



Expert Meeting on  
**THE IMPACT OF ACCESS TO FINANCIAL SERVICES,  
INCLUDING BY HIGHLIGHTING THE IMPACT ON REMITTANCES ON  
DEVELOPMENT: ECONOMIC EMPOWERMENT OF WOMEN AND YOUTH**

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# Plurilateral and regional services agreements especially financial services with special emphasis on CARIFORM EU EPAs

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# Trends in plurilateral and regional services arrangements especially wrt financial services

- Bilateral and regional and multilateral arrangements have been with us for many years.
- However crises change many things.
- Bretton woods was born after the end of the world war.
- The BIS was restructured to produce a Financial Stability Board after the global financial crisis of 2007.
- Crises and failing economies and economic losses of investment partners led to an increase in litigation, particularly in the case of bilateral treaties, and to greater attention to financial stability and risk management.
- Governments were challenged by investors, particularly under BITS agreements as they sought to restructure debts and the number of investor disputes grew.

# Different forms of multilateral, plurilateral and regional arrangements

Services and financial services in particular have been the subject of much discussion following the global financial crisis.

The regulation of such services increased and the extent of collaboration across countries accelerated as each country tried to make sure that it was not disadvantaged by new regulations.

Even before the crisis, the challenge of countries having sufficient policy space to take corrective action became particularly evident in the case of Argentina after the crisis of 2001 and in many countries since the crisis. Some of these ended in the Investor State Dispute organizations.

# The CARIFORUM EU EPA

- If we consider the Caribbean as one area the most important plurilateral arrangement which the region has in force is the CARIFORUM- EPA arrangement.
- the signing of this arrangement coincided with the advent of the global financial crisis of 2007.
- Hence the problems of sovereign debt restructurings and the sufficiency of fiscal space for parties to such arrangement had not yet become a major issue, despite a some very public cases of disputes.
- As a result the CARIFORUM EU EPA was not affected by these developments.
- This note will address the CARIFORUM EPA. It will also address the issues which are currently facing other plurilateral arrangements with regard to regulatory scope, fiscal space and inclusiveness.

# The context of trade agreements in the CARIFORUM

With respect to CARIFORUM EPA

It was estimated at the start of negotiations that CARIFORUM stood to lose US\$300 million in tariffs if there was a de facto resort to Generalised system of tariffs paid to the EU.

It was estimated that the impact on the region's exports would have been quite serious. The EPA arrangement was therefore welcomed in most quarters in the region as a way of its problems.

The EPA covers much more than goods, it covered services .

The biggest controversy was over the MFN clause which required CARIFORUM countries to, require that any more favourable deals given to larger developing countries would have to be extended to EU

It also marked the end of non-reciprocal trade of CARIFORUM and EU

# Importance of the Services Sector for CARIFORUM states

- Services represent the largest income earner in CARIFORUM
- Generates the most employment especially for OECS and Barbados
- Key areas are tourism, investment and entertainment services
- Under the CARIFORUM EU EPA, EU liberalizes approximately 90 % of its services sectors.
- Mode 1(cross border) and mode 2 (consumption abroad)especially
- The movement of natural persons would be subject to Economic Needs test and certification requirements.

# Services liberalized by CARIFORM states

- 20 key sectors were liberalized
- accounting, architecture engineering, computing, R and D, Management consulting, Manufacturing related services, Scientific and technical, telecommunications, convention services, tourism and trade related, courier, hospital, tourism, entertainment maritime transport services.



# Areas which were controversial

- Competition policy, procurement
- Intellectual property rights and other areas
- one argument is that the EPA guarantees European services suppliers access to CARIFORUM markets without certainty regarding concomitant obligations on universal access.
- Another criticism is that limitations on universal service in the EPAs put to test not only a government's right to regulate, but also the policy objectives it seeks to pursue

# Financial services in CARIFORUM EU EPA

- Best efforts language was agreed wrt financial services.
- “will endeavour to facilitate the implementation..... of internationally agreed standards of regulation and supervision in th financial services sector”
- Nothing in the agreement..... will require disclosure of affairs and accounts of individual customer or anz confidential or proprietary information

# Are the safeguards in the EPA sufficient?

Analysts have suggested that in the 5 year review that some key areas be emphasised. They note :

- that the Right of government to regulate FDI should be explicitly recognized in the objectives on investment.
- that the investment should safeguard advancement of human cultural, social , economic health and environmental welfare of the populations
- That clear exceptions should include specific balance of payment safeguards
- And liberalization commitments should be tempered by ability to act in adverse conditions and crises.

# CARIFORUM EPA of new plurilaterals

- The CARIFORUM EPA may not have delivered on its expectations (S. Silva)
- In services few CARIFORUM service suppliers have actually attempted to contest the EU market as “service suppliers”. In many European states, the agreed changes to classify their business as “service suppliers” and not as “migration or “employment (seekers) “has not been done.
- One report states the “the active take-up of regulatory challenges and market opportunities remains fairly muted both within CARICOM and the EU.”(S.Silva)

# Features in the new plurilaterals

- Current Plurilaterals being negotiated like the TISA display several features which make them less flexible than previous agreements
- They tend to be much more comprehensive, liberalising services in essentially all modes of supply ( mode 4 being an exception for the most part)
- Generally, foreign services providers are expected to receive national treatment
- The trend is for no new trade restrictive mechanisms in services to be permitted
- It is feared that other agreements being negotiated – e.g. TTIP and TPPA could challenge the right of governments to regulate and legislate in the public interests.

# Trend for Investors in plurilateral arrangements to challenge the government laws and regulations

- Privileges conferred on investors have been from time to time supported by Dispute Settlement Decisions and governments have had to make hefty settlement because of measures taken in the public interests.

(These have been mostly through decisions of ISDS investor-to state dispute settlement)

It is feared that governments would not be able to impose capital controls to halt capital flight in a crisis.

The danger of placing investor rights over social needs has also become a concern arising from possible trends in plurilaterals

# What does this mean for financial inclusion?

- If there is a trend toward giving investor special privileges and curtailing the right of the state to act in the public interest, one could conclude that such actions could adversely impact financial inclusion, since financial inclusion is best achieved if governments are allowed to act in the public interest.
- We noted that these developments are coinciding with higher level of regulation and greater emphasis on risk management in the financial sector. We have also noted that except for some slippage during the height of the financial crisis, remittances continue to grow and informal financial activity and small scale activities are increasing.
- It suggests that higher levels of regulation may be driving small savers and borrowers to small scale and informal means of banking and performing financial transactions.