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The Caribbean Experience

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Introduction

The CARIFORUM¹ concluded an economic partnership agreement (EPA) with the European Union in 2007. This chapter outlines the CARIFORUM objectives in the negotiations and the approach to liberalisation. The focus is on the services sector, which accounts for over 50 per cent of GDP in the Caribbean. The services sector is a major source of employment creation in the region and reinforces economic efficiency. Infrastructure services (transportation, telecommunications, finance and insurance) also contribute to the competitiveness of goods and services export. The region is seeking to develop a common policy or strategy to advance the sector.

Objectives in negotiations

A main objective going into the negotiations was to increase market access for Caribbean service suppliers at all jurisdictional levels in the EU and in all sectors and modes of supply of interest to them. Another important objective was to obtain greater access in Mode 4 (movement of natural persons) for the region's professionals.

CARIFORUM also sought to introduce specific rules to eliminate requirements for local presence and to remove all the nationality requirements (visa, licences, permits or economic needs tests) impeding market access for individual suppliers, intra-corporate transferees, business visitors, professionals and support personnel from Caribbean countries to the EC as a whole, as well as to individual EC countries. The aim was to expand the list of contractors, service suppliers and independent professionals, in keeping with CARIFORUM demands in WTO for Mode 4.

A third objective was to ensure that all legally registered juridical persons in Caribbean states that are party to an EPA should have access to the EC market on the same basis as national firms or individual nationals from Caribbean states. CARIFORUM sought to eliminate discriminatory citizenship requirements with regards to capital, land purchase and equity caps, and to remove all restrictions on legal forms for setting up businesses that can restrict actual market penetration. The issue here is that negotiations can be concluded and a schedule completed, but so many other requirements have to be met, there is no actual market penetration and service providers cannot benefit.

CARIFORUM also sought to harmonise the regulatory policies and technical standards between Caribbean and EC countries so as to facilitate the sustainability of trade in services without creating burdensome or discriminatory barriers. In addressing the special requirements of small Caribbean service suppliers to take advantage of market access opportunities in the EC, the negotiators emphasised the difference in levels of development between Europe and the Caribbean, and in the Caribbean itself. Within CARICOM, the Organisation of Eastern Caribbean States (OECS) brings together the smaller, lesser-developed countries of the region.

Liberalisation

CARIFORUM adopted the following approach towards scheduling of services:

- We identified the sectors where we have investment, are seeking investment or need development support and scheduled them under Mode 3.
- Next, we identified sectors where we have an offensive interest and we focused on these in terms of our requests and the demands we placed on the EU.
- Then, we identified sectors that are sensitive and would be excluded from the liberalisation commitments.
- Finally, there were sectors assessed to have low export interests, which we used to get some flexibility in the negotiations.

For trade in services, the conclusion of regional trade agreements is governed by GATS Article V: Economic Integration, which requires that any such agreement must have *substantial sectoral coverage... in terms of number of sectors, volume of trade affected and modes of supply*.

However, there is no agreement among countries as to the definition of ‘substantial sectoral coverage’. Within the EPA, we agreed to 65 per cent sectoral coverage for the LDCs of CARICOM, and at least 75 per cent for the MDCs. For many member states, their GATS offer would only be approximately 25 per cent sectoral coverage, so to move to 65 or 75 per cent means they have to schedule several services activities. This approach ensured that all member states were not put at a much greater disadvantage going forward in the process.

Additional commitments

We won some additional, or ‘GATS plus’, commitments under Mode 4. We expanded the definition for ‘business visitors’ within the GATS. In the EPA they are called ‘business service sellers’, that is, representatives of a service supplier seeking temporary entry to negotiate the sale of services or entering into agreements to sell services. This applies to all sectors liberalised under Modes 1, 2 and 3, and was an advantage for us.

We also made gains in expanding the list of contractual service suppliers, specifically in relation to terms of conditions. A ‘contractual services supplier’ is defined as a national employed by a legal entity, with no commercial presence in the other territory, requiring temporary presence to fulfill a bona fide contract. The plus for us is that fashion models, chefs and entertainers have been exempted from the condition requiring contractual service suppliers to have a university degree or equivalent professional qualification. This was a plus for us, because some of our member states (particularly Jamaica) have a number of people in these industries. We are now better able, because of these conditions, to access the market. Moreover, the agreement ensures a level of certainty to the traders themselves in that they have already been providing a service within Europe but now they have a guarantee of entry.

The agreement includes a cultural protocol, looking at some development issues as well as scheduling for culture and entertainment services under the contractual service suppliers. This was a big success for us given that culture has been extremely sensitive for the European communities (for France in particular) and that we stood our ground that there could be no agreement without the protocol, towards the end of the negotiations.

One condition that remains in place is the need to meet the criteria of economic needs tests (ENTs), which has the potential to block any liberalisation opportunity. In general, though, the EC made commitments in 29 sectors for contractual service suppliers so for us, that was a benefit.

Independent professionals

Independent professionals are once again subject to ENTs, but on the plus side they have been granted market access in 11 sectors.² Another plus for us in the negotiations was the provisions allowing for short-term visitors to go into Europe for business purposes, specifically research and design market research, training seminars, trade fairs, sales, and purchasing.

In terms of our professional services, we got mutual recognition in the provisions: the ability to facilitate the negotiations for the development of mutual recognition agreements. This is important as the negotiations are between associations and not states. In the agreement it is mentioned that professional bodies will be encouraged to jointly develop and provide recommendations for the mutual recognition of criteria applied with respect to authorisation, licensing, operation and certification. It was stated that the negotiations should start no later than three years after entry into force of the Agreement, the priority sectors being accounting, architecture, engineering and tourism. We pushed for these provisions based on our experience with NAFTA, which took ten years to negotiate an MRA that was only for engineers.

Development co-operation

Of equal significance to us was the development co-operation aspect of the agreement, which aims to provide support to CARICOM member states through technical assistance, training and capacity building. Here, within the agreement, the parties have agreed to improve our ability to gather information, to improve our export capacity and, importantly, to address the issue of quality and standards, especially in the area of sustainable tourism.

Regarding the implementation of the appropriate regulatory regimes, while we made several commitments and moved to the 65 per cent and 75 per cent sectoral coverage, we do not yet have in place the necessary regulation or policy for many of the sectors.

Therefore, we thought it was important to have provisions indicating our intention but also noting we need assistance to achieve full implementation. Development assistance should seek to develop adequate regulatory mechanisms, address supply-side constraints and foster the integration of CARIFORUM states into the world economy.

EC commitments

The EC has scheduled its reservations in four different sectors: cross-border supply of services; commitments on establishment (commercial presence); reservations on contractual service suppliers, i.e. independent professionals (IP), and reservations on key personnel and graduate trainees; and horizontal limitations on acquisition of land and real estate by foreign investors.

This is a different from the way we scheduled in the GATS, so we have now to adjust to it. Part of the training that we have to do for our service providers now must be on how services are scheduled in Europe, so they can look at the schedule and understand what is there or not there for them. Some of the provisions we wanted removed still remain, like the right to regulate for judicial persons and limitations on the acquisition of land. Although a lot of requirements like obtaining licences, certification and registration have been removed, as indicated above, economic needs tests still apply to gain entry on a temporary movement. The question when one looks at the schedule is to determine where there is actual market penetration, what is the status quo?

Some benefits have been obtained with respect to key personnel and graduate trainees as some limitations have been removed. Only four member states require residency for key personnel and graduate trainees, while 23 others do not have these requirements to meet. So it has been reduced in terms of what the EU offered within the GATS. There is a special situation when it comes to our engineers, or in particular, our architects: many of them are trained within the UK (because of our traditional

linkage with the UK), and they can practise in the UK but they cannot generally practise throughout the other 26 member states. It is an issue that we have to deal with and are trying to address in our implementation.

CARIFORUM commitments

Our commitments generally follow the GATS structure, and they take into account the regional integration process and sensitivities of individual states. We have sought to limit our commitments since we face a number of economic needs tests for the movement of Mode 4 persons, and we did make some provisions for contractual service suppliers and independent professionals for our IT services, because we saw the importance of IT for development. In terms of our horizontal commitments, like the EU, we decided that we could not get the change for limitations on acquisition of land for people who want to go and set up as service providers. We have kept those provisions likewise. So we stated in our provision that the treatment be reserved in terms of subsidies – we have that excluded. For Mode 3, we also have limitations on acquisition of land and so forth. In summary, we have made a majority of commitments – in terms of Modes 1 and 2 – with no limitations, which reflects the importance of IT services and of these modes for trade. We do not have the capital base, so what we can do via the internet we would like to do.

In those sectors where economic needs tests are applied for Mode 4, the main criterion will be availability of persons with the requisite skills in the local labour market. On other modes of supply, the main criterion will be the assessment of the relevant market situation where the service is to be provided, with respect to the number of, and the impact on, existing services suppliers. Regarding Mode 4, we limited our commitments and most if not all of them are subject to economic needs tests. This is because we believe that we have sufficient professionals, so that, when we are competitive in an area, we do not wish to have more people coming in and competing against our professionals in Mode 4. We have a problem in the region; because we are tourist-orientated it is possible for foreign professionals to come in on a tourist visa, stay for two weeks, provide a service and leave – and we do not know about it. We need to develop a mechanism for determining the ENTs and how to place a level of control on such activities. CARIFORUM horizontal commitments were as follows: treatment may be reserved with respect to subsidies or grants; Mode 3 – requirements for incorporation, registration and limitation on the acquisition of land; and Mode 4 – unbound except for key personnel and graduate trainees not available locally.

Challenges and opportunities

The main challenges relate to our regulatory commitments. We have made several commitments but we do not have the required regulatory framework in place and

services providers, with only a few associations in the region, are not very organised. We lack venture capital to finance the sector's needs. Incentives are required; in the Caribbean we mainly have incentives for tourism services, but not for the other services sectors. We must now re-orient our vision in terms of how we develop the sector. We need to upgrade standards to meet the European requirements.

Education is another major challenge, for persons in the audio visual field and in other areas, to meet EU regulations. We lack the funds to increase training, invest in upgrading our educational facilities, and broaden access to and use of technology, which is still quite costly in the region. Most of the CARICOM member states have liberalised telecommunications services, but there are just two telecommunications companies serving most of the region. The cost of telecommunications impacts on the development of the services sector particularly at a time when the region is embarking on a development strategy for the IT sector.

Another challenge is the lack of policies for many of the sectors, which makes it difficult to draft laws and develop the required regulations.

But there are also definite opportunities. We have a real niche market, a unique value added in the region – our culture. The joint ventures we have scheduled can also assist in terms of facilitating cultural exports and fostering investment in the sector. Here, we have opportunities through development to enhance our competitiveness or product quality, but we need to make our product known. This is where our coalitions of services organisations and other support organisations have an important role to play. For instance, the Barbados Coalition of Services Organisations (see Chapter 11A) has been involved in promoting the services sector of Barbados. There are several issues to be considered, both on demand and supply.

Supply and demand

On the demand side, being small and having limited capacity we cannot target all 27 countries of the EU. Services exporters from the Caribbean will need to research their target markets in terms of the regulatory regimes, the standards requirements and the potential partners. In brief, market intelligence will have to be gathered and a strategy put in place to ensure effective market penetration.

On the supply side, we need to develop our level of competitiveness, our product quality and our human resources. It is critical to address our technological capabilities, and here technical assistance for professional development is important, financial support for the firms to enhance their competitiveness is crucial, and assistance is required to conduct market research and improve export capacity. We need to assess the ability of firms to do market research and analysis. The region's main language is English and some of the services suppliers have expressed concern that language

barriers may prevent them from making significant gains in the EU market. This is another area where we require some assistance.

Lessons learned

What can the regions that are now negotiating EPAs, or planning to, learn from the CARIFORUM experience? First, there is the urgent demand for development assistance to be more concrete and that depends very much on our ability to forcefully present our case with respect to our development needs. We have received some assistance so far, but not enough to cover the full cost of implementing the EPA (about €176 million). The disbursement schedule must be clearly spelt out during the negotiations.

Second, bear in mind you have the flexibility of scheduling for future liberalisation. Don't be rushed to schedule Modes 1, 2, 3 and 4 or to meet your 65 per cent (or whatever percentage you agree). If you are being pressured to put more sectors on the table, put them there, by all means, but remember you can liberalise over 10 or 15 years.

Third, understand your limitations and take them into consideration in addressing the issues. What are your regulations? What is it you really need? When you know where you are, then you know how to proceed. It is about understanding your development objectives and translating them into development text to take forward into your negotiations.

Conclusion

CARIFORUM/EU co-operation has been a catalyst for how we go forward with this region's integration and what we are doing with a single market and economy, as well as for integration between CARICOM and the Dominican Republic. But we have a serious challenge in terms of implementation: getting the organisations and getting the associations together, and then actually meeting to develop the proposals to put forward for the mutual recognition agreement. We have to work on promoting integration and to strengthen our relationships taking into consideration levels of development and international obligations.

Notes

1. The 15 Caribbean countries that make up the Caribbean Forum of ACP States (CARIFORUM) are: Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, the Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

2. These are: Legal advisory services in respect of international public law and foreign law (i.e. non-EU law); Architectural services; Urban planning and landscape architecture services; Engineering services; Integrated engineering services; Computer and related services; Research and development services; Market research and opinion polling; Management consulting services; Services related to management consulting; Translation and interpretation services.