

HIGHLIGHTS RE SERVICES AND INVESTMENT IN THE CARIFORUM-EC ECONOMIC PARTNERSHIP AGREEMENT (EPA)

HIGHLIGHTS OF THE RULES ON SERVICES AND INVESTMENT IN THE EPA

The EPA contains a comprehensive section on Investment and Services as well as common rules on E-commerce. It provides a special concession for the Bahamas and Haiti to join the Agreement but they must submit their commitments on investment and services within six months.

The rules on investment will give predictability and transparency to the conditions of market access in manufacturing, mining, agriculture and forestry, and services. In the EU, Cariforum investors will get national treatment and most favoured nation treatment and vice versa. Both regions have liberalized most areas of manufacturing except for some sensitive areas in Cariforum. However, public utilities and other sensitive sectors have not been opened to foreign participation. And Cariforum has maintained special reservations for small and medium enterprises in some sectors. The EU also has some reservations in some sectors for some of its newer member states.

The EPA contains forward-looking rules on investment that will ensure that investors safeguard the Environment and maintain high Labour and Occupational Health and Safety standards. Furthermore, it forbids investors from engaging in corruption to get special concessions.

In the case of Services, there are comprehensive rules in the EPA for the tourism sector as well as the following areas: E-commerce; courier; telecommunications; financial services; and maritime transport. In the case of tourism, large firms will be prevented from behaving in an anti-competitive manner in order to safeguard the interests of the mainly small firms in the Caribbean. There are also provisions for cooperation and mutual recognition of qualifications as well as technical assistance.

The EPA also has special provisions for Short Term Visitors for Business Purposes in the following areas: research and design, marketing, training, trade fairs, sales, purchasing and tourism.

Finally, the Services and Investment Title provides for development assistance from the EU to address a range of needs in the Caribbean such as developing regulatory regimes, building the capacity of regional services firms, market intelligence, interaction with EU firms, among other activities.

SERVICE SECTORS LIBERALIZED BY THE EU

The EC has scheduled more than 90 percent of the sectors in the W120 list used as the basis for liberalization in the WTO. The commitments will start when the EPA enters into force for all EU states except the new members, (EC-10) whose commitments will start in 2011, and Bulgaria

and Romania in 2014. In the case of investment (Mode 3) the EC has liberalized almost all sectors for Cariforum firms in the European Union with only some exclusions in a few sectors and limitations in mainly the new EU member states. In other modes of supply there has been great progress as well. In Mode 1 (cross border trade) the EC has liberalized the vast majority of sectors. The same applies to Mode 2 (consumption abroad).

In the case of the temporary movement of natural persons (Mode 4) the EC has granted market access for Caribbean professionals in 29 sectors for employees of Caribbean firms (Contractual Service Suppliers - CSS) to be able to enter the EU to supply services once they get a contract. These are subject to conditions stipulated in the Services chapter of the EPA but the stays are for up to 90 days in a calendar year. As well, the EU has liberalized 11 sectors for temporary entry by Independent Professionals (IPs) or self employed persons. (See annex for list of sectors). And they have done this without quotas or economic ceilings on the amount of service suppliers that can enter the EU market. This is a very important concession by the EC to Cariforum **since in the WTO and in other bilateral FTAs the EU does not have commitments for temporary entry of this kind.**

There are some conditions such as economic needs tests (ENTs) in some sectors and mainly in the new EU member states; but these are not really burdensome.¹ While CF negotiators challenged these constantly in the negotiations, it was clear that nevertheless, the EC offer was quite significant. The ENTs have existed for years in the EU and are in practice used on a discretionary basis; but if a particular service is needed in any European state, it is hardly likely that the contract obtained by a Caribbean service supplier will be rejected by national immigration or labour authorities in the EU. In most instances, the ENTs are not really applied, but the ENT condition in the formal market access commitment gives flexibility to regulators in the event that they need to use them in extenuating circumstances.

In the case of Entertainment services, a sector in which the Caribbean is immediately competitive, 25 European states will liberalize the whole sub-sector of Entertainment services (CPC 9619) with some limitations by a few states. The entertainment commitment **is a first for any trade agreement of the EU** and potentially a very big area for the region. In the WTO only two EU states have commitments for contractual service suppliers in entertainment services; and in the EU-Chile Trade Agreement only four states have provided market access for CSS. Given the sensitivity of “culture” in the EU, this is a very important concession to CARIFORUM. The activities that are being liberalized include the whole range of artists and cultural practitioners in the following areas:

9619 Entertainment services

- 96191 Theatrical producer, singer group, band and orchestra entertainment services
- 96192 Services provided by authors, composers, sculptors, entertainers & other individual artists
- 96193 Ancillary theatrical services n.e.c.
- 96194 Circus, amusement park and similar attraction services

¹ In those sectors where economic needs tests are applied, their main criteria will be the assessment of the relevant market situation in the Member State or the region where the service is to be provided, including with respect to the number of, and the impact on, existing services suppliers.

- 96195 Ballroom, discotheque and dance instructor services
- 96199 Other entertainment services n.e.c.

The EC offer is subject to some controls (economic needs tests) and *may* be subject to qualification requirements. But when Cariforum states get their artists and cultural practitioners registered and/or certified across the region we can make a case for the EU states accepting that as qualification. The economic needs tests condition was in exchange for an open commitment by the EU **without quotas or economic ceilings**. This level of market access by so many EU states has never been granted to any other country or regional grouping.

It is important to understand the significance of the EU commitment for temporary entry for Entertainment services in an era in which ALL governments are worried about the movement of persons, illegal immigration, terrorism, etc. The CAFTA does not even have temporary entry commitments. Also, the EU states did not put any additional conditions for entertainers. The market access conditions (and benefits) are the same as for other CSS under the agreement. Also, note that in general, Cariforum did NOT make offers in CSS for entertainment to the EU. But Caribbean artists, musicians, and other cultural practitioners and their crews who are registered as businesses will be able to send their members or employees to almost all EU states to supply entertainment services.

The market access granted by the EU in Entertainment is complemented with a historic and innovative **Protocol on Cultural Cooperation** which provides for greater cooperation on all cultural fronts and with special provisions on audiovisual. In particular, co-produced audiovisual products and services involving European and Caribbean creative teams will qualify as domestic productions and meet the audiovisual content rules in all EU states and in the Caribbean. When co-production treaties are completed between individual EU states and Caribbean states or regions, it will also make it possible for Caribbean audiovisual producers to access funding for creative projects.

Furthermore, through the Protocol, artists and other cultural practitioners (who are not involved in commercial activities in the EU) will be able to enter the EU space to collaborate on projects, get training, etc. And they will be allowed to stay in the EU for periods up to 90 days in any 12 month period. Previous EU trade agreements had almost nothing on cultural cooperation. The Cariforum-EC EPA is the first to have comprehensive provisions on culture that provides for movement of artists, musicians, etc. This Protocol mechanism will be useful for the smaller artists and entertainers and any cultural practitioners who do not yet operate as a firm; they can enter EU states under the cooperation element and over time, develop contacts that can lead to commercial contracts.

It is also important to note that the market access commitments on services in the EPA are subject to dispute settlement so if our traders our investors or business persons find officials in individual EC states renegeing on their commitments or making it too difficult for them to enter, we can challenge that.

SERVICE SECTORS LIBERALIZED BY CARIFORUM

In terms of the level of liberalization by CF compared to the EC, there is clear asymmetry as the EC opened more than 90 percent of service sectors. In the case of Cariforum, the sectoral coverage is much less at about 65 percent for the LDCs and about 75 percent by the MDCs using a generous methodology in Cariforum's favour. However, there is very little Mode 4 coverage for CSS and IP. The sectoral coverage of the Dominican Republic is more than 90 percent. Furthermore, while most Cariforum states made an offer for key personnel (managers and specialists) and graduate trainees where they have a commitment in Mode 3 (investment), this is all subject to economic needs tests (ENTs).

The main sectors that most CF states have liberalized in the EPA are:

- Accounting, auditing and bookkeeping Services
- Architecture
- Engineering
- Computer and related Services
- Research and development
- Management consulting
- Services incidental to manufacturing
- Related scientific and technical consultant services
- Convention services
- Courier services
- Environmental services
- Hospital services
- Tourism and travel-related services
- Entertainment services
- Maritime transport

But it should be noted that the level of commitments and modes covered varies very much across individual member states. The commitments on contractual service suppliers and independent professionals made by Cariforum are limited to a range of about 6-7 sectors and mainly the larger countries.

The areas that Cariforum have liberalized should lead to increased investment in the region in order to develop new service industries. As well, it can result in greater efficiencies in a range of services that are inputs to manufacturing and other services. It is expected that there will be increased trade in the short term in business services if regional firms position themselves to take advantage of outsourcing opportunities from European firms.

ANNEX

Sectors Liberalized by the EU for Temporary Entry by Contractual Services Suppliers from Cariforum (employees of services firms)

- 1) Legal advisory services in respect of international public law and foreign law (i.e. non-EU law)
- 2) Accounting and bookkeeping services
- 3) Taxation advisory services
- 4) Architectural services
- 5) Urban planning and landscape architecture services
- 6) Engineering services
- 7) Integrated Engineering services
- 8) Medical and dental services
- 9) Veterinary services
- 10) Midwives services
- 11) Services provided by nurses, physiotherapists and paramedical personnel
- 12) Computer and related services
- 13) Research and development services
- 14) Advertising services
- 15) Market Research and Opinion Polling
- 16) Management consulting services
- 17) Services related to management consulting
- 18) Technical testing and analysis services
- 19) Related scientific and technical consulting services
- 20) Maintenance and repair of equipment, including transportation equipment, notably in the context of an after-sales or after-lease services contract
- 21) Chef de cuisine services
- 22) Fashion model services
- 23) Translation and interpretation services
- 24) Site investigation work
- 25) Higher education services (only privately-funded services)
- 26) Environmental services
- 27) Travel agencies and tour operators' services
- 28) Tourist guides services
- 29) Entertainment services other than audiovisual services

Sectors Liberalized by the EU for Temporary Entry by Independent Professionals (self-employed persons)

- 1) Legal advisory services in respect of international public law and foreign law (i.e. non-EU law)
- 2) Architectural services
- 3) Urban planning and landscape architecture services
- 4) Engineering services
- 5) Integrated Engineering services

- 6) Computer and related services
- 7) Research and development services
- 8) Market Research and Opinion Polling
- 9) Management consulting services
- 10) Services related to management consulting
- 11) Translation and interpretation services