

Services Trade: A Regional Outlook

EPA – The Caribbean Experience

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Outline

- CARIFORUM Objectives in the negotiations
- Approach to liberalisation
- Key features on Services
- EU Services offers
- CARIFORUM Services offers
- Challenges, Opportunities, Supply-side, demand-side
- Lessons learnt
- Implementation issues
- Way forward

Services in CARICOM

- Services contribute on average to over 50% of the GDP of the Region
- Services reinforces economic efficiency (Procedure services is important)
- Services facilitate employment creation
- Infrastructural services contribute to the competitiveness of goods and services exports
- Developing a common policy framework for services
- Some CARICOM Member states have ICT policies
 - Key components of the regional ICT4D Strategy include access, connectivity, internet governance; legal and regulatory framework; business, trade, culture and disaster management and capacity building as the focus of development

CARIFORUM Services Objectives

1. To increase market access for Caribbean service providers at all jurisdictional levels in the European Union and in all sectors and modes of supply of interest to them; in particular, greater access should be obtained in mode 4 (movement of natural persons);
2. To obtain full commitments from the EC (i.e., schedule “none”) in Modes 1 and 2 for all sectors and sub-sectors of interest to Caribbean countries, except where technically unfeasible;

CARIFORUM Objectives ...

3. To eliminate all requirements (visas, licences, permits or economic needs tests) impeding market access for individual suppliers, intra-corporate transferees, business visitors, professionals and support personnel from Caribbean countries to the EC as a whole, as well as to individual EC countries;
4. To achieve recognition of the professional credentials in Caribbean states as equivalent to EC credentials by means of Mutual Recognition Agreements to be concluded with the EC, in the context of the EPA;

CARIFORUM Services Objectives

5. To introduce specific rules eliminating the requirement for local presence. Specific commitments in this regard should be obtained under mode 4 for small service suppliers, middle and lower level professionals, which should be covered in the definition of “other persons” and “specialists”;
6. To expand the list of contractual service suppliers and independent professionals covered under the EC’s Mode 4 horizontal commitments to include all categories in ILO’s classification of professional activities;

CARIFORUM Services Objectives

7. To eliminate all discriminatory citizenship, capital, land purchase and equity caps or requirements for Caribbean service suppliers in all modes of delivery;
8. To remove all restrictions on legal form, allowing all legally registered juridical persons in Caribbean states that are party to an EPA access to the EC market on the same basis as national firms or individual nationals from Caribbean states;

CARIFORUM Services Objectives

9. To obtain specific commitments on national treatment for any subsidies provided by the EC in sectors and modes of delivery of interest for Caribbean juridical and natural persons;
10. To harmonize regulatory and technical standards between Caribbean and EC countries, so as to facilitate the sustainability of trade in services without creating burdensome or discriminatory barriers;
11. To address the special needs of small Caribbean service suppliers to take advantage of market access opportunities in the EC;

CARIFORUM Services Objectives

12. To develop effective measures for implementation of GATS Article IV with a view to increasing Caribbean participation in world trade in services through, inter alia, access to technology; access to distribution channels and information networks; and liberalization commitments in sectors and modes of delivery of their interest;
13. To negotiate and adopt a special safeguard mechanism;
14. To secure broad and timely access to service-related information particularly in regard to tenders, including access to services databases;

Approach to liberalisation

- Identification of sectors in which investment and development support is needed
 - scheduled, particularly with market liberalization under mode 3
- Identification of sectors in which they have an offensive market access interests
 - placed in their request to the European Communities
- Identification of sectors which are sensitive
 - To be excluded from the liberalization commitments
- Identification of sectors with low export interest
 - utilized to exercise flexibility in the negotiating process.
- recognition that the region had specific interest in obtaining market access particularly through mode 4, and market access for professional services, tourism services and cultural practitioners.

General Provisions

- An arrangement for the progressive, reciprocal & asymmetric liberalization
- Do not apply to subsidies
- States retain the right to regulate & introduce new regulations to meet legitimate policy objectives
- Do not apply to measures regarding citizenship, residence or employment
- Measure must not be applied to nullify or impair benefits
- Future liberalization no later than 5 yrs from date of entry into force
- Recognize the importance of Regional Integration
- Does not include activities in the exercise of governmental authority

Business Service Sellers (BSS)

Representatives of a service supplier seeking temporary entry to negotiate the sale of services or entering into agreements to sell services

- For all sector liberalized
- Temporary entry for 90 days
- Do not engage in making direct sales to the public
- Do not receive remuneration from a source in the host State

For all sectors liberalised under modes 1, 2 & 3

Contractual Services Suppliers

National employed by a legal entity, with no commercial presence in the other territory, have concluded a bona fide contract requiring temporary presence to fulfill

Conditions for CSS

- Must have a registered business or an employee of a juridical person
- Must possess a university degree or equivalent and professional qualifications (except fashion model chef de cuisine & entertainment);
- Must first obtain a service contract must not exceed a period of twelve months (temporary entry and stay not more than 6 months);
- Must have been an employee of the juridical person for at least 1 year immediately preceding application;

Conditions for CSS (cont.)

- Must possess at least three years professional experience;
- Remuneration only for the contract; and
- Subject to Economic Needs Test (ENT) -
The main criteria will be the assessment of the relevant market situation in the Member State or the region where the service is to be provided, including with respect to the number of, the impact on, existing services suppliers

Contractual Service Suppliers (CSS)

- The EC made commitments in 29 sectors
- For the EC 10 commitments enter into force in 2011
- For Bulgaria & Romania 2014

EC directives on mutual recognition of diplomas only apply to nationals of EU Member States. The right to practise a regulated professional service in one Member State does not grant the right to practise in another Member State. (In order for third-country nationals to obtain EC-wide recognition of their qualifications, it is necessary a Mutual Recognition Agreement to be negotiated)

Independent Professional

National, self-employed with no commercial presence in the other territory, have concluded a bona fide contract requiring temporary presence to fulfill

Conditions for IP

- Self employed
- Must possess a university degree or equivalent and professional qualifications;
- Must first obtain a service contract must not exceed a period of twelve months (temporary entry and stay not more than 6 months);
- Must have at least 6 years professional experience at the date of application;
- Subject to Economic Needs Test (ENT) - The main criteria will be the assessment of the relevant market situation in the Member State or the region where the service is to be provided, including with respect to the number of, the impact on, existing services suppliers

Independent Professionals (IP)

Market access was granted in 11 sectors.

1. Legal advisory services in respect of international public law and foreign law (i.e. non-EU law)
2. Architectural services
3. Urban planning and landscape architecture services
4. Engineering services
5. Integrated Engineering services
6. Computer and related services
7. Research and development services
8. Market Research and Opinion Polling
9. Management consulting services
10. Services related to management consulting
11. Translation and interpretation services

Other Provisions

- Short Term visitors for business purposes
 - Research and Design; Marketing research; Training seminars; Trade Fairs; Sales; Purchasing;

Provided they are not engaged in selling their services to the general public; do not receive remuneration in the territory of temporary stay, not to engage through a contract outside of the territory of temporary stay;

Temporary stay up to 90 days

Mutual Recognition (MR)

- Nothing in this Title shall prevent the Parties from requiring that natural persons must possess the necessary qualifications and/or professional experience specified in the territory where the service is supplied, for the sector of activity concerned.
- Professional bodies encouraged to Jointly develop & provide recommendations on MR of criteria applied re authorisation, licensing, operation and certification
- Negotiations to start no later than 3 years after entry into force of the Agreement

MR (cont.)

- Start with accounting, architecture, engineering & tourism
- Recommendations to be reviewed by the Joint Committee for consistency
- If consistent negotiate through competent authority a MRA
 - Consistent with GATS Art. VII – shall not be in a manner which constitutes a means of discrimination between countries in its application & shall afford opportunity for other interested Members to negotiate
- CF- EC Trade & Development Committee to review progress every 2 years

Cooperation

Cooperate by providing support through technical assistance, training & capacity building:

- Improve ability to gather information on & meet regulations & standards of the EC;
- Improve export capacity particularly marketing of tourism & cultural services, SMEs;
- Facilitate interaction & dialogue;

Cooperation (cont.)

- Address quality & standards needs under the agreement & domestic & regional markets. Also ensure participation in the development & adoption of sustainable tourism standards;
- Developing & implementing regulatory regimes; and
- Mechanisms for promoting investment & joint ventures & enhancing the capacities of IPA

EC Commitments

The EC have scheduled their reservations in four different sections

- Cross-border supply of services;
- Commitments on Establishment (Commercial Presence);
- Reservations on Contractual Service Suppliers (CSS)
- Independent Professionals (IP)-
- Reservations on Key Personnel and Graduate Trainees.



Cross-border provision

Horizontal limitations on acquisition of land and real estate by foreign investors

Commercial Presence Commitments

Commercial presence (Mode 3)

Horizontal limitations

- Limitations on acquisition of land and real estate by foreign investors in 19 Member states
- Limitations on the type of establishment includes limitation on the treatment accorded to branches or agencies established in a Member State by a third country company, also, residency & nationality conditions in the composition of the board of directors

Commercial presence horizontal limitations (Cont.)

- EC reserve their right to prohibit or regulate the acquisition of a juridical person for overriding reasons of general interest in so far as they comply with Community law and international obligations.
- Prior authorization; and
- Limitation on foreign participation

Movement of Natural Persons

- Those measures (e.g. need to obtain a license, need to register with the Registrar of Companies, universal service obligations, need to obtain recognition of qualifications in regulated sectors, need to pass specific examinations, including language examinations, non-discriminatory requirement that certain activities may not be carried out in environmental protected zones or areas of particular historic and artistic interest), even if not listed, apply in any case to service suppliers of the other Party.

Key Personnel & Graduate Trainees

- 2 Member States require ENT for Graduate Trainees;
- The number of ICT must not exceed 10%;
- Restriction for Managing Directors and Auditors include - Residency requirement, trade permit, specific authorization
- Residency requirement in 4 Member States and years of experience required in 1 Member State

Key Personnel & Graduate Trainees (Cont.)

- EC directives on mutual recognition of diplomas only apply to EC nationals. The right to practise a regulated professional service in one Member State does not grant the right to practise in another Member State – (In order for third-country nationals to obtain EC-wide recognition of their qualifications, it is necessary to negotiate a Mutual Recognition Agreement)

Key Personnel & Graduate Trainees (Cont.)

- Commitments on key personnel and graduate trainees do not apply in cases where the intent or effect of their temporary presence is to interfere with or otherwise affect the outcome of any labour/management dispute or negotiation

CARIFORUM Commitments

GATS structure – does not include The Bahamas & Haiti

- Takes into account regional integration progress and sensitivities of individual states/sub-groupings
- Key personnel & Graduate trainee where there is a mode 3 commitment, subj. to an ENT – Main criterion is availability of persons with the requisite skills in the local labour market (mode 4) or an assessment of the relevant market situation i.e.. number of & impact on existing service suppliers

Movement of Natural Persons

- In those sectors in which economic needs tests (ENTs) are applied for Mode 4, the main criterion will be availability of persons with the requisite skills in the local labour market. With regard to other modes of supply, the main criteria for ENTs will be the assessment of the relevant market situation where the service is to be provided, with respect to the number of, and the impact on, existing service suppliers.

CARIFORUM Horizontal commitments

- Treatment may be reserved with respect to subsidies or grants
- Mode 3 – requirements for incorporation, registration & limitation on the acquisition of land
- Mode 4 – Unbound except for Key Personnel & graduate trainees not available locally

Summary of CARIFORUM commitments

- In the majority of States there are no limitations in modes 1 & 2
 - Reflective of the importance on these modes for trade in services (for mode 1 have to take into consideration rates for telecommunication services)
- Mode 3 is much more restrictive - Mostly unbound or joint venture requirements
 - Reflects the need to develop regulations and contribution to the sector through joint ventures
- Mode 4 limited commitments - subject to ENT (availability of skills in the market)
 - Reflects the endeavor to encourage the development of small/individual suppliers

Challenges

- Addressing regulatory commitments - Most service providers not organised (do not have the required regulatory framework)
- Lack of organization among practitioners
- Lack of venture capital
- Lack of standards & monitoring
- Standards to be met in the EU is very expensive (Audio visual)
- The issue of languages – requirement for sub-titles or dubbing (Audio visual)
- Need for retraining to meet EU standards
- Cultural impact of the inflow of providers
- Need to change the mind set to exporting

Challenges

- Educational system not adapted to the EU regulations & standards
- Lack of funds for increased training & investment in upgrading of educational facilities
- Access to and use of technology (cost, availability & content)

Opportunities

- Real niche market due to unique value-added
- Cultural expo as an avenue to attract & foster investment
- Joint ventures can facilitate operation in the sector
- Promoting investment to increase demand
- Enhanced competitiveness, product quality, HR, Technological capabilities

Other issues to consider

Demand-side issues (market access, consumers, target markets, regulatory regimes)

- Market penetration
- Identify persons & companies in the EU for partnership
- Need to MRA to capitalize upon opportunities
- What regulations exists for operating in the sectors
- Market intelligence

Other issues to consider

Supply-side issues (Competitiveness, product quality, HR, Technological capabilities)

- Identify best practices & standards for MR
- Need to develop capacity to meet nat'l & int'l standards
- Technical assistance for professional development
- Acquire the relevant draftspersons to develop required laws
- Financial and technical support for firms and small industries to enhance their competitiveness
- Development of the capacity of enterprises to meet regulatory and market requirements (Provide training to contest the EU market)

Supply-side issues

- Improving the export capacity of service suppliers, with particular attention to the marketing of tourism and cultural services
- Capacity of firms to conduct market analysis towards their development and enhanced export capacity.
- Support to promote, facilitate and finance access to and the development, transfer and distribution of sound technology and corresponding training (Increased investment in new technologies)
- Assistance to mainstream languages in the educational and business sector to allow sectors to take advantage of market access opportunities and further development of the tourism sector (increase ability to attract other than English speaking)

Lessons Learnt

- Need for stronger language addressing development
 - Assistance received from some EC Member States
- Scheduling of future liberalisation
 - Allow development provision to address the limitations of the sector(s)
- Ensure a full understanding of the regions development objectives and where the negotiations on services can assist in this process.
 - In this regard where development plans were not available it was important to determine and fully understand the various policy objectives established or being established at the national level that can then be translated into language in the text or in the development of the schedule of commitments

Lessons Learnt

- Sound understanding of the scope and content of regulations in place and where necessary seek clarification before making commitments.
- The importance of regional consultation at each juncture
- Ensuring a clear understanding of texts and positions put forward
- limitations must be taken into consideration, when trying to meet set sectoral coverage

Implementation issues

- CARIFORUM-EC cooperation and regional CARIFORUM integration
- Future Liberalisation; (Conduct nat'l consultations towards the future liberalisation of services & investment commitments)
- Facilitatory Measures; Sectoral Measures; Measures on Mode of Supply
 - Conduct nat'l consultations toward development of policies and legislation for the implementation of provisions & commitments in services & investment
 - Review legislation & implement new legislation to facilitate trade in all sectors liberalised

Implementation issues (cont.)

- Harmonisation & enactment of a modern regulatory framework
 - Analysis of regulatory framework - Amending legislation & adopting new
- Complete the process of the CARICOM – DR services schedules
- Development of required legislation for registration & certification of providers
- Strengthening of existing institutions and development of new institutions

Implementation issues (cont.)

- Create the policy framework for conducting e-commerce
- Develop & implement legislation on ICT
- Adequate project development to draw down development assistance
- Development/enhancement of national and regional services industries associations (Will allow for greater dissemination of support, rather than to individual applicants and creating the necessary management unit to assist with implementation of programmes which will allow for greater participation of sectors in policy development as capacity develops)
- Access to information on the EU market, including market access requirements, the regulatory framework in place in each Member States for the provision of the service; tender and sourcing information; and business-to-business portals for EU services to allow for match making services between EU and CARIFORUM services firms

Implementation issues (cont.)

- Train specialists to monitor other FTA and address granting MFN to EU service providers
- Sensitization of all stakeholders on legal requirements for temporary movement
- Establishment of enquiry points
- Implement measures to:
 - facilitate prior publication of new measures;
 - specify and publicize application requirements;
 - establish mechanisms for the timely response to application queries.

Implementation issues (cont.)

Coordination at the national and regional level for the development of MRA (required legislative framework to be put in place for the different professional bodies and also for the joint development of recommendation to put forward to the joint committee. At the national level where there are not the required professional bodies, they will have to be established, to better participate in the regional initiative.)

Way Forward

- Critical to the implementation of the EPA will be the full realisation of development assistance
 - Enhance ability to take advantage of opportunities
 - Develop necessary safety nets to address negative repercussions
 - Reduction & eventual eradication of poverty through trade partnership;
 - Promote of regional integration, economic cooperation and good governance;
 - Promote of integration of CARIFORUM (CF) States into the world economy;
 - Support increase investment & private sector initiative; and
 - Strengthen relations taking into consideration levels of development and int'l obligations



Thank you