Outline of the Presentation

1. CARIFORUM Motivation and Approach towards EPA Negotiations
2. Summary of CARIFORUM EPA and Systemic Issues
3. CARIFORUM Organization and Preparation
4. Lessons Learnt from CARIFORUM EPA

CARIFORUM Motivation for an EPA

A combination of offensive and defensive interests guided CARIFORUM interest in pursuing an EPA. In terms of offensive interests, CARIFORUM needed to bind current levels of EU preferences and immunise such preferences from WTO litigation. The recent spate of challenges to the EU’s preferential regimes for sugar and bananas under the Dispute Settlement Understanding strengthened the need to secure the existing EU preferences to ACP countries.

Second, as trade-dependent economies, CARIFORUM states need to improve their access to the EU market – the world’s largest regional bloc and a longstanding trading partner. All CARIFORUM States, except Guyana and Suriname, have a service sector that is the most significant contributor to GDP. Preferential access to the EU services market was therefore a prime requirement to drive increased growth of Caribbean economies.

Third, the combination of preference erosion and secular decline in agricultural prices compels the region to diversify its export base and capture greater value from its exportables. In 2005, the major six CARICOM exports to the EU were: alumina (15.6% export share); rum (11.3%); petroleum (11.1%); sugar (9.5%) and natural gas (4.7%). The performance of the Dominican Republic mirrors that of its other CARIFORUM partners, with 2005 exports to the EU dominated by commodities, namely ferro-alloys, bananas and rum. CARIFORUM States exude characteristics typical of small economies, i.e. production costs are high, export base is undiversified and production volumes are constrained. These problems are compounded by the region’s physical expanse that is dominated by an arc of islands that results, inter alia, in high transport costs. The challenge, therefore, is to enhance competitiveness, graduate into branded and high-value products and develop innovation systems as a strategic tool.

Fourth, we sought to reinvigorate the implementation of Caribbean regional economic integration. The CARICOM Single Market and Economy (CSME) was promulgated in 1989, yet a number of regional rules and regulatory framework are yet to emerge. One key policy mechanism - the Common External Tariff remains uncommon in terms of the rates applied by each of the 12 CSME members. In 2006, CARICOM Heads renewed a timetable to fully
implement the CSME by 2015. A Free Trade Agreement binding CARICOM with the Dominican Republic was signed in 1998, yet implementation has been limited to goods, while progress on the built-in agenda (Services, Government Procurement, Intellectual Property and Trade Facilitation) awaits completion of CSME regimes. The EPA’s thrust on regional integration should engender the injection of greater dynamism into the CARIFORUM-designed effort. In addition, the EPA includes CARIFORUM development priorities and should therefore facilitate the delivery of European Commission development assistance to support CARIFORUM regional integration.

Fifth, CARIFORUM wanted to secure EU development assistance in building trade regulatory capacity. We recognised that while Lomé/Cotonou trade preferences delivered market access for Caribbean economic operators, the ability of these firms to contest the EU market required the establishment of a full slate of supportive trade rules. The EPA supports the establishment of CARIFORUM regimes in these disciplines, primarily through the promotion of a regional policy framework. The modern regionalism cannot countenance erecting a common economic space shielded from global competition via high tariffs. Instead, strengthened CARIFORUM regional integration provides the major policy tool through which the Caribbean enhances competitiveness, advances productive capacity, and innovates in both new products and production systems. Accelerated economic integration therefore represents the platform through which the Caribbean seeks to garner the benefits of increasingly internationalised production chains while modulating the impact of globalisation’s more deleterious face.

Sixth, an EPA constitutes a forceful signal – to both investors and development partners - of the earnestness of a Caribbean’s programme of economic reform. As net capital importing countries, CARIFORUM States plan to use its EPA to lever increased investment and heighten the region’s appeal as a premier investment destination. In addition, CARIFORUM development partners are now presented with an advanced trade and development framework that requires long-term funding. In this context, an EPA is also a vehicle aimed at reversing the declining share of development assistance extended to the Caribbean.

In terms of defensive interests, CARIFORUM’s primary concerns focussed on securing a modulated tariff liberalisation schedule that would facilitate the reform of national tax regimes while safeguarding trade-generated fiscal revenue and domestic production. In most CARIFORUM States, government revenue from border trade remains quite significant and covers both import duties and Other Duties and Charges (ODCs). Furthermore, the region was interested in shielding its sensitive sectors from deep tariff cuts and therefore sought suitable lengthy periods for domestic production to adjust to competition from EU imports.

A second defensive interest concerns respecting the integrity and thrust of the CARIFORUM regional integration process. EPA commitments were calibrated on the basis of the deepest form of regional integration within the Caribbean, i.e. the CARICOM Single Market and Economy (CSME). In the area of Government Procurement, commitments were limited to transparency because otherwise the design of the CSME regime would have been impaired. Furthermore, the thresholds established in the EPA GP provisions are considerably higher than those envisaged under the CSME. The same logic was applied to free circulation where CARIFORUM accepted to endeavour not to apply duties on EU originating goods only once.

The third CARIFORUM defensive interest stems not assuming new EPA commitments in areas where no current Caribbean regime obtains. While the Region sought a modern and mature trade and development compact with a historical trading partner, due caution was exercised in not undertaking commitments in disciplines. In trade and customs facilitation, advanced binding rulings are inked to securing EU development support. A similar approach is discerned in Intellectual Property Rights where CARIFORUM commitments begin in 2014, time for EU support in specified areas to be realised.
Summary of Major Elements of the Agreement

- CARIFORUM liberalises 86.9% of the value of its imports with 82.7% within the first 15 years. The Agreement will result in the liberalisation of 92% of bilateral CARIFORUM-EU trade;
- CARIFORUM applies a general moratorium on its tariff liberalisation commitments on all products for the first three years of the Agreement. For revenue sensitive items such as gasoline, motor vehicles and parts, the moratorium is extended to 10 years;
- Other Duties and Charges (ODCs) are to be maintained during the first seven years and then phased out during the subsequent three years;
- The Sugar Protocol (SP) quotas will remain on a transitional basis until September 2009 when Duty-Free Quota-Free will be introduced. During the transitional period, the SP quotas will be complemented by a Tariff Rate Quota of 60,000 tonnes split evenly between CARIFORUM SP members and the Dominican Republic. In addition, a joint declaration commits both Parties to ensure, within the strictures of the SP rules, that shortfalls of any CARIFORUM SP member will be reallocated to another CARIFORUM SP member;
- An Agricultural chapter that establishes rules consistent with the objectives of pursuing sustainable development, poverty eradication, enhanced competitiveness and food security. Most notable in the provisions on agriculture is the zero for zero treatment of EU export subsidies, i.e. the EU eliminates export subsidies on all agricultural products that CARIFORUM liberalises cf. HKMD Paragraph 6 whereby the EU commits to eliminate such support by 2013;
- The EU shall exclude CARIFORUM exports from any contemplated use of a multilateral safeguard measure and consider the use of constructive remedies before imposing anti-dumping or countervailing duties in respect of products imported from CARIFORUM States;
- Both CARIFORUM and the EU automatically confer on each other any better treatment granted by one Party to a major trading partner. Such entities are defined as countries or regional blocs garnering 1%, or 1.5% and above, of world merchandise exports. This MFN provision covers both goods and services;
- In services, the EU liberalises 94% of sectoral coverage while the respective figures for CARIFORUM LDCs and MDCs are 65% and 75%, respectively with 86% for the Dominican Republic. The Bahamas and Haiti have six months within which to submit their respective liberalisation schedules. The commitments also include a standstill clause and provisions for future liberalisation;
- In the case of the temporary movement of natural persons (Mode 4) the EU has granted market access for Caribbean professionals in 29 sectors for Caribbean Contractual Service Suppliers (CSS) to enter the EU to supply services once a contract has been secured. This includes entertainment services for all EU Member States - except Belgium and Italy. The EU has liberalized 11 sectors for temporary entry by CARIFORUM Independent Professionals (IPs) or self employed persons;
- CARIFORUM access to the EU entertainment market is complemented by a Protocol on Cultural Cooperation that provides for greater collaboration on all cultural fronts and with special provisions on audiovisual activities. In particular, co-produced audiovisual products involving European and Caribbean creative teams will qualify as European works and thereby satisfy cultural content rules in all EU member states;
- The rules on investment confer predictability and transparency on market access in agriculture and forestry, manufacturing, mining and service sectors in both EU and CARIFORUM. Both regions have liberalised most areas of manufacturing except for some sensitive areas in CARIFORUM and the EU. However, public services and utilities and other sensitive sectors have not been liberalised to EU investors. CARIFORUM has also maintained special reservations for small and medium enterprises in some sectors;
- The EPA also contains obligations that will ensure that investors safeguard the environment and maintain high labour, occupational health and safety standards. Furthermore, the Agreement proscribes the Parties from lowering environmental and social...
standards in order to attract investment, and forbids investors from engaging in corruption to secure special concessions from public officials:

- Finally, regional preference (whatever concession is granted by one CARIFORUM State to the EU should automatically be conferred on all other CARIFORUM States) will be implemented in one, two and five years respectively in CARIFORUM MDCs, LDCs and Haiti.

Table of CARIFORUM Tariff Liberalization Commitments

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At entry into force of the Agreement, CARIFORUM commits to liberalize 52.8% comprising the following elements:

- 42% of CARIFORUM imports currently duty-free;
- 9% to be liberalised by the Dominican Republic (CAFTA-parity); and
- 1.8% to be liberalised on tariff lines that are currently low (nuisance tariffs).

The average share of CARICOM MDCs and LDCs imports excluded from tariff liberalization are 15 and 30%, respectively.

Treatment of Services Liberalization

In terms of Contractual Service Suppliers (CSS), 23 EU Member States granted full access for all of entertainment services while Germany limited its commitments to CPC 96191 and 96192, and Austria to only Authors and Dance Instructor services. Belgium did not undertake any commitments in the entertainment sector, due partly to the lack of a sitting government in Belgium at the time the negotiations were concluded. The commitments of the EC-15 come into effect once the EPA is provisionally applied in 2008, but those of the newer states (EC-10) will come into effect in three years, and Bulgaria and Romania in five years.

Access granted to Caribbean entertainers, artists and other cultural practitioners may be subject to qualification requirements and are subject to economic needs tests. Once CARIFORUM States register or certify their artists and cultural practitioners, a strong case can be made for the EU to accept that as qualification. The economic needs tests (ENTs) condition was in exchange for a full commitment to market opening by the EU without quotas. But the
ENTs are not new but have been in practice in several states for a long time. The EPA grants legally binding access to essentially all of the EU, and in significant markets such as France where the culture-trade interface is rather a sensitive issue. Furthermore, this level of market access in the entertainment sector by so many EU Member States has never been granted before to any other country or regional grouping.

This commitment offers those in the CARIFORUM creative sector the same basis for entry as business professionals. Caribbean artists, musicians, and other cultural practitioners and their crews who are registered as businesses will also be able to send their members or employees and they will benefit from the same conditions as traditional professionals to supply entertainment services under the category of contractual service suppliers (CSS).

It is important to note that while most developing countries can supply services competitively through the temporary entry of natural persons, all developed countries are very reluctant to allow this. Temporary entry is a very contentious and politically charged issue and authorities all want to maintain discretion in terms of access. Governments are willing to allow the supply of entertainment services through other means (especially investment or commercial presence) but due to immigration and other concerns they restrict temporary entry. For instance, while the United States signed far-reaching trade agreements with Central America, the Dominican Republic and several Andean countries, none of these FTAs have provisions on temporary entry of service suppliers.

In the case of the European Union, it is the first time that a comprehensive offer was made in entertainment services because this is usually considered part of the cultural sector that is a very sensitive sector in many EU Member States. On the other hand, it is also important to note that in general, most CARIFORUM States did not undertake commitments for contractual service suppliers from the EU. But Caribbean artists, musicians, and other cultural practitioners and their crews who are registered as businesses will have a legal right to send their members or employees to almost all EU Member States to supply entertainment services once they get a contract from clients in those EU Member States and the meet the normal immigration requirements.

Summary of Systemic Interests and Concerns

a. **DDA negotiations** - tracking WTO exchanges on RTAs and in particular definition of product coverage; monitoring the DDA discussions on Customs and Trade Facilitation with EPA results now creating a precedence for the systemic link between developing countries’ commitments and developed countries support for trade capacity building measures; and the elimination of EU Export Subsidies. Creating a precedent for DDA negotiations also informed CARIFORUM’s strong motivation for insisting on inserting a Special Safeguard Mechanism (SSM) in an EPA.

b. **Safeguarding the impact of tariff revenue**: Given the degree of dependence on tariff revenue in a number of CARIFORUM States, safeguarding revenue from border trade became an important objective during the negotiations. Hence the moderate tariff liberalization schedule that envisages the removal of tariffs on 8.3% of CARIFORUM imports over the first ten years of the Agreement. Similarly, the moderate phase out period for (ODCs) also contribute to CARIFORUM protecting its revenue base while the Agreement calls for EC support to assist in the implementation of tax reform.

c. **Sensitivity of agriculture**: Accordingly, 75% of value of imports is excluded from any tariff reduction or elimination. This highly treatment of agriculture marginally compensates the absence of an SSM in the Agreement. Another manifestation of the protection of
agriculture is the removal of EU export subsidies on those tariff lines liberalised by CARIFORUM.

d. Strengthening **regional integration** while safeguarding the integrity and design of the CARIFORUM integration project. No commitments were assumed in either market access in Government Procurement or free circulation precisely because regional policies in those disciplines are yet to be designed. Nevertheless, we benefitted from existing regional policies to define both commitments and development cooperation needs.

e. **Differentiation** among CARIFORUM States. This is expressed not only in the liberalization scheduled (goods and services) but also in the full importation of Article 164 of the Revised Treaty of Chaguaramas that seeks to spur industrial development among CARICOM LDCs.

f. **Consideration of new trade commitments.** CARIFORUM has assumed commitments in a number of disciplines where previously the region has previously been either defensive or ultra-cautious. Commitments in the social and environment dimension of Sustainable Development have therefore been tempered by measures aimed at ensuring that any transgression is matched by non-trade sanctions. However, we need to ask the question - what is wrong or injurious to ACP development in an Agreement that reaffirms both parties’ rejection of child labour, the rejection of the reduction of environmental standards in attracting or the rejection of the offer of bribes in facilitating foreign investment? How can one promote the development of new services sectors, particularly those based on electronic data transfer without a provision on personal data protection? These questions highlight the need for us to subject each discipline and proposal to a thorough examination of their respective pro-development potential and thereby remove the jaundiced perspective or easy intellectual constructs that encourage the dismissal of development–enhancing proposals.

**CARIFORUM Organization and Preparation**

a. Learning from the FTAA negotiation process in terms of both process and substance of negotiations on modern trade agreement.

b. Crafting of CARIFORUM EPA Negotiation Mandate

c. Preparation of CARIFORUM EPA Legal Text.

d. Execution of a sustained series of technical studies and training sessions, including two simulation on tariff liberalization, including one facilitated by IDS in September 2005.

e. Mounting a comprehensive slate of Technical Working Groups (TWGs) on all technical issues attendant to the negotiations. Such TWGs grouped Senior Officials from all CARIFORUM States; regional secretariats, negotiators, technical experts and the CRNM.

f. EPA National Consultations held in each of the 15 CARIFORUM States aimed at sensitizing private and public sector actors on EPA.

g. Series of national consultations on crafting consolidated CARIFORUM schedules for tariff and services liberalization.

h. Constant reporting to, and receipt of mandate from, CARIFORUM political directorate, *viz.* COTED, COFAP, PMSC on External Negotiations and CARICOM Heads of Government.
i. Securing and maintaining a constant line of communication with EC negotiating partners. This also entailed broadening contacts to address the functionaries that draft positions in other Directorates beyond DG Trade, i.e. TAXUD, AGRI, DEV, JLS.

j. Establishing a network with concerned EU Member States. Recognition that in most instances decisions are made in capitals and therefore transcending the communication beyond those Attaches based in BRU becomes even more imperative. In some instances, the RNM assisted in the drafting of major EU communication on EPAs.

k. Monitoring EC experiences in other FTA negotiations. The RNM tracked MERCOSUR negotiations with the EU in the belief that those trade talks would mirror the EC’s behaviour in EPAs. We therefore spoke with the pro tempore Presidencies of MERCOSUR, and in particular, the Brazilians on the scope, content and structure of those FTA negotiations.

l. Subjecting the CRNM’s technical analyses to constant review through communication with an informal network of ACP negotiators, researchers, policy makers, academics, members of think tanks, international organizations such as COMSEC, UNCTAD, WB and WTO Secretariat).

Challenge of Implementation an EPA

Each subject-specific chapter in CARIFORUM EPA identifies Caribbean development needs and are enumerated under the rubric of development cooperation. The RPTF is already working on translating these legal commitments into operational effect. Under this framework, we are already conducting subject-specific feasibility studies to execute four tasks, viz. (a) identify needs (regional and national); (b) design programmes to address identified needs; (c) comb through existing programmes to ensure that there is no duplication of efforts and where possible aim to coordinate funding and policy coherence; and (d) the quantification of the costs of intervention. Thus far, a number of feasibility studies have been completed, namely in the areas of Competition Policy; Government Procurement; SPS; TBT and Trade Facilitation.

Another slate of priorities should be funded under the EU AfT programme. Modalities for this funding window need to be promulgated and we need to ensure that CARIFORUM receives an equitable share. There is a concern that the UK development assistance with its fixation on either the twenty poorest countries or addressing humanitarian needs arising from the wars in Afghanistan and Iraq has stymied interest in EPA implementation in the Caribbean.

Lessons Learnt from the CARIFORUM Negotiation of an EPA

a. Internalise that negotiation of an FTA is serious business and should be approached with the earnestness that it deserves. The paradigm shift that an EPA entails warrants considerable research, application of political will and coalition-building to confront a well-armed negotiation partner. In spite of the development hype, EPAs are not an exercise in mendicancy or economic altruism but rather a process of hard-nosed negotiations. Therefore, CARIFORUM was highly cognizant that in order to secure its overarching objectives, a series of concessions had to be made.

b. Develop a comprehensive and holistic policy response to global economic currents, e.g. globalization, tariff liberalization, emergence of the BRIC countries, disaggregation of production, value chain analyses, imperative of increased competitiveness, and economic repositioning. This could be in the form of a national and regional development plan and strategy that is constantly calibrated to address emerging realities. Promulgation of such an analytical framework allows for negotiation of an EPA to be guided by a holistic
national/regional response as distinct to the reflex of the new trade compact being viewed as anathema to country's economic development.

c. Articulate interests – defensive, offensive and systemic and devise the appropriate resources and energy for this blend of resources. This also entails understanding that trade policy is a subset of development policy and that development should not be reduced to development cooperation. Internalize that the EPA can never be a panacea and should therefore be complemented by a host of supporting policy interventions, e.g. infrastructure, education, improved health systems, exchange rate regime and regulatory framework.

d. Establish a functional and credible negotiation structure. The EPA College (imported from FTAA negotiations) functioned effectively by pooling the best available technical talent in the region, i.e. CARIFORUM Member States’ senior officials; regional secretariats; consultants; academics; Brussels-based Ambassadors; technical experts renown in their respective fields and led, coordinated and supported with technical analysis by the CRNM.

e. Link the technical negotiators to a complementary political machinery that included the COTED and COFAP (Ministers); PMSC on EN and CARICOM Heads of Government (Heads). Strong and decisive leadership exercised by Dame Billie Miller and PMs Golding and Arthur in their respective capacity as CARIFORUM Lead Ministerial Spokesperson, Chairman of the PMSC External Negotiations and pro tempore Chairman of CARICOM. It also helps if the Region's political leaders enjoy access to EU Commissioners and EU political leaders (e.g. CHOGM 2007).

f. Develop a consultative engagement with the private sector and NSAs as this not only facilitates consensus building but also act as a second line of defence against the EU. In some instances, this means mobilizing the NSA community (known for high decibel levels) in order to increase negotiating leverage inside the negotiation room.

g. Conduct the requisite technical analysis as this generates a capacity to both define trends and table proposals. This is important for the psychology of the negotiations that the ACP negotiating side is not reduced to merely reacting to EC proposals.

h. Communicate with your negotiating partner. DG Trade spearheads the EC negotiation of the EPA with Karl Falkenberg acting as Chief Negotiator. The communication with all major players within the EC is critical, beginning with the respective regional Desk Officers. However, one should also recognize that the EC is not a monolithic organization and therefore it becomes imperative that there is continuous interface with all relevant functionaries. The ability to exchange views affords one to resolve problems in an expeditious manner and contain problems that could poison the negotiation process. Allied to the communication process is developing an informed understanding of EU motivation for the negotiations. That means reading relevant EU policy interventions, such as the EU Development Policy or speeches by EU Commissioner on Agriculture on CAP reform.

i. Devise means of addressing the asymmetries inherent in the relationship between the ACP and EU. This mismatch of negotiator partners is expressed not only in terms of vastly different level of economic development but in political weight and institutional capacity. While the imbalance in power between the ACP cannot be overturned, efforts can be made to mitigate or modulate this partnership of un-equals. This requires mounting an organized political, technical and diplomatic force during the negotiations, marshalling the best available technical expertise and developing a network of like-minded forces in the EU.