

# BASIC FEATURES OF CARIFORUM-EC EPA

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# WHAT IS THE EPA?

- **Agreement** signed by a 27 European Union Member States and 14 CARIFORUM States in October 2008. It came into effect through provisional application in December 2008. It replaces the Cotonou Agreement of 2000 in which the European Community granted non-reciprocal market access to ACP countries on terms more favourable to those granted to non-ACP countries.
- **BACKGROUND TO EPA**
- **requirement for a WTO-compatible trading arrangement**

# WHAT IS THE EPA CONT'D

- The EPA is divided into six parts and contains 7 annexes and 3 protocols. The main text contains 250 Articles.
- Part I: trade partnership for sustainable development
- Part II: trade and trade related matters
- Part III: dispute avoidance and settlement
- Part IV: general exceptions
- Part V: institutional provisions
- Part VI: general and final provisions

# WHAT IS THE EPA CONT'D

- ANNEXES
- 7 Annexes includes export duties on goods, origin rules, customs duties on products of EC origin, information on enquiry points, agencies and services for procurement, publication of laws etc.

# WHAT IS THE EPA CONT'D

- PROTOCOLS
- 3 protocols includes rules of origin, administrative assistance in customs matters, and cultural cooperation.

# OBJECTIVES OF EPA

- These include the following:
  - (a) Contributing to the reduction and eventual eradication of poverty;
  - (b) Promoting regional integration
  - (c) Promoting the gradual integration of the CARIFORUM States into the world economy, in accordance with their political choices and development priorities;
  - (d) Improving the CARIFORUM States' capacity in trade policy and trade related issues;
  - (e) Supporting asymmetrical liberalisation consistent with development needs and WTO obligations

# MFN CLAUSE

- The MFN clause represents perhaps the single most important controversial aspect of the EPA. The MFN clause is contained in Articles 19, 70 and 79 of EPA.
- Article 19 covers MFN treatment in Title I, Chapter 1 relating to trade and trade related matters such as customs, classification, rules of origin, customs duties on imports of goods originating in CARIFORUM, customs duties on goods originating in the EU, elimination of customs duties on originating exports, modification of tariff commitments.
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# MFN CLAUSE CONT'D

- Article 70 covers MFN treatment in respect of commercial presence such as market access, national treatment, list of commitments, behaviour of investors, maintenance of standards and review, and other agreements.
- Article 79 covers MFN treatment in respect of cross-border supply of services such as market access, national treatment and list of commitments.
- The MFN provision provides that any more favourable treatment extended to third countries by the EC under a free trade agreement must be extended to CARIFORUM or the EC and any more favourable treatment extended by CARIFORUM to a major trading economy must be extended to the EC.

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# IMPLICATIONS OF MFN PROVISION

- Locked in effect (but, commitments may be modified, art. 17)
- Preferences extended to major trading economies to be extended to the EC
- Disincentive to conclude agreements with developing countries classified as major trading economies

# MFN CLAUSE:EXCEPTIONS

- The MFN obligation does not apply to preferential treatment accorded to third countries, by either CARIFORUM or the EC, under free trade agreements in existence at the time of the signature of the CARIFORUM-EC EPA.

# TRADE DEFENCE INSTRUMENTS

- Provision for the application of anti-dumping and countervailing duties in accordance with WTO rules
- Provision for the application of safeguard measures in accordance with WTO rules
- Trade defence measures not subject to the dispute settlement provisions under EPA

# TRADE DEFENCE INSTRUMENTS CONT'D

- Measures taken under the Safeguards clause of EPA are governed by the dispute settlement provisions of EPA
- Such measures are subject to a lower standard for application than safeguard measures under WTO rules.

# RELATIONSHIP OF EPA WITH THE WTO AGREEMENT

- There is a general provision relating to the relationship between the EPA and the WTO and specific provisions under particular chapters addressing specific issues.
- General provision, Article 242 of the EPA, provides that the EPA does not require any of the parties to act inconsistent with their obligations under the WTO Agreement.

# RELATIONSHIP OF EPA WITH THE WTO AGREEMENT CONT'D

- On technical barriers to trade, Article 44 of the EPA recognizes the rights and obligations of the parties under the WTO TBT Agreement;
- a similar provision is contained in Article 52 in respect of sanitary and phyto-sanitary measures; for trade defence measures such as anti-dumping duties, countervailing duties and safeguards measures, Article 23 (regarding antidumping and countervailing duties) and Article 24 (regarding safeguards), provide that the parties to EPA can adopt measures consistent with the relevant WTO Agreements;
- and Article 139 with respect to rights and obligations under the WTO Agreement on Trade related Aspects of Intellectual Property (TRIPS).

# RELATIONSHIP OF EPA WITH THE WTO AGREEMENT CONT'D

- Article 222 of the EPA provides for dispute settlement by arbitration to avoid parallel proceedings before the EPA dispute settlement system and the WTO.
- A party may choose its forum but cannot initiate parallel proceedings in different for a
- Proceedings instituted in one forum to be completed before resort to another forum

# RELATIONSHIP OF EPA WITH THE WTO AGREEMENT CONT'D

- Article 222(1) forbids an arbitral panel from adjudicating on disputes involving rights and obligations under the WTO Agreement.
- Presumably, this obligation does not affect the jurisdiction of an arbitral panel to adjudicate on issues whereby the obligation in the EPA is similar to obligations under the WTO Agreement as in the case of WTO consistent provisions (e.g. Art. 17 re modification of commitments)



# RELATIONSHIP OF EPA WITH THE RTC

- The EPA contains general and specific provisions concerning its relationship with the RTC. Article 4 of the EPA sets out the general provision for consistency with the RTC noting that: *‘The Parties recognize that regional integration is an integral element of their relationship and a powerful instrument to achieve the objective of this agreement’.*

# RELATIONSHIP OF EPA WITH THE RTC

- several provisions refer to regional integration as being necessary to realize the objectives in particular sections of the EPA.
- For example, Article 34 on customs administration;
- Article 38 on market access for agricultural products; Article 56 regarding sanitary and phyto-sanitary measures;
- Article 64 relating to trade in services and investments;
- Articles 126 and 127 regarding competition law and policy;
- Article 133 of Chapter 2 on Innovation and Intellectual Property;
- Article 185 relating to environmental standards; Article 94 regarding social cohesion policies.

# RELATIONSHIP OF EPA WITH THE RTC

- Where there is an overlap in obligations, the EPA dispute settlement provisions prevail.
- CARIFORUM Members obligation to each other under the RTC may run afoul of EPA provisions in specific instances, for example, in the case of the exercise of rights relating to establishment or for the removal of restrictions on the right to establishment under the RTC which can impact establishment provisions in the EPA with respect to investments.

# REMEDIES FOR BREACH

- Compliance preferred to compensation. Remedies for breach are considered temporary until the offending measure is withdrawn or the dispute is settled: (Article (213(4))
- Article 213 provides for temporary remedies in the case of non-compliance.
- Triggered when the Party concerned fails to notify any measure taken to comply with the arbitration panel ruling before the expiry of the reasonable period of time, or if the arbitration panel rules that the measure notified under Article 212(1) is not compatible with that Party's obligations under the provisions of the Agreement.

# REMEDIES FOR BREACH CONT'D

- This includes an offer for compensation if so requested by the complaining Party, whether suspension of concessions or financial compensation, though the latter is not required.
- Suspension of concession does not apply to disputes under Chapter 4 and 5 of Title IV of EPA.(i.e. environment and labour standards)

# DISPUTE SETTLEMENT

- Consultations
- Mediation
- Arbitral panel
- Interim panel report
- Panel ruling

# DISPUTE SETTLEMENT CONT'D

- Compliance with arbitration panel ruling
- Reasonable period of time for compliance
- Review of measures taken to comply
- Review of measures taken to comply after adoption of appropriate measures

# INSTITUTIONAL PROVISIONS

- Joint CARIFORUM-EC Council
- CARIFORUM-EC Trade and Development Committee
- CARIFORUM-EC Parliamentary Committee
- CARIFORUM-EC Consultative Committee



*THANK YOU*

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