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EPA Brief

The Cariforum-EC Economic Partnership Agreement (EPA)

Treatment of Professional Services in the EPA

In the CARIFORUM-European Community (EC) Economic Partnership Agreement Negotiations, the Parties negotiated provisions on market access and mutual recognition and cooperation in Professional services. General provisions on professional services can be found in the Title on Investment, Trade in Services and E-commerce. This text is accompanied in annexes by the respective schedules of commitments of CARIFORUM and the EC for Trade in Services, and for Investment; the Protocol on Cultural Cooperation

For the purposes of trade negotiations, professional services have been categorized using the United Nations Central Product Classification (UN CPC). In the WTO Services Sectoral Classification List they are presented with the corresponding CPC as follows: (i) legal services (ii) accounting, auditing and bookkeeping service (iii) taxation services (iv) architecture (v) engineering (vi) integrated engineering (vii) urban planning and landscape architectural services (viii) medical and dental services (ix) veterinary services (x) services provided by midwives, nurses, physiotherapists and para-medical personnel (xi) other professional services.

The trade negotiations focus on the removal of barriers to supplying services in relation to:

- (i) market access, the ability of foreign services suppliers to operate in the domestic territory or to provide services to domestic consumers, and
- (ii) national treatment, the extent to which foreign services suppliers are treated like domestic services suppliers.

With respect to professional services, there are also provisions for cooperation and mutual recognition of qualifications as well as technical assistance for the tourism sector. To facilitate the movement of services suppliers between Europe and the Caribbean, the EPA includes special provisions for Short

Term Visitors for Business Purposes. This allows CARIFORUM nationals to visit the EU for brief periods for business reasons related to research and design, marketing, training, trade fairs, sales, purchasing and tourism. While the EPA does not commit the Parties for issuing visas, both sides commit to making movement across borders easier.

In the agreement, provisions on market access in Investment in goods and services were presented in a separate schedule from market access in services. The provisions in the Title and reservations in the investment schedules of commitment relate to commercial presence; that is where the investor creates and maintains a legal entity, such as a branch or representative office in the territory of the other Party. Investment provisions include rules on corporate governance; sustainable development & environmental protection; labour rights and labour standards.

Certain services are not liberalized under the agreement, namely: social security & pensions, and government supplied services such as public health, energy, water. The agreement also maintains the rights of states to employ domestic regulations, such as minimum qualification, licensing and procedural requirements. There is therefore a need to get information on regulatory regimes for services sectors in different EU economies and in CARIFORUM through the Enquiry Points designated by the Parties in the agreement. The agreement does not apply to measures relating to citizenship, residency, employment; immigration; or those aimed at safeguard human, animal and plant life or health; public safety; morals; national security.

EC Market Access Commitments

Preferential access to the EU services market was a priority for CARIFORUM in the negotiations, because of the size, steady growth, and increasing integration of the European services market, which consists of 27 countries. Therefore, CARIFORUM tried to realise market access in some areas not scheduled by the EC or with less than full commitment in the World Trade Organisation (WTO) negotiations, in which commitments to market openings would be for the benefit of all WTO Members. Some of the restrictive measures targeted were: Restrictions on senior management/directors, residency and nationality requirements, and economic needs tests (ENTs).

The EC schedule is divided into the following sections:

1. List of Commitments on Commercial Presence
2. List of Commitments on Cross-border Services
3. Reservations on Key Personnel and Graduate Trainees
4. Reservations on Contractual Services Suppliers and Independent Professionals

Measures relating to qualifications requirements and procedures, technical standards and licensing requirements and procedures that do not discriminate in terms of “national treatment” are not listed in the schedules of commitment.

Commercial Presence

The List of Commitments on Commercial Presence lists reservations and limitations only, therefore where an EU member state does not list such a measure in a sector falling under the scope of the agreement, there are no reservations. The EC was generally liberal in its commitments on commercial presence, with a range of business services, telecommunications services and maritime transport services being subject to no discriminatory restrictions or reservations on investment. However, there are some limitations on certain professional services, namely: legal services; accounting, auditing and bookkeeping service; taxation services; medical and dental services. Restrictions include maximum foreign equity participation, joint venture requirements, quotas (legal services), specific legal form, economic needs tests, and minimum years of practice in the territory (Latvia for architecture and urban planning). Of the 27 EU States, the maximum number of countries listing reservations in a professional services category is 10 in auditing services. A few countries have listed “Unbound” in the health related professional services, with the most countries (four) doing so for midwives services (Belgium, Finland, Malta, Slovenia).

Cross-border Services

The EC offer on cross-border services combines commitments in cross-border services (Mode 1 - services delivered, for example, via internet, mail) and consumption abroad (Mode 2 - where a consumer of services moves into another Member’s territory to obtain a service). The reservations listed by the EC relate to all the professional services listed in the W/120. The EC is relatively conservative in its Mode 1 commitments when compared to Mode 2, with several countries reservations and ‘Unbound’ in Mode 1, while there are no reservations in Mode 2. There are only reservations in Mode 2 for legal advisory services, where 15 EU listed reservations for both Modes 1 and 2, but none listed the sector as Unbound for the sector in cross-border services. For Mode 1, auditing services are limited in 21 states; architecture and urban planning and landscape architectural services in 13 states; medical and dental services in 21 states; veterinary services in 23 states, and; services provided by midwives, nurses, physiotherapists and para-medical personnel in 26 states.

The EC’s level of commitments in Mode 1 is generally less than ideal for CARIFORUM, given the latter’s potential to export services via mode 1 as a result of the advances in telecommunications services and the relatively high cost of physical commercial presence in Europe.

Temporary movement of services suppliers (natural persons)

The EC has committed to allow investors to engage Key Personnel and Graduate Trainees for every services sector subject to liberalisation in the EPA with some country specific reservations. The temporary entry and stay of key personnel and graduate trainees will for a period of up to three years for intra-corporate transfers, ninety days in any twelve month period for business visitors, and one year for graduate trainees. In terms of reservations, nationality and residency requirements apply for at least a few countries in all profession services, to a lesser extent in accounting, auditing and bookkeeping

services, and taxation advisory services. They apply more widely to the health related professional services.

In Mode 4, though certain conditions remain for European and Caribbean services suppliers, the EC has granted market access for Caribbean professionals in 29 sectors for employees of Caribbean firms or Contractual Service Suppliers (CSS) to be able to enter the EU to supply services once they get a contract for up to six months in a calendar year. This represents a significant improvement when compared to the EC's offer in the WTO. In addition, independent Professionals or self employed professionals have access to the EU in 11 sectors.

These improvements applied to the following professional services:

- i. Legal advisory services in respect of public international law;
- ii. Accounting and bookkeeping service;
- iii. Taxation advisory services;
- iv. Architectural services;
- v. Urban planning and landscape architectural services;
- vi. Engineering;
- vii. Integrated engineering;
- viii. Medical (including psychologists) and dental services;
- ix. Veterinary services;
- x. Services provided by midwives, nurses, physiotherapists and para-medical personnel.

Certain conditions still apply, such as economic needs tests but there are no restrictions on the number of service suppliers that may enter the EU market. However, this level of quota free market access commitment in services is unprecedented in EU services trade commitments at the bilateral level and the multilateral level. A few countries have scheduled "Unbound" for CSS and IP in professional services, that is have not made a binding commitment to open the sector, especially in health related services; the sectors affected are: taxation advisory services, medical and dental services, veterinary services, services provided by midwives, nurses, physiotherapists and para-medical personnel.¹

CARIFORUM Commitments on Professional Services

CARIFORUM adopted the GATS positive list approach for scheduling services offers in the EPA. CARIFORUM States made individual offers based on the particularities of their respective services markets; these offers were consolidated to form the CARIFORUM. While there was convergence in broad sectoral interests, the CARIFORUM schedule has some variance in commitments in some specific services activities, as the negotiations took into account the internal regional integration process among Caribbean countries, and the particular sensitivities and needs of individual countries and/ sub-groupings within the Caribbean.

¹ EU States scheduled "Unbound" for CSS & IP in professional services as follow: Poland - taxation advisory services; Belgium, Greece, Finland, France, Hungary, Latvia, Lithuania, Slovak Republic - medical and dental services; Austria, Bulgaria, France, Hungary, Latvia, Slovak Republic - veterinary services; Bulgaria, Finland, France, Hungary, Slovak Republic - midwives, nurses, physiotherapists and para-medical personnel

The CARIFORUM schedule of commitments on trade in services and on investment do not include the Bahamas and Haiti, which will make such submissions in the first half of 2008 for incorporation in the overall CARIFORUM schedules within six months of signature of the agreement. The Title also includes provisions for future liberalization, with negotiations scheduled to begin no later than five years after entry into force of the agreement.

CARIFORUM's approach to scheduling was to determine the negotiating position by the specific sub-sectors need for investment, leading to the following categories: (i) sensitive sectors where there would be little or no market opening (ii) sectors requiring investment where a liberal approach would be taken (iii) sectors in which there is an offensive market interest, where requests would be made of the trading partner (iv) sectors in which there is not particular export capacity or non-sensitive, which were to be used strategically for negotiating leverage.

All CARIFORUM states have liberalized some professional services activity in the EPA, in at least one mode in the EPA.² Fewer countries undertook commitments in legal services, which were limited to home and international law, legal documentation and certification, and legal advisory and information services.

CARIFORUM States have generally been somewhat liberal with commitments on cross-border services and commercial presence in the EPA because of the effective level of liberalisation already existing in their territories. Unbound was scheduled for Modes 1 and 2 by a few countries in legal services, taxation, accounting auditing and bookkeeping, architectural, urban planning and medical and dental services. Some states reflected their sensitivities in commercial presence by scheduling 'unbound in sectors such as engineering and health-related professional services. Joint-venture requirements were also widely used, and economic needs tests to a lesser extent.

Where there is a CARIFORUM commitment on commercial presence, there is an automatic commitment regarding Key Personnel and Graduate Trainees. A few countries made specific commitments in CSS and IP in their overall commitments, including legal services (Belize, Dominica, Grenada, St. Lucia). While some countries scheduled 'none' (no restrictions except on CSS and IP where commitments had to be explicitly stated), for example Trinidad and Tobago for veterinary services, most CARIFORUM countries scheduled 'Unbound' for temporary movement of natural person except as stated in the horizontal (overarching commitments). Residency requirements were also used in professions such as architectural services.

Some of the commitments will be phased-in over time in some member states, which is an approach taken to address sensitivities at the national level.

Mutual recognition

Currently, EC directives on mutual recognition of diplomas only apply to EC nationals, and the right to practise in one Member State does not grant the right to practise in another Member State. The EPA provides for the initiation of meetings between professional bodies of CARIFORUM and the EC for the

² Other services activities in which CARIFORUM undertook commitments include: computer and related; research and development; environmental services; management consultancy; maritime transport; entertainment; and tourism.

negotiation of mutual recognition agreements no later than three years after entry into force of the EPA. Such an agreement would essentially be to accept each other's methods of accrediting professionals in the respective educational and certification systems. The rights of access of qualified CARIFORUM professionals to the European services market will not be reduced pending negotiation of MRAs, and CARIFORUM and European professionals will be required to comply with any European industry standards, qualifications and criteria in the territory of the other Party. Based on consultations with each other, professional bodies of both regions will make recommendations on mutual recognition to a Joint Committee created by the agreement, which will assess their consistency with the EPA and WTO obligations. The Joint Committee will also review progress in MRA negotiations every two years.

With respect to the temporary movement of professionals, disciplines on accounting, architecture, engineering and tourism are noted as a priority for dialogue between the relevant professional bodies in the Caribbean and Europe, with a view to signing a mutual recognition agreement (MRA) no later than three years after entry into force of the agreement. Given the limited institutional capacity of some professional associations in CARIFORUM, standards for CARIFORUM-EC recognition will need to be developed by appropriate professional accreditation bodies, and supported by any necessary legislative measures. The EPA provides for European cooperation in this regard.

Relationship between the EPA and the CSME process

A common regime for professional services would create a seamless CARICOM professional services market and enable easier negotiations with external professional bodies of mutual recognition agreements that could apply equally to all Member States. This would be a more efficient approach than the negotiation of different MRAs by each CARICOM State. Indeed, the European Union has recognised the importance increased efficiency in the professional services market through its own Professional Services Directive, which was designed to integrate the services markets of its Member States.

So too has the CARICOM Community, Article 35 of the Revised Treaty of Chaguaramas, Acceptance of Diplomas, Certificates and other Evidence of Qualifications, designates the Council on Human and Social Development (COHSOD) as the competent Community organ to oversee domestic regulation.

1. COHSOD ... shall establish common standards and measures for accreditation or when necessary for the mutual recognition of diplomas, certificates and other evidence of qualifications of nationals of the Member States in order to facilitate access to, and engagement in, employment and non-wage earning activities in the Community;
2. The Member States shall establish or employ ... appropriate mechanisms to establish common standards to determine equivalency or accord accreditation to diplomas, certificates and other evidence of qualifications secured by nationals of other Member States;
3. COHSOD shall also establish measures for the coordination of legislative and administrative requirements of the Member States for the participation of Community nationals in employment and for the conduct of non-wage earning activities in the Community.

Integration of the CARICOM professional services market is well underway. The CARICOM Secretariat, in consultation with Member States and the relevant professional bodies have drafted the legislation specific to dentists, veterinarians, medical practitioners, nurses and mid-wives, pharmacists, architects, engineering, accountancy, consultancy and building contracting. Several Member States have integrated specific provisions of this CARICOM Professionals legislation, but few have adopted them in their entirety.

In the January 2008 meeting Joint meeting of the CARICOM Council on Trade and Economic Development (COTED) and the COHSOD considered the latest draft of the Professional Services Bill, considered the policy and financial implications of standardisation and harmonisation at the regional level and agreed to allocate the necessary resources to the initiative.

CARICOM-Dominican Republic Trade and Economic Integration

CARICOM and the Dominican Republic signed a free trade agreement (FTA) in 1998, yet implementation has been limited to goods while progress on the built-in agenda on Trade in Services, Government Procurement, Intellectual Property and Trade Facilitation remains outstanding. The CARICOM-DR FTA gives explicit priority to “the promotion and development of co-operative activities” in professional services; to the certification of professionals to carry out functions related to sanitary and phyto-sanitary measures (SPS) and technical barriers to trade (TBT). The Plan of Action of the Agreement prescribes negotiation of the Annex on Temporary Entry of Business Persons and the Appendix to the Annex on Trade in Services relating to Professional Services.

Given the negotiation of the EPA with the Dominican Republic as a single regional bloc, and the focus of the EPA initiative on market efficiency through regional integration, the CARICOM-DR FTA should have ideally been advanced during the Regional Integration Phase, the second of four phases of the negotiations, September 2004-2005. However, the timing and substance of that negotiation will be based on an assessment of the EPA outcomes and the planned approach to CARIFORUM integration, the desirability of which was affirmed in the Title on Investment, Trade in Services and E-Commerce.

The EPA commitments on EC development assistance are supportive of CARIFORUM regional integration, CARIFORUM-wide projects, institutions and regulatory CARIFORUM regimes/regimes or bodies for the implementation of the agreement. With respect to professional services, the next step should perhaps be to ensure the mutual recognition of qualifications of the Dominican Republic and CARICOM, to ensure that movement between CARIFORUM is not more restrictive than between individual CARIFORUM States and Europe.

