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REVIEW OF CARIFORUM-EU EPA – IMPLICATIONS FOR THE BRITISH AND DUTCH CARIBBEAN OCTs

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GLOSSARY OF ACRONYMS AND ABBREVIATIONS

ACP	Africa, Caribbean, Pacific
CARICOM	Caribbean Community
CARIFORUM	Caribbean Forum of ACP States
CSME	CARICOM Single Market and Economy
DOM	French Overseas Departments
EC	European Commission
EPA	Economic Partnership Agreement
EU	European Union
GATS	General Agreement on Trade in Services
MFN	Most Favoured Nation
OAD	Overseas Association Decision
OCT	Overseas Countries and Territories
OECD	Organization for Economic Cooperation and Development
OECS	Organization of Eastern Caribbean States
OFC	Offshore Financial Centre
WTO	World Trade Organization

REVIEW OF CARIFORUM-EU EPA – IMPLICATIONS FOR THE BRITISH AND DUTCH CARIBBEAN OCTs

Introduction

The European Commission (EC) recently tabled a Green Paper on the future relations between the European Union (EU) and the Overseas Countries and Territories (OCTs). The document is intended to spark a broad public debate on the opportunity of replacing the current Overseas Association Decision (OAD) of 2001 with an "innovative partnership" for the territories when the present agreement expires on 31 December 2013. The Commission will hold an online consultation covering the issue from 1 July to 17 October 2008. This remains without prejudice to a possible revision of the OAD before the end of 2011, in accordance with its article 62. The need for the launch of the debate arose out of the recognition that the current OCT-EU association is based on an outdated development cooperation logic, whereas the OCTs potential and the challenges they are facing would require an approach that focuses on the strengthening of their competitiveness, the facilitation of regional integration and the reduction of the impact of the factors that contribute to their vulnerability.

The present paper is therefore directed at providing inputs to the current debate in order to help pave the way towards the definition of future policy proposals pertaining to the seven British and Dutch OCTs in the Caribbean. More precisely, the paper seeks to provide an assessment of the likely implications of the CARIFORUM-EU Economic Partnership Agreement (EPA) for these territories in the following areas:

(a) The regional integration measures identified in article 4 of the chapter on Trade Partnership for Sustainable Development;

(b) The rules of origin measures identified in articles 15 and 16 of the chapter on Trade and Trade-Related Matters, and Protocol 1 concerning the cumulation of origin;

(c) The services trade liberalization measures identified in articles 60-118 of the chapter on Investment, Trade in Services and E-commerce;

(d) The public procurement market liberalization measures identified in articles 165-182 of Title IV: Trade Related Issues; and

(e) The financial services measures identified in articles 103-108 of the chapter on Investment, Trade in Services and E-commerce.

A secondary objective of the study is to assess the integration options facing the Caribbean British and Dutch OCTs vis-à-vis the Caribbean Community (CARICOM) and the EU, respectively.

The study is based on the following: (a) a desk review of the EPA, including Annexes I through X of Protocol 1; (b) a review of the nine protocols amending the Treaty of Chaguaramas; (c) an examination of the existing literature on the present OCT-EU association and in particular the trade regime; and (d) consultations with a select number of OCT officials and staff of the Caribbean Regional Negotiating Machinery (CRNM).

Chapter I

IMPLICATIONS OF EPA ON CARIBBEAN OCTs

A. REGIONAL INTEGRATION

The CARIFORUM countries and the EU have agreed to put regional economic integration at the heart of their partnership in order to achieve the objectives of the EPA (article 4). The Parties also recognised and reaffirmed the importance of regional integration among the CARIFORUM States as a mechanism for enabling these States to achieve greater economic opportunities, enhanced political stability and to foster their effective integration into the world economy.

Consequently, irrespective of the fact that the British and Dutch OCTs in the Caribbean[1] are not a Party to the EPA, the Agreement will potentially have the economic effect of isolating them from the independent Caribbean. In the trade sphere, products from Europe would be able to enter the CARIFORUM economies duty free under the EPA and trade in services would be further liberalised, but products and services from the OCTs would not benefit from this. The Caribbean market is critical for these territories, especially the Curaçao distribution hub.[2] Paradoxically, after 2008, in the case of the French Overseas Departments (DOMs), an EPA will have the reverse effect. As a part of Europe, albeit remote, the DOMs will then be subject to the phasing in of the same trade reciprocities as are agreed for Continental Europe. This might also possibly be the case with Bonaire, St. Eustatius and Saba following the dissolution of the Federation of the Netherlands Antilles.

For its part, the EC has expressed the view that the progressive trade liberalistion is an inevitable process for which the OCTs need to prepare, particularly given the fact that they already benefit from the most generous tariff regime ever granted by the Community, which leaves no room for improving their access to the EU market.[3] Against this background, the Commission has invited the OCTs and the related EU member States to examine their position vis-à-vis the EPAs and African Caribbean Pacific (ACP) regional integration. The position of the Commission is that the above trends cannot be reversed; hence the adequate response for each of the British and Dutch Caribbean OCTs in terms of EU legislation falls into three possible options: (i) maintaining the status quo vis-à-vis the OCT-EU trade regime; (ii) replacing the OCT-EU trade regime with the reciprocal trade regime of the CARIFORUM-EU EPA; and (iii) pursuing an advanced regional integration strategy through the Caribbean Single Market and Economy (CSME).[4] These three options are discussed in greater detail below.

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[1] i.e. Anguilla, Aruba, British Virgin Islands, Cayman Islands, Montserrat, Netherlands Antilles, Turks and Caicos Islands.

[2] ECLAC, *The Cotonou Agreement: Selected Issues, Effects and Implications for Caribbean Economies*, UN ECLAC/CDCC, Doc. No. LC/CAR/L.66, 14 December 2005, p. 32.

[3] European Commission, *Green Paper on Future Relations Between the EU and the Overseas Countries and Territories*, Commission Staff Working Document, EC Directorate-General Development and Relations with African, Caribbean and Pacific States, p. 32.

[4] Ibid., pp. 32-33.

Option 1: Maintaining the status quo

Under this option, the OCT in question can continue to benefit from its non-reciprocal and discriminatory trade relations with the EU under the applicable OCT-EU trade regime, accompanied by complete access for its products to the Community market (Table 1). In other words, the OCT-EU trade regime, whose basic principles are guaranteed by articles 183 and 184 of the EC Treaty (see Annex I), can coexist with the CARIFORUM-EU EPA, should one or more of the Caribbean OCTs decide not to join these regional integration processes with CARICOM and/or the EU member States.

Table 1: EU Trade in Goods with Caribbean OCTS (mio euro 2004)

	Main products imported in EU	**Main products exported from EU**	**Trade balance**
Anguilla	1	10	9
Aruba	213	163	-50
BVI	147	913	766
Cayman Islands	1.886	1.091	-796
Montserrat	2	6	4
Netherlands Antilles	104	408	304
Turks & Caicos	11	23	12

Source: European Commission, Statistics on OCT/EU Trade, DG Trade, Brussels, Belgium. Internet link: http://ec.europa.eu/development/center/repository/statistics_trade_2004_en.pdf

However, the long-term sustainability of these arrangements would appear to be in jeopardy for three reasons. Firstly, a change in the attitude of the EU towards the World Trade Organization (WTO) compatibility of its trade regime with the ACP countries has occurred. In this context, it is important to recall that the trade provisions of the 1963 Yaoundé Convention of 1975 were based on reciprocal and non-discriminatory terms, pursuing the trade arrangements of pre-independence time. Such reciprocal arrangements were closer to those of a free trade agreement than a preferential trade scheme and, as such, more congruent with the EPAs currently under negotiations between the EU and ACP member States.[5] The change in the EU's attitude towards the ACP group of countries is therefore tantamount to a status quo ante position.

Secondly, the EC is a strong proponent of a rules-based multilateral trading system; hence, it could conceivably encounter mounting pressure from within and without the EU member States to dismantle the non-reciprocal and discriminatory arrangements currently in place under the OCT-EU trade regime. In addition, many of the new EU members do not have the historical links and sensitivity to non-reciprocal trade preferences.

Thirdly, the EC's Green Paper on the future OCT-EU relations advocates the establishment of a new relationship between the Commission and the OCTs based on a "privileged partnership with the European institutions" wherein "the OCTs would then become

[5] United Nations Economic Commission for Africa, *Economic and Welfare Impacts of the EU-Africa Economic Partnership Agreements*, Africa Trade Policy Centre, March 2005, p. 8.

active partners of the EU, rather than merely recipients of development aid".[6] The Green Paper goes on to suggest that "it could therefore be useful to draw inspiration from the EU's internal policies and, in particular, the EU's regional policy and strategy for the Outermost Regions, in order to put new concepts, ideas, possibilities and experiences on the table for the future OCT-EU relations …"[7] The latter would be France's position given Guadeloupe, French Guiana and Martinique's participation (as remote regions of the EU) in the CARIFORUM-EU EPA. The boundaries therefore appear to have been drawn in favour of a new partnership arrangement between the Caribbean OCTs and the related EU member States based on the principle of reciprocity in their trade relations.

Option 2: Joining the CARIFORUM-EU EPA

The EC has maintained that the possibility exists for an OCT to sign up to an EPA. However, this would have to be negotiated between the OCT in question (via the related EU member State), the Community and the ACPs concerned.[8] This withstanding, there is no incentive for them to accede to the Agreement given the fact that their current non-reciprocal trade arrangement with the EU is guaranteed legally by the EC Treaty. The arrangement will, therefore, remain in full force under Community law unless the Treaty is revised. This will clearly not be the case for at least five years or more before the expiration of the current OAD in December 2013.

Salmon (2007) has pointed to three additional reasons for considering that the benefits of them being a party to the CARIFORUM – EU EPA will be limited:

(a) Firstly, their main wealth creation sectors (i.e. tourism and services) have a rate of growth and growth factors which can be considered as independent of whether or not an EPA is signed.[9]

(b) Secondly, there is a risk that they may lose some of the freedom in their offshore financial policy.[10] Specifically, article 237 of the EPA includes general commitments to reinforce transparency, dialogue and collaborative action in areas such as tax policy, anti-corruption and the financing of terrorism. In this regard, the British Virgin Islands have already indicated that any financial and good governance provisions in the EPA, if applicable, must not have an adverse effect on the economy of the OCTs.[11]

(c) Thirdly, from the point of view of the asymmetry from which the CARIFORUM countries will benefit vis-à-vis access of EU goods and services to the regional market, it is often assumed that in principle the Caribbean OCTs would find themselves, if they are parties to the

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[6] European Commission, *Green Paper on Future Relations Between the EU and the Overseas Countries and Territories*, op. cit., p. 2.
[7] Ibid.
[8] European Commission, *Report on the Sixth OCT-EU Forum, 27-28 November 2007*, EC Directorate-General Development and Relations with African, Caribbean and Pacific States, Brussels, Belgium, p. 4.
[9] Jean Michel Salmon, *OCT Regional Integration Impact Study*, Final Report, EC Project No. FWC BENEF Lot 11 – Specific Contract No. 2006/123116, July 2007, p. 127.
[10] Ibid., p. 128.
[11] See the "Report on the Fifth OCT-EU Forum", 5-7 September 2006, Nuuk, Greenland. P. 6.

CARIFORUM-EU EPA, on the "right side" of the asymmetry (i.e. allowing them not to open all markets on account of the non-reciprocal trade arrangements currently in force with the Community and given the possibilities set out in the EC Treaty). However, this concerns only Caribbean OCT-EU relations and there is no certainty that the CARIFORUM countries will see the situation the same way. CARIFORUM States could, on the contrary, consider that the Caribbean OCTs are "extensions" of the EU and, accordingly, must be treated in the same way as the EU regarding the application of the principle of asymmetry. That is apparently the view adopted by the east and southern Africa region's negotiators towards Mayotte; hence, there might be general pressure for the adoption of this position.[12]

Against this background, the more likely scenario would be one centred on a renewed Caribbean OCT-EU partnership à la Cotonou in 2014 (following the expiration of the OAD) with a built-in agenda for negotiations to be concluded in the future on a WTO-compatible trade arrangement. This would give the Caribbean OCTs a lead-time of roughly 10 years to enter into a separate free trade agreement with the EU or join the CARIFORUM-EU EPA. This assumes, of course, that the EC would be inclined to negotiate regional FTAs with the OCTs that are located in the different geographical settings. This question aside, the EC's Green Paper on the future OCT-EU relations clearly points to a move in this direction.

Successful participation in these negotiations with the EC will depend on a capacity for effective independent representation, preparation and negotiation. CARICOM, through the RNM, could be of assistance in this respect. Each of the Caribbean OCTs, including Aruba and the Netherlands Antilles, are associate members of CARICOM and, accordingly, are eligible to receive such assistance from the RNM. As a first step, the Caribbean OCTs should request the RNM to provide them with an independent review of the EC's Green Paper on the future OCT-EU relations.

Option 3: Pursuing an advanced integration strategy through the CSME

The CSME requires, *inter alia*, greater emphasis on macroeconomic convergence and harmonisation. New institutional arrangements had to be put in place to monitor national economic policies to ensure better coordination of these policies. A harmonised policy on foreign investment, the establishment and integration of capital markets in the Community, financial and monetary integration, and the free movement of managerial and skilled personnel and service providers also generated new tasks and work programmes.

Since 1989, the policy decision was taken to create the CSME and the process of implementation is still ongoing. However, the implications of harmonising these policy and functional areas for the Caribbean OCTs are not particularly encouraging at this juncture for the following reasons:

(a) In the area of the free movement of capital, the participation of a specific Caribbean OCT in building a regional capital market would require that national treatment be given eventually to CARICOM producers, as well as the harmonisation of the terms and conditions for the cross-listing. However, it is not known to what extent such participation in the

[12] Jean Michel Salmon, *OCT Regional Integration Impact Study*, op. cit., p. 127.

process would be beneficial. Moreover, the small size and limited scale economies of the OCTs might preclude the critical mass required to benefit here. Further study of foreign investment laws and other regulations would also have to be undertaken.

(b) In 1989, CARICOM agreed to eliminate the requirement for passports and abolish the need for work permits for CARICOM nationals. However, the response of individual CARICOM countries is not yet uniform to the point that will allow a fully harmonised policy to be adopted. The participation of the Caribbean OCTs in the CSME would, therefore, further complicate the issue of free movement of persons. Moreover, in view of their high levels of per capita income (e.g. British Virgin Islands and the Cayman Islands), they would be attractive poles for migrants and may be reluctant to adopt the present facilitating measures.

(c) Presently, as is the case in individual CARICOM member States, some consultation is done by the Caribbean OCTs with international financial agencies, especially the International Monetary Fund (IMF) and the World Bank, on macroeconomic matters. The additional benefit that would come from macroeconomic policy harmonisation and coordination with CARICOM would therefore only be derived in the context of wider benefits of participating in a single market and economy (e.g. functional cooperation, resource pooling and sourcing of important items such as pharmaceuticals).

(d) Under Protocol II relating to services there is a fair amount of harmonisation to be undertaken in terms of the recognition of professional and technical qualifications, as well as mechanisms for all workers to carry over social security entitlements. Tax systems also need to be reviewed. In competition policy, some progress has been made but it needs to be deepened, especially at the national level. The gains from such harmonisation would have to be carefully calculated in the case of the Caribbean OCTs, especially for the benefit of Aruba and the Netherlands Antilles with a different legal and institutional background. The latter is already addressed for Suriname with a similar legal system.

(e) Moreover, the OAD makes it illegal, in article 45.2(b), for an OCT to grant preferential treatment to third States (e.g. CARICOM), if such preferential treatment is not extended to relations with service providers in the EU member States (see Annex II). The OAD therefore prevents the Caribbean OCTS from pursuing an advanced integration strategy through the CSME in the area of services with CARICOM, unless it extends this policy to the EU as a whole. A revision to article 45.2(b) of the OAD will therefore be necessary to enable the Caribbean OCTs that wish to pursue the strategy of joining the CSME to do so in full legality under Community law.[13]

In addition, it is not easy to identify the welfare gains to be achieved by the Caribbean OCTs from an advanced regional integration strategy through the CSME. In the case of the Netherlands Antilles, for example, the Economic Commission for Latin America and the Caribbean (ECLAC) (2001) has pointed out that the potential static and dynamic gains from

[13] Ibid., p. 131.

trade and integration for the territory would most likely be inconsequential for the following reasons:[14]

(a) In terms of goods exports, the local manufacturing base[15] of the Netherlands Antilles is extremely small. It is also uncompetitive and produces items similar to those of many CARICOM countries. Hence, in facing competition from CARICOM countries, many of the local industries could be forced to close unless they are re-engineered within a short time-span under some transitional arrangement. New capital and technology investments would be needed, as well as learning by doing, at least over a five-year period.

(b) The uncompetitive nature of wage rates vis-à-vis CARICOM rates, high input costs for fuel and electricity and relatively strong currencies would militate against any static welfare gains. Only miniscule increases in manufactured exports to CARICOM, if any, could be expected in that situation. Some adjustment costs will be incurred as job losses increase in the short- to medium-term and the fall in output is not compensated by expansion in new or existing areas.

(c) The Netherlands Antilles is not an industrialized centre and, therefore, cannot anticipate the reaping of significant dynamic benefits in the form of economies of scale, lower unit costs, learning-by-doing, specialisation and efficiency, and industrial diversification. Higher wages and/or lower productivity, as well as small market size and a narrow industrial base have caused the countries of the Organisation of Eastern Caribbean States (OECS) and Barbados to shift to service economies and abandon low-wage manufacturing. The islands of the Netherlands Antilles are similar to the OECS and Barbados in this regard.

Above and beyond these considerations, the question has been raised as to whether the Caribbean OCTs possess sufficient autonomy to join the CSME. While the British and Dutch OCTs are afforded a higher level of autonomy than the DOMs, this degree of autonomy places varying degrees of constraints on the flexibility of these territories to pursue regionalism. Such is the case with Montserrat, where constitutional external affairs is the purview of Her Majesty's Government. Accordingly, the Government of Montserrat must receive an entrustment to accede to treaties and protocols. Such an entrustment was recently denied by the administering power for the territory to sign on to the Revised Treaty of Chaguaramas until "*such time as levels of economic activity and capacity are sufficiently enhanced to enable Montserrat to be able to take full advantage of the benefits of membership of the CARICOM Single Market and Economy"*. [16]

Consequently, the non-independent status of the OCTs such as Montserrat and the requirement of an entrustment from the British Government raise a number of major issues regarding their future relationship with their CARICOM partners, now in the process of deepening their integration within the CSME. This notwithstanding, it would appear that if the

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[14] ECLAC, The Netherlands Antilles: Trade and Integration with CARICOM, Doc. No. LC/CAR/G.681, 21 December 2001, pp. 11-13.

[15] The two Free Trade Zones of the Netherlands Antilles are not included since they are not part of the customs territory and not recognised by CARICOM for preferential treatment.

[16] Government of Montserrat, Chief Minister of Montserrat address to the Twenty-Ninth Meeting of the Conference of Heads of Government on the Implications of the denial of the Instrument of Entrustment from the UK for Montserrat to participate in CSME, Office of the Chief Minister, Montserrat, 3 July 2008.

static and dynamic gains as discussed earlier seem to be marginal and much more possible in the long term, then a focus on participation of the Caribbean OCTs in CARICOM (as associate members) mainly in the areas of functional cooperation and common services, as opposed to their accession to the CSME, would be a more appropriate strategy at this juncture.

B. RULES OF ORIGIN AND TRANS-SHIPMENT

1. Rules of Origin

The rules of origin established under the EPA will govern the qualification for preferential access of exports from both CARIFORUM countries and EU member States. For both CARIFORUM and the EC, the countries of each grouping will be considered as a single territory for purposes of the rules of origin. More importantly, the rules of origin in the EPA maintain the structure of those in the Cotonou Agreement while providing for changes in the conditions governing production and manufacture of some goods and some adjustments in other provisions.[17]

The retention of the structure of the Cotonou rules of origin represents the first stage of a two-step process to negotiate rules of origin under the EPA. Article 10 stipulates that within five years of the entry into force of the Agreement "*the parties shall review the provisions of this Protocol, with a view to further simplifying the concepts and methods used for the purpose of determining origin* …" This means that when the EPA comes into force, the CARIFORUM countries will apply both the 'Value Added' and the 'Change in Tariff Heading' criteria, while the EU will work from the 'Value Added' basis alone (see box below).

The EC has given some thought to the details concerning OCT-ACP cumulation. Specifically, it has proposed that if the possibility of OCT-ACP cumulation is to be maintained, the OCTs should, as a matter of policy, be subject to rules of origin that are identical to those applicable to the ACP States.[18] One can therefore envisage a move in the foreseeable future towards the EC favouring an alignment of the rules of origin for the Caribbean OCTs with those of the 16 CARIFORUM countries under the EPA.

[17] CARICOM Secretariat, EPA Implementation Road Map, undated, p. 20.
[18] European Commission, *Green Paper on Future Relations Between the EU and the Overseas Countries and Territories*, op. cit., p. 33.

Box

Where two or more countries have been involved in the manufacture of a product, the general concept applied in formulating rules of origin is that the product has origin where the last "substantial transformation" took place. In practice, there are three main methods of determining whether substantial transformation has occurred:

1. The '**Value Added**' Test: which requires that the last production process has created a certain percentage of added value;

2. The '**Change in Tariff Heading**' Test: which confers origin if the activity in the exporting country results in a product that is classified under a different heading of the customs tariff classification than its intermediate inputs; and

3. The '**Technical**' Test: which sets out certain production activities that may (positive test) or may not (negative test) confer originating status.

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Source: Falvey, R.E. and G.V. Reed, "Rules of Origin as Commercial Policy Instruments", Centre for Research on Globalisation and Labour Markets, School of Economics, University of Nottingham, Research Paper 2000/18 quoted in Pearson, Mark, "Agreeing EPA rules of origin: a strategy unfolds", Trade Negotiations Insights, July-August 2007.

The Caribbean OCTs should begin the process of working out how to adjust the existing OCT-EU rules of origin in order to set flexible rules and derogations that boost their exports into EU markets. A benchmark assessment of value added content and tariff levels in key commodities is therefore required, especially for the Netherlands Antilles. This work must be done prior to the expiration of the OAD in 2013 and be brought together into one coherent proposal that is backed up with a firm plan of the administrative tools which will be used to implement the rules.

2. Trans-shipment

Under the EPA (Title III, Article 14 to Protocol 1), products that constitute one single consignment may be transported through other territories with trans-shipment or temporary warehousing in such territories provided that "*they remain under the surveillance of the customs authorities in the country of transit or warehousing and do not undergo operations other than unloading, reloading or any operation designed to preserve them in good condition*". This means that the theoretical attractiveness of trans-shipment through the Caribbean OCTs will be jeopardized as a result of the liberalisation of trade between the Community and the CARIFORUM countries.

In principle, Article 16 of the OAD stipulates that a Caribbean OCT can re-export goods duty free to the EU market providing that the territory has collected duties or taxes on the non-originating products "*having equivalent effect of a level equal to, or higher than, the customs duties applicable in the Community on import of these same products originating in third*

countries eligible for the MFN clause". Anguilla and the Netherlands Antilles boosted their revenue in the late 1990s through the use of this instrument.

However, the EC is presently of the view that trans-shipment has not yielded the expected results because it implies purely artificial trade routes that present no added value for third-country operators to pass through an OCT such as the Netherlands Antilles (i.e. to make existing (or future) well-developed and under-utilized harbour infrastructure more competitive and create local economic growth).[19]

In view of the above, the Caribbean OCTs should seek the assistance of ECLAC in assessing their international competitiveness, taking due account of the potential in certain territories (notably the Netherlands Antilles) to provide safe and efficient trans-shipment or temporary warehousing in their harbours for products destined for the EU market. This benchmarking exercise would be aimed at making the case for preserving this facility.

C. TOURISM SERVICES

The tourism services section of the EPA introduces for the first time disciplines on anti-competitive practices of tourism operators specific to the tourism industry (article 111). It also targets supply-side constraints by providing for access to technology for firms in CARIFORUM countries (article 112) and facilitating the participation of their small- and medium-sized enterprises (SMEs) in the tourism services sector (article 113). In Chapter 4 dealing with Temporary Presence of Natural Persons for Business Purposes (mode 4), there is specific provision for the movement of tourism personnel (i.e. hotel representatives, tour and travel agents, tour guides or tour operators) attending or participating in tourism conventions or travel exhibitions under the category Short Term Visitors for Business Purposes (article 84).

The treatment of tourism in the EPA should fully engage the attention of the Caribbean OCTs for three important reasons. Firstly, they are highly dependent on tourism, with this sector contributing a third to a half of GDP for all of the territories. Tables 2 and 3 reveal the trends in tourist (stop-over) and cruise ship arrivals for 2004-2007.

Secondly, issues around globalisation and multilateral agreements relating to the liberalisation of trade in services, will increase competition for the Caribbean OCTs and reduce their ability to reserve certain jobs and services in tourism for nationals (i.e. article 45(1) of the OAD). Proposals which are interpreted internationally, as subsidizing national OCT entities will therefore run counter to the WTO Most Favoured Nation (MFN) stipulations.

Thirdly, the Caribbean OCTs must be prepared to compete aggressively for the investment capital needed to provide a competitive product. Capital investment is needed for new accommodations; improvements to essential infrastructure; and upgrading, expanding and refurbishing of existing hotel plant, amenities and attractions.

[19] Ibid., p.37.

Table 2: Tourist (Stop-over) Arrivals: 2004-2007

Destination (Stay-Over)	2004	2005	2006	2007
Anguilla	53,987	62,084	72,962	77,652
Aruba	728,157	732,514	694,372	772,073
Bonaire	62,507	62,550	63,552	74,309
BVI	304,518	337,135	356,271	358,056
Cayman Islands	259,929	167,801	267,257	291,503
Curaçao	223,439	222,070	234,383	299,782
Montserrat	10,110	9,690	7,963	7,745
Saba	11,012	11,462	11,012	11,673
St. Eustatius	11,056	10,355	5,236	11,568
St. Maarten	475,031	467,861	467,804	469,407
Turks & Caicos	-	-	-	-

Source: Caribbean Tourism Organization Statistics (2007)

Table 3: Cruise Passenger Arrivals: 2004-2007

Destination (Cruise)	2004	2005	2006	2007
Anguilla	-	-	4,113	4,324
Aruba	576,320	552,819	591,474	481,775
Bonaire	53,343	40,077	61,844	97,635
BVI	466,601	449,152	443,987	575,211
Cayman Islands	1,693,293	1,798,999	1,930,136	1,715,666
Curaçao	219,385	276,217	321,551	340,907
Montserrat	-	285	-	273
Saba	-	-	-	-
St. Eustatius	-	-	-	-
St. Maarten	1,348,450	1,488,461	1,438,211	1,421,906
Turks & Caicos	-	-	-	-

Source: Caribbean Tourism Organization Statistics (2007)

The prospects for attracting much needed foreign direct investment in the industry are becoming increasingly difficult for the territories in the emerging new economic order where the world appetite for investment is great and resources are dwindling. Capital is swiftly becoming globally mobile in a highly competitive environment, on the one hand, with profits being the sole motivation for involvement. On the other hand, the Caribbean OCTs are being viewed as a conglomeration of territories with high cost operations (i.e. a clear disincentive for attracting investment).

In view of the above, the Caribbean OCTs should insist that tourism receives specific treatment in the new OCT-EU Partnership Agreement (scheduled to take effect from January 2014 when the present OAD expires) by proposing a draft annex on tourism given the economic importance of the sector to their economies. It also seems that while they liberalise aspects of tourism, the OCTs should reserve key areas for domestic suppliers (e.g. in small hotels, entertainment and recreation) while also trying to leverage as much technical assistance as possible to enhance and upgrade the competitiveness of the sector.

D. PUBLIC PROCUREMENT

Whereas CARIFORUM countries agreed to the inclusion of public procurement in the EPA, there was no firm commitment or binding obligation in this area, merely a 'best endeavour' provision on transparency and non-discrimination (article 167.2.b). For its part, the EC insisted on its inclusion for three main reasons:

(a) To improve European access to CARIFORUM public procurement markets. This is in line with the EU's *'Global Europe: Competing in the World'* strategy which identifies government procurement as key for EU companies to compete on an international basis.[20]

(b) To improve transparency and accountability in public procurement activities through improved efficiency in public services delivery, public expenditure procedures, and reduction of corruption and rent seeking activities.

(c) The EU member States deem transparency and accountability in government procurement vital for the EU to support Official Development Assistance (ODA).

CARIFORUM countries were nonetheless prudent in resisting any firm commitment or binding obligation in this area for the simple reason that there is insufficient evidence as to the means by which successful public procurement reform can be implemented. As noted by Evenett and Hoekman (2005), the evidence offered to support the claims that public procurement reform can support development policy needs to trace through the changes in public procurement policies to observable outcomes and also needs to take into account the other possible non-procurement related factors that might be at work.[21]

In view of the above, the Caribbean OCTs should insist on a detailed development-focused assessment of the potential impact of public procurement market liberalisation from the Commission in the event of a proposal from the latter for its inclusion in the new OCT-EU Association Agreement. This is quite likely given the fact that Chapter 3 of the current OAD already includes provisions dealing with a number of trade-related issues such as competition policy, protection of intellectual property rights, standardization and certification, trade and the environment, and trade and labour standards. Moreover, public procurement is best dealt with at the multilateral level - if dealt with at all – as it allows sourcing and contracting with the cheapest and most beneficial parties.

E. FINANCIAL SERVICES

Articles 103-108 of the EPA provide for effective market access to, and facilitation for suppliers of financial services of the Parties. Its coverage and scope are similar to those of the General Agreement on Trade in Services (GATS), and there are specific provisions for

[20] Tomasz Iwanow and C. Kirkpatrick, "Public Procurement and EPAS" in Trade Negotiation Insights, Vol. 7, No. 1, February 2008, p. 15.
[21] Ibid.

Prudential Carve Out, Transparency, New Financial Services, Data Processing, Exceptions and Safeguards.

However, during the negotiations, the EC attempted to pressure the Caribbean into adopting Organisation for Economic Cooperation and Development (OECD) principles or developed country rules on the regulation and supervision of the financial services sector relating to taxation, money laundering and possible tax evasion.[22] This was seen by the Caribbean as an attempt by the Commission to obtain an agreement (via a back-door tactic) on issues that would affect the competitiveness of the region's onshore and offshore financial services industry and impose a form of extra-territorial financial services supervision. In the end, Caribbean negotiators (backed by Heads of Government) rejected the EC's approach and achieved language that was neither intrusive nor challenging to Caribbean sovereignty.[23] Thus, the main text of the EPA makes clear in article 105 (2) that both the EU and CARIFORUM will only *"endeavour to facilitate the implementation and application in their territory of internationally agreed standards for regulation and supervision in the financial services sector."* Elsewhere, in article 104, it is specific in noting that *"nothing in this Agreement shall be construed to require the EC Party or the Signatory CARIFORUM States to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities."*

On balance, these are matters that should be carefully scrutinized by the Caribbean OCTs, especially those that have established offshore financial centres (OFCs) in the region. In particular, the EC's Green Paper on the future OCT-EU relations proposes the development of a more active partnership with the OCTs as regards cooperation in the area of good governance (including in the tax, financial and judicial area). This is consistent with the EC's initial negotiating stance in the CARIFORUM-EU EPA.

Since 1999, the G7 launched several related regulatory initiatives designed to tame tax competition, counter money laundering and shore up international financial stability.[24] One expert has argued that these initiatives were premised on a 'top-down' or exclusionary approach, whereby standards were set in closed forums and diffused to small tax haven States by blacklisting and sanctions.[25] This approach was intended to yield quick results and avoid 'lowest common denominator' standards. The Cayman Islands were one of nine English-speaking Caribbean countries that were subsequently declared to be non-cooperative following the release of the OECD Financial Action Task Force (FATF) report in 2000.

In the light of the heightened scrutiny following the issuance of the FATF report, Anguilla, the British Virgin Islands and the Cayman Islands have been coerced into strengthening their legal and regulatory framework at the expense of their competitiveness in

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[22] David Jessup, "Financial services: CARIFORUM rejects back-door regulation", Jamaica Gleaner. www.jamaica-gleaner.com/gleaner/20080201/business/business12.html

[23] Ibid.

[24] For example, the Financial Stability Forum which operates under the auspices of the Bank of International Settlements, and the Financial Action Task Force with the responsibility of examining money laundering techniques and trends and setting out measures to counter money laundering.

[25] J. Sharman, *"International Organizations, Blacklisting and Tax Haven Regulatory Reform"* at http://www.allacademic.com/meta/p73446_index.html.

international financial services vis-à-vis other jurisdictions that are far less stringent. A 2007 study by the Centre for Freedom and Prosperity Foundation suggests that many nations belonging to the OECD are, in fact, tax havens according to the definition devised by the Paris-based bureaucracy.[26] Among the observations made in the study are:

(a) The United Kingdom, Austria, Belgium and the Netherlands[27] are tax havens since they all have bank secrecy and/or other provisions that make them a magnet for financial capital. Interestingly, the OECD does not blacklist these member States.

(b) Whether it is because foreigners do not pay tax on United States-source interest and capital gains, or whether it is because Delaware, Nevada and Florida companies are among the world's best offshore vehicles, favourable rules for non-resident aliens have attracted trillions of dollars of foreign capital to the United States economy. In other words, the United States is a tax haven according to the OECD definition.

(c) Major players in international finance, like Hong Kong and Singapore, restrict exchanging tax information to domestic interests; and Switzerland restricts it to cases of tax fraud and the like.

(d) The OECD tax agenda is inconsistent with tax reform. It seeks to help governments to double-tax income that is saved and invested, and to help them enforce this bad tax law on an extra-territorial basis. This means that the OECD, for all intents and purposes, feels compelled to target and penalize jurisdictions that have tax systems (such as the flat tax or the sales tax) that tax income only once and only tax income inside national borders. This is both because pro-growth tax systems attract jobs and capital from nations with bad tax law and because nations with good law have no reason to collect the information that high-tax nations need to track (and tax) flight capital.

What the report ultimately reveals is that for the OECD, business has remained as usual. While the OECD has insisted that small jurisdictions like Anguilla, the British Virgin Islands and Cayman Islands remove banking secrecy laws, strengthen regulation, end bearer shares for companies and adopt tax information exchange agreements, many of their own member States have not done so. Nonetheless, the attacks on the OFCs have continued unabated even though many OECD countries continue to break or ignore their own rules.

In view of the above, the OFCs in Anguilla, the British Virgin Islands and the Cayman Islands should demonstrate a will to cooperate with, and contribute to, international standards for the delivery of financial services. At the same time, they must insist on a level playing field in the application of these standards and take a strong stance in countering negative perceptions and misinformation about their jurisdictions in the mainstream media.

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[26] Daniel J. Mitchell, "Tax Havens: Myth Versus Reality", Prosperitas, Vol. VII, Issue IV, May 2007 at http://www.freedomandprosperity.org/Papers/th-myths/th-myths.pdf.

[27] Michiel van Dijk, Francis Weyzig and Richard Murphy have also argued that the Netherlands deliberately offers companies which would not otherwise seek to be resident within its territory the means to reduce their tax charges on interest, royalties, dividends and capital gains income from subsidiary companies. See, "The Netherlands: A Tax Haven?" at http://www.somo.nl/html/paginas/pdf/netherlands_tax_haven_2006_NL.pdf.

To this end, the Caribbean OCTs should be cautious about any attempt by the EC to forge a more active partnership with them in terms of good governance in the tax, financial and judicial areas in the context of a new OCT-EU Partnership Agreement. The preferred strategy should be for them to negotiate terms for multilateral (neutral) prudential regulation, supervision and guidelines that are arbitrated at the multilateral level (e.g. through representatives from the Bank for International Settlements and the Basle Committee, as well as the OCTs and other independent parties).

Chapter II

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Regional integration

- The study recommends at this stage the continued participation of the British and Dutch Caribbean OCTs in CARICOM as associate members mainly in areas of functional cooperation and common services, as opposed to their participation in the CSME and/or the CARIFORUM-EU EPA.

- Research is needed on the costs and benefits for the Caribbean OCTs to enhance their trade in goods and services with CARICOM, as well as to determine the precise areas in functional cooperation and common services that should be targeted.

- The Caribbean OCTs may wish to consider entering into a dialogue with CARICOM and the relevant EU member States with respect to a more meaningful participation of associates that could include free trade arrangements (i.e. CSME and/or the CARIFORUM-EU EPA) in the future.

- The Caribbean OCTs should request the RNM to provide them with an independent review of the EC's Green Paper on the future OCT-EU relations.

- A benchmark assessment of value added content and tariff levels in key commodities is required, especially for the Netherlands Antilles.

Rules of origin and trans-shipment

- The Caribbean OCTs should begin the process of working out how to adjust the existing OCT-EU rules of origin in order to set flexible rules and derogations that boost their exports into EU markets. This work must be done prior to the expiration of the OAD in 2013 and be brought together into one coherent proposal that is backed up with a firm plan of the administrative tools which will be used to implement the rules.

- The Caribbean OCTs should seek the assistance of ECLAC in assessing their international competitiveness, taking due account of the potential in certain territories (notably the Netherlands Antilles) to provide safe and efficient trans-shipment or temporary warehousing in their harbours for products destined for the EU market.

Tourism services

- The Caribbean OCTs should insist that tourism receives specific treatment in the new OCT-EU Partnership Agreement (scheduled to take effect from January 2014 when the present OAD expires) by proposing a draft annex on tourism given the economic importance of the sector to their economies.

- While they liberalise aspects of tourism, the OCTs should reserve key areas for domestic suppliers (e.g. in small hotels, entertainment and recreation) while also trying to leverage as much technical assistance as possible to enhance and upgrade the competitiveness of the sector.

Public procurement

- The Caribbean OCTs should insist on a detailed development-focused assessment of the potential impact of public procurement market liberalisation from the Commission in the event of a proposal from the latter for its inclusion in the new OCT-EU Association Agreement.

- Public procurement is best dealt with at the multilateral level - if dealt with at all – as it allows sourcing and contracting with the cheapest and most beneficial parties.

Financial services

- The OFCs in Anguilla, the British Virgin Islands and the Cayman Islands should demonstrate a will to cooperate with, and contribute to, international standards for the delivery of financial services. At the same time, they must insist on a level playing field in the application of these standards and take a strong stance in countering negative perceptions and misinformation about their jurisdictions in the mainstream media.

- The Caribbean OCTs should seek to negotiate terms for multilateral (neutral) prudential regulation, supervision and guidelines that are arbitrated at the multilateral level (e.g. through representatives from the Bank for International Settlements and the Basle Committee, as well as the OCTs and other independent parties).

Annex I

The Association of the Overseas Countries and Territories with the EU in Accordance with the EC Treaty (extracts)

Article 183

The association shall have the following objectives.

1) Member States shall apply to their trade with the countries and territories the same treatment as they accord each other pursuant to this Treaty.

2) Each country or territory shall apply to its trade with Member States and with the other countries and territories the same treatment as that which it applies to the European State with which it has special relations.

(…)

5) In relations between Member States and the countries and territories the right of establishment of nationals and companies or firms shall be regulated in accordance with the provisions and procedures laid down in the chapter relating to the right of establishment and on a non-discriminatory basis, subject to any special provisions laid down pursuant to article 187.

Article 184

1. Customs duties on imports into the Member States of goods originating in the countries and territories shall be prohibited in conformity with the prohibition of customs duties between Member States in accordance with the provisions of the Treaty.

2. Customs duties on imports into each country or territory from Member States or from the other countries or territories shall be prohibited in accordance with the provisions of article 25.

3. The countries and territories may, however, levy customs duties, which meet the needs of their development and industrialisation or produce revenue for their budgets. The duties referred to in the preceding subparagraph may not exceed the level of those imposed on imports of products from the Member State with which each country or territory has special relations.

4. Paragraph 2 shall not apply to countries and territories which, by reasons of the particular international obligations by which they are bound, already apply a non-discriminatory customs tariff.

5. The introduction of or any change in customs duties imposed on goods imported into the countries and territories shall not, either in law or in fact, give rise to any direct or indirect discrimination between imports from the various Member States.

Annex II

Trade Arrangements of the Overseas Countries and Territories with the EU in the OAD: Trade in Services and Rules of Establishment (extracts)

Article 44

General objective

The long-term aim in this area is a progressive liberalisation of trade in services, with due respect for the local policy objectives of the OCTs, and taking due account of the level of development of the OCT and the obligations entered into by the Community, Member States or the OCTs in the WTO framework.

Article 45

General principle of establishment and the provision of Services

(…)

2. As regards the arrangements applicable to establishment and the provisions of services, in line with article 183, paragraph 5, of the Treaty and subject to paragraph 3 below:

a) The Community shall apply to the OCTs the undertakings entered into under the General Agreement on Trade in Services (GATS) under the conditions laid down in that Agreement and in accordance with the Decision; in application of such undertakings, Member States shall not discriminate between inhabitants, companies or enterprises of the OCTs;

b) The OCT authorities shall afford nationals, companies or enterprises of the Member States treatment that is no less favourable than that which they extend to nationals, companies or enterprises of third countries and shall not discriminate between nationals, companies or enterprises of Member States.

3. The authorities of an OCT may with a view to promoting or supporting local employment, adopt regulations to aid their inhabitants and local activities.

In this event, the OCT authorities shall notify the Commission of the regulations they adopt so that it may inform the Member States.

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