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### CARICOM's External Trade Negotiations without the Completion of the CARICOM Single Market and Economy

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## I. CSME AND EXTERNAL TRADE NEGOTIATIONS

In 1989 the Caribbean Community (CARICOM) commenced a process aimed at establishing the CARICOM Single Market and Economy (CSME). The objective was to go beyond facilitating the liberalization of intra-regional trade to the creation of a single economic space to facilitate regional trade, production and investment. The date for completion of the CSME has been revised several times and it is not clear when all members will be fully compliant. Meanwhile, the CARICOM member states are simultaneously engaged in negotiations in the World Trade Organization (WTO), the Free Trade Area of the Americas (FTAA), an Economic Partnership Agreement (EPA) with the European Union and several bi-lateral trade agreements.

The CSME and the external trade negotiations are inter-related processes. The CSME should provide the foundation for a common CARICOM approach to external trade negotiations, which, allows common negotiating positions and the coordinated conduct of external trade negotiations. The objective is to increase the bargaining power of the small states of the Caribbean. Article 6 (g) of the Revised Treaty of Chaguaramas, which establishes the CSME, states that one of the key objectives of the Community is "the achievement of a greater measure of economic leverage and effectiveness of Member states in dealing with third States, groups of states and entities of any description".<sup>1</sup> The anticipated outcome would be to increase the bargaining power of the small states of the Caribbean in international fora and external negotiations such as those related to trade.

The regimes, institutions and decisions internal to the Community should be the basis on which CARICOM engages in negotiations with external entities. Therefore, the CSME should be the foundation from which to conduct the region's external trade negotiations. Ideally, the CSME should be completed before the external trade negotiations are concluded, or at the very least the completion of the CSME should be synchronized with the completion of the external trade negotiations.

Given the respective schedules for the completion of the CSME and the major external trade negotiations there are three possible scenarios. First, the CSME could be completed before the conclusion of the external trade negotiations, which is the ideal situation, second, the processes move in tandem and finish at roughly the same time, a second best but acceptable outcome and third, the external trade negotiations are completed before the CSME is fully operational. Which of these scenarios materializes depends on the schedule and actual momentum of the completion of the CSME and the various external trade negotiations.

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<sup>1</sup> Revised Treaty of Chaguaramas, Article 6 (g).

## II. OUTLOOK FOR EXTERNAL TRADE NEGOTIATIONS

The Doha Development Agenda is mired in disagreement of a fundamental nature over very contentious issues and these negotiations are extremely unlikely to be completed before the end of 2006 even in the most favourable scenario. The EPA negotiations are on schedule for completion by the end of 2007. If Trade Promotion Authority is renewed or extended in the U.S., The FTAA negotiations are re-launched and negotiations drag on in the WTO then all three major negotiations could be coming to a close at the end of 2007.

### III. STATUS OF THE CARICOM SINGLE MARKET AND ECONOMY

Nearly 15 years after the commencement of the CSME process substantially all of intra-regional trade is unimpeded by barriers (Journal of Eastern Caribbean Studies [2003])<sup>2</sup> but the CSME is not yet a reality. The Treaty has become domestic law in 9 member states and in Guyana at the end of November, which leaves only Dominica, Grenada and Montserrat. There are still in place plethora of restrictions on capital mobility, movement of labour, provision of services and the rights of establishment of enterprises. (Brewster; Abugattas; Dolan; Stewart; Watson [2003]). In addition, the necessary harmonization of legislation would affect as many as 75 instruments.<sup>3</sup> Girvan has estimated what he calls the “implementation deficit” at 40-50 percent in attaining free movement of goods, services, persons and capital” (Girvan [2005]) and much left to be done to achieve a harmonization of laws.

The latest revision to the schedule of implementation calls for Barbados, Jamaica and Trinidad and Tobago to be CSME compliant by December 31, 2005. Severe damage by hurricanes in several Member States and the high levels of government debt (International Monetary Fund [2005]) has slowed implementation and it is not possible to say when all member states will be compliant. It is uncertain when the actions, which transform the Single Market into the Single Economy will be accomplished but the current date for completion is 2008. However, this does not impinge on the external trade negotiations as this process involves actions such as a common currency and harmonization of fiscal policy.

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<sup>2</sup> The CARICOM Secretariat estimates the figure to be 95 percent of intra-regional trade. Cited by Havelock R. Brewster, “The CARICOM Single Market and Economy: Is It Realistic Without Commitment to Political Unity?”

<sup>3</sup> The list of laws to be harmonized in Article 74 and passim in Chapters III, IV and V of the Revised Treaty Establishing the Caribbean Community including the Caricom Single Market and Economy.

#### IV. DISJUNCTURE BETWEEN THE CSME AND EXTERNAL TRADE NEGOTIATIONS

A disjuncture between the CSME and the external trade negotiations could develop if the coverage of the external trade agreements being negotiated differs from that of the CSME and/or there is a divergence between the schedules of implementation of the CSME and the schedule of completion of the external trade negotiations. This disjuncture becomes a distinct possibility if the current schedule for completing the negotiations of the Doha Development Agenda of the WTO is the end of 2006. The date for the conclusion of these negotiations is being driven by the expiration date of Trade Promotion Authority in the United States, which is the end of 2006. Negotiations for an EPA with the EU began in April 2004 and are scheduled for completion at the end of 2007. The FTAA negotiations have been stalled since December, 2004 and there is uncertainty about the dates for resumption and culmination.

## V. COMPLETING EXTERNAL TRADE NEGOTIATIONS BEFORE THE CSME

If the external trade negotiations are completed before the completion of the CSME then the following serious consequences could occur:

### **Complicate the Formulation of a Common Negotiating Strategy**

The CSME is perhaps the best template for formulating a common CARICOM negotiating position because of the substantial differences among CARICOM member states. The differences are evident in their levels of development, size, economic structure, rates of economic growth (World Bank [2005]), economic policy and institutional capacity. GDP *per capita* ranges from range US\$557 in Haiti to US\$17,432 in the Bahamas while the population of St. Kitts is 47,000 and that of Haiti is 8.4 millions. (Inter-American Development Bank [2005]) In addition, there are serious differences in the degree to which member states are participating in the existing regional integration process and the extent to which new members can catch up with the process, in particular Haiti and Suriname. (Jessen, Katona [2001]) There are significant divergences in economic structure, growth trajectory and in development strategies, all of which are reflected in the objectives to be achieved in external trade negotiations. The economy of Trinidad and Tobago is based on energy derived products and manufactured goods, Antigua and Barbuda, Barbados and St. Lucia are service oriented, with tourism and financial services as lead sectors, Jamaica is centred on tourism and bauxite/alumina and Belize and Guyana are dominated by agriculture.

The result of the differences among countries is a wide range of approaches to external trade policy spanning a willingness to engage in reciprocal trade liberalization in Trinidad and Tobago to permanent non-reciprocity in the OECS states. Between these polar extremes Barbados and Jamaica opt for trade liberalization based on special and differential treatment for small developing economies. Without the CSME or the commitment to establish the CSME it might prove impossible to bridge the gap between the reciprocity and non-reciprocity approaches to external trade policy.

### **Weaken the Region's Negotiating Leverage**

The completion of the CSME after the external trade negotiations are finished would weaken the negotiating leverage of the region because it would not be able to negotiate as a group. This reduces the influence which negotiating as a group can accord to a collection of small states. Negotiating issues and subjects, which the region has not collectively resolved and agreed upon among the CARICOM member states would leave individual states to attempt to advance their proposals, individually. The prospect of a small state having an impact on large powerful countries or a body with as many member states as the WTO is very limited.

### **Undermine the Credibility of the Negotiating Stance.**

The CARICOM is frequently in the position that the only way it can agree to certain objectives and measures is to have extended and/or asymmetrical implementation schedules. The rationale is that in the time allotted it can remedy the administrative, institutional, legislative and structural impediments. An integral aspect of building or upgrading capacity is the regional integration

process, in particular the CSME. The prolonged implementation of the CSME and the serial postponement of deadlines belie the veracity of statements of intention to adhere to timelines in external trade agreements. The Leader of the Opposition in Jamaica described the CSME as “long on rhetoric and short on delivery” . (The Daily Observer [2005])

It is difficult to elicit empathy for special and difficult treatment if the time is not going to be utilized to undertake adjustment and transformation. The repeated rescheduling of the completion date of the CSME could seriously undermines the credibility of the arguments in favour of special and differential treatment (S&DT) in the form of asymmetrical implementation schedules and long phase in periods. It places the CARICOM negotiators in the invidious position that the justification for this type of S&DT is that the extra time allowed would be used for adjustment when the reality is that the long delayed CSME is viewed as the lack of commitment to adjustment and liberalization. (Jessop [2004]). Is it credible or reasonable to make strong demands for liberalization of Modes 3 (commercial presence) and 4 (temporary movement) of services supply in international trade fora when the free movement of skills and persons among CARICOM member states is so comprehensively encumbered with restrictions?

### **Breach the Integrity of the Integration Process**

The culmination of the external trade negotiations before the CSME could force CARICOM into a reactive mode because it would be formulating its negotiating stance and strategy in response to external factors rather than the logic and state of its integration process. This could result in developments in the external trade negotiations dictating the character and content of the CSME when that should derive directly from the volition of the member states. The recent experience of the Central American countries is a graphic reminder of what can happen. These countries did not have regional regimes for services and government procurement prior to entering into negotiations with the United States for a free trade agreement. Consequently, the provisions on services and government procurement in the US-Central American Free Trade Agreement (US-CAFTA) have become the de facto national regimes.

### **Deprive the Region of Common Negotiating Positions**

The external trade negotiations encompass the gamut of international economic transactions and raise issues, many of which have not yet been resolved within the internal integration process represented by the CSME. As the external trade negotiations evolve there are issues not covered in the subjects included in the CSME. There is a clear and present danger that the external negotiations could advance ahead of the CSME process in such subjects as services, government procurement, and competition policy. This has occurred in the recent past, for example, in the CARICOM-Dominican Republic Free Trade Agreement provision is made to postpone the negotiations on the liberalization of services until the CARICOM internal regime is in place. As a result, there has undoubtedly been lost opportunities for CARICOM services exports to the Dominican Republic market. A similar situation could arise in the FTAA depending on what is included in the final complement of the services chapter.

Possible subject areas where there would be incomplete guidance or no common positions include:

a) *Services*

Despite the importance of services exports to the actual and future economic development of many CARICOM countries there are a number of important areas where limited progress in the CSME is affecting the negotiation of services in external trade agreements. These include: (i) The considerable differences in WTO commitments among member states is hampering a common approach to services offers and requests in the GATS and the FTAA. (ii) Little discussion has taken place on a CARICOM definition of tourism services in the CSME context. This is a prerequisite for articulating a CARICOM concept and approach to tourism in the WTO and FTAA. (iii) Work on telecommunications in the CSME process has not progressed and there is an absence of a regional strategy on telecommunications for both intra-regional trade and for external trade negotiations. (iv) Important issues relating to the liberalization of financial services have not yet been finalized in the CSME and work on air and maritime transport has not started.

b) *Intellectual Property Rights.*

The member states of CARICOM are focused on the full implementation of the WTO Trade Related Intellectual Property Rights (TRIPS) and are reluctant to engage in negotiations of intellectual property rights, which would go beyond TRIPS. This is the position, which has been consistently articulated in the WTO, FTAA and the EPA negotiations. However, there are issues of interest to the region, which may be included in any or all the major negotiations in which the region is involved. For example, greater protection for Geographical Indications and treatment of Genetically Modified Organisms are issues, to which CARICOM must give careful attention to ensure that its concerns and objectives are adequately addressed. Unfortunately neither the provisions nor the vision of the CSME provides any guidance.

c) *Competition Policy.*

Competition policy is subject to negotiation in the FTAA and in the CARIFORUM-EU Economic Partnership Agreement. Article 45 of the Cotonou Agreement<sup>4</sup> commits the parties to “ensure the elimination of distortions to sound competition” and “undertake to implement national or regional rules”. The article provides for cooperation between national competition agencies with a view to formulating and implementing effective competition policies. However, only Barbados and Jamaica have national competition laws and national competition authorities. The other member states of CARICOM are studying a draft model law and examining the feasibility of establishing and operating national competition agencies. It is difficult to predict with any certainty when all member states will have both laws and authorities and hence the stance in external trade negotiations postpone tackling this area.

d) *Government Procurement.*

The uneven and underdeveloped state of CARICOM's government procurement systems and the consequent anticipated costs of compliance with international regimes, even those that are limited

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<sup>4</sup> Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, page 29.

to only transparency provisions have necessitated a cautious approach to government procurement in external trade negotiations. In the FTAA negotiations, CARICOM countries found themselves having to commit to negotiating government procurement including transparency, non-discrimination and due process. This took place ahead of development of the internal regime, which is currently in the first phase of preparatory work. Further, the EU has stated strong interest in negotiating a full government procurement agreement as an integral part of its EPA with CARIFORUM countries. In the absence of the guidance of internal concessions, particularly with regard to the scope of reciprocal market access commitments, CARICOM runs significant risk of granting to third countries wider and deeper market access than that which will be preserved in the CSME regime.

e) *Investment*

There have been several attempts to establish a common investment regime but the reality is that 15 different national investment regimes continue to co-exist within CARICOM. The national situations range from a single investment code to dispersal across numerous legal acts. This issue has been complicated by the continuing evolution of national investment policies in divergent directions. For example, in 2001, Suriname introduced its own Investment Law, while Guyana and Jamaica continue to have no single Investment Law, with regulation of the investment environment and process embodied in several pieces of legislation ranging from the Companies Act to the Income Tax Act. The present conception of a single regional regime includes the designation of a CARICOM enterprise, which requires at least 50 per cent CARICOM ownership and this might be viewed as contravening the principle of national treatment.

## VI. COMPLETING THE CSME BEFORE THE EXTERNAL TRADE NEGOTIATIONS

The best-case scenario is for the CSME to be completed before the external trade negotiations are concluded. However, even if the CSME is completed ahead of the conclusion of the external trade negotiations there could be problems because of differences in conception and subject coverage. Differences in conception between that embodied in the regime or protocol contemplated in the CSME and the ambit and issues encountered in the external negotiations could occur in several subject areas. Investment is one such area where even if the CSME process is completed the orientation and tenets of the CSME could differ in significantly from those involved in the external negotiations.

The regime anticipated by the CSME intends to provide exclusive investment preferences to CARICOM investments (i.e. those investments substantially owned by CARICOM nationals) and would provide guidance on the treatment to extra-CARICOM transnational corporations. This approach may not be compatible with the principle of national treatment required in the investment provision of modern trade agreements. The positions put forward in the external trade negotiations must be derived by taking cognizance of the CSME investment provisions, the existing BITS and the commitments of CARICOM in bilateral, hemispheric and multilateral trade agreements. Differences between the existing international commitments and the CSME could result in challenges being brought against CARICOM member states for breaches of these agreements.

There is another important danger, which arises if the ambit and provisions of the fully implemented CSME does not provide guidance on all subjects and issues to be confronted in the external trade negotiations. This might require revisions to the CSME, which is inevitable in any dynamic situation, but the question is could this be done before the completion of the external trade negotiations? Another question is if the revisions were made during the course of the external trade negotiations, what effect would this have on the efficacy of CARICOM's negotiations? To avoid these disadvantageous circumstances it is essential and urgent that there be a synchronization of the CSME and the external trade negotiations. (Bernal [2005]).

## VII. SUMMARY

The CARICOM Single Market and Economy can and should provide a common negotiating platform in extra-regional negotiations thereby strengthening the region's position in external trade negotiations. Given the schedule of the major external trade negotiations and the delays in the implementation of the CSME there is a real danger that external trade negotiations could outpace the establishment of the CSME. If the major external trade negotiations were completed before the CSME is fully operational the result would be a weakening of CARICOM's negotiating positions by depriving the region of a common platform on several important issues. Even more worrying is the possibility that if the CSME is completed before the external trade negotiations there would be a lack of collective guidance on some subjects and issues to be resolved in the external negotiations.

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