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The EU-CARIFORUM EPA:
Pursuit of Neo-Mercantilist Goals
under the Cloak of Development Cooperation?

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Abbreviations

AASM group	Association of African States and Madagascar
ACP	Caribbean and Pacific states
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
BTA	Bilateral trade agreements
CAFTA	Central American Free Trade Agreement
CAP	Common Agricultural Policy
CARICOM	Caribbean Community
CARIFORUM	Caribbean Forum
CARIFTA	Caribbean Free Trade Area
CEFTA	Central European Free Trade Association
CET	Common External Tariff
CFSP	Foreign and security policy
CLE	Council of Legal Education
COTED	Council for Trade and Economic Development
CRIP	Caribbean Regional Indicative Programme
CRNM	Caribbean Regional Negotiating Machinery
CRTA	Committee on Regional Trade Agreements
CSM	CARICOM Single Market
CSME	Caribbean Single Market and Economy
CSS	Contractual Service Suppliers
CXC	Caribbean Examination Council
DC	Developing Countries
DFQF	Duty-free and quota-free
DR	Dominican Republic
DSB	Dispute settlement board
EBA	Everything But Arms
EC	European Community
ECB	European Central Bank
EDF	European Development Fund
EEC	European Economic Community
EIB	European Investment Bank
EPA	Economic Partnership Agreement
EPC	European Political Cooperation
EU	European Union

FTAA	Free Trade Area of the Americas
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GSP	Generalized System of Preferences
HDI	Human Development Index
IP	Intellectual Property
IMF	International Monetary Fund
LDC	Less developed countries
MDC	More developed countries
MERCOSUR	Southern Common Market
MFN	Most Favoured Nation
MRA	Mutual recognition agreement
NAFTA	North American Free Trade Agreement
NTB	Non-tariff barriers to trade
OCT	Overseas countries and territories
ODA	Official development aid
ODC	Other Duties and Charges
ODI	Overseas Development Institute
OECD	Organisation for Economic Co-operation and Development
OECS	Organisation of Eastern Caribbean States
OMR	Orderly marketing arrangements
ORC	Other restrictive regulations of commerce
PACP	Pacific ACP States
RDB	Regional Development Bank
RFTA	Regional Free Trade Agreements
RoO	Rules of Origin
RPTF	Regional Preparatory Task Force
SADC	Southern African Development Community
SAT	Substantially all the trade
SC	Southern Countries
SDT	Special and differential treatment
SFA	Special Framework of Assistance
SME	Small and Medium Enterprises
SP	Sugar Protocol
SPS	Sanitary and Phytosanitary Standards
STABEX	Stabilization of Export revenues
SYSMIN	System for mineral products

TAFTA	Thailand-Australia Free Trade Agreement
TBT	Technical barriers to trade
TEC	Communitarian Trade policy
ToR	Treaty of Rome
TRA	Trade Related Assistance
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UNCPC	United Nations Central Classification
UPU	Universal Post Union
US	United States
VCLT	Vienna Convention on the Law of Treaties
VER	Voluntary export restraints
WEU	Western European Union
WTO	World Trade Organisation
WTO+	WTO-plus

1 Introduction

Context and background issues

For more than four decades the EU granted ACP states preferential access to its domestic markets. The recently concluded Economic Partnership Agreements (EPAs) will put an end to the EU's long-standing system of Lomé preferences by progressively removing barriers to trade between the signatory parties. The Caribbean is one of the six regions having emerged from a splitted ACP group. Under the threat of the imposition of higher tariffs, Caribbean Forum (CARIFORUM) states submitted hastily drawn up liberalisation schedules, which include commitments that even go beyond that required by WTO regulations. The Agreement also addresses a number of issues, which are not yet settled in the Caribbean Single Market and Economy (CSME) or are pending full implementation.

Study objective

The present thesis is a critical reflection on the recently concluded Economic Partnership Agreement (EPA) between the European Commission (EC) and the countries of the CARIFORUM. The objective of the study is twice-fold: On the one hand, it attempts to illuminate the reasons why EPAs have come to replace the non-reciprocal preferences granted under the Lomé Conventions and later under the Cotonou Agreement. On the other hand, it seeks to analyse the implications of the EPA provisions for the economic development as well as the integration process of the Caribbean region.

The study is very comprehensive in its approach, seeking to illuminate the EU-CARIFORUM EPA from a political, economic and legal perspective. Particular efforts were employed to build a bridge between the broader theoretical framework (conceptual level), and the technical details of the Agreement (empirical level).

With regard to the latter, it shall be noted that explanation on the EPA prior to its signature, notwithstanding public consultation, was fairly deficient. Information from official sources had been either vague or incomplete and often raised *'more question than answers'* (Girvan, 2008a, p.3). Therefore, a further purpose of this study is also to provide a deeper insight into the scope and content of the EPA regulations. This is all the more important given the fact that the Agreement will determine the future development path of the region and seriously affect its integration process.

Research question and hypothesis

The central question of this study is whether the EC-CARIFORUM EPA represents a new form of political and economic cooperation between the EU and the Caribbean region or if it is just another manifestation of the old asymmetrical Lomé practices. In order to address this question three hypotheses have been formulated, which will guide the research direction of this study:

- 1) The EU-CARIFORUM EPA fails to address the proclaimed goal of reducing and eventually eradicating poverty in the Caribbean region.
- 2) The provisions of the EU-CARIFORUM EPA run counter to the Caribbean integration process.
- 3) The EU pursues its Neo-Mercantilist interests under the cloak of development cooperation within the EU-CARIFORUM EPA.

Content and structure of the thesis

The study is organised in 6 chapters (i.e. an introduction and a concluding chapter and four thematic chapters):

Following this introduction, **chapter 2**, attempts to embed the EPAs into a broader political and economic context: It is often argued that the EU would be forced to replace its unreciprocal trade preferences by virtue of pressures emanating from the multilateral system. While, this is indeed the case the question needs to be raised to which extent the EU itself has been a promoter of globalisation in terms of world-wide liberalisation. Subsequently, the chapter will focus on the EU's strategic behaviour in international trade negotiations, illuminating why it, once again, has turned to the bilateral track in order to pursue its interests.

Thereafter, the structure and functioning of the EU's multi-level system in the policy field of development will be the subject of attention. Though the title of this thesis might create the impression that the EU pursues an explicitly defined strategy within its external relations, this shall be viewed from a differentiated perspective. Indeed, there are not only a variety of actors in the European decision-making process, but also a multiplicity of factors forming the policy outcomes of the EU. Therefore, internal dynamics as well as external factors affecting the process of European integration will be discussed. Finally, the chapter seeks to clarify the conceptual basis of 'Neo-Mercantilism' as well as its significance in present-day politics. Though the term has been discussed in informal literature and to a certain degree also in academic work (see Becker and Raza, 2007; Raza, 2007; the author is not aware of any others), the term requires further clarification.

Chapter 3 proceeds with the background to the EU-CARIFORUM EPA. First a historical outline of the relationship between the EU and the ACP states will be presented, drawing special attention to the underlying power asymmetry between the two partners as well as the changing strategic context in which the EU is operating.

The latter comes along with a fundamental reorientation of the principles and mechanisms, guiding the EU's development cooperation. Finally, the chapter will address the legal aspect of the EPAs: What are the relevant provisions in the Cotonou Agreement on the negotiation of EPAs and which requirements do regional free trade agreements (RFTAs) have to meet in order to comply with WTO regulations?

Chapter 4 seeks to illuminate the CARIFORUM perspective. After providing a brief overview of the economic landscape of the CARIFORUM states, the evolution and current state of regional integration will be analysed.

Chapter 5 discusses the detailed provisions of the EU-CARIFORUM EPA, focusing on their implications for the Caribbean integration process as well as the economic and political development of the region. Finally, the study closes with a summary of the major findings (**chapter 6**).

Method and literature

The author's interest for the EU-CARIFORUM EPA has been aroused at an internship in the Latin America and Caribbean Bureau at the United Nations Industrial Development Organisation (UNIDO) from July 2005 until January 2006, which also presented the starting point for investigation. For the empirical part of this thesis several Agreements have been analysed (including as the EU-CARIFORUM EPA, the Cotonou treaty, the General Agreement on Tariffs and Trade (GATT) amongst others) alongside with information sheets and press releases by Caribbean and ACP institutions. It also comprises informal and formal literature by Caribbean intellectuals, reports by official organisations dealing with North-South relations and news reports by Caribbean media.

The literature for the theoretical part ranges from primary and secondary literature to a number of political science lexicons (for the chapter on theoretical approaches) and EU documents. It equally involves a dissertation, a paper on the EU's role in the WTO, reports by official institutions, informal literature, as well as papers and presentations dealing with EU-ACP relations.

2 Theoretical approach

2.1 *Theoretical Approaches to the study of EU-Cariforum relations and European integration*

2.1.1 Theories of international relations and institutionalism

The EU-Cariforum EPA as the object of investigation can be viewed from different theoretical angles. On the one hand one can draw on theories of international relations. In the 60s and 70s dependency theories developed by critical scholars were the prevalent theoretical approaches for explaining North-South relations. From their point of view, certain historical relations and certain patterns of trade created by the centre, which systematically discriminate peripheral states. It is these dependency relations, which nation states of the centre strive to maintain (Meyers, 2005a, p. 474). Dependency-theoretical approaches, however, have two major shortcomings. The first relates to the lack of explanation for the origin of these power disparities. Second, the basic assumption of a diverging development between industrial and development countries falls short of explaining the recent success of some Asian countries, which were formerly weak economies.

From the view of neorealist scholars cooperation reflects the interests of the most important nation states (M. Elsig, 2002, p.49). In the light of given social resistances, actors of international politics seek to push through their selfish interests, based on a cost-benefit calculus (Zürn, 1994, p. 320). Applied to the case of the EU and the Cariforum states this logic would imply that it is exclusively trade interests which drive the EU to cooperate with the Caribbean region and that the EU's proclaimed target of poverty reduction constitutes an irrelevant factor as incentive for cooperation. What both theoretical schools have in common is their perception of nation states as being the central actors of international politics (Meyers, 2005a, p.466). The main criticism of neoliberal institutionalists relates to the *a priori* view of nation states as being given entities and the neglect of processes of interest formation. The approach disregards the question of how and why social actors develop certain interests (Zürn, 1994, p. 321).

On the other hand EU-Cariforum relations can be viewed from an institution-theoretical approach as alternative concept to the neorealist school. From the view of institutionalists, the international political system would be characterised by a globalising world economy with rising interdependencies. In this system institutions (and regimes) constitute a central element for political and economic acts (Meyers, 2005b, p. 505), for which they would determine power relations and limit the room for manoeuvre (Waschkuhn, 1994, p. 188). Following this approach

one can, thus, derive the argument that the EU is forced to liberalize trade within the framework of RFTA by virtue of pressures emanating from the multilateral system to adopt to WTO regulations. While this is undoubtedly the case, this explanation requires a deeper understanding of the interrelation between the EU and the WTO. The extent to which the EU was forced to adapt to a globalising world economy and to which itself had been a promoter of world-wide liberalisation in the multilateral trading system had already been discussed in chapter 2.2.

Finally, the issue can be viewed from an integration-theoretical perspective. Following the approach of D. Dialer (2000), the preceding section shall illuminate the structure and functioning of the EU's multi-level system in the policy field of development.

It will draw on traditional and modern theories of integration in order to analyse internal dynamics but also external factors affecting the process of European integration.

2.1.2 Theoretical Approaches to the Study of European Integration

Integration theories deal with processes, where nation states agree to delegate parts of their foreign and internal affairs to newly established joint institutions (Lehmkuhl, 1997, p. 138).

Traditional integration-theoretical scholars emphasise on two investigation areas: First, they ask why political actors are willing to orient their activities and expectations towards a new political centre. And second, they attempt to identify conditions under which sovereign nation states are able to melt into a wider community (cf. Lehmkuhl, 1997, p. 138-139; Bergmann, 1995, p. 214). Following the 'backlash' of the grand theories in the mid 1970s, recent approaches have shifted their research interest towards single policy fields and towards policy processes in a multi-level system (Kohler-Koch and Schmidberger, 1996, p.160-161; Elsig, 2002, p.50).

Traditional integration theories

Another perspective from which the EU's international behaviour in international trade politics can be illuminated is neo-functionalism (proponents: Ernest B. Haas, Joseph S. Nye, Leon Lindberg, Robert Keohane). According to Haas (1968, op. cit. Dialer, 2000, p.24) the integration process commences in one area and creates an automatic spill-over into neighbouring policy fields. Hoffmann (2000, op. cit. ibid.) - a proponent of the intergovernmental-realistic school - distinguishes between high politics (i.e. security) and low politics (i.e. development). Dialer (ibid.) in this context highlights the nexus between these two areas by arguing that the construction of 'threat' (i.e. terror) emanating from the ACP states raises development politics into the area of high politics.

Following the functionalist concept of spill-overs, the process of European integration increases external expectations in the interdependent world system. Grimm (2003, op. cit. *ibid.*), thus, argues that both the European integration process and the EU-enlargement strengthened the Community's presence on the international political scene.

The (in)direct expectations of ACP states towards the EU are closely linked to their perception of the Union's role in the global political arena. According to Allen and Smith's presence concept, the quality of 'actorness' (i.e. the capability to take part in international politics) attributed to the EU by third countries is based on their perception and expectation of the EU's role in economic affairs, security policy and foreign relations. The main problem, in this context, is with regard to the opportunities of the EU (Hill, 1998, op. cit. *ibid.*). However, the EU itself would be responsible for this 'capability-expectation gap', since the pronouncement of ambitious goals in the public would raise expectations and create pressure.

The EU's multi-level governance

Following the governance approach, the structure of the EU polity determines the way political processes take place and how policy outputs look like (cf. Jachtenfuchs and Kohler, 2000, p. 101). Jachtenfuchs and Kohler therefore turn Lowi's (1964, op. cit. *ibid.*, p. 101) argument on its head by arguing 'polity determines politics and policy' (Jachtenfuchs and Kohler, 2000, p.101). While it cannot be denied that the delegation of competences to the EU reduces the room for manoeuvre (Kowalsky, 1997, op. cit. Dialer, 2000, p. 26), member states still play an important role in the EU system (Schmitter, 1996, op. cit. Jachtenfuchs and Kohler, 2000, p. 101-102). An overall assessment of the distribution of policy-making powers between the European and the member state levels would suggest 'that the EU is stuck somewhere in the middle' and that there would be large variations with regard to policy fields (Jachtenfuchs and Kohler, 2000, pp.101). In the governance system of the EU policy competences are shared between the different levels 'with the member states retaining a very substantial role in decision-making, including the exclusive power to extend or reduce EU policy-making competencies' (*ibid.*, p.102). A further specific feature of the EU's institutional structure, is that 'EU politics is not characterized by hierarchical and majoritarian decision-making and implementation but by negotiations among independent actors and institutions' (*ibid.*, p.102). Scharpf (2002 and 2003, op. cit. Dialer, 2000, p. 26-27), in this context emphasises on the interdependency of decision-making levels by removing the categorical separation of international and intranational systems. Accordingly the EU can be perceived as a non-hierarchical system, with sometimes unclear responsibilities and the interrelation of decision-making levels being subject to dynamic changes.

This perception of the EU as a non-hierarchical, dynamic multi-level system has important implications for the EU-Cariforum relations. On the one hand, the EU in the area of development politics is limited in its policy-making competencies. This is since the member state's quest for sovereignty badly corresponds with a common position in that area (Dialer, 2000, p. 27). Its room for manoeuvre in the international system (and in particular in the area of development politics within the EU-Cariforum partnership) depends on the quality of European actorness, which in turn is determined by the following factors (op. cit. Dialer, 2000, p.27):

- institutional design
- actor constellation (Zürn, 1992 and 2004; Genschel, 2000),
- problem type (Miles at al., 2002; Scharpf, 2003),
- absence of political parties (Jachtenfuchs, 2000), and
- learning processes (Jachtenfuchs, 1996; Eising, 1999).

On the other hand, the quest for influence 'in a system with dispersed allocation of governing authority' (Jachtenfuchs and Kohler, 2000, p.104) has led to a shift of all kinds of actors to the transnational level. National interest groups have adapted to the modified polity structure and now pursue a dual strategy by lobbying both at the nation state and the regional (European) level (ibid., p. 104). The same applies to EU associations and civil society organisations, now operating on the European as well as on the member state level. Their ability to take part in the Community's policy-making process depends on their competence with regard to problem-solving as well as on the available resources 'to make their voices heard' (ibid., p.104).

Social constructivism

Social constructivism constitutes a rather new approach within the study of European Integration. While there have been discussions on what exactly defines social constructivism and how it is demarked from other disciplines, today constructivism is viewed as another fundamental theory of regional integration. Risse (2000, p.160) describes it as a 'meta-theoretical approach to the study of social phenomena'. However, constructivism does not make any substantive claims about the EU's regional integration process. Constructivists may agree with the intergovernmental focus on interstate negotiations. But they may as well agree with the neo-functional concept of spill-over effects. And equally they may join the institutionalist perception of the EU as a multi-level system.

Rational choice approaches insist that actors behave strategically in accordance with the concept of the *homo oeconomicus* (which is to maximize utility), taking preferences as given (see Pollack, 2000, p. 139). These agency-centred approaches lie at the bottom of many

theories of the prevailing academic literature. Constructivism, here, complements rather than substitutes these approaches. In particular constructivist scholars suggest that the interests of actors cannot be treated as exogenously given but are rather subject to political culture, discourse, and the 'social construction' of interests. Hence, social structures and agents are mutually co-determined. However, constructivist scholars also insist on the mutual constitutiveness of (social) structures and agents. Risse (2000, p.164) in this context writes:

'The social environment in which we find ourselves, defines ('constitutes') who we are, our identities as social beings. 'We' are social beings, embedded in various relevant social communities. At the same time, human agency creates, reproduces, and changes culture through our daily practices.'

The difference between rational choice and constructivism becomes even more evident when looking on the impact of the European integration process on member states. Whereas in the view of rational institutionalists social institutions (such as the EU) constrain actor's behaviour ('logic of consequentialism'), social constructivists and social institutionalists follow a 'logic of appropriateness' (March and Olsen 1989 and 1998, *ibid*, p.163; Pollack, 2000, p. 139). Accordingly, actors would try to 'do the right thing' that is to select the behaviour which they consider appropriate for the given institutional framework (Risse, 2000, p.163). The institutional environment, thus, influences how actors shape their preferences and the way they chose to behave. Applied to the case of the EU-Cariforum EPA, this means that the actors of development politics – be they EU officials, national governments, firms or interest groups - are deeply affected by the social norms communicated by the EU. Dialer (2000, p. 28) in this context argues that rule-guided actors are sometimes faced with the problem of not knowing whether a certain behaviour is appropriate for a given situation or not. Equally, from a rational perspective, strategic-instrumental actors are not always aware of their interest or do not possess enough knowledge to pursue their goals (Dialer, 2000, p. 29).

However, there are controversial debates among constructivists on the direction of cause-effect relationships. According to Wiener (2003, *op.cit.* Dialer, 2000, p. 29) it is not norms which determine actor's behaviour, it is rather actor's behaviour which create norms by interacting with the political environment. Further, the focus on norm-guided behaviour does not imply that norms are always met. A survey of the European law acts reveals that compliance with the *acquis communautaire* varies significantly depending on the member state and the subject area (see Börzel, 2001, *op. cit.* Risse, 2000, p. 164). Nonetheless, the fact of having joined the EU, increases the likelihood of compliance with the law. This is since EU accession implies 'the voluntary acceptance of a particular political order as legitimate and the recognition of a set of rules and obligations as binding' (Risse, 2000, p.164).

The study of communication and discourse practices can yield fundamental insights into the understanding of the European Union. Here, social constructivists have made two important contributions in this regard. First they applied the Habermasian theory of communicative action to international relations. Argumentative behaviour – that is to say negotiating on the basis of arguments and reasoning - enables actors to justify their principles and norms inherent to their actions. It also means that rather than pursuing their fixed preferences, participants of a discourse 'are open to be persuaded by the better argument' and that power relations and social hierarchies are less authoritative (Risse, 2000, p.164). An analysis of international negotiations reveals that there are indeed scarcely situations exclusively based on bargaining.

The second way in which discursive practices have contributed to the studies of the EU relates to their role for the construction of meanings. Discursive arenas play a key role in creating connotations for particular terms and in determining with what they are associated. They are, thus, responsible for establishing and perpetuating power relationships (see Risse, 2000, p. 164-165). For example the term 'partnership' contained in the word 'EPA', might draw the curtain over the power asymmetry between the EU and the Cariforum states, creating the impression that it is *equal* partners which agree on a set of principles and obligations. Equally, discursive practices are decisive in determining which spokesmen are considered qualified and what arguments are viewed as being reasonable (ibid.).

2.2 *The EU's role in the WTO: from defensive, re-activism towards pro-liberal activism*

For more than four decades the EU granted ACP states preferential access to its domestic markets. The recently negotiated EPAs with the six ACP regions will put an end to the EU's discriminatory preferences by progressively removing barriers to trade between the signatory parties. While the legal background to that issue will be discussed in chapter 1.1, the present chapter attempts to illuminate the wider political picture of international trade politics: Which factors drove the EU to terminate its discriminatory trade preferences and to follow instead the path of RFTA? This question shall be answered by analysing the EU's role in the multilateral trading system.

2.2.1 Globalisation and European regional integration

There is no doubt that the EU benefits quite well from globalisation. Trade figures reveal that external trade has assumed considerable importance for European economies. In the case of merchandise trade, the share of Extra-EU exports to EU-15 GDP increased from 6,88% in 1991 to 10,80% in 2004. Measured against world exports, this equals an increase of more than 4% over the same period (from 16,00% in 1991 to 20,09% in 2004). A similar development holds true for services: From 1991 to 2004 the share of Extra-EU services trade to EU-15 GDP rose from 5,51% to 7,12%. Though measured against world exports, the EU's market share in services decreased from a high of 24,52% in 1990 to 20,71% in 1992, it remained at this level over the period to 2004, when it reached 20,81%. The share of the US in world merchandise exports, in contrast, decreased by 3 percents to less than 15 percent, and by 1,7 percent to 15,3 percent for services over roughly the same period (UNCTAD, 2004 and 2005, op. cit. Raza, 2007, p.67-68). Thus, also compared to its main rival, the EU's export performance is quite impressive. Today it represents the biggest trading bloc in the world economy, followed by the US on the second, and China on the third place (DG Trade, 2006b, op. cit. Mortensen, 2007, p.4). Against the background of the emergence of some Asian countries (in particular China and India), it was able to expand its market share in merchandise trade and to maintain its leading role in services trade (Raza, 2007, p. 68).

Alongside this process of global economic integration movements within the EC towards an ever closer union have taken place (Rode, 2000, p.48). With its ambitious project of the European Single Market Economy, the EU strived towards economic integration, while the treaty of Maastricht presented a fundamental pillar for fiscal and political integration. Within the Community national boundaries are gradually eroding. Today, the EU represents a supra-national institution with legal authorities exceeding those of the old nation states.

However, up to date 'European integration' rather relates to an economic than to a political process (cf. *ibid.*, p.48-49). Despite achievements in some areas, the EU's common foreign policy - in particular the European Political Cooperation (EPC) and the common security policy of the Western European Union (WEU) - remained weak points of European integration. In these areas the EU is still limited in its capability to act as a unified entity in international politics.

2.2.2 The EU as a promoter of globalisation between the spokes

Since the creation of the GATT the EU's role in the multilateral trading system has undergone fundamental transformations. In the early years of the GATT, Europeans tended to be defensive, reactive players in the international trade system (Mortensen, 2007, p.14). The EC figured as an actor of regionalisation rather than actively promoting globalisation (in terms of world-wide economic liberalisation and global integration) (see Rode, 2007). It functioned as a role model for other countries and regions and inspired the creation of NAFTA (North American Free Trade Agreement), APEC (Asia-Pacific Economic Cooperation) and Mercosur. Though in a slightly different way, they all followed Europe's example of regional integration. The EC, thus, indirectly stimulated the process of globalisation. Rode (2000, p.48) talks about an 'action-reaction scheme' where regionalisation and globalisation are two sides of the same coin. On the one hand Europe's integration process can be seen as a response to global competition between nation states and regions. On the other hand the EU's regional success presents a driving force for its economic rivals (the US and Japan) as well as emerging NICs to adopt regional strategies, which in turn stimulate the integration process of the EU.

It can also be said that the EU figures as a promoter of a liberalisation process between the spokes (Langhammer, 2000, p.34). This is particularly the case if it concludes bilateral agreements with trading blocs which contain regional cumulation provisions. These allow signatories of such an agreement to source raw material from each other and still have the final goods qualified as 'originating'. Moreover, without pressures from the EU on Middle and Eastern European countries the Central European Free Trade Association (CEFTA) would probably not have been established. It is equally claimed, that the ACP states would not be willing or able to promote regional liberalisation to the extent the EU, now, is asking them to do within the EPAs.

2.2.3 Hegemonic stability theory

The prevalent theory for explaining the creation of the GATT system is that of hegemonic stability. Accordingly, the unipolar character of the GATT hierarchy with the US on the apex would bring stability and order to the system. Indeed, there are striking similarities between the American Reciprocal Trade Agreement Act of 1934 and provisions of the GATT agreement (Rode, 2000, p. 50). The hegemonic stability theory, however, only serves to explain the initial phase of the multilateral trading system up the 70s and 80s when the US dominance started to erode. For the continuation of the WTO regime institutional approaches are frequently used, according to which regimes are able to survive even without the existence of a hegemonial power (ibid.). This is by virtue of learning effects gained from successful cooperation and since the necessity to regulate areas of common interest would prevent a breakup of the system.

Certainly, this represents a rather idealistic-normative approach, since only the WTO staff members, comprising about 500 representatives, can be said to be merely regime-loyal (ibid.). Indeed, the WTO but also in the International Monetary Fund (IMF) was governed by a group hegemony of the world's leading economies. This comprised the states of the triad (the US, Japan and Germany - or today the EU) the G-7 group and the 29 OECD (Organisation for Economic Co-operation and Development) members (as of 1998). Without backing by the OECD world, the WTO would certainly not be able to survive. A modified theory of group hegemony, thus, provides a reasonable explanation.

2.2.4 Between protectionism and liberalisation

The EU integration has always figured as a motor for the trade Rounds as they were aimed to offset the trade disturbing effects (cf. Rode, 2000, p.21-52). This has for example been the case with regard to the Dillon Round from 1960-61. Equally, the Kennedy Round (1964-67) and the Tokyo Round (1973-79) aimed to diminish the negative effects resulting from increased EC exports. The Tokyo Round, in its case, has been motivated by the accession of Denmark, Ireland and Great Britain to the European Union in 1973 as well as by the progress of the Common Agricultural Policy (CAP). In the case of the Uruguay Round the EC's single market played a decisive factor. Finally, the Canadian-United States Free Trade Agreement as well as NAFTA had been inspired by Europe's regional integration process.

However, the EU has always been anything but comfortable within the multilateral trading system. For several decades the EU maintained traditional-institutional ties to privileged developing countries of the ACP and the Mediterranean region. With its discriminating

regionalism, including the granting of unreciprocal trade preferences (discriminating tariffs) and the provision of incentives aimed at enforcing environmental and social standards, it caused considerable costs for the international trading system. According to Bhagwati (1995, op. cit. Langhammer, 2000) and Bhagwati et al. (1998, ibid.) these preferential trade agreements of the EU are not in line with the WTO's transparency principle, increase transaction costs and facilitate the pursuit of protectionist goals by means of trade diversion (so-called 'spaghetti bowl phenomena'). It seems that the EU will not terminate its discriminating practices, unless it develops a common foreign and security policy (CFSP), instead of abusing its trade policy as a substitute (Messerlin, 1997, op. cit. Langhammer, 2000).

However, meanwhile external developments have contributed to tackle the negative effects of discriminating bilateral and plurilateral regional trade agreements: First, multilateral trade liberalisation diminishes the preference margin of privileged trading partners, rendering regional trade agreements less attractive. Second, trading partners of the EU are equally engaging in processes of uni- and multilateral liberalisation, which reduces the potential to discriminate. Third, the WTO is currently examining regional trade agreements according to their computability with Article 24 of the GATT, requiring stricter compliance for example in the area of rules-of-origin regulations. Fourth, the EU is currently striving towards the termination of unreciprocal preferences and the conclusion of RFTAs, including the right of establishment and other regulations. It will then have to fulfil the same requirements it is demanding from other WTO-members such as from NAFTA. Finally, traditional static trade effects have become less attractive for small economies due to the globalisation of financial markets and of returns to scale. They rather tend to opt for existent and well-proven regional integration systems, which protect them against the risks of globalisation.

2.2.5 The EU as a structural problem within the GATT

The EU's elaborate decision-making process has always presented a striking challenge for the GATT regime (Rode, p.2000, p. 52). The principle of a common commercial policy often resulted in slowness and rigidity in the actual operation of the EU's external trade policy. Though liberal strands - presented by Germany and Great Britain - had lost impact during the eighties, they presented a serious obstacle to the protectionist interests of France. Germany, which often found itself in a minority position, showed successful in tackling protectionist initiatives and to provide that the doors to European markets were kept wide open.

In fact, the EU constituted a structural problem within the GATT (ibid., p.49). As an important trading power the EU had become uncomfortable for the multilateral system, since it denoted

the internal conflict of the GATT's major principles: liberalisation, non-discrimination and MFN on the one side and the regional free trade areas on the other side.

The GATT committee, which had been established to proof computability with Article 24 has merely been called upon for EU issues. The reason for this is mainly of political nature. It had been feared that if the Committee would find any contradiction of existent provisions with Article 24 it could drive the EU to resign from the organisation. From the perspective of free trade advocates this certainly presented a major shortcoming of the GATT system. The only solution to the conflict between member states' political and economic sovereignty on the one side and the free trade axiom on the other side was to allow more flexibility within GATT provisions. Otherwise the multilateral trading system would certainly not have been able to survive (ibid., p. 49). The relation between the EU and the GATT system is also frequently described with the expression 'embedded liberalism' (cf. ibid., p.49-50). After the Second World War the US strived towards transforming the global economy into a free trade world. This goal was to be achieved progressively by means of the world trade rounds, which enabled the reduction of tariffs to a minimum level as well as the strengthening of the GATT regime. In a world economy consisting of nation states and regions the WTO can only exist with a pragmatic liberalism. Since the nineties the member states' willingness towards liberalisation has certainly decreased alongside with a better inclusion and control of the leading trading economies - in particular the US, the EU and Japan – into the WTO system.

Until the creation of the WTO, the EU was not able and willing to translate its raw market power into political leadership. It figured as a defensive, reactive player, 'preoccupied with domestic adjustments to a gradually globalising world economy' rather than actively promoting liberalisation (Mortensen, 2007, p. 15). This has, however, changed fundamentally during the Uruguay Round.

2.2.6 The creation of the WTO

The Uruguay Round presented a turning-point for the EU's role in international trade negotiations, moving away from protectionism towards liberal activism (see Mortensen, 2007, p. 17-19). In the beginning of the Round the Europeans were in the defensive. In particular France and Germany prevented progress in both the EU and GATT negotiations on the issue of agriculture. The Uruguay Round reflected the internal European contradiction between northern liberalists and southern protectionists (Rode, 2000, p. 54). The late success of the Round, culminating in the creation of the WTO can be well explained by US obstinacy. Finally, the reason for Europe's approval rested on the fact that neither the EU nor its member states wanted to be responsible for a failure of negotiations (ibid.).

The WTO, comprising the three agreements GATT, GATS and TRIPS, came into existence on January 1st 1995. The strengthening of enforcement mechanisms presented an extension of the GATT regime, while the WTO was formally being institutionalised as a permanent supranational organisation with ministerial conferences every two years and a two-third majority voting procedure. Moreover an ambitious liberalisation agenda was set down, including a further dismantling of tariffs, the reduction of agricultural subsidies, the transformation of quotas into tariffs and the reduction of governmental production subsidies (cf. *ibid.*, p. 54-55). The WTO regime also marked the beginning of a process of opening trade in services such as banking and insurance.

2.2.7 Diverging interests within the multilateral trading system

Since the creation of the WTO there were several examples of interests of member states clashing together (cf. Rode, 2000, p. 55-56). The US-Japanese automobile dispute in 1995, the liberalisation of financial services concluded in 1995, and the agreement concerning the liberalisation of telecommunication markets in 1997 all involved heated debates. The same applies to the banana dispute, which once again revealed that both the US and the EU seek to benefit as much as possible from the WTO system without bearing in mind the stability of the multilateral regime. Here, the preferences of the EU granted to ACP states for their postcolonial bananas apparently contradicted the interests of the US and its Latin American-based companies Chiquita, Dole and Del Monte. Following a controversial dispute between the two parties, the case was brought to the WTO's DSB in 1995. One year later the DSB ruled that the EU's banana regime was inconsistent with WTO obligations. The decision was confirmed by the Appellate Body in September 1997. It obliged the EU to adopt its banana regime until January 1st 1999. Though here on the EU abolished its discriminating licensing system, the US was still unsatisfied with the arbitrary reference period regarding the import allocation. Again, the US challenged the computability of the new banana regime with WTO regulations. While the EU by referring to Article 21 played for time, the US pushed for prohibitive tariffs in line with Article 22(6). Thus, both parties sought for the most beneficial variant of DSB mechanisms in order to push through their regional and sectorial interests and by no means acted in a globalist manner.

2.2.8 EU trade policies in the 90s

In the nineties, the EU shifted towards a more liberal internal and external trade regime. Whereas in 1991 the Secretariat of the GATT/WTO stated in its *Trade Reviews*: '(...) *The EC continues to accord high levels of protection to producers in a notable number of product*

areas. In several cases, EC trade restrictions are primarily directed against competing supply from developing countries, including heavily indebted ones, and affected sectors in which the emerging market economies in central and eastern Europe can be expected to have a comparative advantage' (GATT, 1991, op. cit. Langhammer, p.29), six years later it concluded: '(...) as a result of the combined effects of the single market process and the implementation of the WTO Agreements, the EU's trade policies and practices have generally evolved in a favourable direction. The near elimination of VERs (Voluntary export restraints) and reduced reliance on tariff and non-tariff measures, combined with the observance of WTO rules and disciplines, are increasing the openness and predictability of the market. These tendencies provide encouraging evidence that the multilateral framework of rules and disciplines constitutes an important - and growing- point of reference in the elaboration of the Union's policies.' (WTO, 1997, op. cit. Langhammer, 2000, pp.29).

The Secretariat further highlighted that the link between the single market process and multilateral liberalization was mutually supportive. With regard to the industrial sector, it underlined the reduction in the average MFN tariff from 6 percent in 1995 to 4,9 percent in 1997. In agriculture, average rates – though considerably higher - were decreased from 25 percent in 1995 to 20,8 percent in 1997. The Secretariat also welcomed the removal of restrictions in the areas of financial services, telecommunications and air transport. Equally, it recognised the EU's liberalisation efforts in core public services such as electricity, gas and postal services. Finally, it expressed concerns with regard to trade disturbing effects resulting from EU enlargement and from free trade agreements (WTO Trade Reviews, 1997, op. cit. Rode, 2000, p.56).

That being said, it however needs to be borne in mind that while traditional protectionist measures have been largely decreased or eliminated in the course of the trading Rounds, new variants of commercial practices emerged on the international trade scene. These are not explicitly regulated in the GATT and thus fall within the grey zone of international trade. For a further discussion on that issue, at this point, it shall be referred to chapter 2.4.

2.2.9 The introduction of the euro

With the introduction of the euro the EU has gained importance as a serious partner for global liberal governance (Rode, 2000, p. 57) . The EU, thus, beyond its role as an actor of international trade, assumed leadership in the areas of monetary and financial regulation alongside with the US. The mutual cooperation comprises the stabilisation of financial markets and the macro-economic regulation. The creation of the European Central Bank (ECB) enabled the EU to act bilaterally or trilaterally (alongside with the US and Japan) if

required. Yet intergovernmental approaches play a major role within European governance, since member states are not willing to shift their power to the ECB. In the area of macroeconomic regulation the EU is, thus, still far from constituting a politico-economic entity. However, without a deepening of economic integration the EU will not be able to present a solid and equal partner for the US.

The introduction of the euro has also affected cooperation in multilateral fora such as the IMF and the G-7 group. In both institutions the balance has shifted towards the benefit of the EU (Rode, 2000, p. 58). Though the EU does not automatically replace the membership of single states, the potential gain of weight refers to the EU as a whole, which due to efficiency reasons is intended to be consensus-driven. However, as the history of internal disputes reveals, the European decision-making process has often proved to be cumbersome. In particular, the European Commission tried to improve its stance in monetary politics, by pursuing a strategy of political optimisation within the EU and towards the US. In November 1998 it came forward with the proposal to replace the EU's representation in the IMF by a group of three: the European Council, the EU Commission and the ECB. However, since in the IMF legally only recognises member states this will certainly remain a long-term goal, which shall be reached incrementally.

In the G-7 the introduction of the euro decreased the influence of the four EU member states (Rode, 2000, p. 59). This applies particularly to Germany, since global politics has in fact frequently been ruled by a group of three: the US, Japan and Germany. Nevertheless, there are still striking challenges within Europe with regard to the distribution of competences. Though, the introduction of the euro has raised currency exchange politics to the European level, national economic politics and the funding of financial institutions remained under the authority of national governments.

2.2.10 From defensive re-activism towards global leadership

In the immediate aftermath of the Uruguay Round the EU took upon itself the leadership role in the WTO to include the 'WTO-plus' (WTO+) issues, that is issues such as labour standards, environment, procurement and competition policies (Mortensen, 2000, p. 18). The US pledged for institutional reforms and progress in the area of agriculture, services, procurement, intellectual property, tariffs and NTBs. At the same time the US wanted to bring forward its regional approaches (such as NAFTA, FTAA, TAFTA (Thailand-Australia Free Trade Agreement) and APEC) (Rode, 2000, p.60). It was again the principal *demandeur* for the liberalisation offensive (Mortensen, 2000, p. 18). This time, however, the EU wanted to take an active part in it. In the world economic forum of Davos in 1999 it became clear that

the US wanted a further reduction of the EU's agricultural subsidies and that the reductions of the Uruguay Round still presented striking challenges for the EU's CAP. Within the EU protectionist voices of the agricultural sector again made themselves heard (Rode, 2000, p. 61).

The breakdown of the 1999 Seattle ministerial was a major defeat for the US government. The EU was now in a position 'to fill a leadership vacuum in the WTO' that the US had left behind after the stalemate of the Clinton era (Mortensen, 2000, p. 20). While the US assumed a rather hesitant position in the WTO, the EU actively pushed for a far-reaching new Round and the inclusion of the so-called Singapore issues (investment, competition, government procurement and trade facilitation) as top priorities. The 2003 Cancun ministerial was another failure. Though agriculture remained a controversial issue throughout the negotiations, the eventual breakdown was due to the unwillingness of the G-20 developing countries to accept the pre-fixed US-EU agenda at the meeting. According to Mortensen (2007, p.20) Cancun marked not only 'the end of an era in the WTO', the defeat of the EU - earmarked by the rejection of the Singapore issues -also denoted the termination of European trade diplomacy.

2.2.11 The EU in the WTO today

Since failures of Cancun and Seattle Ministerials and the accession of China, powers relations have changed within the multilateral trading system. On the one side non-state actors have emerged on Europe's political scene, diminishing the weight of the Commission. On the other side China, India and Brazil have proved successful on several occasions in blocking 'sensible' EU-US compromises. Today, all but one of the Singapore issues (trade facilitation) has vanished from the negotiation agenda. Equally, trade and environment issues seem less significant. Instead, traditional issues like agriculture and market access again dominate the international trade debates (Mortensen, 2007, p.21).

Though the EU still expresses strong support for the Doha Round, like other trade powers, it has put 'Plan B' ('B' for bilateralism) into action (ibid., p.21). In its proactive strategy paper, titled 'Global Europe', presented in October 2006, trade Commissioner Mandelson announced to reject protectionism at home and be activist in opening markets abroad (European Commission, 2006). The new strategy, thus, strives towards 'activist bilateralism rather than defensive bilateralism' (Mortensen, 2000, p.21). The five-point programme presents a 'balanced mix between realism' (i.e. trading partnership with China, improve protection of European intellectual property rights) 'and neo-liberal idealism' (liberalize procurement, review antidumping measures) (ibid., p.21).

By 2007, it seems that the EU is pursuing a two-fold strategy. On the one side it seeks for concessions on the bilateral level that go beyond the WTO agenda. In its strategy the EU puts it as follows (Commission, 2006, p.10):

Free Trade Agreements (FTAs), if approached with care, can build on WTO and other international rules by going further and faster in promoting openness and integration, by tackling issues which are not ready for multilateral discussion and by preparing the ground for the next level of multilateral liberalisation. Many key issues, including investment, public procurement, competition, other regulatory issues and IPR enforcement, which remain outside the WTO at this time can be addressed through FTAs.

Accordingly, it would be a priority for the EU 'to ensure that any new FTAs (...) serve as a stepping stone, not a stumbling block for multilateral liberalisation' (ibid, p.10). The recent initiatives towards China, India, South Korea, ASEAN (Association of Southeast Asian Nations) and the EPA regions all point at proactive liberal bilateralism within European trade diplomacy (cf. Mortensen, 2007, p.21-22). On the other side the EU wants to leave WTO doors ajar and is almost single-handedly trying to bring trade diplomats back on the Doha negotiation table. On several occasions EU representatives underlined the importance of multilateralism.

2.3 Forum-Switching: The EU's strategic approach in international trade negotiations

As mentioned before, in the 'Global Europe' paper the EU Commission emphasized the importance of bilateral trade agreements (BTA) for its external trade agenda. The issuing of this paper has been motivated by the cumbersome negotiation process within the WTO's Doha Round. Though it might well be that Doha negotiations will come to an end despite the obstacles being faced, it had soon become clear that the EU's trade agenda lagged considerably behind its ambitious liberalisation goals. Hence, it came as no surprise that the Commission once again turned to the bilateral track. Indeed, forum-shifting – whether in the case of external trade policy or in other areas - presents a well-proven instrument for pushing through one's preferred set of interests. The preceding chapter shall illuminate the EU's strategic behaviour in international trade politics with regards to the choice of negotiation arena. It shall centre on the European perspective, though it needs to be stated that forum-shifting is equally applied by the US and to a certain degree also by middle power developing countries (cf. Becker and Blaas, 2007, p.271-281).

Becker and Blaas (2007, p. 271) define 'forum-switching' ('arena-switching', 'forum-shifting') as 'the deliberate changing from one negotiation arena to another in order to be able to promote one's trade interests more successfully'. The history of trade negotiations reveals that both the EU Commission and the US government apply strategies of forum switching when they encounter opposition to their preferred agenda. Ultimately this has been the case in the Doha Round, where EU and US proposals were rejected by groups of Third World states. But equally during the Cancún and Singapore ministerial the G-20 group proved successful in blocking sensible EU-US compromises (cf. *ibid.*, p.271-272).

One reaction of the US and the EU has been 'to try to co-opt specific key players more closely into the negotiation process with the aim to soften their stand' (*ibid.*, p. 271). The other reaction was to shift negotiations to the bilateral or plurilateral level. The rationale for this strategy is of two-fold nature. First, BTA allow for concessions, which go beyond the agenda of the WTO. Trade issues, which the US and the EU want to see addressed comprise equal treatment of foreign and domestic investors, government procurement, liberalisation of service sector and intellectual property rights. Regulations in these areas achieved within bilateral agreements are seen as a 'stepping stone' for future global trade negotiations since they are later to be raised to the multilateral level. Cynically said, the strategic advantage of bilateral negotiations over global ones is that 'they are characterised by an even larger degree of power asymmetry' (*ibid.*, p. 272). Here, US and EU trade

diplomats have usually applied 'tactics of carrot and stick' (ibid., p.272). While privileged market access is offered in areas where they are felt to be competitive (such as agriculture), sensitive sectors remain strictly circumscribed. The value of preference granted through bilateral agreements, however, decreases if similar agreements are concluded with other trading blocs or states.

The second rationale behind promoting bilateral agreements is the seek for a competitive edge (ibid., p.272). Both the US and the EU have sought to gain privileged market access for their capital within bilateral agreements. Bilateral agreements are therefore highly interlinked. The creation of FTAA in 1994, for example, has been a response to the formation of the MERCOSUR (Southern Common Market) and US fears that Brazil, might create an alternative pole of attraction for South American states. Consequently the US concluded free trade agreements with Chile and with Central American states. The EU in its turn started negotiations on a free trade agreement with MERCOSUR in 1999. But as FTAA negotiations were about to fail in 2003, MERCOSUR-EU negotiations were laid down, too. Apparently, EU relations with MERCOSUR had lost significance without the rivalling FTAA project. In the following an outline shall be given of how the EU switched to the multilateral arena and from the multilateral to the plurilateral and bilateral level, when efforts to push through its interests proved ineffective. Therefore the EU's strategic behaviour in the case of postal services, water liberalisation, and investment shall be analysed.

2.3.1 The case of postal services

The 1994 GATS agreement for the liberalisation of services trade aimed at achieving two objectives (Raza, 2007, p.82). Firstly, it strived towards regulating service activities, by comprising provisions in areas such as transparency, subsidies, government procurement, domestic regulation (qualification requirements, licensing, technical standards), mutual recognition of professional qualifications etc. The second and even more important objective relates to the harmonisation of services rules. Currently foreign service suppliers face a variety of distinct service regulations between regions and even within countries. This parallelism between services liberalisation and harmonisation of rules, thus, presents a fundamental element within the GATS.

A sector of particular significance for international services trade are postal and courier services. Here, big European corporations, of which the most important being the *Deutsche Post AG* have pushed for an expansionist agenda within the GATS 2000 negotiations. This has driven the Commission to request services liberalisation in that sector, based on a newly established classification scheme. The Commission also issued a reference paper, which

aimed at the establishment of a common regulatory framework for postal and courier services. It contained standards for licensing, universal service obligations, independent regulatory authorities, and transparency. Finally it called upon member states to support pro-competitive regulations within the Universal Postal Union (UPU). The latter was created in 1874 and has traditionally been responsible for postal and courier services rules. These efforts towards liberalising postal and courier services within the GATS have led to a disempowerment of the UPU (Raza, 2007, p. 83-84). However, pursuing a two-fold track is nothing new within international trade politics. The strategic behaviour consists in trying to push through one's preferred agenda in more than one organisation 'while threatening the organisation less advantageous to one's objectives with abandonment' (Blaas and Becker, 2007, p.83).

2.3.2 The case of EU water liberalisation

Another prominent case, in which the EU applied strategies of forum-shifting is that of water services. Here, both the multilateral and the bilateral negotiation arena were seen as a useful vehicle for promoting the privatisation of European water services, which at that time appeared too much an obstacle to be implemented directly on the nation state or regional (European) level (cf. Becker and Blaas, p. 84-87). In the preparatory period of the GATS 2000 negotiations the EC consulted extensively with European service industries. This was particularly the case for sectors of export interest for the EU, but is well documented for the water sector. Based on these consultations the EC in June 2002 presented an initial proposal requesting market access for European companies in 109 WTO countries. Out of these, 72 referred to market access for water provision and waste water services and thus actively promoted the export interests of French multinationals, and to a lesser extent those of German and English water services providers.

With regard to the liberalisation of the domestic water sector, interests of European member states were widely diverging (cf. *ibid.*). While France with its competitive water companies pushed for a liberalisation of the water sector, both within and outside Europe, other countries such as Austria and Germany feared that the EC requests could threaten the prevailing system of public water provision. Since the issue was facing too much resistance on the European level, GATS negotiations were seen as a second avenue for achieving the long-term goal of water services liberalisation. In addition, the water industry would become a 'tradable commodity', which could be offered in exchange for concessions from other countries.

Up to date there are basically three reasons which have prevented an EU-wide liberalisation move in the water sector so far. Firstly, such a decision would require unanimity in the Council (cf. *ibid.*). Secondly, the EC proposal faced stiff opposition from civil society organisations and municipalities. Finally, demands for reciprocity in water liberalisations from other WTO members as a response to the EU proposal were largely absent. This was due to the unpopularity of water liberalisation resulting from negative experiences with already implemented privatisation, but also since competitive water services providers were largely absent in many WTO member countries.

The second strategic string by which a liberalisation of the water sector was to be achieved was via the bilateral track. Bilateral agreements are by definition WTO+ agreements, intended to achieve concessions beyond that already implemented at the multilateral level. Thus, in the course of negotiations with MERCOSUR on an association agreement, the EC prepared a services proposal, which in its first draft contained market access commitments for water services. Though after various protests the offer on water services was withdrawn from the preceding drafts, the case exhibits quite well how the EC has used the multilateral and then the bilateral level in order to push through its interests, which were not ready yet for the regional or nation state level (cf. *ibid.*).

2.3.3 The case of investment

Apart from postal and water services, there is a further well-known case of forum-shifting in European trade policy-making. In the Uruguay Round high priority was placed on a multilateral agreement on investment by international trade diplomats and particularly by the US business community (cf. Becker and Blaas, 2007, p. 87-90). Here, improved regulations in the host country for foreign investors were to be achieved: foreign equity participation, performance requirements, local content requirements, residence requirements for staff etc. Though the TRIMs agreement resulting from the Uruguay Round contained a number of substantial provisions, it was generally perceived as a disappointment for the trade diplomacy. Consequently, negotiation efforts were shifted towards the OECD in the second half of the 1990s (cf. *ibid.*). Chances for achieving consensus seemed to be higher among the group of merely economically advanced countries. Once an agreement was reached, other countries could be brought on board, or alternatively, the MAI agreement could serve as a model for future treaties and OECD members could focus their efforts on countries seeking to attract foreign direct investment. The draft MAI issued in 1997, provoked massive public protests and finally lead to a breakdown of negotiations in April 1998.

Despite the general repelling attitude of developing countries towards the issue, efforts - in particular by the EU – were undertaken to shift investment to the agenda of the WTO's Millennium Round (cf. *ibid.*). Following the failure of the Seattle Conference in 1999, it was agreed upon in the fourth WTO Ministerial in Doha to start negotiations on investment at the preceding Ministerial to be held in Cancún in September 2003. The inclusion of investment, however, required explicit consensus, which was not to be achieved by the beginning of the Ministerial. With the exception of trade facilitation, all Singapore Issues had to be dropped from the negotiation agenda (investment, competition, government procurement) - a major defeat for European trade politics.

Interestingly, while the US was the main *demandeur* of an agreement on investment during the Uruguay round, it took a rather reserved attitude towards that issue in multilateral negotiations thereafter (cf. *ibid.*). A major reason for this was certainly the conclusion of the NAFTA agreement, which became effective in January 1994 and comprised a wider range of provisions on investment. In fact, chapter 11 of the treaty contained the most far-reaching and detailed investment arrangements of any bilateral or regional trade agreement. The reason why the EU did not follow the US example of bilateral negotiations, but instead preferred to push through its interests at the WTO level following OECD failure is mainly institutional. While bilateral agreements on investment are under the authority of individual member states, at the multilateral level the Commissions retains the exclusive competence. Thus, it was not astonishing that efforts of European trade diplomats focused on multilateral negotiations.

Though the EU was still eager to achieve progress on that issue in the WTO arena after the Doha round impasse, it increasingly started efforts to include investment provisions in already existent bilateral agreements with trading partners (cf. *ibid.*). While the Euro-Med association agreements between 1995 and 1997, and the Trade, Development and Cooperation Agreement with South Africa in 1999 yet contain rather shallow regulations, the investment provisions of the EU-Mexico agreement (in vigour since 2000) and of the bilateral agreement with Chile (provisionally in force since 1 February 2003) represent a considerably higher degree of commitment. Though particularly the Chile agreement contains comprehensive regulations on investment (indeed it contains the most far-reaching investment provisions to that date), all treaties yet fall short of NAFTA's Chapter 11 provisions, since investment protection provisions are widely absent. These are left for bilateral investment treaties to be negotiated by individual EU member states. Thus, following the failure of OECD negotiations on that issue, the EU has apparently switched to the

bilateral level in order to push through its interests on investment and the remaining Singapore issues respectively.

In the latest MERCOSUR negotiations the EC put efforts into broadening this investment agenda. As has already been the case in the Chile negotiations it pushed for the inclusion of regulations relating to the so-called pre-investment phase. These regulations comprise modalities under which foreign investors may enter a country (market access) and the treatment they are given in the host country (preferably national treatment). Equal efforts have been applied by the EU in the area of government procurement, where it sought to open up the MERCOSUR market for European companies (cf. *ibid.*).

A further prominent example is the issue of investment arising in the course of the negotiations on the revision of the EU-Mexico agreement (cf. *ibid.*). The agreement had a built-in agenda that foresaw negotiations on services and a review of the existent regulations to be started no later than three years from the entry into force of the agreement. In 2005 Mexico came up with the proposal to open up the investment market, which - amongst others - included the area of investment protection. Since this was beyond the competence of the Commission, it advised EU member states to broaden the investment agenda in order to include them into a future investment agreement with Mexico.

The question of EC competences was also an issue in view of the negotiations on services and investment with the EUROMED states in the end of 2005. Here, too, the EC proposed to assign a negotiation mandate to EU member states. Though EU members generally take a rather reluctant position on shifting power to the EC, pressures towards expanding EC competences in the area of investment negotiations are certainly rising when trading partners such as Mexico come up with such proposals (cf. *ibid.*).

2.4 *Neo-Mercantilism: an obstacle to North-South relations*

As already mentioned, the central question of this thesis is whether the EU is pursuing neo-mercantilist interests under the cloak of development cooperation within the EU-Cariforum EPA. Therefore, the present chapter shall clarify the concept of 'Neo-Mercantilism' (or 'New Protectionism') and its relevance in present-day politics. Whereas traditional protectionist measures have gradually been decreased in the course of the WTO trade Rounds, today other forms of commercial practices, which are not explicitly regulated in the GATT, challenge the international trading system. Further, the EU's import policy and its 'offensive' and 'defensive' interests will be analysed.

2.4.1 'New' Protectionism and 'Neomercantilism'

Becker and Raza (2008) perceive 'Neomercantilism' as a concept which regards to both internal and foreign policy. Following their definition they perceive 'Neomercantilism' as a politico-economical strategy, where nation states strive towards achieving an export surplus in their trade with goods and services (see also Raza, 2007, p. 68, p. 71). The accumulation of wealth shall be realized through active extraversion, that is, a strong orientation towards exports. This is accompanied by protectionist measures, which aim at shielding domestic markets against foreign competition. Active extraversion, however, requires appropriate backing through regulation at different territorial levels, in particular at the nation state, the regional (EU) as well at the international level. Therefore neo-mercantilist economies often apply a policy of currency undervaluation with a view to increase exports while weakening imports. The resulting financial burden is usually shifted towards wage policy. Becker and Raza's definition of neomercantilism, thus, also comprises the area of internal politics (monetary and wage policy instruments). For the sake of analysing the EU-Cariforum EPA, in the following the term shall refer to the foreign policy aspect only.

A common feature of 'Neo-mercantilism' and its precursor concept 'Mercantilism' is their focus on export surplus. However, there are fundamental differences in the social context in which they are embedded. First, in the absolutist era the objective of neomercantilism was to accumulate wealth for the benefit of the state rather than for the benefit of the nation (Raza, 2007, p. 71; Becker and Raza, 2008)). The state, in turn, was represented by the king, which relied on the cooperation of a group of privileged traders in order to realize profits from unequal trade. Therefore the assignment of political titles, which legitimised personal wealth constituted an integral part of the mercantilist regime. This system of internal and external accumulation of wealth was adhered through political power and by means of military force.

Present-day mercantilist politics, in contrast, is ruled by the primacy of 'capital accumulation', which relates to the second difference (see Becker and Raza, 2008). Whereas in the absolutist regime the overall aim was to maximize the inflow of gold and currency, modern capitalist regimes seek to open up foreign markets for the sake of domestic enterprises, while at the same time shielding particular businesses against foreign competition that might arise from the internationalisation of trade. Thus, under both doctrines the state is seen as the principal agent for safeguarding the economy's stance in the world. The difference in their perception relates to the specific type of accumulation and whether wealth is about capital or about the fostering of international business opportunities.

Another term which is frequently used in this context is 'new' Protectionism (e.g. Beise, 1998, pp.61; Krauss, 1979, op. cit. Beise, p. 61). Beise describes it as a strategic approach, which is opposed to that of free trade and aims at the protection of domestic industries against foreign competition. Protectionist measures can manifest themselves in the form of tariffs or in the form of technical barriers to trade (TBT). In the case of unavoidable restrictions, advocates of free trade have always pledged for tariffs in the international trade system, whereas protectionists usually tended to opt for quotas and likewise restrictions. In the following the terms 'Neomercantilism' and 'new' Protectionism shall be used to describe the same phenomena.

2.4.2 Old vs. new forms of Protectionism

Under the traditional protectionist doctrine tariffs, quotas and import restrictions constituted the central element for shielding domestic markets against foreign competition. However, these have gradually been decreased in the course of the GATT Rounds and states increasingly shifted towards the application of non-tariff barriers to trade (NTBs). After the Tokyo Round the average tariff of the EC stood at a low of 6 percent, which resembled that of Japan and the US. In the course of the Uruguay Round Communitarian tariffs were further reduced to an average of around 3 percent-points. From the eighties NTB gained considerable importance. In 1981 they amounted to 10 percent for imports from industrial countries and increased to 13 percent in 1986, with both figures falling 3 percent below the average tariff applied on imports from industrial countries. The average NTB tariff of the US amounted to only 9 percent in 1981, but was raised to a level, which exceeded the average tariff of the EC by 15 percent-points by 1986. Japan's average NTB tariff remained at a high of 29 percent. Between 1981 and 1987 alone, the share of imports affected by NTB measures rose by 20,7 percent (World Bank, 1987, op. cit. Rode, 2000, p.53). Since then this development was not brought to a hold, even though GATT member states had agreed

on a rollback of trade barriers in the declaration of Punta del Este. In the mid-90s NTBs tariff levels were three or four times those of ordinary protectionist tariffs (Rode, 2000, p. 53).

Interestingly, tariffs were applied with significant differences between imports from industrial and developing countries. In 1981 the EU (as well as Japan) levied imports originating in developing countries with a high NTB tariff of 22 percent. NTB tariff of the US for imports from developing countries amounted to a meagre 14 percent and that of the average industrial country 19 percent. In 1986 the average NTB tariff increased to a level of 21 percent, with the EC and the US ranging at a level of 23 percent and 17 percent, respectively, while Japan remained at a level of 22 percent-points (World Bank, 1987, op. cit. Rode, 2000, p. 53).

The record of the GATT's Dispute settlement system serves as another indicator for the protectionist profile of the EU. The European Economic Community (EEC) and later on the European Community (EC) and their member states were frequently the target of complaints in the multilateral trading system. Out of 61 formal GATT complaints subject to Article 23 between 1958 and 1964, 19 cases alone have been launched against the EEC and a further eight against particular EC members. 16 cases involved trade restrictions or subsidies in the agricultural sector, which underlines the prominence of the Community's agricultural policy in the WTO system. Until 1980 only two cases have been launched by the EC, while itself had been target of 11 complaints within the same period. Since the creation of the WTO, the importance of dispute settlement increased significantly. Until 1998 154 cases were brought to the WTO's dispute settlement board (DSB). Out of these a considerable share involved the EU or the US, which both figured as initiator as well as target of complaints.

When looking at the record of antidumping cases between 1980 and 1985, the EC clearly constituted the most frequent target of complaints (276 cases targeting EC practices), followed by the US on the second (105 cases) and Japan on the third place (96 cases). The EC itself initiated 254 cases within that period, surpassed by Australia with 393 cases and the US with 280 cases (WTO, 1997, op. cit. 2000, p. 52-53).

Estimates suggest that there are about 800 NTB measures (Beise, 1998, p. 61-62). They range from subsidies and antidumping measures to traditional quota restrictions and price disturbing barriers to trade, but also include monetary and fiscal measures and discriminatory public procurement practices or arbitrary decisions (cross-border bullying).

A fundamental change has also taken place with regard to the sectors affected by protectionist measures (ibid., p.62). While in the early years of the GATT protectionist measures were targeted towards areas like agricultural, textile and garment; and shipping

and mining, over the years industries such as steel, automobile, machine tool and entertainment electronics have been added to the target of state intervention.

2.4.3 'Old wine in new bottles'

At this point it needs to be said that 'new' protectionism is not about a revitalisation of classical trade instruments or an increased usage of barriers to trade (Beise, 1998, p. 62-63). The term rather refers to more and more subtle forms of market foreclosure and to new variants of barriers to trade. It is about 'old wine in new bottles' (Bhagwati, 1987, op. cit. Beise (1998), p.63) or just another manifestation of well known practices of international trade. Whereas the old protectionism referred to tariffs, quotas and import restrictions, the present-day world economy is increasingly faced with trade policies, which are not explicitly regulated in the GATT and thus fall within the grey zone of international trade. Such policies range from voluntary export restraints (VERs), orderly marketing arrangements (OMRs), minimum price fixing etc. (Beise, 1998, p. 63).

Whereas subsidies, countervailing duties, or antidumping measures obviously conflict the principles and provisions of the GATT, new protectionist measures abuse the instruments of the GATT, by condemning them to inaction (ibid.). It is much more difficult to prove inconsistency of these measures with MFN or national treatment clauses, than monitoring the reduction of tariff barriers or the harmonisation of tariff regulations (Langhammer, 2000, p. 22).

'New' protectionist measures collide with various GATT principles (Beise, 1998, p. 63). First, NTB measures are usually applied in bilateral relations and thus collide with the principle of non-discrimination, which is so essential that it constitutes the first article of the GATT agreement. Second, NTBs present a striking challenge to the GATT's transparency principle. NTBs are frequently regulated through single provisions mostly in the form of enactments of the executive authority, which exacerbates for the individual supplier the identification of her market position. Finally, NTBs render the principle of reciprocity obsolete. Whereas reciprocity originally was meant to refer to the entire provisions of a trade agreement, nowadays it is applied in bilateral, sector- or even product-specific manner.

Protectionist outcomes of the EU's common foreign trade policy can be well illustrated by the 'restaurant-bill-problem' (Rode, 2000, p.51). Accordingly, a group of guests, which shares the bill in a restaurant, will have more incentives to order expensive food than would have been the case if everyone would pay for himself. The same applies to the costs of protectionism, which all members have to bear collectively. If, for example, bigger nation states try to push

through their protectionist goals within the European Commission, smaller states, which otherwise wouldn't have much opportunity to make themselves heard, will also be eager to enforce protectionist measures for their own sectors. The Commission, in turn, by attempting to keep unity among member states, will opt for more rather than for less protectionism in case of any doubt.

2.4.4 The rift between Northern 'pro-traders' and the Southern 'protectionists'

While the EU certainly works hard to increase its net exports and foster business opportunities abroad, its policies on import protection are not fully in line with traditional Mercantilism. This is mainly due to the different patterns of production among European economies (Raza 2008). Whereas areas such as agriculture, textile/garment, and leather play an important role in the economy of France, Spain, Portugal and Italy, other member states (Germany, the Netherlands, Great Britain and the Scandinavian countries) have strongly internationalised, capital and technology intensive industries and service sectors. This results in different import interests. While the first group advocates sector-specific protection and subsidy policies (e.g. in the agricultural sector), the second group lobbies for the abolishment of existent tariffs and TBT. Besides the aforementioned examples, the rift between Northern 'pro-traders' and the Southern 'protectionists' also revealed itself when the transition period of the WTO's textile and garment agreement was about to terminate in 2005. While the textile and garment producing countries pushed for the application of at least temporary prohibitive tariffs on imports originating in China, Germany, Great Britain and the Scandinavian countries pledged for a liberalisation of Chinas imports. The latter country group purchases textiles and garments for its domestic industry almost exclusively on the international market and, thus, has no incentive in applying tariffs in this sector (Raza, 2008).

Hence, import restrictions are applied selectively by the EU. The sector, which has been protected the most is agriculture with a median tariff of 30%. However, tariff rates of particular product groups exceed this level considerably. Protection has traditionally been high with regard to products, where the EU - due to historic reasons - sought to stimulate national production. Sugar tariffs average 350%, and high tariffs are also applied to milk and milk products (87%), and grains (53%) (ibid.). Other agricultural products (such as skins and hides, cotton, wool, flax or oils) - amounting to 27% of agricultural imports - have, however, been subject to zero or very low tariffs. This applies to areas where EU markets were traditionally characterised by excess demand or where an increase of production was unfeasible or unbeneficial due to climatic or other reasons. Interestingly, though the average Communitarian tariff line exceeds that of the US or Japan, the EU is nevertheless the biggest

importer of agricultural products (see European Commission, 2005, op. cit. Blaas and Becker, 2007, p.72).

A dismantling of discriminatory regulations has also taken place in the industrial sector. Though import tariffs of finished products have been decreased to a weighted average of around 3,5 percent since the end of the second world war and are thus at a very moderate level, 12% of finished goods still face import tariffs of over 10 percent. In contrast, raw materials or intermediate goods are imported de-facto duty free or at a very low tariff. Protectionist instruments such as anti-dumping or subsidies are still applied on a large scale in the industrial sector (see European Commission, 2005, op. cit. Blaas and Becker, 2007, p.72).

Similar applies to the services sector (Blaas and Becker, 2007, p.72-73). Since the 1980s the EU's services trade has undergone a process of deliberate liberalisation and deregulation. Discriminatory regulations are mainly upheld for a small number of mostly public services, though a process of gradual regulatory erosion - even in highly sensitive areas (such as water services or health and social services) - is underway.

2.4.5 Selective import restrictions and 'offensive' vs. 'defensive' interests

In EU terminology this divergent handling of export and import trade policies is described as 'offensive' versus 'defensive' interests. Offensive interests aim at the improvement of market access for EU enterprises, which requires the erosion of existent barriers to trade, tariff reductions as well as the abolishment of discriminatory measures imposed by trading partners. Such interests are usually pursued in the case of industrial products, most services and certain agricultural products. Offensive interests can also relate to regulatory issues. On the one hand, in the areas of investment, public procurement or services the EU pursues a strategy, which aims at the abolishment or alleviation of measures of trading partners which, considered discriminatory or restrictive against EU firms. On the other hand, it strives towards the harmonization of technical standards (e.g. intellectual property) as well as competition, law or sector-specific regulations in the area of services (e.g. telecommunication, post and financial services). The overall aim in these areas is to internationalize Community standards or to push other countries for the implementation of international regulations which the EU itself already operates (cf. Raza, 2007, p. 73-75; cf. Raza, 2008).

Defensive interests are sectors, which are regarded vulnerable due to political or economic reasons and which require protection against foreign competition. This is particularly the

case in the area of agriculture, certain industries (textile and garments, leather etc.) and public services (e.g. education, cultural services, health, social services, public transport, water services) (cf. Raza, 2007, p. 73-75; cf. Raza, 2008). However, whether a sector shall be treated as offensive or defensive is sometimes far from clear, occasionally resulting in controversial debates among European member states. A prominent example is the case of water services, which has already been discussed in chapter 2.3. Here, EU firms, the Commission and the French government pledged for the liberalisation of water services within the GATS, whereas other member states (in particular Germany and Austria) as well as municipal associations and civil society organisation pushed for their exclusion from GATS negotiations. Such divergent interests sometimes result in paradoxical compromises. While the Commission pushed developing countries to liberalise their water services, the EU itself rejected liberalisation by referring to the need for protection in areas of public interest. Hence, the EU pursued its commercial export interests abroad, while at the same time refusing to open up its own markets by applying political and normative arguments (Raza, 2008). This selective application of restrictive trade policies has often been subject to complaints in the multilateral trading system. In particular developing countries claimed that the EU would pursue protectionist goals under the cloak of social or environmental standards (ibid.).

Protectionism usually prospers in times of economic difficulties and aim at reducing adjustment costs (such as growing unemployment), promoting a positive trade balance and creating future industries. Thus are applied in order to facilitate structural adjustment and ensure employment in sensitive sectors (Beise, 1998, p. 64-67). While, it is beyond the scope here to look deeper into the reasons why nation states pursue neomercantilist strategies, it is suffice to say that protectionist measures have devastating economic effects on the world economy.

3 Background to the EU-Cariforum EPA

3.1 The history of EU-ACP relations

The Lomé system represents the core of European development policy and of EU-ACP trade relations in particular. Its history 'mirrors North-South relations very well, including their origin in the colonial past' (Raffer and Singer, 2001, pp. 99). Raffer (1997, p.1) describes the Lomé arrangement as a 'unique system, once granted under exceptional circumstances' and which has been shifted from 'contractility and partnership to conditionality and donor power' (ibid., p.1). While for long it served as a model for development cooperation, a cumbersome bureaucracy and complicated execution procedures have rendered the system less attractive for ACP countries. Raffer, in this context, points at the discrepancy between 'high development aspirations and limited, positive, measurable development performance' (2005, p.9). In the following the evolution of the EU-ACP relations, from its origins in colonial times until the recent negotiation of EPAs, shall be outlined.

3.1.1 From the Treaty of Rome to Lomé IV

The incipencies of the EU's development cooperation trace back to the intention of maintaining ties to former colonies. Therefore the Treaty of Rome (ToR) already contained clauses (Articles 131 and 136), which aimed at facilitating trade between the European Community and colonial states. However, following independence of many Southern countries in the 60s, these regulations became obsolete and new international treaties that provided for the continuation of trade relations became necessary. Hence, in 1963 the first Yaoundé Convention (named after the place of signature) was signed between the six original EEC members and 18 francophone states of Africa and a few years later, in 1969, its provisions were renewed in the second Yaoundé Convention. In principal, these agreements obliged the signatory countries to grant European exporters preferential access ('reverse preferences'). An important introduction was also the establishment of the European Development Fund (EDF) in 1957, which later on became the primer source of funding for ACP countries (for detailed explanation see chapter 3.2)

When Great Britain joined the European Community in 1973 the question was raised of how to incorporate its commitments under the Commonwealth treaty into Community law. These had included preferential tariffs and arrangements for certain commodities, the most important being the Commonwealth Sugar Agreement. Moreover, against the background of the first oil crisis, fears within the European Community arose, that Southern Countries could follow OPEC's example and establish other commodity cartels (Raffer, 2005, p.13). The

South was perceived 'to be on the brink of wielding commodity power.', with its states demanding a total reorganisation of the world economy and a New International Economic Order (cf. Raffer, 2005, p.13).

Thus, in 1975 a Convention was signed in the capital of Togo (Lomé I) with 46 countries¹. They comprised the AASM group (Association of African States and Madagascar), which were signatories of the Yaoundé-Convention, 20 Commonwealth states and a couple of non-aligned countries. They founded the group of African, Caribbean and Pacific states (ACP), which brought European intentions to negotiate with three regional groups in parallel to naught (cf. Frisch 1996, op. cit. Raffer, 2002, p.1). The creation of this alliance eventually forced the European Community to grant ACP states more concessions than originally envisaged (cf. Raffer, 2005, p.13). About twenty years later the European Commission (1996, p.9, op. cit. Raffer, 1997, p.2) quotes as reasons for Lomé I the

'concern to defend ... economic and geopolitical interests in the age of the Cold War ... the international situation ... European anxiety at the first oil crisis, i.e. a fear of raw material shortages and a desire to hold on to valued overseas markets, united with geostrategic interests (...)'.

The agreement removed reverse preferences and instead granted preferences according to the principle of non-reciprocity. This means that ACP states were not obliged to provide the same access to European markets. However, the value of preferences was diminished by a couple of NTB such as rules of origin (RoO), quality standards and environmental provisions. In order to alleviate these adverse effects, trade protocols for bananas, sugar, rum, and beef/veal were introduced (cf. Janata, 2005). Up to fixed quantities these enabled signatory countries to enter their products duty-free and in the case of beef/veal and sugar provided for high guaranteed prices, equalling those of the (heavily protected and subsidized) Community market. The most important achievement of the Convention was undoubtedly the introduction of STABEX (STABILization of EXport revenues) (cf. Raffer and Singer 1996, op. cit. Raffer, 2002, p. 2). It functioned like an insurance scheme and conferred contractual rights to compensation for selected commodities (such as coffee, cocoa, bananas and peanuts) in the case of shortfalls in export earnings. Raffer describes Lomé I as 'the best arrangement Southern countries ever got from any group of donors' (Raffer, 2001, pp.100). Further evolutions after Lomé I would be 'easily explained by a determined and tenacious, yet slow and diplomatic undoing of what had been granted in a period of anxiety by skilfully taking

¹ Today the ACP group consists of 79 countries (http://www.acpsec.org/en/acp_states.htm , 31 March 2008).

advantage of the worsening position of SCs [System for mineral products]' (Raffer, 2005, p.13).

With the exception of Lomé IV, all conventions had a 5-year-duration. Lomé II, thus came into effect in 1980. Since the conclusion of Lomé I, geopolitical conditions had changed considerably. The end of the Cold War weakened European interests towards ACP countries and their supply with agricultural goods, which had played a major role in the first agreement. Furthermore, many Southern countries were heavily indebted and faced severe economic difficulties (cf. Janata, 2005). They demanded the extension of STABEX to other major commodities, amongst others minerals. However, the EU viewed minerals much too important to be included into STABEX and instead established a separate funding scheme, SYSMIN (cf. Raffer and Singer, 2001, p.101), which covered copper, cobalt and uranium. In contrast to STABEX's automaticity with regard to financial transfers, SYSMIN was strictly controlled by the Commission, which had the exclusive authority to approve financing.

In 1985 the situation for most ACP states had worsened (Janata, 2005). Lomé III focused on rural development as well as on regional, cultural and social cooperation. It increased the control of Lomé fund usage and made its availability subject to stiff conditionality. In addition, 'cumbersome administrative procedures' were introduced (Raffer and Singer, 2001, p.102), which had profound effects for recipient countries. Until the end of 1992 only 64 percent of the funds had been disbursed (Greenidge, 1999, op. cit. Raffer and Singer, 2001, p. 102). According to Raffer (2005, p.14) 'this clumsiness of Lomé (...) proved highly useful later on and was extensively used as an argument when Brussels wanted to abolish the Lomé system'.

Lomé IV, was concluded for a period of 10 years. Though, it brought formal support for Structural Adjustment, nevertheless, several EU organs at the same time proclaimed their disapproval with the Bretton woods approach. Lomé IV also started a process of differentiation between ACP countries. For example when the Dominican Republic - heavily dependent on sugar trade - signed Cotonou, it was not granted access to the Sugar Protocol (SP). Moreover, the EU continued with its cumbersome bureaucratic practices.

3.1.2 Evaluation of the Lomé system

On balance, the effects of the Lomé preferences had been rather limited and few, if any of the ACP states have seen a radical progress in their economic development. Moreover, trade preferences have been significantly eroded since 1975 and Lomé countries are no longer at the apex of the 'pyramid of privilege' (e.g. Mathews 2007, p.497; Holland, 1998,

p.9). Amongst others, this is reflected in the decreasing significance of ACP imports for the Community market: From a high of 6,7 percent in 1976, the region's share in extra-EU trade fell to a meagre 2,8 percent in 1999 (Ravenhill, 2004, p. 125). There are several reasons for this:

On the one hand trade preferences failed to provide the necessary incentives for diversification (cf. Matthews, 2007, p.499). In fact, the region's export profile exhibits that only 10 products make up 70% of ACP's total exports (WTO, 2004, op. cit. Janata, 2005). On the other hand, diversification was achieved with regard to those products, where the preference margin considerably exceeded that of the EU's MFN tariff (e.g. textiles, fisheries and horticultural products) (cf. Matthews, 2007, p. 499-500). In addition, the potential benefits of trade preferences have been circumscribed by supply-side constraints in the ACP countries (mainly political, social and economic conditions). Therefore the expected increase of production capacities stemming from returns to scale have not materialized (Meyn, 2005. p. 11). Finally, Meyn (ibid., p.11) also points to trade restriction on the EU side. These include, for example, high tariffs for processed agricultural products, where the level of protection rises when moving up the value-added chain (e.g. sugar) (ibid.).

A further criticism relates to the cumbersome bureaucracy and the complicated execution procedures, resulting in delayed disbursements, shortfalls and inefficiencies. In 2001 the average delay in the disbursement of Lomé funds amounted to 4,5 years. In some cases this period could even rise to 10 years, as, for example, with regard to some Lomé I funds, which were not disbursed until 1990 (Greenidge 1999, op. cit. Raffer, 2002, p. 5). According to Court of Auditor reports, half of the annual budget was hastily committed in the last month of the year (cf. Matthews, 2007, p.512). This added to the problem of poor staff numbers to administer the various programmes and the different budget lines and instruments (ibid.).

In the context of the EU-ACP relationship various authors point at the underlying power asymmetry between the trading partners (cf. Ravenhill, 2004, p.112). Though the Conventions made use of the NIEO rhetoric, underlining the partnership among equals, the relationship was rather characterised by economic disparities and by a lack of reciprocity among the parties (ibid.). From the outset of the Lomé history the ACP for the most part only figured as a demandeur, with their room for manoeuvre being circumscribed to agree on participating 'as beneficiaries of EU largess' (Ravenhill, 2004, p.122). In negotiations, this weakness served Southern partners to appeal to EU development aspirations and to argue that any concessions would not harm European interests (cf. ibid., p.122).

Though the EU emphasised the contractility of the relationship², in the course of the Lomé history, it unilaterally took actions that downgraded the value of preferences enjoyed by the ACP. This included the reduction of MFN tariffs (lowering tariffs for third countries render preferences for ACP states less attractive) (cf. Meyn, 2005, p.11), the conclusion of preferential agreements with other countries and regions, and the extension of preference beneficiaries through modifications in the GSP scheme. Equally, though the commodity protocols guaranteed for preferential treatment within fixed quantities, changes in the EU's CAP decreased the invention price afforded to these products (cf. Meyn, 2005, p. 12). Throughout the Conventions, also a shift from 'partnership' towards political conditionality has been evident (e.g. Raffer, 1997). Whereas initially recipient countries were assigned relative discretion in the use of EU money, following some examples of mismanagement on behalf of the ACP, from Lomé III the EU insisted on 'policy dialogue' and on 'duly negotiated and formulated mutual undertakings' for the implementation of cooperation instruments (Ravenhill, 2004, p.123). Another case in point, was the EU's attempt to roll back STABEX's automatic mechanism of financial transfers by tying them to the compliance with human rights (cf. *ibid.*). However, until the inclusion of more specific provision in the revised Lomé IV treaty, such practices took place outside the legal framework of the Conventions (cf. *ibid.*).

3.1.3 Changing strategic context

Meanwhile, the strategic context, in which the EU was operating had changed considerably, leading to a decrease in European interests towards the maintenance of the relationship. First, the end of the Cold War had not only washed away geopolitical considerations inherent to the development cooperation with the ACP, but had shifted Europe's attention towards Central and Eastern European countries, and the Mediterranean region (cf. Ravenhill, 2004, p. 126; cf. Lister, 1999, cf. Holland, 1998). They seemed to have greater potential, due to their economic and political significance (Lister, 1999, p.145). No less important, large obstacles such as illegal migration, drugs, and terrorism, have drove the EU to further move forward its CFSP project, rather than to concentrate on development cooperation (Lister, 1999, p. 144; also see Metthews, 2007, p.496).

Second, the enlargement of the EU brought new members on board, which lack colonial ties with the ACP countries. In addition, the newly acceded states merely maintained trade relations with the region: In 2000, the combined share of Austria, Denmark, Finland, and

² In its 1996 Green Paper on the Future of Lomé the EU underlined the 'contractuality' of the relationship, quoting that 'preferences are jointly agreed, they cannot be modified unilaterally by the EU.' (chapter II, part 6).

Sweden in ACP imports from the EU was less than that of Belgium (Allen, 2002, op.cit. Ravenhill, 2004, p.126).

Finally, the decision of the GATT Panel on the banana dispute (see chapter 2.2) had come as a shock to the Lomé signatory parties (cf. Ravenhill, 2004, p. 128). Though the EU granted a waiver for the continuation of its banana regime, it was not on solid ground in the WTO. The obtaining of the waiver was not an easy task and (involved the EU's commitment to) and involved the EU's acceptance to the proviso that the waiver could still be nullified or impaired if it could be demonstrated that its implementation was not in line with GATT provisions (cf. *ibid.*, p. 128-129). This opened the doors for further GATT challenges and eventually put the entire WTO system and its principles under threat (cf. *ibid.*, p. 128-129). Indeed, in the following years the waiver has been subject to several challenges in the WTO.

3.1.4 The Cotonou Agreement

Negotiations on a successor agreement to Lomé IV commenced in late 1998 and were accompanied by controversial debates following the issue of the Commission's discussion *Green Paper* (Commission, 1996) on the future of Lomé. Though the Paper discussed a menu of options for future trade relationships with the ACP, it came as no surprise that the Commission favoured the conclusion of WTO-compatible free trade agreements (see Ravenhill, 2004, p.131; Holland, 1998, p.122).

The Cotonou Agreement, signed in 2000 (in vigour since 2003) and with validity until 2020, introduced major changes in the principles and instruments compared to the preceding Conventions. It revised the banana regime in order to comply with WTO regulations and also abolished the EU's long-standing mechanisms for providing aid in the case of shortfalls in exports earnings: STABEX and SYSMIN. It emphasises the role of the private sector in stimulating the entrepreneurial environment in the ACP (cf. Nugent, 2006, p.514). Further, it increased political conditionality by focusing on the strengthening of democratic processes, good governance, respect for human rights, and civil society in the ACP states (cf. Nugent, 2006, p.515). The Agreement quotes as overall aim the eradication of poverty, consistent not only with the objective of integrating ACP countries into the world economy, but more importantly, also with that of sustainable development:

*'The partnership shall be centred on the objective of **reducing and eventually eradicating poverty** consistent with the objectives of **sustainable development** and the gradual integration of the ACP countries into the world economy.'* (Cotonou Agreement, Article 1, *emphasis added*)

This should be realised through the conclusion of WTO compatible EPAs:

'[...] the Parties agree to conclude new World Trade Organisation (WTO) compatible trading arrangements, removing progressively barriers to trade between them and enhancing cooperation in all areas relevant to trade.' (Cotonou Agreement, Article 36(1))

The inbuilt agenda provided for the conclusion of EPA negotiations by the end of 2007 with validity from January 1st 2008.

'Economic partnership agreements shall be negotiated during the preparatory period which shall end by 31 December 2007 at the latest. Formal, negotiations of the new trading arrangements shall start in September 2002 and the new trading arrangements shall enter into force by 1 January 2008, unless earlier dates are agreed between the Parties.'(Cotonou Agreement, Article 37(1))

In principle, it was left up to the ACP states whether they want to conclude an EPA with the EU: For non-LDCs wishing not to sign an EPA 'all alternative possibilities' would be examined, 'in order to provide these countries with a new framework for trade which is equivalent to their existing situation and in conformity with WTO rules.' (Cotonou Agreement, Article 37(6)) However, the alternative GSP scheme, would have signified a severe setback in trade relations with the EU (see chapter 3.3).

Ravenhill (2004, p.133), describes the situation the following:

'Recognition by the ACP of the limited viability of the existing trade arrangements might be seen as indicating a degree of cognitive consensus on the issue. But few ACP governments perceived significant benefit in the EU proposals; it was more a matter of having to accept an unpalatable alternative forced on them by the power asymmetries in the relationship'.

3.2 *The EU's development cooperation*

As already mentioned, the Lomé system has for long constituted the core of European development cooperation. The central elements in the relationship with the ACP were a mixture between trade preferences and development aid aimed at building infrastructure in the countries concerned. The radical transformation of the strategic context, in which the EU is operating (discussed in the previous chapter) have lead the EU not only to shift its attention towards other regions and states (the ACP are not longer at the apex of the pyramid of privilege), but also to fundamentally reorient the principles and mechanisms of its development policy.

3.2.1 Principles of European development cooperation

Prior to the 1993 Treaty of Maastricht, European development cooperation was characterised by its fragmented nature (e.g. Matthews, 2007, p.504). The Treaty, for the first time, introduced defined objectives and provided for how competences should be shared between the European Commission and the member states. In its Article 177 the following three objectives are quoted:

Community policy in the sphere of development cooperation, which shall be complementary to the policies pursued by the Member States, shall foster:

- *the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them.*
- *the smooth and gradual integration of the developing countries into the world economy,*
- *the campaign against poverty in the developing countries.*

(Article 177, Treaty of Maastricht, op. cit. Matthews, 2007, p.506)

The Article proceeds by emphasising that EU development policy shall contribute 'to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms' (ibid., p.505). It further underlines the 'complementarity' of EU and member states policies, implying that development cooperation is an area of shared competence between the two levels (in contrast to trade policy, which is under the exclusive authority of the EU) (Matthews, 2007, p. 506). With regard to development funding, for example, the distribution of competences is such that the EU budget is used for geographical or thematic programmes only, while allocations of the member states are exclusively reserved for the EDF (see Matthews, 2007, p. 505).

Article 178 establishes the principle of policy coherence. Accordingly 'the Community shall take account of the objectives referred to in Article 177 in the policies that it implements which are likely to affect developing countries' (ibid., p.504). The Treaty also gives the EU the legal authority to coordinate the different development policies between the national and the Community level (Article 188). According to an OECD report, that would make the EU 'a unique donor', since it would play 'a dual role in development, as a bilateral donor providing direct support to countries, and as a co-ordinating framework for EU Member States' (OECD, 2002a, op. cit. ibid. p. 507). Finally, the Treaty provides that decision-making in the area of development cooperation shall be based on majority voting (Article 179). The only exemption are decisions on the EDF, which will remain subject to unanimity.

Thus, the Treaty of Maastricht embodies the three important principles, which are the corner stones of European development policy: *complementarity*, *coordination*, *coherence* (cf. ibid., p. 507). In the 1997 Treaty of Amsterdam these principles were extended by another one, namely *consistency* with regard to EU actions in the area of external relations, including security, economic and development policies (ibid., p. 507).

Though with the Treaty of Maastricht the EU's development cooperation had obtained a clear direction, it was still facing the problem of having a variety of action fields (cf. ibid., p. 507). This was, however, of significant relevance, particularly in the light of the multiplicity of programmes the EU was supporting. Thus, in the development policy statement of November 2000, the EU defined six priority areas towards which Community action should be directed.

Meanwhile, the EU with its 2005 strategy paper (the 'European Consensus on Development') had obtained a conceptual framework for its development policy, containing common goals, values and principles. While part 1 provides a European vision, based on international obligations as well as common values and principles, part 2 contains guidelines for concrete implementation. In the paper the EU extends the six areas of cooperation by a further three, while underlining the value added of European action in that fields. These are (op. cit. Tannous, 2007, pp.251-252):

- trade and regional integration,
- environment and sustainable management of natural resources,
- infrastructure, communications and transport,
- water and energy,
- rural development, agriculture and food security,

- governance, democracy, human rights and promotion of economic and institutional reforms,
- conflict prevention and fragile states,
- human development, and
- social cohesion and employment.

With its focus on fragile states the paper, thus, laid down the conceptual fundamentals for linking security and development policy (Tannous, 2007, p. 252). Furthermore, the EU once again underlined the significance of policy coherence. This issue has been of significant relevance with regard to coherent trade and development policies in the EPA negotiations (ibid., p.252).

3.2.2 Functioning of the EU's Development assistance

EU assistance targeted towards developing countries is classified as Official development aid (ODA). It is in the form of loans or grants and tied to specific financial terms. For the ACP states (as well as for overseas countries and territories (OCTs) the relevant source of financing is the EDF. Resources under this fund are exclusively made up of volunteer contributions by member states with the amount to be paid by each country being calculated on the basis of a particular formula. The management of the funds falls under the competences of the Commission, while the supervision of disbursements rests with the Council of Ministers (see Matthews, 2007, p. 504-505).

3.2.3 Evolution and scope of the EDF

The table below shows the evolution of EDF resources over last three decades. Though the figures indicate a positive trend, EDF funding has remained constant in real terms and even fell from the nineties onwards, in both real and per capita terms (ibid., p. 511).

The 5-year financial protocols provided under the Cotonou Agreement set the available resources under the EDF. However, the 9th EDF, originally envisaged to terminate by 2005, was extended by a further two years due to the outstanding transfers of previous funds. Consequently, the expiry of the 10th EDF was settled for 2013 in order to coincide with the expiry of the EU's 2007-13 Financial Perspective. In December 2005 its amount was fixed at 22,68 billion Euros (Matthews, 2007, p. 511). This should 'ensure that the funds available would be maintained at least at the same level as the ninth EDF, taking into account the effects of inflation, growth within the EU and enlargement to ten new member states in 2004' (ibid., p.511).

EDF funds are available for programmable and non-programmable purposes. Programmable funds are targeted to individual ACP states and regions through National and Regional Indicative Programmes. Every five years they are granted to the recipients according to demographic, geographic and macroeconomic indicators. Since the Cotonou Agreement a performance parameter has been included as well. Non-programmable funds, in contrast, are ad-hoc instruments and prior allocations by country are not defined. They are granted on a case-by-case basis to whichever countries meet the specified condition. The main non-programmable resources of Lomé were support for structural adjustment, STABEX and SYMIN, and humanitarian and rehabilitation assistance. As can be seen in the table, the EU increasingly turned away from non-programmable funds in favour of programmable aid. Equally, within the latter category a notable trend towards budget support instead of non-budget/project grants has been evident. This is a consequence of EU aspirations to improve the effectiveness of aid by aligning it more closely with recipient countries' own priorities and procedures.

Table 1: EDF global commitments (€million)

	EDF6 (1985-90)	EDF7 (1990-95)	EDF8 (1995-2000)	EDF9 (2000-07)	Total (%)
Programmable aid	5,285	7,751	8,276	8,493	77%
Non-budget support (projects)	5,224	6,125	6,174	6,061	61%
Budget support	61	1,626	2,101	2,432	16%
Non-programmable aid	2,130	3,031	3,040	722	23%
Venture capital	544	839	1,157	-	7%
HIPC and Global Fund	-	40	1,060	630	4%
STABEX, FLEX	1,451	1,703	708	92	10%
SYSMIN	134	449	114	-	2%
Total	7,415	10,782	11,316	9,215	100%

Source: CEC, 2006c (op.cit. Matthews, 2007., p. 511)

3.2.4 EU trade policies

While the evolution of EU objectives in the area of development cooperation needs to be seen in the context of historical, political and economic conditions, there is no doubt that (amongst other factors) the desire to open up new markets for European exporters has also played an important role (see Schmuck, 1992, op. cit. Dialer, 2007, p. 31). A notable move in this respect was the reorganization of the European Commission in 1999, which shifted the

responsibilities of the Development Directorate towards the Trade Directorate. This could be seen as 'a clear signal (...) that trade with the ACP would be subordinate to the overall principles of EU external trade relations' (Ravenhill, 2004, p.130-131).

As discussed in the previous chapter EU actions in that field are also increasingly guided by social and security policy concerns. With regard to Africa, Collier describes it the following:

(...) if Africa were to collapse (...) then Europe would suffer from drugs and immigration (...). The conjunction of European trade benefits arising from African growth and European social problems arising from African decline is presumably why Europe already spends such large sums on aid to Africa (Collier, 1999, p.108, op. cit. Dialer, 2007)

Today the cross-cutting character of development policy is increasingly being emphasised (Tannous, 2007, p.252), touching the above-mentioned problem of coherency between the different EU policy fields. Indeed, there are various institutions in the EU dealing with the field of development cooperation, partly with overlapping responsibilities (see Dialer, 2007).

An important role with this regard is attached to the European Commission due to its authority in negotiating bilateral agreements (such as the EPAs) on behalf of the member states (covered under Article 310 of the EC Treaty on Communitarian Trade policy (TEC)).

Though it is out of the scope of this thesis to analyse the EC's decision-making procedure in these areas, it shall be mentioned that in recent years (besides the institutional level), an increasing number of non-state actors have become to form the outcomes of European trade policies. In this context several authors raised concerns about the growing role of lobby groups representing the economic interests of large European companies. For further literature on that issue is shall be referred to, for example, Schilder et al. (2005, p. 8-12).

3.3 *Legal background to the EU-CARIFORUM EPA*

3.3.1 The WTO waiver and expiry of the Cotonou agreement

A guiding principle of the WTO is the Most Favoured Nation (MFN) principle. It obliges WTO member countries to treat imports of all other WTO member countries no worse than imports of the 'most favoured' trading partner:

'With respect to customs duties and charges of any kind [...], any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.' (Article 1 of GATT 1947)

MFN, thus, excludes discrimination between WTO member countries in terms of imports and exports through the imposition of custom duties, charges, modalities for payments, custom formalities etc (Lang, 2006, p. 1). It is so crucial to WTO jurisprudence that it constitutes the first article of the GATT of 1947. The MFN principle - though slightly handled differently - is also a key element in the General Agreement on Trade in Services (GATS) (Article 2) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (Article 4). With their membership to the GATT/WTO the EU and the ACP states agreed to that principle and were thus obliged to replace discriminatory Cotonou preferences. Until the discontinuation of preferences they were granted a special exemption ('waiver') which expired on 31 December 2007.

For this reason and in order to inhibit successful challenges from other WTO members the Cotonou agreement also contains an internal deadline for the validity of the trade regime. The extension of the Lomé IV trade arrangement was only provided until 31 December 2007 coinciding with the expiry of the waiver (see e.g. CRNM, 2007a). It has to be noted that it is only the trade regime, which will terminate on that date, while the entire agreement will still run for 20 years. Within the so-called 'preparatory period' both sides agreed to negotiate a WTO-compatible trade regime that would replace the trade arrangement of Cotonou (Article 36(1)). There is also an indication that the new trading arrangement should be introduced gradually (Article 36(2)).

Further, under Article 36(4) the Parties agreed to review the Commodity Protocols with a view to safeguarding their benefits, bearing in mind the special legal status of the SP:

'In this context, the Parties reaffirm the importance of the commodity protocols, attached to Annex V of this Agreement. They agree on the need to review them in the context of the new

trading arrangements, in particular as regards their compatibility with WTO rules, with a view to safeguarding the benefits derived there from, bearing in mind the special legal status of the Sugar Protocol.’ (Article 36(4) of the Cotonou Agreement)

3.3.2 WTO compatibility

The WTO permits two kinds of exceptions from the MFN clause (see e.g. Lang, 2006, p. 1-2). The first one is ruled in Article 24 of the GATT 1947 and exempts RFTAs from the MFN principle. However, there are certain conditions that must be met in order for an agreement, such as the EPA in goods, to qualify as an RFTA (see e.g. Lang, 2006, p. 4-5, p. 7-23; CRNM 2007a). First of all, it must not increase existing levels of trade restrictions affecting non-member countries:

‘[...] with respect to a free-trade area, or an interim agreement leading to the formation of a free-trade area, the duties and other regulations of commerce shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement [...]’ (Article 24 (5(b)) of GATT 1947)

The idea of that regulation is to keep the level of discrimination and the resulting trade disturbing effects at a minimum (CRNM, 2007a). Secondly the arrangement must lead to a significant liberalization by covering ‘substantially all trade’. However, what is meant by the latter is not explained in the Article and thus has been subject to controversial debates.

‘A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.’ (Article 24 (8(b)) of GATT 1947)

Finally, the formation of free trade areas through interim agreements shall be realized within a reasonable period of time:

‘[...] any interim agreement referred to in sub-paragraphs (a) and (b) shall include a plan and schedule for the formation of such a customs union or of such a free-trade area within a reasonable length of time.’ (Article 24 (5(c)) of GATT 1947)

This vague formulation of Article 24 certainly presents a major shortfall of the GATT agreement. Developing countries, in particular, demanded an amendment of its provisions in

order to account for different levels of development between the parties of an RFTA (special and differential treatment (SDT)). Currently this issue is being discussed in the framework of the Doha Round (see Box 1).

In addition to addressing market access in goods, EPAs may also address services and investment. In this case the EPA as a RFTA must meet similar requirements regulated in Article 5 of the GATS.

Box 1: Renegotiating GATT Article 24

Article 24 of the GATT and in particular the definition of the concept of 'substantially all the trade' (SAT) has been subject to controversial debates as it fails to determine the terms and conditions that need to be met in order for an RFTA to be WTO compatible (see e.g. Lang, 2006, p. 4-5). The vague formulation of the Article traces back to the poor number of RFTAs existent in 1947. In fact, between 1948 and 1960 only two RFTAs were reported to the GATT (Lang, 2006, p. 4). For this reason, the founding treaty of the WTO was complemented by an 'Understanding on the Interpretation of Article 24 of the GATT 1994'. It clarified some details of the Article and determined a period of 10 years to be a 'reasonable length of time' for interim agreements. Exceptions were possible but needed to be justified towards the Council for Trade in Goods:

'The 'reasonable length of time' referred to in paragraph 5(c) of Article XXIV should exceed 10 years only in exceptional cases. In cases where Members parties to an interim agreement believe that 10 years would be insufficient they shall provide a full explanation to the Council for Trade in Goods of the need for a longer period.' (Article 3 of the Understanding)

The Understanding, however failed to clarify some crucial issues, most importantly the meaning of SAT. Thus, in 1996 the Committee on Regional Trade Agreements (CRTA) was established with a view to review RFTAs and examine their conformity with WTO rules. However, it soon became apparent that the Committee proved ineffective in evaluating the conformity with the multilateral legal system (Lang, 2006, p.5). Moreover, developing countries called for the introduction of SDT into RFTAs. They also demanded a flexible reading of 'other restrictive regulations of commerce' (ORCs) in order to allow for safeguard measures and to restrict the assessment of RFTAs to the Committee on Regional Trade Agreements only (excluding the Dispute Settlement Body (DSB)). Amongst others this should remove the threat of dispute and challenge.

The international trading community has taken account of these facts and included that issue into the Doha agenda. Paragraph 29 of the Doha Declaration states:

'We also agree to negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements. The negotiators shall take into account the development aspect to the rules on RTAs.' (Paragraph 29 of the Doha Declaration, *op. cit.* Lang, 2006, p. 5)

Hence, in the course of the WTO negotiations the ACP submitted a proposal asking for a more flexible reading of GATT Article 24 by allowing for SDT in RFTAs between developing and industrialised countries (see e.g. South Centre, 2008b, p. 11; Gonzales, a). Essentially, they pledged for longer transition periods and greater exclusions from the SAT requirement within RFTAs. Traditionally, the EU's interpretation of the SAT provision has been that at least 90% of the existing trade should be liberalized (R. Lang, 2006, p. 12). These 90% can be divided unevenly in order to account for development asymmetries. In the free trade agreement with South Africa, for example, the EU committed to liberalize 98% of its trade while South Africa was only obliged to open up 82% of its markets (*ibid.*). After several years of ongoing Doha negotiations without real substantive progress on that issue it is becoming evident that efforts of the ACP states towards changing Article 24 have come to naught. (Gonzales, a).

The other exception from the MFN principle is governed by the Decision on '*Differential and more favourable treatment reciprocity and fuller participation of developing countries*' clause, also called 'Enabling Clause'. It allows for more favourable treatment if granted to the entire group of a development category (e.g. see Lang, 2006, p. 1; Matthews, p. 497-499);³. The EU grants more favourable treatment to developing countries under an arrangement known as the Generalized System of Preferences (GSP). This would have been the only alternative for ACP countries opting not to sign an EPA. However, the GSP scheme would have presented a severe setback for CARIFORUM countries in trade relations with the EU. There are two reasons for this: First, the arrangement cannot be used to limit preferential access to Caribbean or ACP countries only. And second, tariffs under this arrangement would be notably higher compared to both the Cotonou Agreement and the EPA.

Currently⁴, the EU offers three different levels of market access under the GSP, which will be discussed in the following (c.f. CRNM, 2007a; see also Matthews, p. 497-499):

1. The standard GSP is open to *all* developing countries, which would cancel out the preference margin that Caribbean exports currently enjoy. Moreover, under the arrangement only a few products are eligible for duty-free access. The remainder of the products exported to the EU (including sugar) would face a significant tariff jump compared to the EPA alternative. The resultant higher prices would render most of the regions export to the European markets uncompetitive.
2. The Everything But Arms scheme (EBA) is open to LDCs only, granting them duty-free access for all products except for guns and ammunition. Out of the CARIFORUM members, only Haiti - the only LDC - would be able to benefit from the EBA.
3. The GSP+ arrangement ('Special incentive arrangement for sustainable development and good governance') grants preferential access to the EU markets for developing countries that '*implement certain international standards in human and labour rights, environmental protection, the fight against drugs, and good governance*' (European Parliament, 2006). It offers developing countries duty-free access to significantly more items than under the standard GSP. However, sugar, bananas, rice, rum and aluminium are not covered by the arrangement. In addition, under GSP+ eight of the

³ It also allows for RFTAs between developing countries ('South-South agreements'). Due to its flexible nature the Enabling Clause has been the legal basis for a number of agreements such as MERCOSUR, COMESA, CEMAC, the EAC and WAEMU (Lang, 2006, p.5).

⁴ Regulation (EC) No 980/2005, valid for the period 01.01.2006-31.12.2008

top twelve CARIFORUM exports would face tariffs prohibitive to competitive export. Therefore only for a few CARIFORUM countries the GSP+ would be more beneficial than the standard GSP. The remainder of the Caribbean countries would be worse off compared to the Cotonou Agreement or the EPA.

Further, it shall be noted that none of the GSP arrangements covers trade in services and investment - an area regarded as 'offensive' interest by the EU (see Chapter 2.4). Though for many CARIFORUM countries tourism and cultural services constitute a major source of income, it was rather the EU, which pushed for the inclusion of services and investment in the EPA negotiations. Moreover, it is often argued that preferences granted unilaterally by the EU can equally be removed or modified unilaterally. Thus, in sum, the GSP scheme would notably impede the export of Caribbean products and services to the EU and offer little scope for new producers seeking to penetrate the European market (CRNM, 2007a).

4 The CARIFORUM perspective

4.1 *Economic landscape of the CARIFORUM region*

The present chapter shall give a brief overview of the economic landscape of the Caribbean region. As otherwise indicated, trade figures and indicators are taken from the 2008 South Centre report (South Centre, 2008a).

4.1.1 The CARIFORUM region

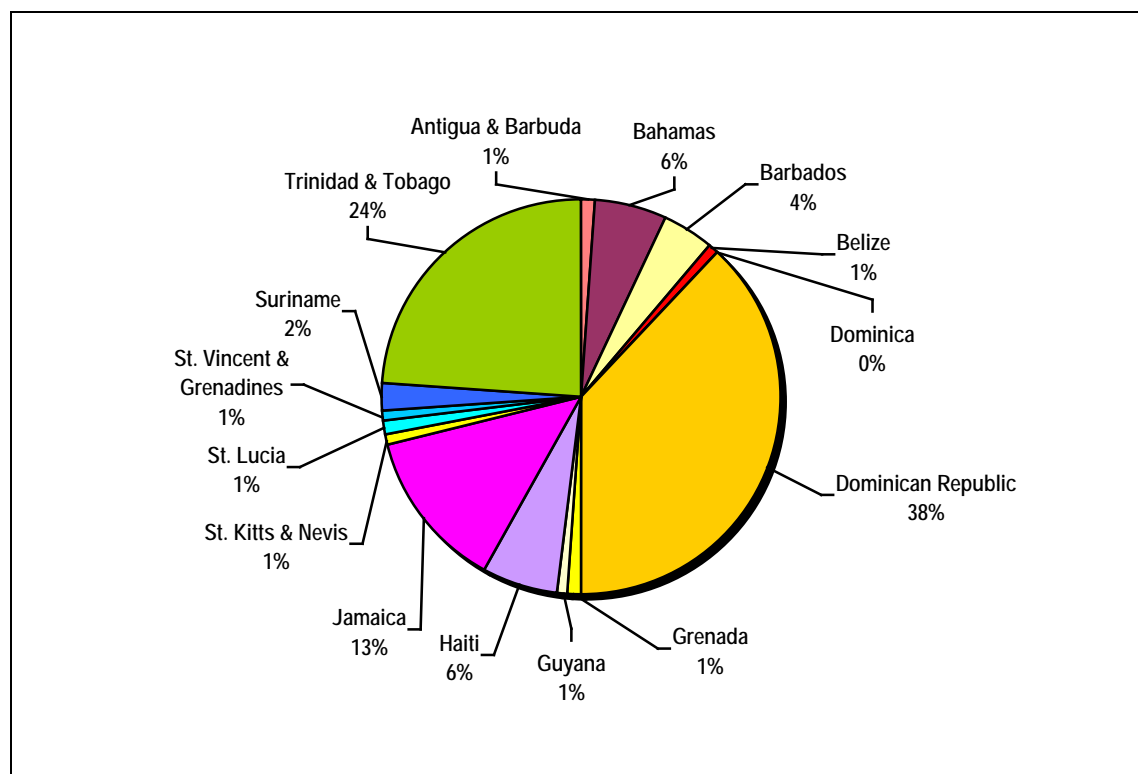
The CARIFORUM was established in 1992 with the aim of coordinating and monitoring EDF resources for the region. It comprises 15 countries, namely the 14 CARICOM countries (save Cuba) plus the Dominican Republic: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

Geographically the region is composed of 12 small island states and 3 coastal small to medium size states (Belize, Suriname and Guyana). These are poorly diversified and their geographical location makes them particularly vulnerable to natural disasters (hurricanes, sea-level rise).

4.1.2 Demographic indicators

The Cariforum region has a population size of around 24,9 million and an average annual growth rate of 0,82%. The regional GDP amounts US\$81,4 billion, of which the Dominican Republic and Trinidad and Tobago clearly account for the largest share (38% and 24% respectively). Jamaica (13%), Bahamas (6%), Barbados (4%) and Suriname (2%) lag far behind, while the remaining countries exhibit a share of equal or less than 1% of the region's GDP (see Figure 1).

Figure 1: CARIFORUM countries GDP (as percentage of regional GDP)



Source: South Centre (2008a, p. 10)

The economic disparity among Caribbean countries is also reflected in GDP per capita figures. Haiti's per capita GDP - US\$1,800 - accounts for not even as much as 10% of that of Bahamas (US\$21,600), Trinidad and Tobago (US\$19,800) or Barbados (US\$18,400). Belize, Dominican Republic and Saint Kitts & Nevis range in the middle field with GDPs per capita revolving around the regional average of US\$8,687.

4.1.3 Development indicators

According to the United Nations out of the classified economies four countries are severely indebted (Belize, Dominica, Guyana, Haiti, Jamaica), another four are moderately indebted (Grenada, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines), while three countries (Dominican Republic, Haiti, Trinidad and Tobago) are only less indebted (see Table 2).

Table 2: Indebtedness of CARIFORUM states

Country	Indebtedness			
	Severely indebted	Moderately indebted	Less indebted	Not classified
Antigua and Barbuda				X

Bahamas				X
Barbados				X
Belize	X			
Dominica	X			X
Dominican Republic			X	
Grenada		X		
Guyana	X			
Haiti			X	
Jamaica	X			
Saint Kitts and Nevis		X		
Saint Lucia		X		
Saint Vincent and the Grenadines		X		
Suriname				X
Trinidad and Tobago			X	

Source: World Bank (2008a)

Compared to other EPA regions - indicated by Human Development Index (HDI) values and rankings - CARIFORUM is by far the region with the higher level of development (see Table 3). Haiti is the only country classified as LDC and, thus, eligible for the EBA preferential scheme. This has had implications for the negotiation process, with the Caribbean region certainly being under more pressure to conclude an agreement by time than other ACP regions.

Table 3: GDP per capita, HDI value and ranking

EPA region	CARIFORUM	SADC	PACP
GDP per capita (US\$)	8,867	4,428	3,833
HDI value (lowest-highest in the region)	0.529 (Haiti) – 0.892 (Barbados)	0.390 (Mozambique) – 0.626 (Namibia)	0.530 (Papa New Guinea) – 0.819 (Tonga)
HDI ranking (highest-lowest in the region)	31 st – 146 th	125 th -169 th	55 th -145 th
Number of LDCs	1	4	5

Source: South Centre (2008a, p. 10)

4.1.4 Production

With regard to sector-specific production, the services sector – with 64,5% - captures by far the largest share of regional GDP. However, there are considerable variations at the country level, ranging from 39,4% in Trinidad and Tobago to 90% in the Bahamas. Trinidad and Tobago's most important source of income are clearly industrial activities with its 59,8% ranging considerably above the regional average of 24,%. Agriculture accounts for around 11% of the combined CARIFORUM GDP. Again there are significant differences among national economies with regard to the particular importance of the sector. While agriculture accounts for less than 1% of Trinidad and Tobago's GDP, figures are considerably higher for Belize and Guyana with 22,% and 34,9% respectively.

Table 4: GDP composition and trade in goods and services

	GDP composition by sector (% of total GDP)			Trade in goods and services (% of GDP)	
	<i>Agriculture</i>	<i>Industry</i>	<i>Services</i>	<i>Exports</i>	<i>Imports</i>
CARIFORUM	11.4	24.1	64.5	49.2	64.9
West Africa	36.7	21.5	41.9	46.5	61.1
PACP	21.4	22.2	56.4	46.5	61.1

Source: South Centre (2008a, p. 11)

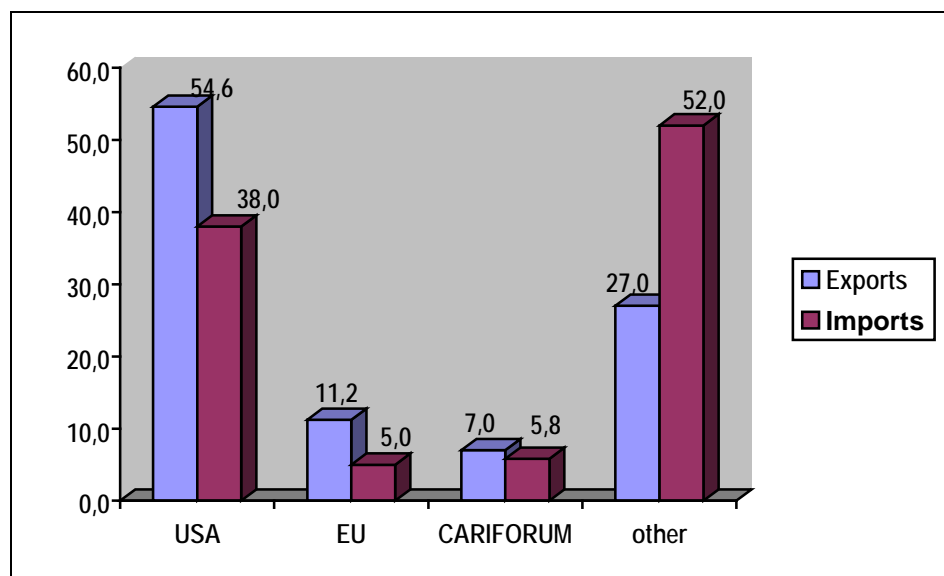
4.1.5 Intra-regional trade

At the regional level, CARIFORUM states exhibit a strong orientation towards merchandise trade (accounting for 75,8% of regional GDP), ranging from 53% in the Bahamas to 161,2% in Guyana. A further characteristics of CARIFORUM economies are their high dependency on imports, denoting 65% of regional GDP and with Guyana standing at the forefront (goods and services accounting for 123,9%).

4.1.6 Exports

The EU is only the second most important trading partner of the Caribbean region with 11,2% of the region's exports going to the Community market (as opposed to 54,6% targeted towards the US market) (see Figure 2). 7% of total exported products are garnered by intra-regional trade, of which the Jamaican market clearly captures the largest share (3,4%). Jamaica's imports, in turn, originate mainly from Belize, Dominica, Guyana and Trinidad and Tobago.

Figure 2: Main trading partners



Source: South Centre (2008a, p. 11)

The region's export structure exhibits a high concentration on four product categories. Mineral fuels, boats and ships, electronic equipment, and beverages capture 42,8% of the total value of exports. However, it needs to be stated that only Antigua and Barbuda and the Bahamas export boats and ships, while the remainder of the product groups are exported by at least five countries. While in the early years of the Lomé relations traditional agricultural products (bananas, sugar, rum, rice) constituted a – though modest - but secure export income for Caribbean countries, they steadily lost importance with the dismantling of trade preferences. In fact, the share of EU imports originating in the wider ACP region decreased from 6,7% in 1976 to only 3,0% in 2000. Today sugar exports amount to around 2% of the region's total exports with Guyana constituting the largest exporter of sugar (30%).

4.1.7 Imports

Imports are also strongly concentrated: mineral fuels capture 24,3% of total imports, boats and ships 10,0%, boilers and machinery 4,8%, and vehicles other than railway 4,5%. The preceding places in the export ranking are placed by electronic equipment, generic consumer goods, apparel items and cereals with their combined share amounting for only less than 4% of total imports. Merchandise imports mainly originate from the US (37,7%), Nigeria (13,1%), Brazil (8,4%), Trinidad and Tobago (5,7%) and South Korea (4,7%). The EU represents a more important export than import partner for the region, with only 5% of total imports originating in the Community market. A modest amount of 5,8% of the region's import demands are met by CARIFORUM states, which again exhibits the poor development of intra-regional trade.

4.2 *The Caribbean integration process*

4.2.1 Rationale for regional integration

The rationale for regional integration usually stems from cost-benefit considerations, including the aim to increase self-determined governance and to overcome vulnerability to external shocks (e.g. fluctuations in international commodity prices, policy changes abroad (cf. IADB, 2005, p.3)) resulting from small size as well as economic and political fragmentation of the economies (see Nuscheler, 1992, p.293). This also applies to the Caribbean region with its colonial past and its dependency on external trade due to the lack of diversified resources. As in other regions, Caribbean integration has been advanced as a strategy to confront the challenges of globalisation and regionalism (cf. Hall, 2000, p. XI), by promoting both internal and external reciprocity. The gradual erosion of trade preferences, alongside with market liberalisation (particularly through the conclusion of the EPA with the EU) have spurred Caribbean interests in regional integration.

4.2.2 The evolution of Caribbean regionalism: A record of fragmented coherence

Initial integration approaches of the Caribbean region trace back to the creation of the West Indies Federation in 1958 by the United Kingdom in an attempt to lead its former colonies into independence. These efforts, however, failed to materialise due to the development of a 'fragmented nationalism' and the unwillingness of the two greater island states (Jamaica and Trinidad and Tobago) to get overruled by the smaller economies - associated with the UK (cf. Nuscheler, 1992, p.293). The latter in 1967, created the Caribbean Free Trade Area (CARIFTA) in order to protect themselves against competition from the four greater economies (Jamaica, Trinidad and Tobago, Barbados and Guyana) (Nuscheler, 1992, p.294). Though, indeed, these were not able to gain substantial market shares and the intraregional trade only rose from 6% to 12% within seven years from the creation of the free trade area (IADB, 2005).

Great Britain's access to the EEC refreshed the Caribbean efforts to unite in order to secure continued development assistance and privileged access to British markets (cf. IADB, p. 6). In 1973, the Caribbean Community (CARICOM) was created in the treaty of Chaguaramas by the four founding members Barbados, Guyana, Jamaica, and Trinidad and Tobago. Belize, Dominica, Grenada, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines joined in 1974. Finally, with the inclusion of the Bahamas in 1983 the group of the former Commonwealth Caribbean was complete again (Nuscheler, 1992, p.294).

The treaty of Chaguaramas provided for the establishment of the CARICOM Secretariat and for the creation of the Regional Development Bank (RDB). It also manifested the objectives of the Community, which are economic integration, including the creation of the Caribbean Common Market, and functional cooperation in areas such as transport, communication, education, and economic and security cooperation. Article 9 of the treaty appoints as 'supreme policy-making bodies' the Conference of the Heads of Government and the Common Market Council, consisting of Ministers. Further a number of institutions with an associate status were created, amongst others the Council of Legal Education (CLE) and the Caribbean Examination Council (CXC). These three, later on played a major role in overcoming the eight-year hiatus from 1975 to 1982 (see Hall, 2000, p. XXXII). Within this period no Heads of Government Conferences were taking place as a result of the economic world crises and the consequent debt crisis of the 1970s and 1980s.

4.2.3 From inward towards outward integration

Initially, the Caribbean Community pursued a mainly inward-oriented integration strategy, which focused merely on intra-regional trade and on industrial development (IADB, 2005, p.3-4). The central elements of this approach were the liberalisation of trade in goods and the implementation of a Common External Tariff (CET). From the late 1980s onwards, the Community increasingly shifted towards a more outward-looking integration approach, focusing on efforts to attract new members and the dismantling of protectionist measures against third countries (ibid., p.4).

On the one hand this reorientation can be seen as an answer to changes in the global economic context. These are earmarked by Europe's move towards the single market, changes in the EC's banana regime and in other commercial policies (cf. ibid., p. 6). On the other hand the shift towards outward-orientation reflects changes in the economic development thinking and the emergence of the 'open regionalism' approach (ibid., p.4). In the 1990s the progress of the Free Trade Area of the Americas (FTAA) as well as liberalisation pressures, emanating from the new multilateral system became the driving forces for Caribbean integration (cf. ibid., p.6).

4.2.4 The revised treaty of Chaguaramas

With the Community's shift towards outward-orientation, the coordination of external policies gained substantial weight. Moreover, the treaty of Chaguaramas, in its original form, did not cover many of the issues complemented under the CSME. Therefore in the Community

adopted a series of nine protocols in the 1990s and in 2001 heads of governments signed the revised treaty of Chaguaramas.

A characteristic feature of CARICOM's integration process is the postponement of target dates for envisaged measures. The introduction of the CET, originally scheduled for 1981 was delayed by more than a decade and only a few countries met the 1998 deadline for a full implementation. The Community also foresees the creation of the CSME. Therefore, heads of governments agreed on a number of measures to be taken by 1993. However, that deadline was never met and major elements of the CSME implementation were postponed until 1999. Though some progress has been made, today, the CSME is still 'far from being reality' IADB, 2005. Similar applies to governmental and institutional reforms, where final decisions are still pending.

With the inclusion of Suriname and Haiti in 1995 and 2002 respectively, the number of Caribbean Community members had risen to 15. Finally, in 1998 CARICOM concluded a free trade agreement with the Dominican Republic (in vigour since the end of 2001).

4.2.5 The Organisation of Eastern Caribbean States (OECS)

All though the Community offers special treatment for LDCs (for detailed explanation see below), it became apparent in the middle of the debt crises that this was insufficient and that economic disparities were further widening. As a result (see Hall, 2000, p. XLI), a number of smaller island states (Dominica, St Lucia, Antigua & Barbuda, Grenada, St Kitts and Nevis, St Vincent & the Grenadines, Montserrat, Anguilla and the British Virgin Islands), which seemed to benefit less from the Community compared to other members, founded the Organisation of Eastern Caribbean States (OECS).

In contrast to CARICOM, the competences of the OECS also cover cooperation in the areas of health, telecommunications and information technology. With the introduction of a common currency, the establishment of a joint judiciary system as well as the creation of an economic union at an accelerated pace, the organisation clearly shows a deeper degree of integration compared to CARICOM.

4.2.6 Bilateral agreements

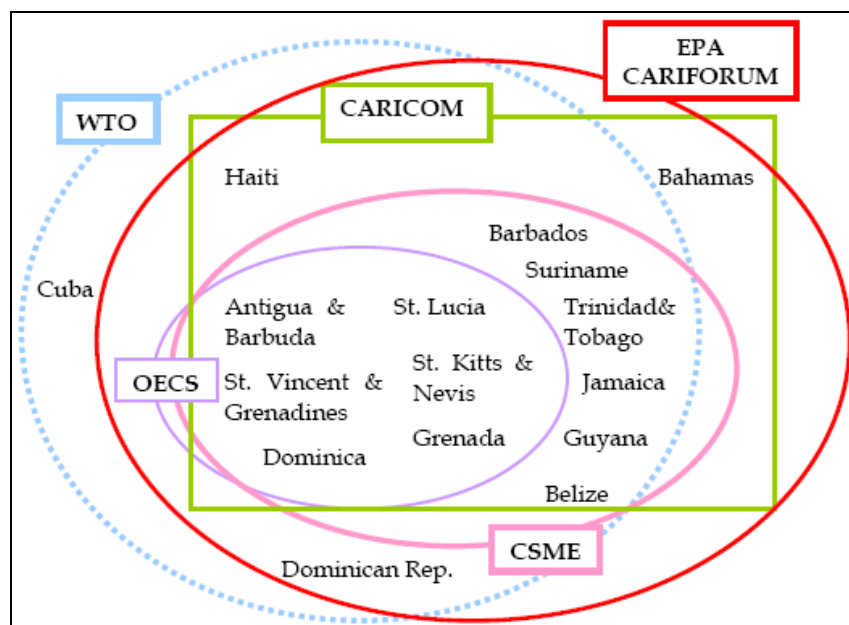
In addition to the aforementioned integration processes, a number of bilateral agreements have been concluded within the Caribbean region. These include free trade agreements between CARIFORUM states and certain Central and Latin American countries, such as Cuba, Costa Rica, Colombia and Venezuela, and Canada. Talks are also underway for the

establishment of a FTAA, as well as with MERCOSUR countries and Canada for the conclusion of free trade agreements. Finally economic relations between the Dominican Republic and the US are framed by the Central American Free Trade Agreement (CAFTA, later on renamed to US-DR-CAFTA) since 2004.

4.2.7 Influence of the EU on Caribbean integration

The EU has affected the Caribbean integration process in several ways. It contributed to the integration among English and non-English speaking states: Through its support for CARIFORUM, the EU may have prompted the enlargement of the Community, extending its membership to Suriname and Haiti (cf. IADB, p. 6). Equally, it has spurred incentives for enhanced relations with the Dominican Republic, culminating in the CARICOM-DR free trade agreement in 2002 (cf. *ibid.*, p.6). Today, through the conclusion of the EPA with the EU, CSME implementation is regarded more important than ever before (see *ibid.*).

Figure 3: Overlapping Caribbean memberships



Source: South Centre (2008)

4.2.8 Integration within CARICOM: the ambitious CSME project

The Caribbean Community foresees a four-phase implementation for its ambitious CSME project. Besides the creation of common markets, CSME also involves measures towards the harmonization of standards and the creation of a Caribbean court of Justice.

The first phase, the CARICOM Single Market (CSM), envisages the free movement of goods, services, people and capital without tariffs or any other restrictions within the Community. It

also includes the communitarization of economic and trade policies - an issue, which touches the question of national sovereignty and which has raised concerns among some of the member states (see constraints to Caribbean integration). In any case, an important step with this regard was the introduction of a CET for imports originating in third countries, already in application since 1991. Imports from the Community market are duty-free, except for a few products, which will be subject to a phased liberalisation. Tariffs for non-member countries will be gradually reduced, with Phase I having commenced in 1993. Full implementation (Phase IV), meaning a tariff ceiling of 20% for industrial goods and 40% for agricultural goods, was scheduled for January 1998. However, only a few CARICOM economies have entered phase IV yet.

4.2.9 Obstacles to Caribbean integration

Though it has to be acknowledged that the Caribbean region exhibits a deeper degree of integration compared to other ACP regions, the process still needs to be taken further. CARICOM, the most comprehensive organisation in terms of membership (save the Dominican Republic all Caribbean EPA countries are members of CARICOM) (see Figure 3), can still not be accounted to be a cohesive economic grouping with well coordinated economic policies.

The achievements of CARICOM's integration process comprise the abolition of Communitarian tariffs and NTB, the reduction of the CET, and the creation of joint political institutions. However, a number of other issues failed to be addressed, including the harmonisation of tax measures, the coordination of industrial policies, joint strategies for agricultural development, and the organisation of joint industrial enterprises. Though progress has been made in the implementation of the CSME, the process is still far from being complete. In the following a few factors shall be discussed, which have slowed the Caribbean integration process so far.

Cultural divides and ideological barriers:

A joint identity can mainly be attributed to the English-speaking members of the Caribbean Community, sharing a common colonial past. It applies less to the more recent members of CARICOM, Haiti and Suriname (ibid. p.5). Until 1995 when Suriname joined the group, the Caribbean Community consisted entirely of former (or, in Motserat's case still existing) British territories. The addition of three, though unofficial languages (Dutch and French, Haitian Creole), and another legal system (civil law) further contributed to the heterogeneity of the group (see ibid., p.8). According to Hall (cf. 2000 p. XL), personal relations among respective leaders played an important role for the formation of a joint ideology. Many of the

political elite were educated in the UK, where 'they took the opportunity to forge bonds, deepen personal ties and map out strategies for the integration of their region' (ibid., p. XL).

In addition to 'cultural' divides, the ideological diversity among the member states posed a further challenge to the Community. Three CARICOM members turned to socialism in the beginnings of the 1980s. When by 1982 a Revolutionary Military Council took over in Grenada, the OECS appealed for a US-led intervention. Some Community members had apparently given their 'silent consent' and hadn't followed the official CARICOM 'apeacement'-policy. In the words of Hall, '[w]hatever consensus was arrived at by the Community on ideological pluralism was destroyed by the Grenada invasion' (Hall, 2000, p. XXXVI).

Economic disparities and divergence:

As in other regions, one of the major constraints to Caribbean integration is the fear towards losing national sovereignty (ibid., p.12). Trinidad and Tobago, for example, benefits quite well from intra-regional free trade, spurring its manufacturing exports. By presenting one of the group's largest economies the loss of autonomy seems not a big threat. Not surprisingly, it is a strong proponent of the 'open regionalism' approach (see ibid., p.14). For other members, the benefits of economic integration are less obvious. CARICOM membership involves administrative costs for the preparation of technical papers or for the attendance of meetings, but also includes travel and likewise expenditures. However, there are also countries, which are less ready to face competition resulting from intra-regional liberalization. For example, Suriname's accession to the CARICOM free trade zone in 1995, had severe consequences for its manufacturing sector, due to increased competition from Trinidad and Tobago (cf. ibid., p.12).

Both CARICOM treaties (the 1973 founding treaty and the revised treaty) distinguish between more developed countries (MDCs) and less developed countries (LDCs) within the Community. This distinction differs from the official UN classification, with Barbados, Bahamas, Jamaica, Suriname and Trinidad and Tobago being classified as MDCs, while all the OECS states (Belize, Guyana and Haiti) are accorded LDC-status⁵ (IADB, 2005, p.12). The Revised Treaty foresees measures of assistance (technical and financial) for disadvantaged economies, and more importantly, also allows for derogations from Community obligations. Further, it provides for the creation of a Regional Development Fund in order to cope with CSME-related adjustments. Despite entry into force of these

⁵ as of 2005

arrangements, the status, composition and functioning of the fund as well as contributions from member states, yet needs to be determined (ibid., p.12)⁶.

Legal enforcement:

CARICOM has not yet developed the necessary legal instruments that would enable Community decisions to become binding law (cf. ibid., p.14). Currently, most of the measures targeted towards CSME implementation require a separate legal decision by each member state, resulting in significant delays. The role of enforcement, however, has for long been neglected within the Community's integration process (cf. ibid., p.14).

Governance and institutional constraints:

Another constraint to region integration is the weakness of regional institutions with most of them lacking sufficient funding. The CARICOM Secretariat - the administrative organ of the Community – as well as other important agencies rely on financial contributions from member states, which are calculated on the basis of a particular formula. However, payments are sometimes late, and occasionally fail to materialize at all. Equally, organizational and administrative inefficiencies as well as internal communication problems (e.g. duplication of activities) have constrained the Secretariat's effectiveness.

In the Rose Hall Declaration of July 2003, heads of government, in principle, agreed on the creation of a CARICOM Commission - an executive mechanism aimed at facilitating 'deeper integration through the exercise of full-time responsibility in specifically assigned areas of integration (for example CSME), and to initiate proposals for Community actions in these areas' (ibid. p.15). In principle, they also agreed on the adoption of automatic resource transfers for the financing of Community institutions. Equally, heads of governments reached consensus on the necessity of reforming the Secretariat and other Community organs. However, there is no firm compromise yet with regard to terms of implementation (ibid., p.15)⁷. In any case, it is clear that the creation of a CARICOM Commission means shifting at least some decision-making power to the supra-national level.

Constraints at the national level:

A Heads of Government Report, published in 1981, detected weaknesses at the national level as major constraints to the region's integration process (cf. Hall, 2000 p. XLVIII). This

⁶ as of 2005

⁷ as of 2005

report, together with a series of others, influenced what would later be the revised Treaty of Chaguarama in 2002. Regional integration cannot substitute for what is lacking at the national level was one lesson to be learned after the economic downfall of the 1970s and the emergence of 'socialdarwinistic' approaches as employed by many of the Community members. Effective regionalism needs to be based on internal political, social cohesiveness and policy coherence.

Several societies in the insular Caribbean are facing severe problems of governance and political legitimacy, rooted in ethnic and class conflict but also in the fragility of national institutions. In the Greater Caribbean the movement towards effective regionalism will also be conditioned to the progress in resolving problems of internal legitimacy in the G3 group and in Central American states.

External factors:

Though the emergence of the FTAA in the 1990s spurred Caribbean regionalism, the FTAA also puts the integration project under threat (cf. IADB, 2005, p.6). This is because it has prompted the conclusion of bilateral agreements. One example is the free trade area between Trinidad and Tobago, and Costa Rica, which later on was extended to the entire CARICOM region. Another case in point is the enhanced cooperation between Guyana and Suriname with South American countries (ibid., p.6)

5 The EU-CARIFORUM EPA

5.1 *Negotiations*

This chapter seeks to illuminate the content, character and implications of the EU-CARIFORUM EPA.

5.1.1 The Negotiating structure

In 1997 the Caribbean Regional Negotiating Machinery (CRNM) was established in order to pilot negotiations on all issues related to external trade (South Centre, 2008a, p. 3; Clive, 2008d). The EPA negotiations with the EU were conducted by its Director General, Ambassador Richard Bernal, while being assisted by the CARICOM and the OECS secretariats. Further, a Regional Preparatory Task Force (RPTF) was created, consisting of both CARIFORUM and EU representatives. On the CARIFORUM side the RPTF consisted of regional and national authorising officers, as well as with representatives of regional secretariats, universities, institutions and non-governmental actors. On the EU side, it was made up of DG Trade, DG development and field delegations (cf. South Centre, 2008a, p. 3).

The CARIFORUM negotiation structure comprised three levels, which corporate at the technical level. At the Ministerial level, the Lead Spokesperson - Senior Minister Dame Antoinette Miller of Barbados - was assisted by a Ministerial Troika, formed by representatives of the Dominican Republic, St. Lucia and Belize. At the technical level, negotiations were lead by the EPA College of Negotiators, consisting of technical experts from regional institutions (e.g. CRNM, CARICOM Secretariat and academic institutions) as well as from the private sector. Finally, technical support was also provided by the CARICOM and the OECS secretariats

5.1.2 The negotiation process

EPA negotiations began in 2002 on an ACP-wide level. When negotiations were developed to the regional level in 2004 only three regions (comprising just 18 of the 77 ACP countries) had set up a common union or initialled the necessary procedures of doing so (Meyn, 2008, p. 4). In the absence of sufficiently integrated regional entities six EPA groupings were eventually created, in the case of the Caribbean region by merging the Caribbean Community with the Dominican Republic. (Meyn, 2008, p. 4). However, the first three years passed without substantial progress as the parties could not be agreed on basic issues. In October 2007 it became apparent that negotiations would not be concluded until the end of the year, as foreseen by the Cotonou agreement. According to an ODI analysis (2007e, op.

cit. Meyn, 2008, p. 7), in November 2007, the EPA texts of many ACP regions (including CARIFORUM) still showed huge gaps and none of them contained detailed annexes such as liberalisation schedules or RoO (Meyn, 2008, p. 3-7).

5.1.3 Public transparency

The EPA negotiation process was characterised by two major deficiencies, the first relating to the lack of transparency: Information provided by official sources was rather vague and incomplete and often raised ‘more question than answers’ (Girvan, 2008a, p.3). The text of the Agreement itself is ‘highly technical’, embracing ‘complex legal, economic and trade terminology’ (cf. Clive, 2008c). Accordingly to Clive (ibid.) even ‘most lay persons would find it exceedingly difficult, if not impossible, to follow and understand the EPA in a meaningful way so as to assess its implications’. Second, under the threat of the imposition of higher tariffs (discussed in chapter 3.3), fundamental elements of the text were hastily concluded, leaving little opportunity for the public to become familiar with the provisions of the EPA (Girvan, 2008c, p. 1).

Throughout the ratification process several Caribbean intellectuals have raised concerns with regard to several provisions contained in the EPA, suggesting that there was still a ‘window of opportunity for re-negotiate the Agreement’ (Brewster et al, 2008, p. 1). In a memorandum, submitted to CARICOM’s Council for Trade and Economic Development (COTED) in February 2008, they called for ‘*more time and opportunity be provided for a full and public review of the EPA in order that all its aspects are explained and understood and relevant objections taken into account.*’ (Group of Concerned Caribbean Citizens, 2008). These initiatives, however, failed to prove successful with only minor changes being made to the final EPA text⁸.

5.2 *Legal aspects*

5.2.1 Entry into force

The legal procedures for putting the EU-CARIFORUM EPA into force are the following (cf. Clive, 2008d): On behalf of CARIFORUM, the text needs to be signed at ministerial level and thereafter administrative and legal instruments have to be put in place. The necessary procedure on the EU side also involves two steps: The Council decision to authorise the

⁸ indicated in an E-mail reply by Norman Girvan on 3 November 2008

signature of the initialled Agreement has been adopted on 20 December 2007⁹. Thereafter assent has to be given to the European Parliament. Finally, as provided by the WTO Transparency Decision the two parties have to notify the WTO (Bartels, 2008).

On 16 December 2007 Ambassador Richard Bernal, Director General of the CRNM, initialled the EPA on behalf of the 15 CARIFORUM states and Karl Falkenberg, Deputy Director General for Trade, on behalf of the European Commission. 20 other ACP countries signed interim agreements which will be turned into EPAs at a later date (ECDPM, 2007a)¹⁰, while the remainder refused to initial due to the presence of a number of contentious clauses. This has resulted in a situation, in which there now exist a variety of different trade regimes between the ACP and the EU – a phenomenon which, according to the Commonwealth and ACP Secretariat (2008), would be *'detrimental to the regional integration process of the regions concerned, and contrary to the Cotonou objective that EPAs should prioritize regional integration'*.

As provided by the initialled draft EPA, Ministerial signature was originally scheduled for 15 March 2008, but has been postponed repeatedly since some Member States were still examining the text (cf. Clive, 2008d). Only at the fifth attempt, on 15 October 2008, the Agreement was approved by the CARIFORUM states (Economist, 2008). Haiti, distracted by recent hurricanes, has requested more time to review the EPA (cf. CRNM, 2008d; Richards, 2008). Guyana, which had raised several concerns on the EPA provisions during the negotiations, refused to sign until 20 October 2008. Its criticism focused on the stringent RoO, the MFN clause and the liberalisation coverage. The Guyanese President Bharrat Jagdeo had initially sought to sign a goods only agreement. Notwithstanding, he also made clear that the country would give its approval to the EPA should the GSP be imposed, since it could not afford to lose the revenues from its major exports (Guyana, 2008). As a result of his initiatives, a Joint Declaration was appended to the EPA, providing for a mandatory review of the Agreement (see below) (Girvan, 2008f).

As provided by Article 25 of the Vienna Convention on the Law of Treaties (VCLT, 1969), pending entry into force of a treaty, the parties may provisionally apply the Agreement. According to Article 243(3) of the EPA, '[p]rovisional application shall be effected as soon as

⁹ Council Regulation (EC) No. 1528/2007

¹⁰ The logic of this 'two stage' approach is to, first, sign a goods-only EPA (rather than to refuse signing an agreement until every part of the negotiation is complete), then progressively moving towards a more comprehensive Agreement. Such proceeding aims at circumventing a loss of trade preferences and bring EU-ACP trade on solid grounds in the WTO (cf. ECDPM, 2007a).

possible, but no later than 31 October 2008'. However, the problem with this regulation (and also with other agreements containing clauses based on Article 25 of the VCLT) is that the agreement has no binding force until ratification and is therefore not enforceable by law (Bartels, 2008)

At the time of writing the EPA has not yet been notified to the WTO¹¹. Nonetheless EU preferences are already being granted under the EPA though the WTO Transparency Decision requires that such preferences may only be granted after WTO notification. Evidently, this is not in line with the decision (ibid.).

5.2.2 The revision clause

The EU-CARIFORUM EPA is of indefinite duration and contains legally binding commitments. Though the Agreement contains revisions clauses, the possibilities for amendment are rather limited. The Revision clause in the EPA (Article 246) provides for the extension of the Agreement,

'with the aim of broadening and supplementing its scope in accordance with their respective legislation by amending it or concluding agreements on specific sectors or activities in the light of the experience gained during its implementation'.

A revision may also be considered in the case of inclusion of Europe's OCTs. Further there are various references throughout the text on specific revision measures to be carried out by the implementation committees, within the limits set by the terms of the agreement itself (Girvan, 2008c).

For the sake of completeness it shall be mentioned that the EPA also provides for the case of expiry of Cotonou itself, replacement or renewal of the agreement beyond 2020 (CRNM, 2008c) (Article 246(3)). A single Party can only withdraw from its obligations by denouncing the Agreement in its entirety (Article 244).

This means that the EPA practically limits the possibility of its amendment for the purpose of extending the scope of commitments such as for example in the areas of services, public procurement or investment; the inclusion of OCTs; and the varying specific measures of the implementation committees (Girvan, 2008c).

¹¹ indicated in an E-Mail reply by Norman Girvan on 3 November 2008

5.2.3 Parties to the EPA

The parties to the EPA are the signatory CARIFORUM states 'acting collectively' and the EC with its 27 member states (Girvan, 2008a, p. 2; Brewster et al., 2008, p.4). Neither CARIFORUM nor CARICOM are parties to the Agreement. Nonetheless, most binding obligations are those of the 'Signatory CARIFORUM states' (Brewster et al, 2008, p. 4).

5.3 *Scope and content of the EU-Cariforum EPA*

The main text comprises more than 300 pages. Together with the accompanying material (including several annexes, protocols and liberalisation schedules) it makes up more than 1000 pages (Girvan, 2008a, p. 2). The Agreement covers trade in goods, trade in services and investment, trade related rules as well as provisions on development cooperation. After discussing the objective of the EPA, the provisions on these issues will be discussed in more detail.

5.4 *Objectives*

There are several Articles in the EPA, which point at the development aspirations of the Agreement. Yet, the first Article states that the objectives of the EPA are (Article 1 of the EPA) (emphasis added):

*'(a) Contributing to the reduction and eventual **eradication of poverty** through the establishment of a **trade partnership consistent with the objective of sustainable development**, the Millennium Development Goals and the Cotonou Agreement;*

[...]

*(c) Promoting the gradual integration of the CARIFORUM States into the world economy, **in accordance with their political choices and development priorities**;*

[...]

*(f) Strengthening the existing relations between the Parties **on the basis of solidarity and mutual interest**. To this end, **taking into account their respective levels of development** and consistent with WTO obligations, the Agreement shall enhance commercial and economic relations, support a new trading dynamic between the Parties by means of the progressive, **asymmetrical liberalisation** of trade between them and reinforce, broaden and deepen cooperation in all areas relevant to trade and investment.'*

Further, Article 3 on sustainable development states (emphasis added):

*'1. The Parties reaffirm that **the objective of sustainable development is to be applied and***

integrated at every level of their economic partnership, in fulfilment of the overarching commitments set out in Articles 1, 2 and 9 of the Cotonou Agreement, and especially the general commitment to reducing and eventually eradicating poverty in a way that is consistent with the objectives of sustainable development.

2. The Parties understand this objective to apply in the case of the present Economic Partnership Agreement as a commitment that:

(a) the application of this Agreement shall fully take into account ***the human, cultural, economic, social, health and environmental best interests of their respective population and of future generations;***

(b) decision-taking methods shall embrace the ***fundamental principles of ownership, participation and dialogue.***

3. As a result the Parties agree to ***work cooperatively towards the realisation of a sustainable development centred on the human person, who is the main beneficiary of development.***

In Article 7(1) the parties recognised ‘that development cooperation is a crucial element of their Partnership’. The EPA, thus, needs to be judged against these high developmental aspirations.

5.5 Trade in goods

The coverage of goods liberalised by the CARIFORUM states amounts to 61,1% of the cumulative value of EU imports over 10 years, 82,79% over 15 years and 86,9% over 25 years. Out of this, 51% currently attract zero duties and another 1,8% attract nuisance tariffs that were immediately liberalized. In terms of cumulative tariff lines this equals a reduction of 85,1% until 2023 and 90,7% until 2033 (see Table 5) (cf. ECDPM, 2007a). Thereby Caribbean countries can apply a moratorium on all products for the first three years from the entry into force of the Agreement. For revenue sensitive items such as gasoline, motor vehicles and parts, this period was extended to 10 years. The dismantling Other Duties and Charges (ODCs), which is of particular interest to most OECS countries, can be deferred up to seven years and then phased out over the subsequent three years (Gonzales, b).

493 products or 9,8% of tariff lines (equivalent to 13,1% of the cumulative value of EU imports) are excluded from liberalisation. However, this mainly applies to agricultural goods (live animals, fresh fruits and vegetables, dairy and cheese, wines and spirits) and to a lesser extent to processed agricultural goods, chemicals and furniture. In the case of agriculture 75% of the value of EU imports are placed on the region’s ‘exclusion list’ (Gonzales, b), whereas manufacturing or high-value products are largely exempted (Oxfam, 2008, p. 16).

Table 5: CARIFRORUM liberalisation schedule for trade in goods

	2008	2013	2018	2023	2033
Cumulative value	52,8%	56%	61,1%	82,7%	86,9%
Cumulative tariff lines	-	-	-	85,1%	90,7%

Source: ECDPM (2007a)

In return, the EU committed to offer duty-free quota-free access to its markets for all products, however with transition periods for sugar and rice (ECDPM, 2007b).

5.5.1 Sugar

Trade in sugar was certainly one of the most contentious issues towards the end of the negotiations. The EPA provides that until the formal end of the Sugar Protocol in September 2009 an additional tariff rate quota (i.e. in excess of the Sugar Protocol quota) of 60,000 tonnes will be made available. Of this amount 30,000 tonnes are allocated to the Sugar Protocol (i.e. CARICOM) signatories and the remainder to the Dominican Republic (ECDPM, 2007b).

Since this means a *de facto* reduction of market access for Caribbean sugar exporters based on historical levels (Agritrade, 2008), the EU has given assurance that up to the validity of the transitional period it would seek to ensure that any shortfalls on the sugar protocol quota are reallocated among other CARICOM countries. This is provided in the 'Joint Declaration on the Reallocation of undelivered quantities under the Sugar Protocol' annexed to the EPA:

'The EC Party and the Signatory CARIFORUM States party to the Sugar Protocol shall seek to reallocate until 30 September 2009 any undelivered quantities from such States amongst other CARIFORUM States party to the Sugar Protocol to the extent permitted by Article 7 of the Protocol.' ('Joint Declaration on the Reallocation of undelivered quantities under the Sugar Protocol')

5.5.2 Bananas

For bananas, the EPA provides for full duty-free quota-free access to the European market from the entry into force of the agreement. This nullifies the recent ruling of the WTO dispute

settlement Panel and it is hoped that covering bananas by WTO regulations on RFTAs will prevent further challenges from Latin American countries (Agritrade, 2008).

The EPA also contains a Joint Declaration on Bananas which acknowledged the importance of bananas to the economic development of the region and also recognizes that *'the possible reductions of the MFN tariff and the implementation of Free Trade Agreements between the EC Party and certain third countries would pose significant competitive challenges for the banana industry in several CARIFORUM countries'*.

5.5.3 Rules of Origin

The EPA also detailed provisions on RoO¹². For CARIFORUM countries, the EPA limits the ability to 'cumulate' with each other and with other ACP States in respect of a number of manufactured products containing sugar (Article 2(4) of Protocol 1). Only from 2015 CARIFORUM countries will be able to source raw material from each other and from other ACP states and still have the final goods qualify for preferential treatment into the EU. Obviously, such a regulation will inhibit the formation and growth of regional production-chains of sugar-based products targeted to European markets (cf. Brewster, 2008). The Agreement also inhibits CARIFORUM states from cumulating with other ACP countries. However, this contradicts with the Cotonou undertaking, stating that EPAs will provide for no less favourable market access including RoO. Thus, on balance, RoO regulations have remained quite restrictive in the EPA (e.g. Oxfam, 2008, p. 19; Meyn, 2008, p. 3).

As stipulated in Article 37(9) of the Cotonou Agreement the EU committed to review the concept and methods regarding RoO within the first five years of the entry into force of the EPA (Article 10). This shall be done *'with a view to further simplifying the concepts and methods used for the purpose of determining origin in the light of the development needs of the CARIFORUM States'*.

A review has also been foreseen with regard to the list of products excluded from 'cumulation':

'The Parties shall review the provisions of paragraph 4 of Article 2 and of paragraph 4 of Article 4 after three years from the signature of this Agreement with a view to reducing the products listed in Annex X to this Protocol.' (Article 43 of Protocol 1)

¹² These are regulated in Article 10 and Protocol 1 ('Concerning the definition of the concept of 'originating products' and methods of administrative cooperation') of the Agreement.

5.6 Trade in services and investment

5.6.1 The 'W/120 list'

The services sector regulations addressed in the GATS are defined in the so-called 'W/120 list', based on the United Nations Central Classification (UNCCPC). They are divided into 4 modes (see Table 6) and comprise areas such as business, communications, construction, environment, finance, transport, tourism and recreation services.

The services chapter in the EPA, like several other RFTAs, consolidates Mode 1 and 2 as cross-border services. However, for obligations on market access to CARIFORUM states, these are treated as separate modes (CRNMe, p. 4).

Table 6: Modes of supply in services trade

Modes of Supply in Services Trade
Mode 1: Cross-border supply is defined to cover services flows from the territory of one Member into the territory of another Member (e.g. banking or architectural services transmitted via telecommunications or mail);
Mode 2: Consumption abroad refers to situations where a service consumer moves into another Member's territory to obtain a service;
Mode 3: Commercial presence means that a service supplier of one Member establishes a territorial presence, including through ownership or lease of premises, in another Member's territory to provide a service (e.g. domestic subsidiaries of foreign insurance companies or hotel chains); and
Mode 4: Presence of natural persons refers to persons of one Member entering the territory of another Member to supply a service.

Source: CRNM (2008e, p. 4)

5.6.2 Coverage of liberalization

With regard to trade in services and investment, CARIFORUM committed to open between 65 and 75% of the sector, with the first corresponding to MDCs and the latter to LDCs respectively (CRNM, 2007b, p. 3). The main sectors liberalised on behalf of CARIFORUM states are in areas such as business services (accounting, architecture, engineering, etc), computer and related, research and development, environmental services, management consultancy, maritime transport, entertainment, tourism (see Table 7).

In the case of the Dominican Republic the EPA foresees a liberalisation of 90%. Exceptions are made for the Bahamas and Haiti in order to address national sensitivities. They will set up liberalisation in the next 6 months following conclusion of the EPA (ECDPM, 2007b). In return the EU will open immediately more than 90% of the W/120 list (CRNM, 2007b, p. 3). The sectors liberalized on behalf of the EU include business, communications, construction, distribution, environment, finance, transport, tourism and recreation services (CRNM, 2007b, p. 1-2).

Table 7: Main sectors liberalised by CARIFORUM states

<u>The main sectors that most CE states have liberalized in the EPA.</u>
- Accounting, auditing and bookkeeping Services
- Architecture
- Engineering
- Computer and related Services
- Research and development
- Management consulting
- Services incidental to manufacturing
- Related scientific and technical consultant services
- Telecommunications
- Convention services
- Courier services
- Environmental services
- Hospital services
- Tourism and travel-related services
- Entertainment services
- Maritime transport

Source: CRNM (2008e, p. 10)

5.6.3 Mode 4

Mode 4 deals with the temporary movement of natural persons (Gonzales, b, p. 1). Within this category, the EU has permitted entrance to its markets for Caribbean professionals in 29 sectors, employees of Caribbean firms, and Contractual Service Suppliers (CSS) in order to supply services for up to 6 months in a calendar year (see Table 9) (CRNM, 2008e, p. 5). However, this is subject to strict regulations. For example a firm wishing to operate in the EU must have a contract of at least on year's duration and its employees need to have worked with the firm for at least one year. Obviously this hinders small firms from providing their services in the European market (Girvan, 2008a, p. 11).

Table 8: Sectors liberalised by the EU for temporary entry by Contract Services Suppliers

<u>Sectors Liberalized by the EU for Temporary Entry by Contractual Services Suppliers from Cariforum (employees of services firms)</u>	
1)	Legal advisory services in respect of international public law and foreign law (i.e. non-EU law)
2)	Accounting and bookkeeping services
3)	Taxation advisory services
4)	Architectural services
5)	Urban planning and landscape architecture services
6)	Engineering services
7)	Integrated Engineering services
8)	Medical and dental services
9)	Veterinary services
10)	Midwives services
11)	Services provided by nurses, physiotherapists and paramedical personnel
12)	Computer and related services
13)	Research and development services
14)	Advertising services
15)	Market Research and Opinion Polling
16)	Management consulting services
17)	Services related to management consulting
18)	Technical testing and analysis services
19)	Related scientific and technical consulting services
20)	Maintenance and repair of equipment, including transportation equipment, notably in the context of an after-sales or after-lease services contract
21)	Chef de cuisine services
22)	Fashion model services
23)	Translation and interpretation services
24)	Site investigation work
25)	Higher education services (only privately-funded services)
26)	Environmental services
27)	Travel agencies and tour operators' services
28)	Tourist guides services
29)	Entertainment services other than audiovisual services

Source: CRNM (2008e, p. 5)

Further, the EU has granted access to its markets for Independent Professionals or self employed professionals in 11 sectors for a period up to 90 days (see Table 9) (CRNM, 2008e, p. 5). However, this is subject to strict regulations, including an 'economic needs test' and mutual recognition agreements (MRA). Negotiations on this are foreseen within 3 years after entry into force of the EPA. However, given the huge differences among the 27 EU member states, this will certainly constitute a challenging task. It could be many years until new arrangements are stalled and Caribbean professionals will be able to provide their services in the EU on a significant scale (Girvan, 2008a, p. 11).

Table 9: Sectors liberalised by the EU for temporary entry by Independent Professionals (self-employed persons)

<u>Sectors Liberalized by the EU for Temporary Entry by Independent Professionals (self-employed persons)</u>	
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

Source: CRNM (2008e, p. 5)

5.7 Trade related issues

5.7.1 The MFN clause

The EPA also provides for MFN treatment on the EU side with respect to all future agreements and on the CARIFORUM side with respect to all future agreements with 'major trading economies' (Bartels, 2008, p. 2). This means that investors from third countries (i.e. countries not party to the EPA), will not be given a more favourable treatment than CARIFORUM investors within the EU, and vice versa. 'Major trading economies' are defined as having a share of world merchandise exports above 1 percent (Bartels, 2008, p. 2). In such a case, pursuant to, '*the Parties shall enter into consultations. The Parties may decide whether the concerned Signatory CARIFORUM State may deny the more favourable treatment contained in the free trade agreement to the EC Party.*' (Article 19 of the EPA). Obviously this would contradict the spirit of the Enabling Clause, which was originally intended to facilitate South-South trade on a preferential basis. Such a clause might hinder the conclusion of agreements with the region. This has been experienced, for example, by the Pacific states as a consequence of the agreements with Australia and New Zealand (ibid.).

The MFN clause incorporated in the EPA has been subject to controversial debates. It has recently been attacked by Brazil and India (two 'major economies') at the WTO on the grounds that it would be inconsistent with the GATT rules on SDT. At the 5th WTO General Council meeting on February 5th 2008 the Brazilian representative argued that the MFN clause would seriously affect trade between developing countries and that it would turn the Enabling clause 'upside down'. He stated that '*the MFN clauses in the EPAs, if confirmed, will discourage or even prevent third countries from negotiating RFTAs with EPA parties and*

will create major constraints to South–South trade. Yet, it remains to be seen which path Brazil and India will pursue in the WTO.

5.7.2 National treatment

On National treatment, there are several provisions that provide for equal treatment of European and CARIFORUM products and services (Girvan, 2008c, p. 7). For example, Paragraph 1 of Article 27 prohibits the imposition of internal taxes or other internal charges on imports so as to protect domestic products. Paragraph 2 of the Article provides for *‘no less favourable than that accorded to like domestic products in respect of all laws, regulations and requirements affecting their internal sale, purchase, transportation, distribution or use.’*

In the case of Services and Investment, Article 68(1) for example stipulates that for the sectors where market access has been agreed on, the two parties *‘shall grant to commercial presences and investors of each other treatment no less favourable than that they accord to their own like commercial presences and investors’.*

National treatment clauses inhibit CARIFORUM governments from discriminating for the sake of local and regional Small and Medium Enterprises (SMEs) (Brewster et al., 2008, p. 4). This principle is embedded in various Articles of the EPA such as trade in goods and trade in services and investment. This will rule out the possibility to foster the competitiveness of local firms in order to compete in the global economy as intended by the CSME (Girvan, 2008a, p. 13). However, Caribbean firms, in particular SMEs, will require targeted assistance in order to be able to cope with competition from European imports and to take advantage of new export opportunities (Brewster et al., 2008, p. 3).

5.8 *Development cooperation*

As a consequence of the EPA, numerous sectors in the Caribbean region will face increased competition. The tariff cuts will result in the loss of tariff revenues, putting a strain on public budgets. In order to cope with the challenges implied by the new trade conditions, Caribbean countries will have to take adjustment measures designed to restructure their economies and foster productive capacities. This, of course, not only requires financial resources but also well-targeted instruments.

5.8.1 Provisions on development cooperation

The provisions on development cooperation are regulated in a Joint Declaration annexed to the Agreement, Article 7 and Article 8 of the EPA (see CARIFORUM-EC EPA). With regard to development financing, the Joint Declaration on Development Cooperation points to the availability of €165 mio under the 10th EDF from the Caribbean Regional Indicative Programme (CRIP). It also provides for a successor to the Financial Protocol under the Cotonou Agreement for the period from 2014 to 2020. According to the Declaration, this shall be complemented by Aid for Trade with its usage being subject to the terms of the Trade Strategy adopted in October 2007 (see Joint Declaration on Development Cooperation).

According to Article 7(2) of the EPA, a major priority of development cooperation shall be the support for EPA implementation:

*'The European Community financing pertaining to development co-operation [...] supporting the implementation of this Agreement shall be carried out within the framework of the [...] Cotonou Agreement, in particular the programming procedures of the European Development Fund (EDF), and within the framework of the relevant instruments financed by the General Budget of the European Union. In this context, **supporting the implementation of this Agreement shall be one of the priorities.**' (Article 7(2) of the EPA, emphasis added)*

Pursuant to Article 8, a development fund aimed at monitoring financial resources shall be established within two years following the signature of the Agreement:

'The Parties agree on the benefits of a regional development fund representative of the interests of all CARIFORUM States to mobilise and channel EPA related development resources from the EDF and other potential donors. The CARIFORUM States shall in this regard endeavour to establish such a fund within two years of the date of signature of this Agreement.' (Article 8(3) of the EPA)

With regard to Cooperation priorities, 7 fields of actions are listed under Article 8:

- 1) Technical assistance to build human, legal and institutional capacity
- 2) Capacity and institution building for fiscal reform
- 3) Private sector and enterprise development with focus on small economic operators, enhancement of international competitiveness of CARIFORUM firms and diversification of economies;
- 4) Diversification of exports of goods and services,

- 5) Enhancement of technological and research capabilities with focus on technical (sanitary and phytosanitary) standards, environmental and labour standards;
- 6) Development of innovation systems, particularly with regard to technological capacity;
- 7) Support for the development of infrastructure for the conduction of trade.

Evaluation of provisions on development cooperation

- **Commitment not in specified forms, quantities, and time-frames**

With regard to development cooperation the EPA contains no funding commitments, time-frames or actions in specified form by identified agencies. They are in the form of non-obliging declaratory statements and the measures being envisaged are formulated in a general way. In contrast, issues in the interest of the EU are specified with considerable accuracy (Girvan, 2008a, p. 7).

One example is the liberalisation commitments on behalf of CARIFORUM states, which are defined by international classification categories with fixed timetables and detailed implementation procedures (Girvan, 2008a, p. 7). The EPA also contains detailed regulations, providing for dispute settlement, including trade sanctions in the case of any violation from obligations. However, there is no doubt that Europe's leverage in monitoring the compliance with EPA commitments is clearly superior to those of the CARIFORUM states (Girvan 2008a, p. 14).

Another case in point are the regulations with regard to Intellectual Property (IP) (ibid., p. 4-5). Section 1 of the IP chapter provides for EU support aimed at developing innovation capacities in CARICORUM countries. Section 2 of the IP chapter contains largely binding measures for securing IP standards clearly, exceeding those required by the WTO's TRIPS agreement. According to Girvan (ibid.) EU support for the EPA will favour the implementation of these 'TRIPS-plus' issues.

- **EDF regarded as complement**

Another striking feature of the EPA is that the EDF is now conveniently regarded by the EU as a complement to the Agreement (Girvan, 2008a, p. 6). However, the adjustment to the economic changes implied by the EPA cannot be assured without additional resources.

- **Development assistance not enough and used for direct costs of the EPA**

With regard to development funding, a CRNM release states that the 10th EDF *'is estimated at €165 million) with €132 million allocated to Cariforum to be applied to the Regional Indicative Programme, with euro33 million allocated directly to EPA participation and*

commitment making. As such, the €132 million would be programmed in such a way that 85 per cent would go to the Focal Area of Regional Cooperation/Integration and EPA capacity building, and 15 per cent would go to the non-focal area of vulnerabilities and social issues.' (op. cit. Girvan, 2008a, p. 6)

According to press reports, the Foreign Minister of the Dominican Republic stated that *'the EU would be assisting the Dominican Republic with programmes for competitiveness (€80 million/US\$120 million) and development (US\$169 million) over the 2008-2013 period'* (Girvan 2008h). It remains unclear, whether this will be within or in addition to the 10th EDF. Even considering the more favourable case, €165 million split between the 15 CARIFORUM countries over a period of 5 years presents an allocation of only €2.2 million per year for each country (Girvan, 2008a, p. 6).

5.9 Further issues

5.9.1 'WTO-plus' subjects

The EPA contains regulations in areas that go beyond that required by WTO regulations regarding RFTAs. The EPA includes the areas of services and investment, competition policy and government procurement in the EPA, which however are not mandatory for WTO compliance. (Commonwealth and ACP Secretariat, 2008; Girvan, 2008a, p. 3). As discussed in chapter 2.2, developing countries had rejected the inclusion of these subjects in the current WTO negotiations. The EU, however, urged for the inclusion of these subjects since they provide additional protection for EU enterprises and investors in the region (Girvan, 2008a, p. 3-5). Moreover, in the area of services, the EPA involves obligations that even go beyond the WTO agreement on GATS (Girvan, 2008a, p. 3-5). Equally, the Agreement provides for heightened Intellectual Property (IP) protection over and above the requirements imposed by the TRIPS agreement. This is, for example, the case with regard to current account payments; environmental issues, social aspects; and cultural cooperation (Girvan, 2008a, p. 3-5).

5.9.2 Caribbean competitiveness

Proponents of EPA often claim that the Agreement offers remunerative export opportunities in goods and services for the Caribbean region. The relief offered for traditional exports though phased liberalisation will only be temporary. Within this narrow time-frame CARIFORUM exporters will need to adjust their economies in order to cope with the obstacles imposed by restrictive RuO, TBT and Sanitary and Phytosanitary Standards (SPS)

regarding the agricultural sector. According to Brewster et al. (2008, p. 2) the private sector has raised concerns that these issues have not been properly addressed by the EPA. Though, according to a CRNM statement, the private sector can 'expect assistance' in the areas of TBT, and sanitary and phytosanitary standards from the EU, there are no specific commitments in the EPA text (Girvan, 2008g).

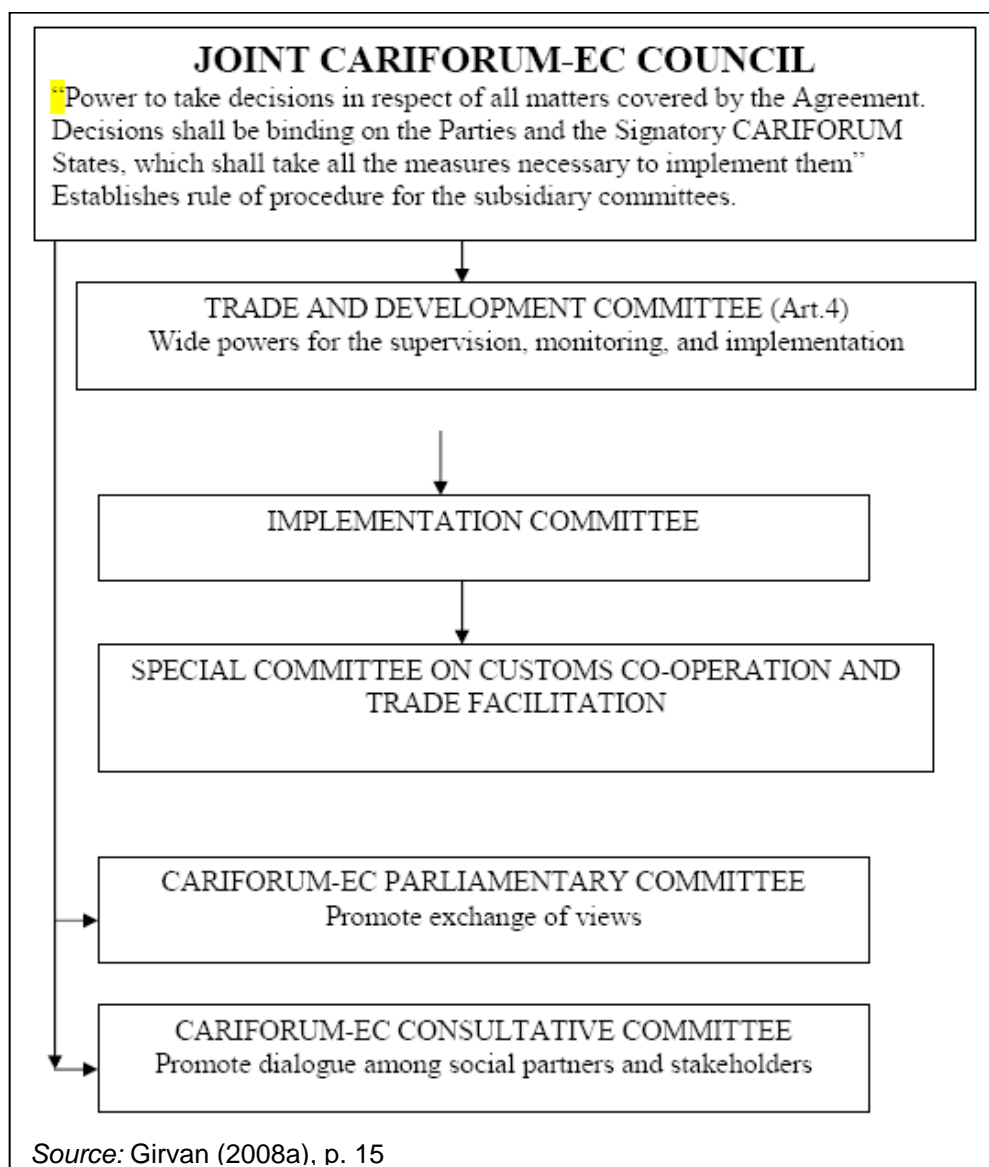
5.9.3 The EPA's 'super-nationality'

The EPA sets up administrative and organisational arrangements, which grant EPA institutions a higher degree of 'sovereignty' on economic issues of CARICOM than the Treaty of Chaguaramas assigned to the Caricom Secretariat and organs (Clive, 2008b). The head of the institutional structure is made up by the Joint Cariforum-EC Council, a ministerial body with authorisation to '*take decisions on all matters related to the Agreement*'. The decisions taken '*shall be binding on the Parties*' which '*shall take all measures necessary to implement them*' (Article 229 of the EPA). It assigns the Joint Council a greater degree of legal powers in national and regional governance than Caricom's Conference of Heads of Government, Caricom's COTED or any other organ of the Caribbean Community. In fact, it seems likely that COTED's scope for governance will be considerably diminished by the authorities foreseen for EPA institutions.

A striking feature of the EPA is that it endows the Joint Council with legal authorities on which they couldn't agree on giving its own organs after several years of contentious debates. While in principle CARIFORUM states can apply a veto power in decisions taken by consensus, it is clear that the EU has more pull in the power relationship due to its control over market access and development cooperation (Girvan, 2008a, p. 14).

The Trade and Development Committee will operate under the Joint Council. It will be made up of senior officials, dealing with the direct supervision of EPA implementation, in particular in the area of trade and development. The Committee is assigned with legal powers superseding those of the CARIFORUM member states. Other major institutions are the Implementation Committee and the Special Committee on Customs Cooperation and Trade Facilitation. The Consultative Committee and the Joint Parliamentary Committee will be in charge of consultation and dialogue between the stakeholders, however, without specific legal powers with regard to the EPA (Girvan 2008a, p. 16).

Box 2: EPA Institutional Structure



5.9.4 Regional integration process

Article 4 of the EPA underlines the importance of Caribbean integration (emphasis added):

‘1. The Parties recognise that regional integration is an integral element of their partnership and a powerful instrument to achieve the objectives of this Agreement.

2. The Parties recognise and reaffirm the importance of regional integration among the CARIFORUM States as a mechanism for enabling these States to achieve greater economic opportunities, and enhanced political stability and to foster their effective integration into the world economy.

3. The Parties acknowledge the efforts of the CARIFORUM States to foster regional and

sub-regional integration amongst themselves through the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CSM and Economy, the Treaty of Basseterre establishing the Organisation of Eastern Caribbean States and the Agreement establishing a Free Trade Area between the Caribbean Community and the Dominican Republic.

*4. The Parties further recognise that, without prejudice to the commitments undertaken in this Agreement, **the pace and content of regional integration are matters to be determined exclusively by the CARIFORUM States in the exercise of their sovereignty and in the light of their current and future political ambitions.***

*5. The Parties agree that their partnership builds upon and aims at deepening regional integration and undertake to cooperate to develop it further, **taking into account the Parties' levels of development, needs, geographical realities and sustainable development strategies, as well as the priorities that the CARIFORUM States have set for themselves** and the obligations enshrined in the existing regional integration agreements identified in paragraph 3.*

6. The Parties commit themselves to cooperating in order to facilitate the implementation of this Agreement and to support CARIFORUM regional integration.'

However, a number of issues regulated by the EPA are not yet settled in the CSME or are pending full implementation (Girvan, 2008a, p. 5). This applies to the areas of financial services, other services, investment, competition, government procurement, E-commerce, IP, free circulation of goods, and the Environment. Defenders of the EPA claim that the inclusion of these subjects would boost the Caribbean region, implicitly assuming that what is governed by the EPA in these areas presents the best for the CSME. However, settling legal and policy subjects in these areas first would have certainly placed Caricom in a better position from which to negotiate.

Another matter of concern is the EPA's compliance with the Caricom Development Vision, 'the framework for the development of the Community' approved by the Heads of Government in 2007 (Girvan, 2008a, p. 16). The goods and services liberalisation schedules, for example, are not aligned with Caricom's national and regional development strategies. Equally, the phasing of the EPA implementation have not been synchronized with the Community's phasing of CSME implementation. Finally, it is also worth mentioning that no reference is made to the impending CSME regimes for investment, services, harmonized taxation, incentives, IP, competition, government procurement, telecommunications and the environment throughout the entire text of the EPA, nor is there provided for the regulation of

these affairs (Girvan, 2008a, p. 16). According to Girvan (2008a, p.17) there would thus be ‘a very real possibility of contradictions between CSME and EPA implementation measures, both in content and in sequencing’. He argues that in any case of contradiction of agendas the odds would favour the EPA. He argues that the most probable scenario would be a melting of the CSME ‘into the EPA as an adjunct to the larger scheme of economic integration with Europe’. Accordingly, ‘the logic of the EPA’ was ‘to replace the CSME with a ‘Cariforum-EU Single Market and Economy’’. Accordingly, the Preamble and Part 1 as well as references to EPA in the Cotonou Agreement would all indicate that this approach was implicit to the EPA (Girvan, 2008a, p. 16-18).

6 Conclusion

1) The EU-CARIFORUM EPA fails to address the proclaimed goal of reducing and eventually eradicating poverty in the Caribbean region.

- Export opportunities

Under the Lomé and the Cotonou Agreement ACP states enjoyed DFQF (Duty-free and quota-free) access to the EU markets for the majority of its exports. Nonetheless, the export of non-traditional products to the EU decreased, indicating that 'market access' does not necessarily convert to 'market presence'. CARIFORUM exporters face a number of obstacles to trade, including stringent RoO, TBT and SPS. For sugar-based products, for example the EU-CARIFORUM EPA rules out the possibility of 'cumulation' at least until 2015. This will obviously hinder the formation and growth of regional production chains. Equally, the agreement inhibits CARIFORUM states from cumulating with other ACP countries. However, this contradicts with the Cotonou undertaking, stating that EPAs will provide for no less favourable market access including RoO.

Though, proponents of the EPA claim that the agreement will offer remunerative export opportunities in goods and services for the Caribbean region, the relief afforded to traditional exporters will only be temporary.

- MFN clause and national treatment

The MFN clause in the EPA obliges CARIFORUM countries to grant MFN treatment with respect to all later agreements with major trading economies. Obviously, this contradicts the spirit of the Enabling Clause, which was originally intended to facilitate South-South trade on a preferential basis. It is equally clear that the MFN clause might well undermined the conclusion of new agreements with the region.

The 'National treatment' provisions contained in the EPA inhibit CARIFORUM states from discriminating EU firms for the sake of local and regional SMEs. This will rule out the possibility to foster the competition of local firms in order to compete in the global economy as intended by the CSME.

- WTO+

The EPA contains regulations in areas that go beyond that required by WTO regulations regarding RFTAs. There is no WTO requirement for the inclusion of services rules in EPAs, and those included in the Agreement even go beyond the obligations under the GATS. The

same applies to Investment, Competition Policy and Government Procurement, which are not mandatory for WTO compatibility. Finally, the EPA also provides for heightened Intellectual Property (IP) protection over and above the requirements imposed by the TRIPS agreement.

- Development cooperation

With regard to development cooperation the EPA contains no funding commitments, time-frames or actions in specified form by identified agencies. In contrast, issues in the interest of the EU are specified with considerable accuracy. Another striking issue is that the EDF is now conveniently regarded as a complement to the EPA. However, the facilitation of adjustment to the economic changes implied by the EPA cannot be assured without additional financial resources for the region.

The mandate of the EPA is to promote sustainable development and to reduce and eventually eradicate poverty, as stipulated in several Articles of the Agreement. However, in the light of these facts, the affirmation of sustainable development as a priority of the EPA seems to be mere lip service by the EU in order to bring off the entire deal.

2) The provisions of the EU-CARIFORUM EPA run counter to the Caribbean integration process.

- The EPA's super-nationality

The EPA sets up administrative and organisational arrangements, which grant EPA institutions a higher degree of 'sovereignty' on economic issues, than the Treaty of Chaguaramas assigned to the Caricom Secretariat and organs. Caricom governments accepted, for example, to endow the Joint Council with legal authorities, on which they couldn't agree to grant its own organs after several years of contentious debates.

- EPA vs. Caribbean regional integration

A number of issues regulated in the EPA are not yet settled in the CSME or are pending full implementation (e.g. financial services, other services, investment, competition, government procurement, E-commerce, IP, free circulation of goods, and environmental issues). Defenders of the Agreement claim that the inclusion of these subjects would boost Caribbean integration, settling the required legal and policy measures first would have certainly placed Caricom in a better position from which to negotiate.

Equally, the liberalisation schedules for goods and services fail to comply with Caricom's national and regional development strategies. Another case in point is the phasing of EPA implementation, which has not been synchronized with the Community's sequencing of CSME implementation. Finally, there is no reference throughout the entire EPA text to the impending CSME regimes for investment, services, harmonized taxation, incentives, IP, competition, government procurement, telecommunications and the environment. Thus, there is a very real possibility of contradictions between CSME and EPA implementation measures, both in content and in sequencing. In any case of contradiction of agendas there is the odds will certainly favour the EPA. The most probable scenario will be a melting of the CSME into the EPA as an adjunct to the larger scheme of economic integration with Europe.

3) The EU pursues its Neo-Mercantilist goals under the cloak of development cooperation within the EU-CARIFORUM EPA.

- **European integration**

The study of European integration has gained fundamental into EU policies towards the ACP:

First, the construction of 'threat' emanating from the ACP states raised development politics into the are of high politics. Second, the quality of 'actorness' attributed to the EU by the ACP is based on their perception and expectation of the EU's role in economic affairs, security policy and foreign relations. The main problem in this context is that there exists a 'capability-expectation gap' emanating from the EU's pronouncement of ambitious goals in the public. Third, the institutional structure of the EU, which can be characterised as a non-hierarchical, dynamic multi-level system, limits its policy-making competences in the area of development politics. Fourth, discursive arenas play a key role in creating connotations for particular terms, thereby establishing and perpetuating power relationships. Accordingly, the term 'partnership' contained in the word 'EPA' might draw the curtain over the power asymmetry between the EU and the CARIFORUM states, creating the impression that it is *equal* partners which agree on a set of principles and obligations.

- **The EU's role in the WTO:**

Since the creation of the GATT the EU's role in the multilateral trading system has undergone fundamental transformations. In the early years of the GATT, Europeans tended to be defensive, reactive players in the international trading system, 'preoccupied with domestic adjustments to a gradually globalising world economy' (Mortensen, 2007, p. 15). Rather than actively promoting globalisation, the EU constituted a driving force for regionalisation. It functioned as a role model for other countries and regions and inspired the

creation of other trading blocs. It can also be said that the EC figured as a promotor of liberalisation between the spokes. The ACP, for example, would certainly not be willing or able to promote regional liberalisation to the extent the EU, now, is asking them to do within the EPAs.

However, the EU has always been anything but comfortable within the multilateral trading system. With its discriminating regionalism the EU, not only caused considerable costs for the international trading system, it also denoted the internal conflict between the major principles of the GATT: liberalisation, non-discrimination and MFN on the one side and the regional free trade areas on the other side.

The Uruguay Round presented a turning-point for the EU's role in international trade negotiations, moving away from protectionism towards liberal activism: it took upon itself the leadership role in the WTO to include the WTO+ issues. It was in a position 'to fill a leadership vacuum in the WTO' (Mortensen, 2000, p. 20) that the US had left behind after the stalemate of the Clinton era. However, the failure of Concur presented a major defeat for European trade diplomacy. China, India and Brazil have proved successful on several occasions in blocking 'sensible' EU-US compromises. Today, all but one of the Singapore issues has vanished from the negotiation agenda. With its 'Global Europe' project the EU, now, seeks to reject protectionism at home and be activist in opening markets abroad

- **Forum-switching:**

Following opposition at the multilateral level, the EU has put Plan 'B' into action, turning once again to the bilateral track. In fact, forum-shifting presents a well-proven instrument for pushing through one's preferred interests. The rationale for this strategy is of two-fold nature: First, BTA are characterised by an even larger degree of power asymmetry and allow for concessions, which go beyond the agenda of the WTO. While privileged market access is offered in competitive areas, sensitive sectors remain strictly circumscribed. The second rationale behind promoting bilateral agreements is the seek for a competitive edge. This has also been the case with regard to the EU-CARIFORUM EPA, where the EU has sought to gain privileged market access for its capital.

- **Neomercantilism:**

Neo-mercantilist strategies are ruled by the primacy of 'capital accumulation', striving towards opening up foreign markets for domestic enterprises, while at the same time shielding particular businesses against foreign competition that might arise from the internationalisation of trade. The accumulation of wealth shall be realised through active

extraversion, accompanied by protectionist measures, which aim at shielding markets against foreign competition. 'New' protectionism refers to a strategic approach, which is characterised by more and more subtle forms of market foreclosure. It is about new variants of barriers to trade or about just another manifestation of well known practices of international trade.

While tariffs, quotas and import restrictions (which obviously conflict the regulations of the WTO) have been gradually decreased in the course of the GATT Rounds, nation states increasingly shifted towards the application of NTBs. The characteristic feature of 'new' protectionist policies is that they fall within the grey zone of international trade, condemning the instruments of the WTO to inaction.

They are usually applied in bilateral agreements and thus collide with the principle of non-discrimination. Besides the obvious protectionist measures with regard to import restriction on behalf of the EU, the EU-CARIFORUM EPA also contains a variety of NTB, which effectively impede the access of Caribbean exports and services to the Community markets. Certainly, this will diminish the region's opportunity to benefit from free trade with the EU.

Though, it is not astonishing that within the EU-CARIFORUM EPA, the EU sought for concessions in areas with offensive interest, while circumscribing domestic markets in sectors with defensive interest, its proclaimed development aspirations are more than questionable. Rather than development needs of CARIFORUM countries, the EPA tends to mirror negotiating capacity and EU interests. However, in order for a reciprocal trade agreement between unequal partners to promote sustainable development of the less developed partner, adequate resource transfers for the development of the economic infrastructure and the supply capabilities of the firms have to take place.

Appendix

Box 3: EPA outline

PART I. TRADE PARTNERSHIP FOR SUSTAINABLE DEVELOPMENT

PART II. TRADE AND TRADE-RELATED MATTERS

TITLE I. TRADE IN GOODS

CHAPTER 1. CUSTOMS DUTIES

CHAPTER 2. TRADE DEFENCE INSTRUMENTS

CHAPTER 3. NON-TARIFF MEASURES

CHAPTER 4. CUSTOMS AND TRADE FACILITATION

CHAPTER 5. AGRICULTURE AND FISHERIES

CHAPTER 6. TECHNICAL BARRIERS TO TRADE

CHAPTER 7. SANITARY AND PHYTOSANITARY MEASURES

TITLE II. INVESTMENT, TRADE IN SERVICES AND E-COMMERCE

TITLE III. CURRENT PAYMENTS AND CAPITAL MOVEMENT

TITLE IV. TRADE RELATED ISSUES

CHAPTER 1. COMPETITION

CHAPTER 2. INNOVATION AND INTELLECTUAL PROPERTY

CHAPTER 3. PUBLIC PROCUREMENT

CHAPTER 4. ENVIRONMENT

CHAPTER 5. SOCIAL ASPECTS

CHAPTER 6. PROTECTION OF PERSONAL DATA

PART III. DISPUTE AVOIDANCE AND SETTLEMENT

PART IV. GENERAL EXCEPTIONS

PART V. INSTITUTIONAL PROVISIONS

PART VI. GENERAL AND FINAL PROVISIONS

ANNEX I: Export Duties

ANNEX II: Customs Duties on Products Originating in CARIFORUM States

ANNEX III: Customs Duties on Products Originating in the EC Party

ANNEX IV: Lists of Commitments on Investment and Trade in Services

ANNEX V: Enquiry Points (referred to in Article 86)

ANNEX VI: Covered Procurements

ANNEX VII: Means of Publication

PROTOCOL I CONCERNING THE DEFINITION OF THE CONCEPT OF "ORIGINATING PRODUCTS" AND METHODS OF ADMINISTRATIVE COOPERATION

PROTOCOL II ON MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS

PROTOCOL III ON CULTURAL COOPERATION

Source: Girvan (2008a, p. 2); CARIFORUM-EC EPA (2008)

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