



**CARIBBEAN
REGIONAL NEGOTIATING MACHINERY**

**THE TREATMENT OF TOURISM IN THE CARIFORUM-EC
THE ECONOMIC PARTNERSHIP AGREEMENT**

The Cotonou Agreement, which governs the relationship between CARIFORUM (CARICOM and the Dominican Republic) and the European Communities (EC), specifically provides for cooperation strategies on tourism. Article 24 of the Agreement states that the EC will provide support for development of the tourism sector; such support should aim at: sustainable development of the tourism industry; improve countries' legal and institutional framework and resources for related policies and programmes; improving the competitiveness of the sector, especially small and medium-sized enterprises (SMEs), through investment and product development; and strengthening linkages between tourism and other sectors of economic activity. Negotiations between CARIFORUM and the EC towards an EPA, which replaces the trade component of the Cotonou Agreement, are focused on these overarching objectives, not only through market liberalisation in tourism services, but also through clear cooperation mechanisms.

The preparatory consultations with the Caribbean tourism industry and other stakeholders for the EPA negotiations were aimed at establishing priorities for the negotiations, achieving convergence on a strategic approach towards the sector in the negotiations. Stakeholders included the Caribbean Tourism Organisation, the Caribbean Hotel Association; national hotel associations; investment promotion agencies; educational institutions; the maritime, airline and ground transportation sectors.

Structure of the EPA Title on Investment, Trade in Services and E-Commerce

With respect to the structure of the Title on Investment, Trade in Services and E-Commerce, the European Commission (EC), which negotiates on behalf of the European Union, proposed the inclusion of specific disciplines on several sectors of interest, namely: E-commerce; courier services; telecommunications; financial services; and maritime transport. CARIFORUM negotiators in turn insisted that tourism receive specific treatment given the economic importance of the sector to region, and proposed a draft annex on tourism. There was some resistance to the proposed annex on the part of the EC, however both sides finally agreed on a mutually satisfactory text. The agreed provisions on Tourism Services have finally been incorporated in Section 6 of the Title on Investment, Trade in Services and E-Commerce, and form part of Chapter 5 on Regulatory Framework. .

The Tourism Section of the EPA introduces for the first time disciplines on anti-competitive practices of tourism operators specific to the tourism industry. The global tourism industry is characterised by a vertically integrated market and a consolidated distribution channel controlled by a limited number of large international players. The Tourism Section of the EPA therefore

safeguards the interests of the mainly small firms in the Caribbean in its article on the Prevention of Anti-competitive Practices, which focuses on behaviour in tourism distribution networks¹.

CARIFORUM operators do not currently have the capabilities to fully exploit increased market access to Europe because of the high cost of marketing in Europe, and their limited access to market information. The EPA responds to these obstacles through provisions on cooperation, exchange of information and a formal consultation mechanism, involving CARIFORUM and European officials and industry associations. The consultation and dialogue would be managed by the CARIFORUM-EC Trade and Development Committee, a body specifically created by the agreement; the Parties also agree to regular dialogue on the issuance of travel advisories.

The Tourism Section also targets other supply-side constraints by providing for access to technology for firms in CARIFORUM states and facilitating the participation of their SMEs in the tourism services sector. The Agreement also addresses issues related to sustainable development and increased environment consciousness through the use of environmental and quality standards.

Human resource development in the Caribbean is another focus of the Section on Tourism which provides for assistance and training to service suppliers and support for training institutions. There are also provisions on cooperation and mutual recognition of qualifications with tourism being highlighted as one of the priority sectors for dialogue between the relevant professional bodies in the Caribbean and Europe, and the initiation of mutual recognition no later than three years after entry into force of the EPA. This is a significant achievement as tourism services is not normally considered as part of the traditional “professions”.

In Chapter 4 dealing with Temporary Presence of Natural Persons for Business Purpose (Mode 4), there is specific provision for the movement of tourism personnel (hotel representatives, tour and travel agents, tour guides or tour operators) attending or participating in tourism conventions or tourism exhibitions under the category Short Term Visitors for Business Purposes. This is a special category negotiated in the EPA and is complemented by provisions for cooperation between government officials to facilitate the easier movement of services suppliers.

EC Market Access Commitments on Tourism Services in the EPA

The provisions on cooperation complement the market access commitments for further liberalization on both sides. For the purposes of trade negotiations, tourism services have been categorized using the United Nations Central Product Classification (UN CPC). In the WTO Services Sectoral Classification List they are presented with the corresponding CPC codes as follows: (i) Hotels, restaurants and catering (CPC 641-643) (ii) Travel agencies and tour operators (CPC 7471) (iii) Tourist guide services (CPC 7472).

The EC schedule is divided into the following sections:

1. List of Commitments on Commercial Presence

¹ Tourism distribution networks refers to tour operators and other tourism wholesalers (both out-bound and in-bound), computer reservation systems and global distribution systems (whether or not connected to airlines or provided through the Internet), travel agencies and other distributors of tourism services.

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

Discriminatory restrictions are explicitly stated in the schedule with the country/countries imposing them; if no restriction is listed, none exists and the sector can be considered opened for the particular mode of supply. Where countries list Unbound for a particular mode of supply it means that the country reserves the right to place restrictions on that sector, and essentially has not made a commitment to liberalise the sector.

Cross Border Supply of Services

The EC offer on cross-border services combines commitments in cross-border services (Mode 1 - services delivered, for example, via Internet, mail) and consumption abroad (Mode 2 - where a consumer of services moves into another Member's territory to obtain a service).

The EC's commitment on tourism services in the EPA, marginally improves on its WTO offer on cross-border services in the EPA as a result of the expansion of its membership and the scheduling by new Members of similar commitments. Generally the EC Member States have been more liberal with catering than with Hotels and Restaurants in Mode 1, with the Czech Republic and Poland joining the group of countries which have no discriminatory restrictions for catering, while the rest of the sub-sector is Unbound. The other three countries - Estonia, Finland and Hungary - have no limitations or restrictions in hotels, restaurants and catering. For Mode 1 supply of Travel Agencies and Tour Operator services only Bulgaria and Hungary have not opened the sector (it remains Unbound). In the WTO, reservations apply in Cyprus, Malta, Slovak Republic and Poland. For Tourist Guide Services, 17 countries have no restrictions. The following countries have not opened the sector: Bulgaria, Cyprus, Czech Republic, Hungary, Italy, Lithuania, Malta, Poland, Slovak Republic and Slovenia.

There are no reservations on Mode 2 for any of the three tourism categories. Europeans can therefore consume tourism services freely in CARIFORUM countries.

The EC has also scheduled *Spa services and non therapeutic massages*, but this limited to those that are not provided as relaxation physical well-being services and not for medical or rehabilitation services under Other Services. CARIFORUM, on the other hand, has scheduled tourism services under Other Services because of its relation to wellness tourism. The EC has not opened spa services in Mode 1, perhaps because of limited technical feasibility, that is, the customer would need to be physically present to receive the service. However, the EC has not listed any reservations in Mode 2.

Commercial Presence

In the List of Commitments on Commercial Presence, or establishment, the EC only includes countries that have discriminatory restrictions and limitations, therefore where an EU member state does not list such a measure in a sector falling under the scope of the agreement, there are

no restrictions on market access or national treatment. This mode of supplying tourism services is very liberal in the EC.

For Hotel, Restaurants and Bars all EC Member States except Bulgaria and Italy have no restrictions on commercial presence. Bulgaria requires incorporation, and Italy imposes economic needs tests (ENTs); this compares favourably to the WTO where 7 other States also had limitations. For Travel Agencies and Tour Operator services, only Bulgaria and Portugal have reservations requiring incorporation or maintenance of the firm's corporate base in that country. In the WTO five EU Member States did not open the sector at all, and 3 applied economic needs tests as a condition to set up a business. There are no reservations on commercial presence in any EU state for Tourist Guide Services. In addition, there are no restrictions on spa services.

Temporary presence of natural persons for business purposes

The EC has committed to allowing investors to engage Key Personnel² and Graduate Trainees³ for every service sector liberalised in the EPA with some country specific reservations. The temporary entry and stay of key personnel and graduate trainees will be for a period of up to three years for intra-corporate transfers, ninety days in any twelve month period for business visitors, and one year for graduate trainees. Only Bulgaria has maintained reservations in these categories for Hotel, Restaurants and Catering and Travel Agencies and Tour Operator Services, which stipulate that foreign managers cannot exceed local managers where the state/municipal share in equity in a Bulgarian company is over 50%. However, 11 EU Member States have maintained nationality requirements for Key Personnel and Graduate Trainees in Tour Guides Services as they do in the WTO and Bulgaria has joined this group in the EPA. The nationality condition also applies for Key Personnel and Graduate Trainees across the EC for spa services.

The EU has not made an offer on Independent Professionals⁴ in any of the three tourism sub-sectors. The EU provided access for temporary presence for the Contractual service suppliers⁵ and categories in the areas of travel agencies, tour operator services and tourist guide services.

For Travel agencies and Tour operators: Belgium requires economic needs tests (ENTs), except for CSS when the annual wage is above the amount defined by the relevant laws and regulations. Denmark requires ENTs except for CSS stays of up to three months, while Ireland is only providing bound access for tour managers. Bulgaria, Greece, Hungary, Lithuania, Latvia, Malta,

² Key personnel includes business visitors and intra-corporate transferees such as managers and specialists

³ Graduate trainees have to be employed by an established organization that is a legal entity /juridical person, for at least one year before taking up the training position; must have a university degree; must carry out training in a legal entity in the Territory of the other Party.

⁴ Independent professionals are individuals, that is, not firms, who are established as self-employed in his country of origin (but not in the territory of the other Party) and who have concluded a contract to supply services with a final consumer in the territory of the other Party, but must travel temporarily to the consumer's territory in order to fulfill the contract.

⁵ Contractual Service Suppliers are employed by a ~~legal entity firm~~ in either the CARIFORUM or the EC, are not established in the territory of the other Party, whose employer/organisation has concluded a contract to supply services with a final consumer in the territory of the other Party, but must travel temporarily to the consumer's territory in order to fulfill the contract.

Portugal, Romania, Slovak republic require ENTs. Fourteen EU Member States have not scheduled any restrictions on the temporary movement of CARIFORUM Travel Agents and Tour operators; this is a very significant concession. The EC's EPA commitment is a significant improvement to its WTO offer where 16 Member States did not open the sector at all, and several limited their offer to tour managers only.

For Tourist Guide services: The EC's EPA offer is a significant improvement to its WTO offer where all EC Member States were closed or almost totally closed for this sub-sector. Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Germany, Estonia, Finland, Greece, Hungary, Italy, Latvia, Luxembourg, Malta, Netherlands, Romania, Slovak Republic, Slovenia and the UK require ENTs for CARIFORUM tour guides to temporarily access their markets. Sweden, has not registered any restrictions, while Spain, France, Lithuania, Poland and Portugal have reserved the right to introduce future domestic regulation and measures which may restrict access in this sector.

The EC did not make an offer on Contractual Services Suppliers or Independent Professionals in Spa Services in the EPA.

CARIFORUM Market Access Commitments on Tourism Services in the EPA

Though the tourism sector is generally effectively open in CARIFORUM States, with limitations for foreign investors in the case of small hotels, they improved their binding commitments on market opening in the tourism sector beyond those made in the WTO. CARIFORUM's approach to scheduling was to determine the negotiating position by the specific sub-sectors need for investment, leading to the following categories: (i) sensitive sectors where there would be little or no market opening (ii) sectors requiring investment where a liberal approach would be taken (iii) sectors in which there is an offensive market interest, where requests would be made of the trading partner (iv) sectors in which there is not particular export capacity or non-sensitive, which were to be used strategically for negotiating leverage.

CARIFORUM adopted the GATS positive list approach for scheduling services offers in the EPA. Therefore, the CARIFORUM schedule of commitments only reflects where States have made a commitment. If a CARIFORUM State is not listed in the schedule, then it has not made a commitment to remove restrictions in the particular sector. CARIFORUM States made individual offers based on the particularities of their respective services markets. These offers were consolidated to form the CARIFORUM. While there was convergence in broad sectoral interests, the CARIFORUM schedule has some variance in commitments in some specific services activities, as the negotiations took into account the internal regional integration process among Caribbean countries, and the particular sensitivities and needs of individual countries and/ sub-groupings within the Caribbean. In addition, CARIFORUM has left flexibility for policy makers to introduce measures to protect the domestic industry from surges in temporary movement of natural persons. CARIFORUM has made commitments in: (i) Hotels, restaurants and catering (ii) Travel agencies and tour operators (iii) Tourist guide services. Hotels, restaurants and catering was further disaggregated by some States into Letting services of furnished accommodation, meal serving with full restaurant services, meal services in self-service facilities, and beverage service facilities with entertainment. Under the category "Other"

(tourism services) some CARIFORUM countries made additional commitments on hotel development, hotel management, marina services and spa services.

The CARIFORUM schedule of commitments on trade in services and on investment do not include the Bahamas and Haiti, which will make such submissions in the first half of 2008 for incorporation in the overall CARIFORUM schedules within six months of signature of the agreement.

Cross Border Supply of Services

For Hotels, Restaurants and Catering CARIFORUM scheduled Unbound for Mode 1 across the board, with the exception of the Dominican Republic which listed no reservations in catering. There were no reservations on Mode 2, consumption abroad for this category. For Travel Agencies and Tour Operators, only 5 CARIFORUM countries made an offer, all of which listed no reservations in Modes 1 and 2. Only the Dominican Republic scheduled Tourist guide services and listed no reservations on either mode 1 or 2.

Commercial Presence

CARIFORUM countries were generally liberal in their offer on commercial presence for Hotels, Restaurants and Catering with limitations such as ENTs relating only to small hotels, the definition of which ranges from 50-150 rooms. In the case of Trinidad and Tobago, there is a nationality condition for hotels of less than 21 rooms. For Travel Agencies and Tour Operators, there are no limitations for the 5 countries making an offer except in Trinidad and Tobago, where the activity is only allowed for inbound passengers. For Tourist guide services the Dominican Republic listed no reservations.

Temporary presence of natural persons for business purposes

Where there is a commitment on commercial presence by CARIFORUM, there is an automatic commitment on Key Personnel and Graduate Trainees. CARIFORUM commitments on CSS and IP were generally limited, with most states scheduling “Unbound except for horizontal commitments” almost across all tourism sub-sectors where commitments had been made. The exceptions are in Hotel Development, where Dominica and Grenada have limited entry to the managerial and specialist skill level. In Marina services, 3 of the 12 scheduling countries, Antigua and Barbuda, St. Lucia and Trinidad and Tobago, scheduled none for all categories except CSS and IP.

Relationship between the EPA and the WTO

Tourism negotiations in the WTO have not made significant progress, with strong divergence among Members regarding the classification of the sector; and the significance of the particularities of the sector, which some Members propose as a basis for developing specific disciplines. However, there is consensus on the economic importance of the sector to a wide cross-section of the WTO membership, and indeed globally.

The EPA negotiations represented an opportunity to reap benefits not achieved in the WTO: to create meaningful rules for the sector; to establish a common understanding on issues facing the sector, for example in the area of standards; to create mechanisms to make it easier for EU investors to choose the Caribbean; and to strengthen the capacity of CARIFORUM operators to increase tourism exports and competitiveness. The EPA Tourism Section incorporates elements of proposals on tourism, including those sponsored by the Dominican Republic and friends in the WTO in 2000 and 2001.

The region's positions on international trade in tourism services coalesced through preparatory consultations across CARIFORUM States and direct input from the region's tourism and hotel associations and other stakeholders. CARIFORUM has successfully advanced its position in the negotiations, leading to disciplines on tourism in the EPA, and the creation of a common understanding on tourism disciplines among almost a third of the WTO membership.