

## INFORMATION PAPER

### CARIFORUM-EU ECONOMIC PARTNERSHIP AGREEMENT:

#### An Overview\*

*(July 2008)*

On December 16 the European Commission initialled an Economic Partnership Agreement (EPA) with Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, the Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, Saint Kitts and Nevis, Suriname, and Trinidad and Tobago (the CARIFORUM countries). Negotiations began in 2004 and this Economic Partnership Agreement covers all the areas foreseen in the Cotonou Agreement for those negotiations.



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\* This document describes the key features of the EU-CARIFORUM EPA for information purposes only. It does not replace or interpret the provisions of this Agreement.

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## **1. TRADE PARTNERSHIP FOR SUSTAINABLE DEVELOPMENT**

### *Approach to Sustainable Development*

The CARIFORUM EPA aims at achieving sustainable development by establishing a trade partnership which promotes regional integration and the gradual integration of CARIFORUM countries into the world economy includes capacity building measures and supports increased investment. This is a new kind of free-trade agreement as sustainable development is the presiding principle governing the whole agreement. Sustainable development is also covered in detail in two chapters dealing with environmental and social provisions.

The relevant provisions of the agreement set out the aspects of sustainable development that are affirmed, protected, covered by rules and disciplines, taken up in institutional and administrative arrangements and made the subject of cooperation.

### *Things that are reaffirmed*

- The sustainable development provisions of the Cotonou Agreement (Article 3 states that "the objective of sustainable development is to be applied and integrated at every level of their economic partnership...");
- The use of international environment standards, taking account of scientific information, respect for the precautionary principle, and transparency when introducing environmental legislation;
- Social aspects such as commitments to core labour standards in the 1998 International Labour Organisation declaration on Fundamental Principles and Rights of Work and the United Nations declaration on Full Employment and Decent Work.

### *Rights that are protected*

The major area that is safeguarded is the Parties' right to determine their own level of environmental protection and social regulation, subject to the existing commitments in the Cotonou Agreement in respect of core labour standards. This freedom is qualified by the affirmation of a shared ambition to legislate for high standards and to implement them.

Other specific provisions include the right to take measures that are genuinely intended to protect the environment or natural resources, even if they have trade impacts.

### *Issues covered by rules and disciplines*

The key discipline is the undertaking not to lower social or environmental standards in order to derive trade or investment benefit. There is also a commitment not to use labour standards for "protectionist trade purposes", and on the environment side a commitment not to use trade or investment-related legislation or measures in a way that frustrates attempts to protect the environment.

### *Institutional and administrative arrangements*

As well as using existing bodies and the Consultative Committee for consultation, monitoring and assessing sustainability impacts, the EPA provides for a Committee of Experts to play a role in handling issues arising from its implementation in this area. In the event of dispute settlement procedures being used related to a sustainable development issue, a specific provision makes it impossible for compensation or trade remedies to be invoked against a Party's wishes.

### *Cooperation Provisions*

Together with provisions on cooperation on eco-innovation and renewable energy, the social and environmental chapters conclude with a summary list of relevant cooperation priorities including environmental and social aspects of sustainable development:

#### Environmental cooperation:

- Technical assistance in meeting product standards in EU markets;
- Facilitation of voluntary schemes including labelling and accreditation schemes;
- Technical assistance and capacity building on multilateral environmental agreements;
- Facilitation of trade in timber and wood products, from legal and sustainable sources;
- Assistance to develop production of goods and services beneficial to the environment;
- Public awareness and education programmes in environmental goods and services.

#### Social cooperation:

- Exchange of information on respective legislation and policies;
- National legislation and mechanisms for social dialogue, promoting Decent Work Agenda;
- Education on skills, health and safety, rights and responsibilities, labour market adjustment;
- Training labour inspectors, and promoting corporate social responsibility.

## **2. TRADE IN GOODS: LIBERALIZATION COMMITMENTS**

### *CARIFORUM liberalisation*

The coverage of goods liberalised by CARIFORUM countries under this Agreement amounts to 61.1% of CARIFORUM imports from the EU in value over 10 years, 82.7% over 15 years (84.7 % of tariff lines) and 86.9 % over 25 years (90.2 % of tariff lines).

The main exclusions and long phase in periods (i.e. up to 25 years) for sensitive products include (this is a non exhaustive list): agricultural products (poultry and other meat, dairy products, certain fruits and vegetables), fishery products, food preparations (sauces, ice cream, syrup), beverages, ethanol, rum, vegetable oils, chemicals (paints/varnishes, perfumes, make up/cosmetics, soaps, shoe polish, glass/metal polishes, candles, disinfectants), furniture and parts, apparel (cotton pullovers/jerseys/cardigans).

For agricultural products, most sectors have been either excluded from liberalisation or subject to long transition periods (20 or even 25 years). The only exception is the Dominican Republic which, in the light of the liberalisation already committed to in its free-trade agreement with the United States, has granted better conditions to EU products than the general CARIFORUM treatment.

With respect to Other Duties and Charges, including various kind of discriminatory levies and surcharges additional to normal customs duties, which are a major revenue earner for the majority of the CARICOM countries, the Agreement provides for a standstill together with a phase-out starting seven years after signature with a complete elimination within 10 years. All export duties are eliminated immediately upon entry into force (Guyana and Suriname enjoy limited exceptions).

### *EU liberalisation*

For all products originating in CARIFORUM countries and exported to the EU (other than rice and sugar), the Agreement has brought about a Duty and Quota Free Access (DFQF) regime as from 1 January 2008. This is a major improvement compared to the preferential treatment granted under the Cotonou Agreement for some agricultural products, in particular for bananas.

Access for CARIFORUM rice will be DFQF after a transition period of 2 years ending on 31 December 2009. In 2008 and 2009 the rice quota will be 187 000 tonnes and 250 000 tonnes, compared to the former quota of 125 000 tonnes. The in-quota duty will be eliminated.

For sugar, access will be DFQF as from 1 October 2009, subject to a transitional automatic safeguard mechanism until 30 September 2015. For the period from 1 October 2008 to 30 September 2009, while the Sugar Protocol remains in force, a quantity of 60 000 tonnes of sugar at zero duty (additional to the quantities under the Sugar Protocol) has been granted to CARIFORUM countries. 30 000 tonnes of this tariff rate quota have been reserved for the Dominican Republic which has so far had no preferential access under the Sugar Protocol. Sugar shortfalls in the framework of Sugar Protocol will be reallocated within the CARIFORUM region, as stipulated in a joint declaration on the "reallocation of undelivered quantities under the Sugar Protocol".

In addition, imports of CARIFORUM sugar will be subject to a minimum price (not lower than 90% of the EU reference price) between 1 October 2009 and 30 September 2012.

In order to avoid trade circumvention, certain products with high sugar content are subject to a special surveillance mechanism from 1 January 2008 to 30 September 2015 (if imports increase by 20% in volume during a period of 12 consecutive months, the Commission may analyse trade patterns and, in case of circumvention, suspend preferential treatment for these products).

#### *Other Provisions*

Other provisions include:

Remodulation of the phasing out period of customs duties:

- In the event of serious difficulties in respect of the liberalisation of import duties the CARIFORUM countries can ask for the re-phasing of the liberalisation commitments, within the overall transitional period for tariff elimination set for the particular product.

Modification of tariff commitments:

- In the light of the special development needs of Antigua and Barbuda, Belize, Dominica, Grenada, Guyana, Haiti, Saint Lucia, Saint Vincent and the Grenadines and Saint Kitts and Nevis, the Agreement provides for the possibility to modify the level of customs duties stipulated in the schedule for tariff liberalisation. Such modifications need to remain compatible with the requirements of Article XXIV of the GATT 1994 which require Parties to liberalise "substantially all trade" between them.

The Most Favoured Nation (MFN) Clause:

- The Agreement includes a non-discrimination clause which is intentionally asymmetric, in that the EU will grant to African, Caribbean and Pacific (ACP) partners any more favourable treatment arising from subsequent agreements the EU concludes with any third parties, while the ACP partners will only have to extend to the EU any more favourable treatment to a major trading country with whom they enter into a free-trade agreement after signature of the EPA. Major trading countries only cover competitive exporters that are directly competing with the EU. The clause therefore does not apply to deeper integration between neighbouring ACP countries and many or in fact most other instances of potential South-South integration.

### **3. TRADE DEFENCE INSTRUMENTS**

#### *Standard Trade Defence Measures*

The trade defence chapter of the Agreement includes provisions on anti-dumping, countervailing and safeguard measures.

#### *WTO Safeguards*

With respect to anti-dumping and countervailing measures all bilateral agreements between EU and third countries confirm existing rules of the World Trade Organisation (WTO). The EPA is no exception in this regard. It acknowledges the right of both Parties to take the measures, including the recognition of the special status of developing countries. In addition, clear rules will be applicable in potentially difficult situations where measures would be taken both at national and at regional level.

With respect to WTO (multilateral) safeguard measures which are normally applied to imports from all countries, the EU has granted a blanket exclusion to the CARIFORUM States from the scope of any WTO safeguard measure taken by the EU – for a period of 5 years (renewable). This is a strong – and unprecedented – preferential treatment granted to CARIFORUM and other ACP countries.

#### *Asymmetry*

Standard bilateral safeguards are provided for in order to account for problems such as import surges but with some asymmetries in favour of the CARIFORUM States (longer duration of measures, protection of infant industries). There are also specific measures for the EU outermost regions offering them additional protection in view of their geography, small economic size and structural difficulties.

## 4. CUSTOMS AND TRADE FACILITATION

### *Definition of Trade Facilitation*

"Trade facilitation" is the name given to measures that will simplify and modernise import, export and transit requirements and procedures, in particular with respect to customs.

### *Overview of Provisions*

The Agreement with CARIFORUM includes a comprehensive chapter on customs cooperation and trade facilitation including:

- Detailed provisions on simplification and modernisation of customs procedures (risk management, computerisation, simplified procedures, customs brokers, etc.);
- A rendezvous clause on pre-shipment inspections (together with an agreement on the need to dismantle them, but without prejudice to CARIFORUM's present WTO rights in this area);
- Clear disciplines on customs fees and customs valuation; the application of the Harmonised System for classification purposes;
- Detailed commitments on transparency of customs legislation and cooperation with traders;
- Limited transitional provisions (3 years for introducing the CARIFORUM single administrative document);
- A commitment to make progress towards regional integration in the area of customs, at CARIFORUM's own pace.

### *Institutional Provisions*

The agreement foresees the setting up of a Special Committee on customs and trade facilitation, to oversee the implementation of the chapter, as well as the Protocols on rules of origin and mutual administrative assistance.

### *Cooperation Provisions*

- Provisions on enhanced cooperation on customs, building upon the EU's experience and expertise in this area;
- Commitments from the EU on supporting action in this area, including on the implementation of the Framework of Standards of the World Customs Organisation.

## **5. AGRICULTURE AND FISHERIES**

### *Overview of agriculture and fisheries provisions*

The chapter on agriculture and fisheries covers cooperation and assistance to the CARIFORUM agri-food sector. In addition, in a specific article on "traditional agricultural products" the EU has committed to undertake prior consultations on trade policy developments that may impact on the competitive positions of traditional agricultural products, including bananas, rum, rice and sugar.

### *Export Subsidies*

The EU side has committed to phase out the export subsidies on all agricultural products for which CARIFORUM has agreed to eliminate custom duties. The modalities of such phasing-out shall be decided by the CARIFORUM-EC Trade and Development Committee.

### *Food Security*

The Agreement takes into consideration the issue of food security and allows CARIFORUM countries to take "appropriate measures" in case of need.

### *Accompanying declarations*

Two declarations concerning agricultural products have been included at the end of the Agreement:

- A joint declaration on rice which addresses the administration of the rice quota;
- A joint declaration on bananas which acknowledges the importance of the sector for several CARIFORUM countries, recognizes the benefits of a substantial tariff preferences and sets out potential uses of funds to help the CARIFORUM banana industry further adjust to new challenges.

### *Cooperation Provisions*

Co-operation priorities identified include areas such as market development, innovation, linkage development, financing, international health standards for fish/fish products and investment promotion support.

## **6. TECHNICAL BARRIERS TO TRADE (TBT)**

### *Objectives of TBT Provisions*

The objectives of the TBT Chapter are to facilitate trade in goods between the Parties while maintaining and increasing their capacity to protect health, safety, consumers and the environment, and improve their capacity to eliminate unnecessary obstacles to trade between them.

### *Overview of Provisions*

The Parties will inform each other of proposals for technical regulations and standards that are especially relevant to trade between them, and designate contact points. There are also commitments to inform and consult each other on specific issues as they arise; to inform each other of measures to preclude imports for reasons of safety and the environment; and to identify priority products with a view to collaborating so that these products meet requirements for access to each other's markets.

### *The Regional Dimension*

On all these matters a key feature of the Agreement is its regional dimension, incorporating provisions on cooperation between national and regional authorities dealing with standardization, accreditation and related matters to facilitate both intra-regional and inter-regional trade, and support of the process of CARIFORUM regional integration.

### *Cooperation Provisions*

The Agreement includes a commitment to cooperate in international standard setting bodies, including facilitating participation of CARIFORUM countries representatives in the meetings of these bodies. There is also an agreement to cooperate in sharing of expertise and training in standard-setting, metrology, accreditation, market surveillance and conformity assessment in the CARIFORUM region; development of centres of expertise within CARIFORUM, development of the capacity of CARIFORUM enterprises to meet regulatory and market requirements, and adoption of harmonized technical regulations, standards and conformity assessment procedures based on relevant international standards.

## **7. SANITARY AND PHYTOSANITARY MEASURES (SPS)**

### *Objectives of SPS Provisions*

The Chapter on SPS measures has as its main objective to facilitate trade between the Parties. The most important part of the Chapter deals with the provision of assistance in order to improve their capacity to address potential disruptions to trade and achieve equivalence and/or compliance with EU requirements.

### *Main Provisions*

- The designation of Competent Authorities on SPS measures by both Parties and commitment from the CARIFORUM side to establish a regional body representing the CARIFORUM Competent Authorities to enhance regional integration;
- Specific attention to regional collaboration and integration, noting cooperation will be needed to establish harmonised SPS measures within the region;
- Transparency provisions, with the EU committing to cooperate with the region to enhance relevant information exchange.

### *Asymmetry and support for regional integration*

A good part of the commitments are unilaterally undertaken by the EU, but the Agreement also contains a commitment from the CARIFORUM side on regional integration and harmonisation.

### *Cooperation Provisions*

The EU agrees to cooperate to reinforce regional integration, to improve monitoring, implementation and enforcement of SPS measures through capacity building activities, and support public and private sector partnerships. This includes expertise sharing, training and information for regulatory personnel, capacity development for the private sector and cooperation in international bodies.

## **8. INVESTMENT, TRADE IN SERVICES AND E-COMMERCE**

### *Overview of provisions*

Services and investment provisions include reciprocal but asymmetrical commitments, with gradual and effective market opening, consistent with WTO rules, taking into account the level of development of the CARIFORUM countries.

The Agreement includes provisions in investment, trade in services and electronic commerce. Rights and obligations of the Parties and investors are balanced, and new market access commitments are coupled with binding provisions on non-lowering of environmental and social standards, as well as new provisions strengthening cooperation against corruption.

The provisions of the Agreement do not affect national policies as regards public services, such as education and health, and CARIFORUM countries retain the right to regulate services sectors and enact new domestic regulation.

The Agreement includes a regulatory framework for mutual recognition of requirements, qualifications, licences and other regulations; and specific provisions recognizing the importance of technical cooperation and assistance in order to complement the liberalisation of services and establishment.

### *EU commitments*

EU commitments open the EU market to CARIFORUM services suppliers and investors for cross-border supply of services, commercial presence, including commitments for the temporary presence of natural persons for business purposes (mode 4) across most sectors, including short term business visitors, sellers of goods, investors, and graduate trainees.

The EU has lodged commitments for contractual services suppliers, and, to a lesser extent, independent professionals, in a very large number of services sectors, including new services sectors such as tourist guides, entertainers, artists, chefs de cuisine and fashion models. In some sectors some EU Member States retain the right to apply economic needs tests.

CARIFORUM services companies will be able to transfer management trainees to their affiliated companies in the European Union, so as to allow them to acquire up to one year of work experience in the EU. CARIFORUM companies with a contract to provide services in 29 important sectors will be able to send certain employees to the EU to provide these services for up to six months at a time. In addition, skilled CARIFORUM self-employed services suppliers in 11 services sectors, including some legal advisory services, computer-related services and management consulting, will be able to enter the EU for up to six months at a time to provide services to their clients in the European Union. In all such cases, EU and national working conditions, minimum wage requirements and collective wage agreements will apply.

### *CARIFORUM commitments*

CARIFORUM countries have also made significant offers, in particular in export-oriented and infrastructure sectors key for their development, such as telecommunications, transport, tourism, manufacturing and environmental services. Overall, as regards the Dominican

Republic, the only CARIFORUM country member of the Central American Free Trade Agreement with the United States, the EPA ensures that EU services suppliers and investors will receive across the vast majority of economic activities and services sectors the same treatment in the Dominican Republic as their United States counterparts.

#### *Protocol on cultural cooperation*

The EPA also includes for the first time a protocol implementing the UNESCO Convention on cultural diversity, and providing CARIFORUM artists and other culture-related services suppliers with better conditions for the temporary movement of persons, for co-production market access, and other aspects, which have been a high priority in particular for CARIFORUM authorities and services suppliers.

#### *Other Cooperation Provisions*

The Agreement includes supporting provisions for some services sectors in CARIFORUM, such as computer-related services, telecommunications, financial services, international maritime transport, courier services, and, in particular, for the tourism sector.

## 9. COMPETITION

### *Coverage of Competition Provisions*

The competition law chapter of the Agreement identifies the types of anticompetitive conduct that are prohibited as they affect trade between the Parties. These only cover restrictive agreements and abuse of a dominant position. They do not cover mergers and state aid, the other two large areas of EU competition law enforcement activities, but in the light of the very different development level between the Parties, it was considered that such inclusion was not necessary at this stage. In addition, mergers issues are not addressed since most of the CARIFORUM countries do not have merger control rules and so far mergers have not been prominent in the economies of this region.

### *Enforcement*

An important provision of the EPA is the article on enforcement cooperation. This article has three elements:

- The parties may inform each other of their willingness to cooperate in enforcement;
- The parties may exchange non-confidential information;
- The parties may inform each other of anticompetitive activity taking place in the territory of the other party.

Unlike other EU agreements, the reason for the relatively non-demanding enforcement cooperation provisions in the CARIFORUM EPA is that the competition agencies in the region are still in their infancy or yet to be established.

### *Public Enterprises and Enterprises with Special Rights*

The EPA contains provisions on public enterprises and enterprises with special rights, including monopolies. Under this provision such enterprises are also subject to competition laws to the extent that the application of these laws does not obstruct the execution of the special task assigned to them. This article is a reflection of the importance that the EU attaches to this principle, which is based on Article 86 of the EC Treaty and to the related enforcement activity. However, in the light of the specific development needs of CARIFORUM countries, the EU agreed to allow CARIFORUM to exempt certain sectors from the operation of this provision. The other element of this article is a commitment by the parties to adjust monopolies of a commercial character to ensure that no discrimination takes place between goods and services sold by nationals of the CARIFORUM States and by those of the EU.

### *Cooperation*

Finally but quite importantly, the Agreement provides that the Parties will cooperate through technical assistance and capacity building.

## 10. INNOVATION AND INTELLECTUAL PROPERTY

### *Focus on Innovation*

Under the Agreement, intellectual property is not treated as a self standing issue, but within the overall context of cooperation on innovation. The main objective of integrating Intellectual Property Rights (IPR) in this agreement is to promote innovation and creativity in the Caribbean.

The innovation and IPR chapter contains detailed provisions on innovation-oriented cooperation in specific fields such as science and technology, information society, information and communication technologies; eco-innovation and renewable energy. The participation of CARIFORUM countries in EU framework programmes will be facilitated and promoted.

### *Intellectual Property*

Provisions covering Intellectual Property Rights include:

- The capacity of the parties to promote access to medicines should not be impaired; Direct reference is made to the Doha Declaration on the TRIP<sup>†</sup>'s Agreement and Public Health and the 2003 WTO Decision on compulsory licensing;
- Specific provisions related to development-related issues such as traditional knowledge, biodiversity or transfer of technology;
- A provision that allows farmers to save, use and exchange farm-saved seed or propagating material rather than buying new seed each year;
- Long implementation periods (2014) and provisions in "best endeavour" terms that allow CARIFORUM states to implement them only if and when they are ready; and
- The Least-Developed Country member of CARIFORUM (i.e. Haiti) will not have to implement the IPR chapter until 2021 at the earliest.

Other provisions related to copyright ensure that right holders from both sides are adequately remunerated for the use of their music or other artistic works in the territory of the other party. This should make easier for Caribbean artists to get properly rewarded for use of their works in the EU.

For well-established IPRs like copyright, trademarks, or patents, the Agreement contains no detailed provisions. Rather, reference is made to adherence to/compliance with the main relevant international conventions, either in the form of a firm commitment or in the form of a best-endeavour clause.

On patents, for instance, CARIFORUM States have committed to adhere to the Patent Cooperation Treaty (PCT), which allows the filing of a single international patent application in several countries, in so far as they have not yet done so.

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<sup>†</sup> Trade Related Intellectual Property Rights

On other rights for which there are no major international conventions, i.e. geographical indications (GIs) and designs, as well as on enforcement, the Agreement sets out some important provisions.

With respect to Geographical Indications (which protect the use of name or sign which corresponds to a specific geographical location or origin) there is a rendez-vous clause according to which the CARIFORUM States will establish a system of protection of GIs by 2014. In the meantime provisions aim at fostering cooperation to identify and promote GIs in CARIFORUM via the active involvement of the EPA Trade and Development Committee.

#### *Enforcement*

These are the most elaborated provisions covering the measures and procedures to be put in place to ensure effective protection and enforcement of (existing) IPRs by the authorities or before the courts to ensure CARIFORUM and EU right holders benefit from the rights conferred in the Agreement.

The agreement expressly states that their enforcement should take into account the development needs of the CARIFORUM countries and provide for an adequate balance of rights and obligations between right holders and users.

#### *Cooperation Provisions*

A key objective of the Agreement is the strengthening of regional capacity for dealing with intellectual property issues. Priority in co-operation provisions is placed on improving the regional intellectual property regulatory capacity in the CARIFORUM countries and supporting the regional implementation of intellectual property commitments undertaken.

## **11. PUBLIC PROCUREMENT**

### *Objectives in addressing Public Procurement*

The government procurement chapter of the Agreement seeks to support a more efficient use of public budgets when authorities want to buy products (such as fire engines, computers for schools, water treatment facilities, etc.) on the market.

The central objective is that, by promoting transparency and predictability, more suppliers are made aware of tendering opportunities and can feel assured that they enjoy equal opportunities. As a result, CARIFORUM taxpayers get a better deal in terms of price and quality for their money. On a wider level, accountability of public spending is improved and prospects for economic development are enhanced.

### *Main Provisions*

With this in mind, the procurement chapter sets out some basic principles and minimum transparency rules that procuring entities should respect when tendering. These however only apply to the relatively few large contracts (those in excess of US\$ 200,000) tendered by central authorities. Hence, the overwhelming amount of public expenditure by the CARIFORUM countries is not affected by these provisions.

In particular, the procurement chapter seeks to support the gradual creation of a regional procurement framework in the Caribbean region. This process is already underway in the region and should receive new momentum through the EPA.

However, it should be underlined that the EPA does not grant a right of access to public tenders. This means that when an authority in a CARIFORUM country wants to tender a public contract, suppliers established in the EU or in another CARIFORUM country cannot claim a right to participate in that procurement. It remains for the Parties to decide which suppliers are eligible to tender. In this crucial respect, the EPA is different from the CAFTA-Dominican Republic or Chile-EU free-trade agreements: both these agreements grant the right to participate in public tendering for a substantial number of procurements.

### *Cooperation Provisions*

In the interest of capacity building, the procurement chapter foresees a significant implementation period to give CARIFORUM countries good time to prepare for implementation. The EPA also envisages some support in this respect.

## 12. PROTECTION OF PERSONAL DATA

### *Objectives of Personal Data Provisions*

The data protection chapter in the EPA has more extensive provisions than other EU trade agreements, which in most cases limit themselves to a commitment to work towards the elimination of obstacles to the free flow of information due to lack of adequate protection, in line with high international standards, and to provide for the possibility of exchange of information and experts. The added value of the EPA consists in spelling out the data protection principles contained in those high international standards. This should help the CARIFORUM countries to establish a comprehensive data protection system, which is a key condition for success in e-commerce, better business and administrative cooperation, as well as good governance.

### *Main Provisions*

The Chapter on Protection of Personal Data sets out a comprehensive framework in the field of protection of personal data, along three lines:

- Principles and General rules: The parties are obliged to establish legal regimes and administrative capacity to ensure the implementation of the most important set of data protection principles and enforcement mechanisms, as contained in international instruments in this field. These principles are spelled out in very precise terms as to the objectives they should achieve;
- Coherence with international instruments: the EPA acknowledges that agreements the Parties may conclude with other countries may have an impact on the implementation of their obligations under the EPA. To avoid any clash of international obligations, the EPA provides that Parties will inform each other about international commitments or arrangements with third countries which may be relevant for the implementation of the EPA;
- Cooperation: exchange of information and the possibility of technical assistance are envisaged in order to help setting up the legislative and administrative framework in the data protection sector, in accordance with the Parties' obligations under the EPA.

### 13. RULES OF ORIGIN

#### *Background to the Rules of Origin*

The system of specific product origin rules, together with the necessary definitions, requirements, proofs of origin and arrangements for administrative cooperation are part of a Protocol on rules of origin attached to EPA. This document is based on the Cotonou Agreement's Protocol on rules of origin. However there are certain important amendments and improvements.

#### *Modifications and improvements to Cotonou Rules of Origin:*

Taking into account the new legal framework for trade among the African, Caribbean and Pacific (ACP) States, there are new conditions for cumulation of origin between ACP States. These include:

- Specific provisions regarding sugar, rice and high sugar content products in order to avoid possible circumvention of the provisions in force during a transition period;
- Redrafted provisions on cumulation with neighbouring countries and the addition of Mexico to the list of countries;
- Clarified and reinforced provisions on the conditions, responsibilities and commitments for administrative cooperation;
- Updated conditions related to derogations;
- Assignment of specific tasks in the area of origin to the Special Committee on Customs Cooperation and Trade Facilitation.

#### *Product specific improvements to Cotonou Rules of Origin*

With respect to product-specific origin rules, improvements focused on three main areas where Caribbean exports are concentrated:

##### Fisheries

- Elimination of the condition referring to the nationality of the crew of fishing boats (registration and ownership remain the main requirements);
- Simplification and redrafting of the ownership requirements;
- Introduction of a clear reference to aquaculture;
- Change of the main rule for several products of fisheries chapters 3 and 16 (instead of the "wholly obtained" requirement with regard to materials of chapter 3, now 15% (in terms of the ex-works product price) of non-originating input is allowed).

## Agriculture

- Greater flexibility on the use of non-originating content for countries which face serious constraints on agricultural production, such as island economies.
- A targeted relaxation of the Cotonou Agreement's rules of origin has been agreed for agricultural products, allowing greater flexibility for CARIFORUM in the use of non-originating content in the final product. As an example, for some products containing sugar such as "chocolate and other food preparations containing cocoa", "jams" or "fruit juices", for which it was necessary under previous rules that any material of chapter 17 (sugar and sugar confectionery) used did not exceed 30% of the ex-works price, it was decided to simplify rules and not to use the 30% criterion in case the product concerned contains 20% or less by weight of sugar. In other terms, if a fruit juice or a chocolate bar has a low content of sugar and if it fulfils the other requirements to get the originating status, then it can qualify as an originating product. It is also relevant in the case of tobacco (where now 40% by weight of the unmanufactured tobacco can be sourced from outside CARIFORUM as compared to 30% under the Cotonou Agreement).
- With respect to cumulation of origin, as CARIFORUM countries do not all have the same status under the United Nations system (Haiti being a Least-Developed Country (LDC) while the other 14 are non-LDCs) and consequently have a different trade regime for sugar until 2015, sugar and products with high sugar content have been excluded from cumulation to avoid trade circumvention. However, the Protocol stipulates that the list of products excluded will be reviewed after 3 years to assess whether the exclusion clause is still needed.

## Textiles and Clothing

- Where requested by CARIFORUM and where technically possible, with no other conditions (time or quantitative limits), the single step transformation rule has been introduced. Beforehand, a more substantial double transformation process was generally required to benefit from free access to the EU. This is to be considered a major step forward in supporting development and industrialisation efforts in CARIFORUM, more advantageous than the United States' "AGOA" scheme granted to a number of African countries which is subject to conditions and limitations.

## *Review Clauses*

The Agreement also provides for the review of the origin provisions (within five years) 'with a view to their further simplification ... in the light of the development needs of the CARIFORUM states' and 'the development of technologies, production processes and all other factors, which may require modification to the provisions of this protocol'. This can offer opportunities to constructively address origin issues as they could arise in the first years of implementation.

## 14. DEVELOPMENT COOPERATION

The Caribbean EPA aims at achieving development objectives through the establishment of a trade partnership based on the promotion of regional integration, the gradual integration of Cariforum countries into the world economy, capacity building in trade policy and trade related issues, supporting the conditions for increased investment and economic growth.

Part I of the Agreement (Trade partnership for sustainable development) recalls the basic principles of the partnership: sustainable development, regional integration, monitoring and, last but not least, development cooperation, considered as a crucial element in the new trade partnership. Part I also contains a non-exhaustive summary of cooperation priorities (Art. 8). In addition, each sectoral EPA chapter contains a specific article outlining areas in which the Parties agree to cooperate.

Finally, a joint Declaration on development co-operation has been agreed in which the Parties recognize the important adjustment challenges and in which reference is made: 1) to available means under the European Development Fund; and 2) to the collective commitment of Member States to increased trade-related assistance and support in the context of the EU's Aid-for-Trade Strategy.

How are cooperation provisions of the EPA text translated into action? The EPA text identifies the broad areas in which adjustment needs to take place. In the framework of the Regional Preparatory Task Force (RPTF) and after application of the Agreement by its institutions (mainly the Trade and Development Committee) the provisions of each sectoral cooperation article are translated into specific proposals for sectoral assistance programmes with a 'price tag' and a 'time line' which can allow the definition and prioritising of a package of development cooperation activities aiming at the proper implementation of the EPA. The RPTF is also working with other potentially interested donors.

Substantial amounts are available from the European Development Fund (EDF). Following important contributions from the 9<sup>th</sup> EDF (€ 76 million for regional cooperation and for adjustment in sensitive sectors - € 680 million in total for bananas, rum, rice and sugar), the 10<sup>th</sup> EDF (2008-2013) entails very significant assistance to regional integration and EPA related needs:

- The regional programme already more than doubled between the 9<sup>th</sup> and the 10<sup>th</sup> EDF (from € 57 million to € 132 million) has been reinforced by 25% to cover specifically needs resulting from the regional integration process. It will amount to a total of € 165 million.
- Very significantly, the national indicative programmes are also oriented towards activities linked to regional integration: 5 programmes will target competitiveness, 3 programmes will contribute to governance and public administration reforms, and 3 will focus on infrastructure. In total, this concerns € 454 million out of approximately € 600 million, which is 75% of the national programmes.

In addition, trade liberalisation commitments will be phased over time, with transition periods in some cases of up to 25 years. As a consequence, changes and possible reforms will also be spread over time and will not happen overnight.

Under the EU's Aid-for-Trade Strategy, EU Member States are committed to reach an annual amount of € 1 billion by 2010 in trade-related assistance, with a range of 50%

available for ACP countries. This is a substantial share of the increase of EU aid for trade. The Cariforum-EU Declaration on development cooperation reiterates the EU's commitment to ensure that Cariforum countries will benefit from an equitable share of Aid for Trade from EU Member States.

## **15. INSTITUTIONS AND MONITORING**

### *Main Institutions*

The CARIFORUM EPA foresees four main institutions:

- A Joint CARIFORUM-EC Council;
- A CARIFORUM-EC Trade and Development Committee;
- A CARIFORUM-EC Parliamentary Committee;
- A CARIFORUM-EC Consultative Committee.

The Council is a Ministerial body which will meet regularly, at least every two years, in order to oversee the implementation of the Agreement. The Council will have the power to take decisions in respect of all matters covered by the Agreement. It will comprise the 15 Caribbean States signatory to the Agreement, the 27 EU Member States and one or more members of the Commission. Chair of the Council will alternate between the CARIFORUM and the EU side.

The Trade and Development Committee is the main subsidiary body to the Joint Council composed of senior officials representing the Parties and meeting at least once a year. The Committee is tasked with the administration of the EPA and should ensure the attainment of its objectives. It may decide to set-up sub-committees. Its main responsibilities include: monitoring and assessing implementation of EPA commitments; examining and seeking to resolve any issue liable to impede the effective and efficient implementation of the EPA or which could impede the achievement of the EPA's objectives; and preparing and coordinating meetings of the Joint EPA Council.

The functions of the Committee include monitoring and reviewing the implementation of development cooperation provisions embedded in the EPA text and making recommendations on further trade-related cooperation supportive of the objectives of the Agreement. The Committee is tasked with monitoring the Agreement in terms of development as well as trade challenges and outcomes.

The Parliamentary Committee, bringing together Members of European Parliament and ACP parliaments, is to meet at regular intervals. It may request the Council to supply information and make recommendations to the Joint Council and the Trade and Development Committee.

Finally, the Consultative Committee is meant to promote dialogue with civil society organisations (including the academic community). It carries out activities on the basis of consultation by the Council or its own initiative. It may make recommendations to the Joint Council and Trade and Development Committee to help ensure effective monitoring of the EPA on the basis of a broad participation of stakeholders.

## **16. OUTERMOST REGIONS, OVERSEAS COUNTRIES AND TERRITORIES**

### *Overall Approach*

The CARIFORUM EPA takes into account the specific interests of the EU's outermost regions and refers to the overseas countries and territories associated with the EU in the Agreement's revision clause.

### *Outermost Regions*

As part of the EU and its customs territory, the outermost regions are fully covered by the commitments taken by and towards the EC Party, promoting increased openness between the EU outermost regions and the CARIFORUM countries both in goods and services as well as investment. The Agreement includes a specific article on the outermost regions aimed at fostering links with CARIFORUM countries by facilitating cooperation in all areas covered by the Agreement, such as innovation. To take account of the special geographical and socioeconomic situation of the outermost regions, specific safeguards are foreseen. The outermost regions are the French overseas departments and the Spanish and Portuguese Islands of the Canaries, the Azores and Madeira.

### *Overseas Countries and Territories*

While the Overseas Countries and Territories associated with the EU are not parties to the EPA, the Agreement provides that "The Parties may also consider revising this Agreement to bring Overseas Countries and Territories associated with the European Community within the scope of this Agreement." The overseas countries and territories in the Caribbean are British and Dutch.