as part of its economic and foreign policy (Webber & Smith 2002), has already signaled its discomfort with this clause. The geographical proximity between Brazil and Guyana and the possibility of new trading links and synergies to be derived from new infrastructural links between the two countries further complicates the matter. It is instructive to note that the most strenuous objections to the EPA thus far from a CARICOM Head of State came from the President of Guyana. China's increasing trade with Africa, as well as India's increasing exploration of Foreign Policy options in the wider world as they both seek markets and energy to feed their expanding economies would mean that this would come to their attention sooner or later, if it hasn't already.

The clause has no application to the smaller economies of the world and CARICOM is still able to negotiate agreements with those economies. Given the traditional links to the economies of Europe and North America and with an inherited appetite for the products of first world economies, CARICOM cannot escape having to interact with the traditional trading partners. The time for lamenting the bygone days of preferential access has gone. Whatever the merits or demerits of the EPA, it does constitute a bold attempt by CARICOM to put in place the mechanisms required for the region's survival in the age of globalization. What is now required of CARICOM is a pragmatic appraisal of what has worked and what has not worked under any particular agreement and implementation of creative and complementary changes to secure and ensure favorable trading terms for the region in spite of the trading environment in which we may find ourselves.

References


