

UNDERSTANDING THE CARIFORUM-EUROPEAN UNION ECONOMIC PARTNERSHIP AGREEMENT

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Abstract

On 15 October 2008, the Caribbean became the first region among the African, Caribbean and Pacific (ACP) group of countries to sign a 'full' Economic Partnership Agreement (EPA) with the European Union (EU). Although the EPA process has generated widespread critical commentary, few analysts have stopped to consider the motives of individual ACP countries and regions in their approach to the talks. In this paper we consider the question of motives in relation to the CARIFORUM-EU EPA. Specifically, it asks why did Caribbean trade negotiators feel it necessary or desirable to sign a 'full' EPA, containing numerous provisions not actually mandated by the WTO, when the rest of the ACP was content to sign far less ambitious 'goods only' interim agreements? In order to address this question, the paper goes beyond the extant EU-ACP trade literature to draw insights from wider International Political Economy (IPE) scholarship, which has analysed the actions of developing countries in relation to a whole range of 'WTO-plus' North-South regional and bilateral FTAs. On this basis, the paper stands back from the complex details of the agreement to analyse its wider significance, especially in terms the presumed trade-off between the immediate economic benefits of improved and more secure market access against the longer-term costs of sacrificing the regulatory autonomy, or policy space, deemed necessary to pursue the type of trade and industrial policies deployed successfully in the past by both developed and (some) developing countries. Put simply, the paper seeks to ascertain what ultimately the Caribbean gained from the EPA negotiations and at what cost.

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1. Introduction

On 15 October 2008, the Caribbean became the first region among the African, Caribbean and Pacific (ACP) group of countries to sign a 'full' Economic Partnership Agreement (EPA) with the European Union (EU).¹ The foundations for the EPAs were laid by the Cotonou Partnership Agreement of 2000 which set out a timeframe for the establishment of a series of 'World Trade Organization (WTO) compatible trading arrangements, removing progressively barriers to trade between them and enhancing cooperation in all areas relevant to trade'.² Although the imperative of 'WTO compatibility' was advanced as the principal justification for the trade dimension of Cotonou, most observers argue that this is a far less important motivation than the independent, political and commercial interests of the EU (see *inter alia* Gibb 2000; Ravenhill 2004; Hurt 2003; Goodison 2007). This insight has informed much of the critical commentary that the EPA process has generated, ranging from the extent to which the EU has deployed excessive policy leverage to the desirability or otherwise of fully reciprocal free trade agreements (FTAs), from the inclusion of the controversial Singapore Issues to speculation about the likely long-term development consequences of the agreements. Despite all of this, few analysts have as yet stopped to consider the different motives and stratagems of individual ACP regions and countries in the EPA process. This omission is somewhat surprising since the response of the ACP to the EPAs has been anything but uniform. In this paper we consider the question of motives in relation to the CARIFORUM-EU EPA. Specifically, the paper asks why did Caribbean trade negotiators feel it necessary or desirable to sign up to a 'full' EPA, containing numerous provisions not actually mandated by the WTO, when the rest of the ACP was content to sign far less ambitious 'goods only' interim agreements?

The paper starts from the premise that, even though the EPA process has obviously been shaped in a decisive way by the actions of the EU, the small and vulnerable developing

¹ The EPA was concluded under the auspice of Caribbean Forum of African, Caribbean and Pacific states (CARIFORUM). CARIFORUM was established in 1992 to facilitate cooperation between the English-speaking Caribbean Community (CARICOM) and the Dominican Republic and Haiti, following the accession of the latter to the Lomé Convention. Although 13 of the 15 members of CARIFORUM - Antigua & Barbuda, Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Jamaica, St. Kitts & Nevis, St. Lucia, St. Vincent & the Grenadines, Suriname and Trinidad & Tobago - signed EPA on 15 October, Guyana initially refused to sign only to do so five days later on 20 October. Haiti, which qualifies for EU unilateral trade preferences as a Least-Developed Country (LDC), has yet to sign EPA.

² Cotonou Partnership Agreement, Paper 36.1.

countries that make up the bulk of the membership of the ACP still retain the ultimate decision to sign, or not sign, an agreement. Hence the fact that the Caribbean has chosen to sign what appears to be a relatively far-reaching agreement tells us something important about the strategic calculations of the governing elite within the region. According to the Caribbean Regional Negotiating Machinery (CRNM), the body that led the negotiations on behalf of CARIFORUM, the strategic calculations that led to the conclusion of the EPA were variously informed by a relatively high degree of regional coherence, different institutional structures and a divergence in underlying economic interests between the Caribbean and the rest of the ACP.³ Without necessarily discounting these rationales, the paper seeks to probe a little deeper into Caribbean motives and to subject the claims advanced by the CRNM and other EPA advocates to critical scrutiny. In order to do so, it goes beyond the extant EU-ACP trade literature to draw insights from wider International Political Economy (IPE) scholarship, which has analysed the actions of developing countries in relation to a whole range of 'WTO-plus' North-South regional and bilateral FTAs. Although the EPAs represent a very particular type of FTA, since ACP countries are, at least in the first instance, seeking to defend existing preferences rather than secure additional market access, the presence of so many WTO-plus provisions within the CARIFORUM agreement - and in the EPA negotiations elsewhere - invites comparison with FTAs that have been concluded in other parts of the developing world.

The paper is organised as follows. The first section surveys the relevant IPE literature on North-South FTAs in order to establish an analytical template for the rest of the paper. The second section sketches out the background to the CARIFORUM EPA by detailing, albeit rather briefly, the various factors which led to the rise and fall of the Lomé protocol and to the establishment of the Cotonou Partnership Agreement in 2000. A key task for this section will be to identify the sources of preference erosion that were most relevant to the Caribbean, particularly since these are argued to have persuaded regional elites to the

³ The rest of the paper draws extensively on interviews and background briefings with CRNM staff, government officials, representatives of private sector and other relevant non-governmental organisations conducted in the Caribbean in January-February 2009. It also draws on a series of follow-up interviews conducted by Matt Bishop with EU and Caribbean officials in Brussels and Geneva in February 2009. I would like to thank Matt for very kindly giving me access to the transcripts from these interviews. At the request of interviewees, all subsequent references made to the interviews have been anonymised.

merits of a reciprocal FTA with the EU. The third section then looks specifically at the EPA, summarising its main provisions as well as offering an initial assessment of its likely development impact. The fourth and final substantive section attempts to gauge the wider significance of the agreement by relating the specifics of the EPA to the broader debate regarding the trade-off between the immediate economic benefits of improved and more secure market access against the longer-term costs of sacrificing development policy space. Put simply, this section seeks to ascertain what ultimately the Caribbean gained from the EPA negotiations and at what price. The final, concluding section briefly summarises the main findings of the paper.

2. The political economy of North-South FTAs: Market access versus development policy space?

In the last 10 to 15 years, the governance of international trade has undergone a significant transformation as a result of the proliferation of regional and bilateral FTAs, mainly though not exclusively concluded between developed and developing countries. The WTO estimates that close to 400 FTAs will have been implemented by 2010, close to three-quarters of which were negotiated after 1995.⁴ From a development perspective, there is a tendency for free-market economists to dismiss FTAs and other forms of preferential trade on the grounds that they (allegedly) deliver smaller benefits to developing countries than global free trade, are potentially trade distorting and reduce pressure for further liberalisation in preference-receiving countries, thereby undermining the process of internal policy reform (Panagariya 1999). The trade agreements that have dominated recent North-South bilateral diplomacy, however, present a challenge to this traditional liberal viewpoint, in both normative and analytical terms. The reason for this is that these agreements are typically geared more to the harmonisation of domestic regulatory standards in areas like foreign direct investment and intellectual property protection, than to liberalisation in the traditional sense of removing tariff and non-tariff barriers to trade – or, more accurately, the current crop of FTAs are based on a political bargain whereby developing countries receive greater market access but only in exchange for deeper commitments in regulatory harmonisation (Shadlen 2005: 751). Finally, it hardly needs to be added that the degree of

⁴ World Trade Organisation (WTO), 'Regional trade agreements', http://wto.org/English/tratop_e/region_e/region_e.htm [retrieved 16 June 2009].

regulatory harmonisation evident in FTAs has now gone way beyond what remains under discussion in the WTO Doha Round, thus rendering the conventional 'regionalism/bilateralism-versus-multilateralism' calculus somewhat redundant.

The prominence of regulatory issues within the current set of FTAs has led an increasing number of scholars to focus on the international political economy of North-South trade diplomacy (Phillips 2005; Shadlen 2005; 2008; Gallagher 2008). The key point of departure for these theorists is the emphasis they place on the political dynamics of FTAs, and in particular how the asymmetrical bargaining context changes developing countries' perception of the relative costs and benefits of signing an agreement. It is important to emphasise that these costs and benefits are understood here, not principally as market efficiencies or immediate welfare effects, but rather as an essential trade-off between the economic benefits of 'shallow' integration against the political constraints associated with 'deeper' forms of integration (Shadlen, 2005: 751). In other words, whether trade integration is pursued via the bilateral, regional or multilateral route, the economic benefits to developing countries through better market access are only available at the cost of sacrificing the regulatory autonomy, or policy space, deemed necessary to pursue the type of trade and industrial policies deployed successfully in the past by both developed and (some) developing countries (Chang 2002).

Although the concept of policy space is not always defined in the literature, the United Nations Conference on Trade and Development (UNCTAD) has described it, as part of the so-called 'Sao Paulo consensus', in the following terms: 'the scope for domestic policies, especially in the area of trade, investment and industrial development', which might be otherwise constrained by 'international disciplines, commitments and global market considerations' (UNCTAD 2004: 3). Up until recently, most discussion of development policy space has taken place with more or less exclusive reference to the WTO and multilateral trade disciplines (Amsden and Hikino 2000; Wade 2003; Weiss 2005; Rodrik 2007; Page 2007; Gallagher 2008a). The key point of reference in this debate is the 1993 Uruguay Round allegedly premised on a 'grand bargain' (Ostry 2000), whereby developing countries received improved market access for textiles and clothing and agriculture in exchange for regulatory harmonisation with respect to intellectual property, investment, services and so

on. Although the emerging intellectual consensus now seems to be that the Uruguay Round bargain reduced but did not eliminate altogether development policy space, the fear is that FTAs are now removing what little scope there remains for developing countries to pursue relatively autonomous trade and industrial policies (Shadlen 2005: 752; Gallagher 2008: 46). The main reason for this is that, despite the procedural inequities of the current system of multilateral trade regulation - and they are considerable - the WTO does at least offer developing countries opportunities to balance against power politics through, for example, issue linkage and the formation of international coalitions (Narlikar 2003). In contrast, FTAs are said to take place in the context of unmediated forms of asymmetric bargaining, the consequence of which is that developing countries often sign agreements that go way beyond what they have been willing to agree to in the WTO.

Although FTAs have now been established in almost all parts of the developing world, including Asia-Pacific, Africa and the Middle East, no other region has been subject to quite so much diplomatic activity as Latin America and the Caribbean (LAC). The LAC region also best illustrates the contrasting negotiating dynamics between multilateral and regional/bilateral trade integration. On the multilateral front, LAC has been within the vanguard of developing countries aiming to prevent the further erosion of policy space through resistance to the inclusion of the Singapore Issues (competition policy, transparency in government procurement, trade facilitation and investment) within the Doha Round negotiations. This has involved, among other things, active membership in South-South coalitions, including the Core Group of developing countries, the Like Minded Group (LVG), the Small and Vulnerable Economies (SVE), the Alliance on Strategic Products (SP) and the Special Safeguard Mechanism (SSM), and the G20 (Narlikar and Tussie 2004).⁵ By way of contrast, in regional and bilateral negotiations some, but by no means all, LAC governments have apparently been willing to surrender more policy autonomy in exchange for better access to the markets of the USA and, to a far lesser though increasing extent, the

⁵ Many of these coalitions are cross-cutting in membership and policy objectives. In terms of the issues explored in this paper, it is notable that through membership in these coalitions Chile, Colombia, Costa Rica, El Salvador, Guatemala, Mexico and Peru have all fought against the Singapore Issues while simultaneously agreeing to such measures in FTAs with the USA. Likewise, members of CARICOM at various points in the run up to the Cancun Ministerial actively resisted the inclusion of many of the same issues within the Doha Round that subsequently ended up in the final text of the CARIFORUM-EU EPA.

EU. Kenneth Shadlen (2005) has convincingly shown that, in specific relation to the North American Free Trade Agreement (NAFTA), the relevant chapters on trade, investment and intellectual property protection are all considerably more exacting than WTO rules in restricting the ability of member states to follow independently-determined economic policies.

A similar pattern has been detected in relation to other FTAs modelled on NAFTA, such as the agreements concluded between the United States and the five Central America republics (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua) and the Dominican Republic, Chile, Colombia and Peru. The important point to register here is that the contrasting position of certain LAC states in multilateral and regional/bilateral settings does not simply reveal an inconsistent trade strategy. It also shows that, in the absence of power-balancing institutions, asymmetries in negotiating power are more likely to lead to asymmetries in negotiating outcome. As Nicola Phillips (2005: 9) has argued in relation to the launching of the original Free Trade Area of the Americas (FTAA) process in the mid 1990s, the initial preference of LAC was for a trading regime that, with the sole exception of market access, was based on the principle of 'WTO compatibility'. By late 2003, however, the FTAA process had given way to an accelerating proliferation of bilateral agreements along the lines of the traditional 'hub-and-spoke' model. Crucially, the shift from a hemispheric to a bilateral approach enabled the United States to use its bargaining leverage more effectively to shape the ideological parameters of the negotiations in a manner reflective of its primary interests and preferences: that is, to secure a series of commitments on regulatory harmonisation that were fundamentally WTO-plus in nature (*ibid.*: 1, 3).

Although such power asymmetries account for the typically lopsided nature of North-South FTAs, this does not explain why developing country elites choose to sign such agreements in the first place. To this quandary, analysts have advanced a range of explanations, a number of which are especially worth highlighting. Some analysts have approached this question from the perspective of instrumental rationality. As Kevin Gallagher notes (2008: 42), citing the econometric work of Carsten Kowalczyk and Ronald Wonnacott (2002), even under neo-classical assumptions it is theoretically possible for small developing countries to increase the volume of trade and see their terms of trade improve through signing a FTA with a

larger and richer neighbour. Such improvements would, however, be short lived if comparable developing countries follow the same course of action; and, should these rivals establish a FTA first, then the original developing country would likely see its terms of trade worsen. Hence, from this perspective, not only is it economically rational for the governments of developing countries to seek a bilateral FTA with a larger and richer neighbour, it is also rational for them to do this before rival states beat them to it. Lloyd Gruber (2001) has described this competitive logic in terms of the concept 'bandwagoning', by which is meant the fear of marginalisation compels states to seek membership of FTAs even though they may actually prefer the status quo. Drawing on the example of NAFTA, Gruber asserts that the 1989 United States-Canada FTA precipitated a u-turn on the part of the Mexican elite, which calculated that, even though its preferred option was the restoration of the original (more protectionist) status quo, reaching a new (freer trade) accommodation with the USA and Canada was preferable to possible exclusion from the new trade reality.

In an extension of Gruber's argument, Kenneth Shadlen (2008) has introduced the concept of 'political trade dependence' to account for the favourable response that certain LAC governments have shown to the USA's regional and bilateral agenda. One of the most puzzling aspects of the current enthusiasm among developing country elites for FTAs is that the amount of additional market access available through these agreements is, in most cases, fairly modest because of the prior existence of unilateral trade preferences schemes such as the Caribbean Basin Initiative (CBI)/Caribbean Basin Trade Partnership Act (CBTPA), The Andean Trade Preference and Drug Eradication Act (ATPDEA) and the Generalised System of Preferences (GSP). According to Shadlen, however, the problem with these schemes is that they are unilateral in nature and hence subject to arbitrary change and political manipulation. Crucially, also, preference-receiving countries cannot under multilateral trade disciplines challenge a preference-granting country through the WTO Dispute Settlement Mechanism (DSM) in response to changes to or the removal of unilateral trade concessions (*ibid.*: 6). It is the degree to which preference-receiving countries are sensitive to this type of political interference which, according to Shadlen, constitutes political trade dependence. Importantly, political trade dependence differs from ordinary trade dependence in the sense that, not only are preference-receiving countries subject to

the normal vagaries of fluctuating demand and changing patterns of production, they often end up on the receiving end of interest group conflict and distributional struggles from within the preference-granting country.⁶ The importance of this insight, with respect to Shadlen's overall argument, is that the governments of countries experiencing high levels of political trade dependence may wish to place their trading relations on a more stable and secure footing by signing up to a fully reciprocal FTA (*ibid.*: 3-8). The prior existence of unilateral trade preferences, moreover, renders this outcome even more likely, since such schemes tend over time to build powerful coalitions among export-oriented interests within preference-receiving countries with a strong vested interest in the maintenance and deepening of these trade relationships (*ibid.* : 14).

In summary, then, this (necessarily brief) review of the emerging IPE literature on regional and bilateral FTAs offers a number of potentially crucial insights into the CARIFORUM-EU EPA. Three points are especially worth underlining. First, the conventional liberal approach, aiming to determine whether an agreement is on the whole 'trade creating' or 'trade diverting', largely misses the point about the current crop of FTAs which tend to revolve around 'behind-the-border' issues like national treatment for investors and intellectual property regimes. Because of this, these agreements are best understood in terms of an assessment of the immediate economic benefits of enhanced market access against the longer-term costs associated with reduced regulatory policy autonomy. Second, in the absence of power-balancing institutions North-South FTAs are generally characterised by an asymmetrical bargaining context. This has the effect of altering the perceptions that elites within developing countries hold about the costs and benefits of signing an agreement with a richer and more powerful trading partner. Third, despite these costs there are a variety of reasons why elites in a developing country may still prefer to sign rather than not sign an agreement, including the bandwagoning effect, the fear of marginalisation and the desire to place current trade preferences on a more stable and secure footing. Of course these dilemmas are not unique to FTAs. But the heightened power asymmetries involved in these

⁶ This happened, for example, in December 2001 when a deal struck between the G. W. Bush administration and Congressional leaders regarding the reinstatement of 'fast track' or Trade Promotion Authority (TPA) led to the removal of important flexibilities in the rules of origin provisions contained in the CBTPA. This was despite the fact the agreement had been in place for less than 18 months.

agreements do serve to intensify the market access/development space trade-offs which characterise the limited choice set available to small developing countries in all trade bargaining scenarios. In the rest of the paper we explore how these dilemmas have played out in the CARIFORUM-EU EPA.

3. From Lomé to Cotonou: EU-ACP trade relations, 1975-2000

The origins of the Lomé Convention (which preceded the Cotonou Agreement and hence the EPAs) came from Europe's post-colonial settlement established after the Second World War. Articles 131 and 136 of the Treaty of Rome provided for the African colonies of France and Belgium to be included within the Customs Union; and, following independence, the Yaoundé Convention of 1963 (subsequently renewed in 1969), among other things, extended these trade preferences, supposedly on a reciprocal basis, for 18 African countries. The next significant step came with Britain's accession to the Common Market in 1973, which increased greatly the number of newly-independent (and soon-to-be-independent) developing countries with strong colonial ties to Europe. Britain's accession to the Common Market also coincided with the Organisation of Petroleum Exporting Countries (OPEC) 'oil shock' of 1973 which, coupled with the related boom in other primary commodity prices, instilled a sense of acute nervousness in European capitals regarding the future security of supply for key raw materials, many of which were located in the former colonies. Furthermore, the negotiations leading up to the conclusion of the first Lomé Convention were influenced by the international climate of the mid 1970s, characterised by Third World demands for a New International Economic Order (NIEO). Indeed, Lomé I (1975-79) is seen in retrospect as something of a highpoint in the attempt by the developing world to redefine North-South relations, in the sense that the agreement was at least rhetorically consistent with the spirit of the NIEO (Brown 2000).

Unlike the Yaoundé Convention, preferences under Lomé were granted on a non-reciprocal basis (although in practice full reciprocity had never really existed under Yaoundé), while the number of preference-receiving counties increased from 18 to 46, eventually reaching 71 by the time of the Cotonou Agreement in 2000. Perhaps more importantly, Lomé established a series of highly lucrative commodity protocols - for bananas, beef, rum and

sugar - offering eligible ACP states guaranteed prices way in excess of those available on the world market (due to the price-distorting effects of the Common Agricultural Policy [CAP]). Reflecting the spirit of the NIEO, Lomé also included a substantial aid component financed through the European Development Fund (EDF), plus compensatory mechanisms to assist countries suffering price fluctuations for primary commodities (STABEX) and to guarantee the production of certain minerals (SYSMIN). Finally, Lomé was governed by an elaborate set of joint ACP-EU institutions, including a Council of Ministers, Committee of Ambassadors and Joint Parliamentary Assembly. The logic underpinning this institutional design was that Lomé was said to represent a departure from traditional preference schemes like the GSP in the dual sense that it was legally contractual (unlike the GSP which could be withdrawn unilaterally at any time by the preference-granting country) and based on a 'partnership of equals'. Yet this logic suffered from two crucial flaws. First, prior to Lomé the ACP did not exist; indeed it was effectively created by the EU in order to negotiate the Lomé Convention (Bretherton and Volger 1999: 126).⁷ As a consequence, the ACP lacked the ability to act in a collective and coherent manner. Second, as John Ravenhill (2004: 122) makes clear, because of the vast disparities in economic power alongside the absence of reciprocity within Lomé, the ACP possessed little - if any - substantive bargaining leverage over the EU. Instead, it came to rely on what Ravenhill (1985) refers to as 'collective clientelism', by which he meant that the ACP had little alternative but to rely on the generosity of Lomé, and EU largess more generally, to forward its collective interests. As Ravenhill argues, however, this strategy was only viable so long as the EU was prepared to continue to carry the economic and political burden of maintaining, increasingly unpopular, non-reciprocal trade preferences.

This was patently something that the EU was not prepared to contemplate indefinitely and changes to the Lomé system duly came. These changes came from two different directions.

⁷ As John Ravenhill (2004: 120) explains, the main rationale for the creation of the ACP was to find a means of accommodating Britain's former colonies but to somehow exclude the Asian Commonwealth, because the economies of India and Pakistan, even though classified as low-income, were comparatively large and sufficiently diversified to be perceived as a threat by import-competing interests in Europe. The happy coincidence of geography and development thus provided a solution on the grounds that the economies of Africa, Pacific and Caribbean were of a 'comparable economic structure' and unlike the larger and more diversified economies of South Asia. The demarcation was hardly ideal, however, since it led to the bizarre situation where the Bahamas was included on development criteria but not Bangladesh! (*ibid* : 145, fn. 4).

The first came from within the EU itself. In 1996, the European Commission published its landmark *Green Paper on Relations between the European Union and the ACP Countries*, which made the startling admission that Lomé had been an almost unqualified failure in meeting more or less all of its principal objectives. Most importantly, despite 25 years of trade preferences and generous aid provision, it was claimed that Lomé had signally failed to promote export growth or diversification. In fact quite the reverse was true: between 1976 and 1994, ACP exports to the EU as a proportion of the total shrunk from 6.7 per cent to 3.4 per cent while its share of world trade fell from 3 per cent to 1 per cent (Gibb 2000: 463). Apart from the trade statistics, another factor that served to harden European attitudes towards Lomé was the further enlargement of the EU to include countries such as Spain, Portugal and the Nordic countries which saw little logic in a pro-development policy based on targeting aid for the most part at countries with strong colonial links to certain member states while excluding other, equally or even more poor, countries without this historical connection. Crucially, both the Maastricht Treaty of 1992 and the Amsterdam Treaty of 1997 made references to the need to integrate 'developing countries into the world economy' with particular emphasis on 'the most disadvantaged among them'. The implication of this for the ACP was clear: Lomé was on borrowed time because it was based neither on sound development criteria (although 39 of 71 ACP states were classified by the UN in 2001 as Least-Developed Countries [LDCs] the rest were not) but nor had it succeed into integrating the ACP into the world economy (Ravenhill 2004: 126-127).

The second, more widely cited, source of change came from a series of adverse legal rulings against the EU's banana protocol under both the GATT and the WTO. Although much has been made of the role of the WTO in precipitating the demise of Lomé - not least by the EU itself - it is worth pointing out that the original banana dispute was provoked, not by Lomé itself, but by the creation of the single banana market in 1992 as part of the implementation of the Single European Act (Alter and Meunier 2006). Despite this, in 1994 the GATT ruled that the Lomé Convention was inconsistent with the most-favoured nation clause because it did not constitute a 'free trade area' or 'customs union' (due to the lack of reciprocity) but nor was it consistent with the 1979 Enabling Clause (because it discriminated between developing countries). In response, the EU immediately sought and received a five-year waiver for Lomé (although this did not prevent further legal challenges to the banana

regime) in advance of the introduction of the much-strengthened WTO DSM in 1995. Although the EU possessed the option to seek a further waiver - for which there were numerous other precedents under both the GATT and WTO - it soon intimated that its intention would be to recast the entire ACP trade relationship in such a way as to make it 'WTO compatible'. The reason given for this was that the tightening of rules covering the granting of legal waivers under the WTO (requiring a 75 per cent as opposed to a 66 per cent majority for approval) meant that such a request was unlikely to succeed. Yet, while many questioned this interpretation, the truth was that the banana dispute merely added grist to the mill of the increasing majority within the EU which had already concluded that Lomé had long passed its sell-by date.

Ultimately, the Cotonou Partnership Act of 2000 replaced the Lomé Convention as the basis for governing EU-ACP trade relations. Although the 1996 *Green Paper* had identified a number of alternative options - including the maintenance of the status quo, the standard application of GSP and the establishment of a single agreement based on the principle of uniform reciprocity - the Cotonou Agreement eventually settled on the formula of replacing Lomé with separate EPAs based on six 'regions' - Caribbean, Pacific, West, East, Central and Southern Africa - identified by the Commission. In order to make this possible, the EU would seek an extension to the WTO waiver (which was subsequently granted during the 2001 Doha Ministerial in Qatar) in order to allow the ACP sufficient breathing space to prepare for the EPA negotiations, scheduled to begin in September 2002 and end no later than 31 December 2007. The Cotonou Agreement, however, made special provisions for LDCs which would be granted Lomé-equivalent duty- and quota-free preferences under what became the Everything but Arms (EBA) agreement of 2001. By including the handful of UN-designated LDCs that had been excluded from Lomé, the EBA effectively got around the issue of WTO incompatibility since the regime was now legally consistent with the 1979 Enabling Clause. In so doing, however, the EBA created another problem: with duty- and quota-free preferences now available from EBA there would be very little incentive for LDCs to abandon non-reciprocity in order to participate in the EPAs.

A similar problem existed for the non-LDCs in the sense that they were effectively being asked to sign up to fully reciprocal agreements in exchange for trade benefits they already

received. Further, Article 37.6 of the Cotonou Agreement made reference to offering countries which fail to sign an EPA a trade framework at least 'equivalent to their existing situation'. Yet, since Cotonou had introduced the deadline of December 2007 and the only other option available was the substantially inferior GSP programme (which offered preferences on approximately 54 per cent of tariff lines in contrast to approximately 95 per cent under Lomé), the non-LDCs were confronted with an unpalatable choice: either negotiate a fully reciprocal EPA or run the risk of being downgraded to GSP. Finally, not only did Cotonou require the establishment of WTO-compatible EPAs, Articles 41-52 of the agreement also made provision for reciprocal liberalisation in trade-related areas not covered by the original Lomé protocol and hence not subject to WTO litigation. Therefore the issue to be determined was, if the non-LDCs did sign an EPA, would the subsequent agreement merely be 'WTO compatible' or would it come to resemble the WTO-plus North-South FTAs which by now had become widespread in other parts of the developing world?

4. The CARIFORUM-EU Economic Partnership Agreement

Even since the 1996 *Green Paper* there has been a general expectancy among scholars, policy makers and non-governmental organisations alike that the negotiation of a post-Lomé trade regime would be more straightforward in the Caribbean than elsewhere in the ACP. The main reason for this is that, although the negotiating groups identified for the purpose of the EPAs more or less correspond to existing regional institutions (with the exception of the Pacific where the only equivalent is the Pacific Islands Forum which also includes Australia and New Zealand), very few of these are characterised by the type of bureaucratic capacity and supranational authority deemed necessary to negotiate region-wide reciprocal trade agreements (Stevens 2008: 212). The CRNM arguably provided the Caribbean with the regional coherence, technical competence and negotiating capacity generally missing in the rest of the ACP. Although the CRNM is often superficially likened to the European Commission with respect to the latter's delegated role in leading negotiations with third parties on behalf of the Council of Ministers, the former's role is more limited and its origins more idiosyncratic than implied by this comparison. These differences are worth describing briefly since they do have quite an important bearing on how the CARIFORUM-EU negotiations actually unfolded. As Cedric Grant (2000) describes it, the CRNM was created in 1997 following a series of ad hoc steps designed to help Caribbean governments cope with

the multiple demands of liberalisation pressures on both regional and multilateral fronts. As originally envisaged, the CRNM was supposedly intended to operate inside CARICOM and exist only so long as was necessary to assist Caribbean governments in the FTAA and WTO negotiations. In practice, however, the subsequent institutional trajectory of CRNM came to reflect the forceful personality of its first Chief Negotiator - Shridath Ramphal - leading to a series of important and controversial organisational changes, the most important of which was the decision to upgrade the ambassadorial rank of the Chief Negotiator to that of minister, reporting directly to Caribbean heads of government rather than to the CARICOM Secretariat. Ramphal also used his forceful personality to shape, perhaps decisively, the intellectual character of the CRNM in a pro-liberalisation direction by identifying the need to respond in a pro-active manner to the 'imperative' of reciprocity as the central reason d'être of the new collective negotiating framework (*ibid.*: 473).

Another important difference between the Caribbean and rest of the ACP lay in the perceived urgency of the EPA negotiations. One of the key problems with the trade arrangement envisaged by Cotonou is the general absence in the ACP of a coincidence of geography and development, meaning that the regional groupings consist of LDCs (which, as we have seen, have less incentive to sign an EPA because equivalent benefits are available on a non-reciprocal basis through EBA) *and* non-LDCs (which may have a strong incentive to sign an EPA because of the threat of being downgraded to GSP), making it extremely difficult to establish a common negotiating position. Although the Caribbean is not totally immune from this problem - Haiti is a LDC and despite being a full member of both CARICOM and CARIFORUM has yet to sign EPA - it is by some measure the region least affected by heterogeneity. More to the point, as a *region* the Caribbean has historically been more dependent on Lomé and hence more vulnerable to the effects of preference erosion than the rest of the ACP, especially in relation to key tropical commodities like bananas and sugar. At the same time, by the late 2000s more than half of Caribbean export revenue was derived from non-traditional industries, especially tourism, not covered by the Lomé agreement. Caribbean heads of governments and CRNM officials therefore perceived EPA not only as an opportunity to arrest the progressive erosion of the value of traditional

preferences but also to improve access to the EU market in areas like services and investment.⁸

For its part, the European Commission approached the EPA negotiations on the insistence that it had no underlying motive in securing a reciprocal agreement other than promoting sustainable development through the gradual regional and global integration of CARIFORUM countries into the world economy in a manner consistent with WTO rules (EU 2006: 3). Accordingly:

By explicitly taking into account the development objectives, needs and interests of the CARIFORUM region the EPA is very different from every other trade agreement negotiated up to now between developed and developing countries. This comprehensive approach is what constitutes the development dimension of the EPA and all the provisions of the EPA are designed to support it (EU 2008: 1).

Although critics were quick to question, if not ridicule, the suggestion that the EU had no offensive interests at stake in promoting the EPAs (Stoneman and Thompson 2007; Oxfam 2008; Brewster, Girvan and Lewis 2008), the claim nevertheless rested on an important half-truth: beginning with Lomé IV (1990-2000) the European Commission increasingly used the policy leverage afforded by the Lomé and Cotonou agreements as a means to steer ACP countries in a broadly neoliberal direction but for ideological rather than straightforward commercial reasons (Brown 2000; Holland 2002; Hurt 2003). Yet the importance of the EU's wider economic interests cannot be ignored. Crucially, the 1996 *Green Paper* that presaged the demise of Lomé coincided, more or directly, with a recalibration of EU wider trade strategy built on a more aggressive approach towards penetrating overseas markets (Faber and Orbie 2008).

Later, following the debacle at Cancún in 2003 which eventually led to the three most controversial Singapore Issues - competition policy, transparency in government procurement and investment - being dropped from the Doha agenda, the EU found itself having to respond to the USA's pre-emptive shift towards 'competitive liberalisation' (Zoellick 2003). This it duly did, albeit somewhat belatedly, when the Commission launched its *Global Europe* trade strategy document in October 2006. The essential thrust of *Global*

⁸ Confidential interviews with CRNM officials, Geneva, Switzerland, February 2009.

Europe was that the aim of promoting internal competitiveness and job creation through further liberalisation and marketisation under the auspice of the Lisbon Agenda needed to run in tandem with a more offensive external trade strategy build on a new generation of bilateral trade deals, trade defence instruments, vigilant protection of intellectual property and so on (see Hay 2008). Revealingly, the strategy document identified a whole range of emerging markets in Asia, Latin America and elsewhere deemed ripe for commercial exploitation, but at no point did it mention the ACP other than to suggest that these countries were peripheral to Europe's main commercial interests and that the EPAs were thus designed to meet development rather than trade objectives (EU 2006a: 10-11). As Faber and Orbie (2008) argue, however, the very fact that Lomé preferences were in the past considered such a major diplomatic impediment to closer trading relations between Europe and the more dynamic countries of Latin America and Asia suggests that the EPAs were not unrelated to the EU's wider economic interests. Finally, parallels with the United States' strategy of 'competitive liberalisation' - which also embraced developing countries peripheral to its main commercial interests - reveals that the new bilateralism is not driven exclusively, nor in many cases predominantly, by market access considerations. It is also related to an attempt to establish what VanGrasstek (2000: 169-7) calls a 'spiral of precedents' intended to influence the trade agenda of subsequent bilateral, regional and multilateral negotiations (Phillips 2003: 9).

Returning specifically to the CARIFORUM EPA, the preamble to the agreement sets out a series of lofty aims and objectives wherein the notion of 'development cooperation' figures prominently ('development cooperation' and 'cooperation' appear in the text 13 times and 135 times respectively). More substantively, the agreement liberalises approximately 92 per cent of bilateral CARIFORUM-EU trade over a 25-year period, although most of the liberalisation occurs in the first 10 years. Further, the agreement is based on the principle of 'asymmetrical reciprocity' which means that, whereas the EU is committed to offering duty- and quota-free treatment to 100 per cent of the value of its imports from CARIFORUM from 1 January 2008 (with the exception of the transitional arrangements for sugar and rice), CARIFORUM will liberalise 82.7 per cent of the value of its imports from the EU within the first 15 years and 86.9 per cent within 25 years. The agreement also extends the principle of asymmetrical reciprocity to the liberalisation of services, where the EU sectoral

commitment provides 94 per cent coverage compared to 65 per cent for CARIFORUM 'lesser-developed countries', 75 per cent for 'more-developed countries' and 86 per cent in the case of the Dominican Republic.

It is important to remember at this stage that, insofar as the goods agreement is concerned, the principle of asymmetrical reciprocity is largely nominal because approximately 95 per cent of CARIFORUM exports to the EU have benefited from preferential trade since 1975. It should also be noted that the value of goods that the EU exports to CARIFORUM is an estimated four-fifths greater than the value of goods that CARIFORUM exports to the EU. Hence the adjustment costs associated with the shift to reciprocity will be borne more or less exclusively by CARIFORUM (ECLAC 2008: 27). The presence of lengthy transition periods, along with product exclusions for the most sensitive items, make it difficult at this stage to predict what the precise costs associated with liberalisation will actually entail. Yet initial studies suggest that the shift towards reciprocity will involve significant challenges, especially in the area of fiscal adjustment in a region containing seven of the ten most heavily-indebted countries in the world and where import duties as a percentage of total tax revenue range from between 7.6 per cent and 50.2 per cent (World Bank 2005; Milner 2005). Another concern that has been expressed is that the EPA is likely to entail significant implementation costs (ECLAC 2008; South Centre 2008). The European Commission has committed funds from the 10th EDF Regional and National Indicative Programmes (CRIP/NIP), worth approximately €454 million and €39 million respectively, to support EPA implementation. The Commission has also pledged to commit approximately half of its annual €2 billion Aid for Trade contribution to support ACP countries, largely though not exclusively through EPA implementation projects.⁹ Despite numerous references to development cooperation in the text, the financial component of the CARIFORUM agreement remains almost entirely unbound. Equally, some commentators have suggested that because the overall volume of financial aid has not increased, support for EPA

⁹ During the Hong Kong ministerial in 2005, the EU pledged to contribute €2 billion a year to the WTO's Aid for Trade fund by 2010 - half coming from the Commission and half from member states. This commitment is, however, far from assured: A 2008 European Commission report (cited in South Centre 2008: 22) acknowledged that while the Commission itself was close to reaching its annual €1 billion contribution, member states would need to increase their collective spending by approximately 56 per cent in order to match the Commission's contribution. It hardly needs to be added that the onset of the global financial crisis makes the likelihood of this happening even less likely.

implementation can only come at the cost of diverting funds from other areas of development assistance such as health and education (South Centre 2008: 24).

The CARIFORUM agreement also contains a number of more specific market access provisions that have attracted controversy because of their potentially adverse development implications. One area of complaint has centred on the presence of a 'standstill clause' within the CARIFORUM text, under which signatories will be obligated to respect fixed tariff ceilings even before they are reduced or eliminated altogether. This principle is controversial because it goes against current practice within the WTO, which merely requires tariff liberalisation over a reasonable length of time without any stipulation that duties are maintained at a predetermined rate prior to their eventual reduction or elimination (South Centre 2008a: 3). Another widely discussed provision is the so-called 'MFN clause' mandating CARIFORUM to extend to the EU any more favourable treatment granted to a 'major trading country' in a subsequent FTA. This has led some to argue that the MFN clause will diminish any future bargaining leverage that CARIFORUM would have in signing a FTA with a major developing country like Brazil, India or China, since the region would be unable to offer preference margins vis-à-vis the EU to any country or group of countries or would otherwise have to extend these trade benefits to the EU (Tidiane and Hanson 2008).¹⁰ More worrying still, some commentators have suggested that the MFN clause along with other aspects of the CARIFORUM agreement may jeopardise the unilateral trade concessions still offered to the Caribbean by the USA and Canada under the CBI and CARIBCAN respectively (Lande 2008). Furthermore, if as seems likely the CBI and CARIBCAN eventually give way to reciprocal FTAs, the precedents set in the EPA with respect to market access and regulatory harmonisation would make it extremely difficult for the Caribbean to resist the pressure to grant similar concessions to the USA and Canada.

¹⁰ Although the Cotonou Agreement also required preference-receiving countries to grant to the EU any more favourable treatment offered to other developed countries, the CARIFORUM text extends this to advanced developing countries and regions which account for more than 1 per cent and 1.5 per cent of world trade respectively. ECLAC (2008: 32) estimates that, on the basis of 2005 trade data, this provision would be sufficient to preclude CARIFORUM from signing a FTA with China, Brazil, Hong Kong, Singapore, Mexico, Taiwan, the Association of South East Asian Nations (ASEAN) and the Southern Common Market (MERCOSUR) without offering MFN treatment to the EU.

Beyond market access, the CARIFORUM agreement includes a number of other commitments that are neither mandated by the WTO nor under discussion in the current Doha Round. According to the South Centre (2008a: 3-4), the CARIFORUM agreement contains provisions in five main areas - the elimination of customs duties; rules governing trade-defence instruments; prohibition on export taxes; removal of technical barriers to trade; and regulatory harmonisation with respect to customs administration and trade facilitation - but only the first is actually required by WTO rules. Furthermore, the CARIFORUM text also contains a whole raft of other measures relating to the harmonisation of domestic regulations, ranging from transparency in government procurement to investment, from competition policy to intellectual property protection to rules on data protection. The rationale that is offered for inclusion of these measures is that, while they may not be required by the WTO nor be under discussion in the Doha Round, they nevertheless pertain to regulatory 'best practice' and will facilitate key development objectives of the EPA in the sense of enhancing the general economic competitiveness of the Caribbean (European Commission 2008: 2).

It is also suggested that, because the CARIFORUM agreement is informed by development rather than trade objectives, these provisions are not directly comparable to those contained within the more comprehensive regional and bilateral FTAs established by the USA. The investment provisions contained within EPA, for example, do not seek to guarantee investors protection against expropriation of their property without fair compensation; nor do these provisions include a dispute-settlement process granting investors recourse to legal arbitration as in the case of Chapter 11 of NAFTA (European Commission 2008a; Westcott 2008). Similarly, it is argued that the trade disciplines relating to government procurement in the CARIFORUM Agreement are based largely on 'best endeavour' language designed to promote transparency in the awarding of government contracts. As such, these provisions are considerably weaker than those contained within the WTO plurilateral Agreement on Government Procurement, to which the EU is a key signatory (Dawar 2008). Nevertheless, the presence of so many behind-the-border provisions within the EPA text - irrespective of whether or not they are based on weaker trade disciplines than those contained within other agreements - remains contentious for the simple reason that they are not strictly necessary to satisfy WTO compatibility. The

inclusion of these provisions is also difficult to square with the stance adopted by the Caribbean in other diplomatic settings, where its stated position has been to resist trade issues that might prejudice the outcome of the Doha Round. Finally, it needs to be recalled that CARIFORUM remains the only region belonging to the ACP which has so far signed a 'full' EPA containing these WTO-plus measures.

5. Understanding the CARIFORUM-EU EPA as a 'political bargain': power asymmetry, development trade-offs and the erosion of policy space

As we have seen, the contrast between CARIFORUM and the rest of the ACP with respect to the scope and pace of the EPA negotiations is generally explained by differences in regional institutions and a divergence in underlying economic interests. Since differences in institutions have already been discussed at length, we deal here mainly with (perceived) differences in economic interests – and, more particularly, whether and to what extent the EPA has furthered the economic interests of the Caribbean. Rather than analysing this question strictly in terms of the technical merits of the agreement, however, this section seeks to gauge its wider significance. It does this by relating the specifics of the EPA to the broader debate outlined earlier regarding the trade-off between the immediate economic benefits of improved and more secure market access against the longer-term costs of sacrificing development policy space. To recall from section 2, because regional and bilateral FTAs are said to take place in the absence of power-balancing institutions, asymmetries in negotiating power are more likely to lead to asymmetries in negotiating outcome. In the case of the EPA, the precise bargaining dynamics were obviously shaped by an enormous disparity between the two parties in terms of technical, bureaucratic and negotiating capacity. In more substantive terms, however, the defining characteristic of the EPA was the extent to which EU-CARIFORUM trade relations are based on a high degree of what Shadlen (2008) calls political trade dependence, in the sense that the overwhelming majority of the Caribbean's exports to the EU were up until this point dependent on unbound, unilateral trade concessions. This meant that the mere threat of changes to or the removal of these preferences – both of which were invoked explicitly on several occasions during the negotiations – provided EU negotiators with a degree of political leverage that would not have existed in the absence of such political trade dependence. Conversely, since the EU supposedly had little to gain from the EPA in commercial terms, CARIFORUM lacked an

equivalent source of political leverage with which it could counterbalance the negotiations. In fact, to the extent that CARIFORUM possessed any meaningful influence over the course of the negotiations, it was more likely to be derived from its apparent eagerness to sign an agreement, thus providing symbolic affirmation of the merits of the EU's post-Lomé trade vision.¹¹

In a recent policy briefing, the CRNM (2008) identified at least six separate justifications for why it was deemed necessary to, not only sign an EPA, but to do so on the basis of an agreement that went beyond what was strictly necessary to meet the legal requirements of the WTO.¹² Although limited space precludes a thorough analysis of each of these justifications, the remainder of this paper considers a few of the more pertinent issues in order to provide a snapshot of how and in what ways power asymmetry shaped the political bargain of the CARIFORUM-EU EPA. First of all, the CRNM cites the objective of binding the current level of EU preferences available through the Cotonou Agreement and safeguarding these preferences from further WTO litigation. To once again invoke Shadlen's terminology, this objective seems to correspond to political trade dependence in the sense that the CRNM was motivated by the need to defend existing preferences rather than secure additional market access. Yet if the motive was to lessen the region's political trade dependence it would have made far more sense for the Caribbean to have prioritised a FTA with the USA, which absorbs approximately 55 per cent the region's total exports - almost all facilitated by unilateral trade preferences - compared to just 11 per cent in the case of the EU. In any case, it is far from certain that the CARIFORUM agreement has actually succeeded in making EU trade preferences more secure. This is almost certainly not true with respect to key agricultural commodities like bananas and sugar where the EU has signalled its intention to gradually but inexorably extend the process of internal and external liberalisation to the point where sectoral preferences to the Caribbean will be practically worthless.¹³ The concept of political trade dependence also has difficulty explaining why

¹¹ Confidential interviews, Office of the Prime Minister, Jamaica, 29 January 2009.

¹² Along with the justifications dealt with here, the CRNM (2008: 2) policy briefing also mentions the importance of EPA as a 'forceful signal – to both investors and development partners – of the earnestness of a Caribbean's programme of economic reform'.

¹³ In 2006, the EU moved to a 'tariff only' banana regime based on a most-favoured nation (MFN) rate of €176 per tonne but at one stage in the Doha negotiations it came to an agreement with the Latin American

Caribbean heads of government and the CRNM found it necessary to eschew the option made available by the EU and favoured by the majority of the ACP of signing a 'goods only' interim agreement - which would have been sufficient to immunise Lomé preferences from further WTO litigation - with the contentious WTO-plus issues dealt with over a longer schedule after 1 January 2008. Finally, and related to this, even though as a region the Caribbean had historically made more use of traditional Lomé preferences than the rest of the ACP, this still does not explain why it would be willing to sign up to the EU's behind-the-border trade agenda, when the rest of the ACP resisted these issues - perhaps temporarily - without apparently jeopardising a market access agreement.

A second justification offered by the CRNM for the necessity of the EPA rests on improving access to the EU market for non-traditional Caribbean exports as a means of fostering economic diversification and lessening the region's long-standing dependence on agricultural commodities blighted by preference erosion and declining terms of trade. This objective is particularly important for understanding why the CRNM chose to forgo the option of a 'goods only' interim agreement. According to CRNM officials, concerns regarding the fiscal implications of import liberalisation for those islands heavily dependent on tariff revenue meant that securing a 'goods only' agreement was far more politically contentious

countries to reduce this to €116 per tonne by 2015. Although the EU subsequently reneged on this agreement following the collapse of the Geneva mini-Ministerial in July 2008, it seems more than probable that this represents only a temporary reprieve for the majority of Caribbean banana producers (the Dominican Republic and, possibly, Belize being the exceptions), as the EU extends the benefits of freer trade to other, more efficient banana-exporting countries. The sugar reforms have followed an analogous pattern since the EU took the decision in February 2006 to denounce unilaterally the ACP Sugar Protocol (SP) and to impose a 36 per cent cut to the domestically-administered price - and therefore the export price received by beneficiaries of the SP - to be implemented over a four-year period. Although Caribbean beneficiaries of the SP (Belize, Jamaica, Trinidad & Tobago and St. Kitts & Nevis), along with the Dominican Republic, will be granted an additional quota of approximately 60,000 tonnes on a transitional basis until September 2009, the ability to offset the effects of the price reduction by increasing the volume of exports will be tempered by the presence of an 'anti-surge' safeguard mechanism within the CARIFORUM agreement. Furthermore, Caribbean sugar producers are likely to face significant price competition after September 2009 when beneficiaries of the EBA will be eligible for duty- and quota-free treatment, while the EPA does little to assuage the probability of further EU price reductions as part of the ongoing reform of the CAP.

than securing agreement on the WTO-plus provisions. Hence the CRNM saw little merit in an interim agreement limited to trade in goods.¹⁴ Moreover, as Ambassador Richard Bernal (2008: 22), the CRNM Chief Negotiator during the EPA negotiations, has put it, a 'goods only' EPA 'would have entailed the adjustment costs of liberalisation without garnering the gains from the inclusion of services, investment and development-boosting measures'. Echoing Gruber's concept of 'bandwagoning', CRNM officials have also suggested that their willingness to engage in serious talks prior to the expiry of the Cotonou waiver, before other ACP regions got their act together, persuaded EU negotiators to cede considerable ground to CARIFORUM in order to secure a more comprehensive agreement.¹⁵ In support of this, the CRNM point to a number of aspects of the CARIFORUM agreement which appear to grant significant concessions to the region while providing favourable access to the EU market. The most notable provisions in this respect include EU commitments regarding the temporary movement of natural persons (Mode IV), granting Caribbean professionals market access for the supply of cross-border services in 29 different industries, lengthy transition periods for the removal of tariffs to enable revenue-dependent economies to undertake tax reform, plus the exclusion of approximately 75 per cent of agriculture for any import liberalisation and the exemption of sensitive sectors like public services and utilities from commitments under the investment chapter.¹⁶

While the significance of these concessions should not be underplayed, the extent to which the CARIFORUM text as a whole will be sufficient to spur the kind of economic diversification envisaged by the CRNM remains debatable. Indeed, some critics have argued that the EPA is more likely to achieve the precise opposite (Brewster, Girvan and Lewis 2008; South Centre 2008a). The main reason for this, they suggest, is that the CARIFORUM agreement mainly consists of improving market access, even if only marginally, for traditional commodities like rum, beef and dairy products while exposing the region to a greater level of import competition for higher-value added industrial and other processed goods. Hence the EPA will reinforce rather than lessen the Caribbean's existing terms of trade. Furthermore, it is argued that the level of tariff and regulatory harmonisation

¹⁴ Confidential telephone interview with a senior CRNM official, Kingston, Jamaica, 8 January 2009.

¹⁵ Confidential interviews, Geneva, 3 February 2009.

¹⁶ *Ibid.*; confidential interviews, Kingston, Jamaica, January 2009.

required by EPA risks robbing the region of the very policy tools that might be used to effect a successful diversifications strategy. Although tariffs constitutes only one of a number of WTO-compatible policy tools potentially available to assist developing countries, discretion over this area is seen as particularly important for small states which lack the resources required to implement larger-scale industrial policies (South Centre 2008a: 18). As we have seen, the EPA requires CARIFORUM to eventually remove close to 90 per cent of the tariffs currently levied on imports from the EU, including the abolition or ‘standstill’ of export taxes and other charges. The lengthy transitions periods and product exclusions secured for sensitive imports do potentially offer a means - albeit mostly temporary - to mitigate the loss of tariff policy space. Yet even here the CRNM has taken less-than-full advantage of the available flexibilities since even the EU’s conservative interpretation of Article 24 would permit the exclusion of a much higher proportion of trade than actually granted under EPA.¹⁷ Furthermore, to the extent that the CRNM did take advantage of available flexibilities with respect to transition periods and product exclusions, its negotiation position seems to have been largely informed by static considerations related to the need to protect fiscal revenue and agricultural interests rather than dynamic considerations related to longer-term industrial policy objectives (*Ibid.*: 8). Where specific industrial policy objectives are cited explicitly in the EPA text, the relevant provisions are generally characterised by attendant restrictions and limitations that render such mechanisms difficult to invoke. In the case of the EPA Safeguard Clause which offers protection for infant industries, for example, the provision restricts action to the first ten years of the agreement and defines ‘infant industries’ in such a way so as to exclude cases where imports may be hindering the start up of an industry that does not yet exist. The Safeguard Clause also limits action to a rise in

¹⁷ Although Article 24 of GATT 1947 stipulates that FTAs must cover ‘substantially all trade’ (hence the need for reciprocity), in practice WTO members have been unable to agree on what in strict legal terms this actually means – to the extent that the Committee on Regional Trade Agreements has been unable to reach agreement on the legality or otherwise of any of the current crop of FTAs. In its previous FTAs the EU has adopted a quantitative interpretation of 90 per cent of all trade – thus enabling it to exempt agriculture from market opening commitments – and this seems to be the template that has informed the CARIFORUM agreement. Since the EU has liberalised 100 per cent of its goods sector, CARIFORUM would arguably need only to liberalise around 80 per cent of imports, rather than the 87 per cent actually agreed to, in order to meet the this quantitative interpretation. Furthermore, taking into account the dynamic effects of trade liberalisation, which presumably means that the volume of bilateral trade covered by the FTA is expected to grow over time, CARIFORUM would have been entitled to claim even more flexibility than the 20 per cent exclusion cited above. However, given that Article 24 has yet to be tested under the WTO DSM, the extent to which CARIFORUM did or did not exploit the full range of available flexibilities remains, to say the least, moot.

import duty only to the level of the *current* bound rate under the WTO, meaning that the safeguard would be rendered immediately obsolete following a successful outcome to the Doha Round (*ibid.*: 13).

A third justification offered by the CRNM to account for the relatively far-reaching nature of the CARIFORUM agreement relates to the aim of strengthening and reinvigorating the Caribbean regional integration process. This objective has been advanced by the EU in support of the EPAs elsewhere - but it has added resonance in the Caribbean due to the relatively advanced stage of the regional integration process. Even so, it is not altogether clear how and in what specific ways EPAs actually serve to strengthen or invigorate the regional integration process, either in the Caribbean or elsewhere in the ACP. One of the key challenges presented by the CARIFORUM agreement resides in those areas where the level of trade liberalisation and regulatory harmonisation goes beyond what has been agreed to at the regional level. In spite of the launching of the Caribbean Single Market Economy (CSME) in 2006, one estimate suggests that close to one-half of the measures required for the Single Market are yet to be implemented - including a number of areas such as government procurement, e-commerce and the free circulation of goods which are contained in the EPA (Girvan 2008: 6). Another problem relates to the Regional Preference clause which obliges CARIFORUM signatories to extend to each other the same treatment they extend to the EU. This clause is seen as controversial even within the English-speaking Caribbean due to a divergence in base rates and individual liberalisation schedules, but it is potentially far more problematical in the case of the Dominican Republic whose market access offer includes no less than 125 tariff lines excluded by CARICOM (South Centre 2008a: 23). Although a FTA between CARICOM and the Dominican Republic was signed in 1998 and entered into force in 2001, the agreement has yet to extend the liberalisation in goods to services while the level of regulatory harmonisation eventually envisaged is not comparable to the EPA. Finally, concern has been expressed about the different approaches of CARICOM and EPA towards the question of Special and Differential Treatment (SDT) for the region's lesser-developed countries. Although the CARIFORUM agreement does contain a number of references to SDT, their precise meaning remains ambiguous which has provoked some of the smaller economies like Belize to complain that they are being robbed

of important derogations and flexibilities permitted under both the CSME and the CARICOM-Dominican Republic FTA.¹⁸

A fourth and final justification offered by the CRNM for the EPA relates to development assistance and, more particularly, the belief that a willingness to sign a comprehensive agreement would place the Caribbean in an advantageous position vis-à-vis the rest of the ACP with respect to the financial component of the EPAs. As we have noted, even though there are repeated references to development cooperation in the text, the financial component of the CARIFORUM agreement remains almost entirely unbound. In this sense, the political bargain behind the EPA can be said to resemble the lopsided deal struck in the Uruguay Round wherein developing countries agreed to take on 'bound commitments to implement in exchange for unbound commitments of assistance to implement' (Finger and Schuler 2000: 514). What makes this comparison particularly apposite is that the EPA itself does not contain a funding facility but simply reaffirms that development cooperation will be facilitated by existing aid mechanisms linked to the Cotonou Agreement and the EDF. This being case, historical precedent would suggest that any funds earmarked to support the implementation of the EPA are likely to be characterised by a significant, if not an indefinite, time lag between the announcement and disbursement of financial aid (Grynberg and Clarke 2006). Even if this proves not to be the case, the actual resources that the EU has pledged to support EPA - that is, the EDF and Aid for Trade funds mentioned earlier - are likely to be dwarfed by the actual adjustment and implementation costs which one study has placed close to €1 billion (Milner 2005). Finally, because these financial commitments have been conceived within the context of asymmetrical bargaining, it seems plausible to expect that, to the extent that development finance is available to support the EPA, it is likely to reflect the EU's priority of targeting narrowly-defined trade adjustment and implementation needs rather than addressing wider capacity issues which might enable Caribbean countries to diversify and hence trade their way out of poverty.

¹⁸ Confidential interviews, Ministry of Trade, Belmopan, Belize, 3-6 February 2009.

6. Conclusion

In this paper we have sought to resolve the puzzle of why CARIFORUM chose to break ranks with the ACP in order to sign a 'full' EPA, even though the option remained of signing a less onerous 'goods only' agreement that would have been enough to secure its Lomé/Cotonou preferences from further WTO litigation. The straightforward solution to this puzzle draws attention to key differences in terms of regional institutions and negotiating structures. That is to say, the CRNM provided CARIFORUM with the type of bureaucratic capacity and supranational authority deemed necessary to negotiate region-wide reciprocal trade agreements but which are generally absent in other parts of the ACP. The capacity of the CRNM to negotiate on behalf of CARIFORUM was also facilitated by its idiosyncratic foundations, which enabled it to articulate a series of consistent negotiating positions relatively unencumbered by the normal political constraints. The quasi-autonomous status of the CRNM¹⁹, coupled with the comparatively homogenous character of the Caribbean region, thus goes some way to explaining why the outcome of the EPA negotiations turned out to be markedly different in the Caribbean than in the rest of the ACP.

Yet differences in regional institutions and negotiating structures do not tell the whole story. Borrowing insights from the IPE literature, the paper has shed light on how power asymmetries influenced how the CRNM and Caribbean heads of government came to perceive the relative costs and benefits of EPA. Although cognisant of numerous problems associated with the CARIFORUM text, regional elites nevertheless made the strategic calculation that a willingness to sign a comprehensive EPA would enable the region to extract the maximum number of concessions from the EU in order to craft a deal best suited to its particular development needs. As we have argued, however, in the absence of power-balancing institutions that normally serve to mitigate some, but by no means all, of the worst effects of asymmetric bargaining, it appears that CARIFORUM has surrendered significant amounts of policy space (among other things) in exchange for trade benefits that

¹⁹ It is worth noting that, during the 30th Annual Conference of CARICOM Heads of Government, held in Guyana 2-4 July 2009, the decision was taken to rename the CRNM as the Office of Trade Negotiations (OTN) and to redefine its operational remit. Among other things, the OTN has now been re-incorporated into the CARICOM Secretariat. These changes are seen as a direct result of the fallout from the EPA negotiations where the quasi-autonomous status of the CRNM was widely criticised in the region. The controversy surrounding the CRNM provides an interesting commentary on the EPA process as a whole, which is premised on using collective regional institutions to negotiate what are in effect a series of bilateral FTAs.

may very well turn out to be illusory. Since EPA is based on lengthy transition periods designed to cushion the effects of liberalisation, it is likely to be some time before the long-term development consequences of the agreement become clear. Even so, the precedents set in the CARIFORUM text are likely to impact well beyond the region's bilateral relationship with the EU by redefining the ideological and policy parameters of the Caribbean's wider trade and development options for some time to come.

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