

## Getting To Know The EPA

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Prepared by the Information Unit of the Caribbean Regional Negotiating Machinery (CRNM), this electronic newsletter focuses on the RNM, trade negotiation issues within its mandate and related activities.

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**Getting to Know the EPA** is one of a series of guides produced by the Caribbean Regional Negotiating Machinery (CRNM) on the subject of the Economic Partnership Agreement (EPA) between African, Caribbean and Pacific States and Europe. This Frequently Asked Questions (FAQ) guide is designed to clarify basic facts about the EPA.

### **Background**

The Cotonou Agreement, signed in 2000, is a partnership pact between the Europe Union (EU) and the African, Caribbean and Pacific Group of States or ACP. Before the Cotonou Agreement, European – ACP trade relations were facilitated by what was primarily a trade and aid agreement known as the Lomé Convention, which was originally signed in 1975. The Lomé Convention, which facilitated ACP trade access to Europe in preference to goods from other countries, was renewed and renegotiated successively thereafter creating four agreements - Lomé I, Lomé II, Lomé III, and Lomé IV. The Cotonou Agreement, which will run for 20 years, is the successor to Lomé IV and was created to help the ACP deal with challenges that hinder their development such as poverty, lack of economic opportunities and conflict.

The Cotonou Agreement is based on three broad areas of partnership namely, Development Cooperation, Trade and the Political Dialogue. While the Lomé Convention and the Cotonou Agreement share similar objectives, the Cotonou provides a comprehensive framework to address the political, economic, social, cultural and environmental aspects of ACP development.

Though the Cotonou Agreement allowed for the continuation of Lomé IV non-reciprocal trade preferences, it also provides for the replacement of those preferences by the end of 2007.

### **What is the EPA?**

The Economic Partnership Agreement or EPA is an instrument of trade partnership required by the Cotonou Agreement to replace the trade component of Lomé IV. It is expected that it will help ACP countries, including CARIFORUM, to reduce poverty and achieve economic growth through sustainable trade with Europe.

### **What is CARIFORUM?**

CARIFORUM is an abbreviation of Caribbean Forum, the Caribbean Group of States which are Members of the African, Caribbean and Pacific (ACP) Group of States. These countries include the independent States of the Caribbean Community, Cuba and the Dominican Republic. In the EPA negotiations, Cuba, though an ACP member from the Caribbean Group,

is not party to the Cotonou Agreement, and therefore has not participated in the EPA negotiations.

### **Why do we need an EPA at this time?**

The current ACP trade relationship with the EU under the Cotonou Agreement is based on Lomé IV duty-free non-reciprocal preferential access of most ACP goods to European markets. The access is described as preferential because other states both developed and developing, do not enjoy the same degree of access. In this sense it is also discriminatory. It is non-reciprocal in that these ACP states are not obliged to provide the same access to EU goods.

After Lomé IV was signed in 1989, other negotiations were taking place at the international level to reduce barriers to trade between countries on the international market. The ACP States and Europe, as participating Members in that round of negotiations which culminated in the establishment of the WTO Agreement in 1994, agreed to the principle that countries should not discriminate against each other, except in a few exceptional cases. This obligation to uphold this principle of non-discrimination compelled ACP States and the EU to make provision for the replacement of Lomé preferences under the Cotonou Agreement of 2000.

Until these preferences can be terminated, the trade relationship has required special exemption or waiver from the WTO. This WTO waiver that covers the current preferential access was granted only because of ACP and Europe's agreement to reduce the preferences granted to ACP countries. This waiver will expire on 31<sup>st</sup> December 2007.

The Lomé IV preferences present implications for the treatment of non-ACP WTO Members that seek better access in to Europe. Though the preferences are technically covered by a waiver, they have generated angst and disquiet amongst these interested WTO members. For example, in the case of bananas, both the ACP and Europe were also compelled by the pressures of WTO litigation to find a WTO compatible replacement to the Lomé preferences that would facilitate market access for traditional ACP exports. Disputes lost by Europe and initiated in 1996 by Latin American countries and the US, and again in 2006 by Ecuador, challenged Europe's import regime for bananas, a traditional ACP export covered by Lomé IV.

Obtaining a waiver for another preferential non-reciprocal trade agreement after the current one expires is therefore considered improbable because of the political and economic interests of non-ACP WTO members in the discontinuation of ACP preferential access to Europe.

In addition to the consideration of the expiring WTO waiver, the Cotonou has built-in a schedule for the discontinuation of the Lomé preferences by the beginning of 2008. We have until that date to negotiate a new agreement that is WTO compatible. By replacing the current WTO incompatible non-reciprocal preferential trade arrangements with Europe, the EPAs should prevent other countries from successfully challenging the ACP's privileged access to European markets.

### **What makes the EPA WTO compatible?**

Under the new relationship between the regions, trade liberalization in goods between the EU and the ACP is required to ensure that the EPAs in goods are compatible with the rules on non-discrimination under the World Trade Organization. While non-discrimination is a pillar of the WTO, there are permitted exceptions where the principle need not be applied. Though the EPA in goods will in practice be discriminatory against non-ACP WTO members, it qualifies as a Regional Free Trade Agreement (RFTA) and therefore is technically permissible under the WTO rules, specifically the General Agreement on Tariffs and Trade (GATT) Article XXIV. Under these rules the ACP and EU must exchange market access offers. This means they must exchange schedules for the liberalization of their respective goods markets. However, it is not necessary that the offers share the same degree of liberalization commitment.

GATT Article XXIV is clear on the test that must be passed in order for an RFTA to be considered WTO compatible. The most important elements of that test are that firstly, the RFTA must not raise the overall level of protection and make access to products of other countries not participating in the RFTA more difficult. Secondly, there is an obligation to liberalize "substantially all trade" amongst the participants of the RFTA.

The first test reflects an obligation to the principle to keep the level of discrimination at a minimum so that global trade is not excessively distorted. The second test is much more controversial in that "substantially all trade" is not defined by the WTO rules. The EPA obligates both the ACP and the EU to open their markets.

On one hand, the EU has offered duty-free, quota free access for all ACP goods, with some delay for rice and sugar. On the other, in the CARIFORUM negotiations, reaching consensus on the degree to which CARIFORUM must liberalize to satisfy this WTO criterion has been particularly challenging and controversial. CARIFORUM liberalization presents difficult fiscal implications for CARIFORUM economies.

Though an EPA must address market access in goods, it may also address services and investment. If services are included, then the EPA as a RFTA, must also meet similar requirements under the WTO rules on trade in services.

### **What if there is no EPA by the beginning of 2008?**

In light of the expiring Cotonou waiver, without an EPA, the only alternative is to use the EU's Generalized System of Preferences (GSP) from which all developing countries, including the ACP, may benefit. Obtaining a waiver on another non-reciprocal preferential trade agreement is unlikely. Therefore the EU can no longer legally continue these trade arrangements after 2007.

For ACP countries that considered themselves not in a position to enter into an EPA, Article 37.6 of the Cotonou obligated them to request the EU to examine in 2004, all possible alternatives for ACP countries, to ensure that ACP countries are provided market access that is equivalent to the current preferential market access.

However, the Cotonou Agreement is quite clear that any alternative arrangement **must** be compatible with the rules of the WTO. After consultation and examination, GSP was found to be the only legally compatible alternative to the EPA but it facilitates less generous access than which is currently available under the Cotonou Agreement. Furthermore, GSP is not based on the principle of partnership and development between Europe and the ACP. In

recognition of this, CARIFORUM during that consultation and examination period in 2004 did not indicate an inability to enter into an EPA with Europe.

### **What is GSP?**

Under WTO rules, developed countries are allowed, at their discretion, to offer to all developing countries in a non-discriminatory fashion, non-reciprocal market access to their markets. The arrangement through which this form of preferential access is offered is known as the Generalized System of Preferences. The European Union offers different levels of access under their GSP regime. The main ones are described below.

1. Under the Standard GSP scheme the available access is open to developing countries in general so the margin of preference which Caribbean exports currently enjoy will be cancelled out. Under GSP only a few products are eligible for duty-free access. A tariff will be applied to the other products allowed under the Standard GSP that are ineligible for duty free treatment. This means that there would be a significant tariff jump for most ACP exports, including CARIFORUM'S largest exports. The resultant higher prices will make most of the region's current exports to the EU uncompetitive.
2. For some developing countries the Standard GSP is not the only option. Without an EPA the world's poorest countries or Least Developed Countries (LDC), some of which are ACP countries, would still be eligible to benefit from the special 'Everything but Arms' arrangement under the GSP scheme. This arrangement grants duty-free access to LDCs for all products except ammunition and guns. While Haiti, a CARIFORUM member, is a LDC, the rest of CARIFORUM do not qualify as LDCs. Therefore, most CARIFORUM States would not be eligible for this arrangement.
3. The last and newest arrangement under the Scheme is the GSP+ arrangement. This offers duty-free access to significantly more items than under Standard GSP. However, for most CARIFORUM Countries GSP+ would not be beneficial. For example, of the top twelve CARIFORUM exports, eight would face tariffs that will be prohibitive to competitive export. In addition, sugar, bananas, rice and rum and alumina, all of which are significant CARIFORUM exports, are excluded from the EU GSP regime. Only a few CARIFORUM industries would realize beneficial market access under GSP+ compared to standard GSP.

The effect of GSP would be damaging and would inhibit the ability of current exporters to continue exporting to Europe, and offers little prospects to new producers that seek to penetrate the European market. Furthermore, the entire GSP scheme does not incorporate any framework for trade in services such as tourism and cultural services.

### **What will the EPA cover?**

The EPA is primarily designed to replace the current trade arrangement for goods, which will cease to exist at the beginning of 2008. The core of the EPA is trade in goods. CARIFORUM is however, especially interested in negotiating trade in services, investment and trade related issues like innovation, as well as development assistance, within its EPA. Given the Caribbean's declining eligibility for international aid and the decline of preferential market access, for the small developing countries of the Caribbean few avenues remain to support the process of diversifying their economies and developing in a sustainable way. The EPA presents a unique opportunity for CARIFORUM to obtain such support. Given the importance of these areas to the regional economy and its future, the EU has also been prepared to negotiate these areas.

## **What opportunities will the EPA provide?**

1. The EPA will broaden access for CARIFORUM goods and services to the European markets, including the French territories of Guadeloupe, Martinique and French Guiana.
2. Like ordinary RFTAs, the EPA will also open up ACP markets to European exports. But unlike most regional free trade arrangements the EPA will allow ACP countries as much time as possible to adjust to opening up their own markets to European goods. In addition to these flexibilities the EU has pledged to provide financial and non-financial parallel development resources.
3. Under the EPA, opportunities will be provided for investment promotion and for local firms to improve their international competitiveness.
4. The CARIFORUM EPA also seeks to avoid having development compromise the environment and the rights of workers.
5. Mention has already been made of the obligation to open markets to EU exporters. The positive side of this coin is that it can help to reduce the cost of imports. Therefore inputs for CARIFORUM producers and service providers sourced from Europe could become cheaper, which could result in the reduction of the price of local goods and services for consumers within CARIFORUM.
6. In addition to duty-free, quota-free access, a number of financing and technical assistance measures contained in the EPA, can help to reduce the cost of exporting to Europe, especially where these arise from administrative and processing inefficiencies and obligations.
7. Through improved competition between local goods and European goods, local consumers can expect lower prices and wider variety of merchandise, making it easier on household budgets.
8. If new as well as established local industries take advantage of the many measures and opportunities negotiated to date in the EPA, they will be in a position to competitively develop, produce and sell high quality CARIFORUM goods and services on international markets.

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