



EXPLOITING THE EPA FOR PROMOTING CARIFORUM'S CREATIVE INDUSTRY

S. H. Allyson Francis

Trade in Services & Investment Specialist

CARICOM Secretariat EPA Implementation Unit

sfrancis@caricom.org

sonjafrancis@hotmail.com

Outline

- EPA (background & provisions)
- Services provisions
- Entertainment Services
- Challenges, Opportunities
- Supply-side, demand-side, implementation issues
- Way forward/Next steps



The EPA

- Objectives

- Reduction & eventual eradication of poverty through trade partnership;
- Promoting regional integration, economic cooperation and good governance;
- Promoting the integration of CARIFORUM (CF) States into the world economy;
- Support for increasing investment & private sector initiative; and
- Strengthening relations taking into consideration levels of development and int'l obligations



Services trade



Services are traded by four modes

- **Mode 1 - Cross-border trade** (the supplier or the consumer do not move e.g. advisory services via the internet, providing drafts);
- **Mode 2 - Consumption abroad** (the consumer moves to obtain the service e.g. tourism, non-national purchasing Architectural services paid from their home country);
- **Mode 3 - Commercial presence** (the supplier establishes in the territory to supply a service e.g. branches); and
- **Mode 4 - Movement of natural persons** (temporary movement of the supplier to provide a service e.g. consultancy services)

Scheduling



Positive listing of restrictions in services sectors – what is listed is liberalised (may contain restrictions)

- None – No discriminatory legislation/regulations
- Unbound - States have the ability to regulate/change the trade regime in the sector
- Unbound * - Not feasible

NB: Only discriminatory requirements are scheduled therefore there may be other regulatory requirements to be met.

NB: the schedule sets the upper limits of restrictions a State may allow activities to be undertaken that is more liberal than what is scheduled

Services Title



- Chapter 1 – General Provisions
- Chapter 2 – Commercial Presence
- Chapter 3 – Cross Border Supply of Services
- Chapter 4 - Temporary Presence of Natural Persons for Business Purpose
- Chapter 5 – Regulatory Framework (MR, Computer, Courier, Telecom, Financial, Int'l Maritime & Tourism)
- Chapter 6 – Electronic Commerce
- Chapter 7 - Cooperation

General Provisions

- An arrangement for the progressive, reciprocal & asymmetric liberalization
- Do not apply to subsidies
- States retain the right to regulate & introduce new regulations to meet legitimate policy objectives
- Do not apply to measures regarding citizenship, residence or employment
- Measure must not be applied to nullify or impair benefits
- Future liberalization no later than 5 yrs from date of entry into force



General Provisions (cont'd)



- Bahamas & Haiti to schedule commitments no later than 6 months after signature (preferential treatment not applicable until)
- Recognize the importance of Regional Integration
- Does not include activities in the exercise of governmental authority
- Do not apply to activities such as mining, manufacturing, processing of nuclear materials, production of arms, audio-visual services, national & international air transport etc.

Market Access (MA)



- Parties shall accord treatment no less favorable than that provided for in the specific commitments
- Measures not to be maintained unless specified- Limitations such as on
 - the number of commercial presences (quotas, monopolies, exclusive rights or other requirements such as ENT)
 - the total value of transactions or assets
 - the total number of operations or quantity of output
 - the participation of foreign capital
 - specific types of commercial presence

National Treatment (NT)



Where there are MA commitments States shall grant treatment no less favorable than that accorded to their own like service provider (treatment will be considered less favorable if it modifies the conditions of competition in favor of the other party)



Most-Favored Nation Treatment (MFN)

- The EC shall accord treatment no less favorable than the most favorable accorded to third country with whom they conclude & agreement with after signature of the EPA
- CF shall accord treatment no less favorable than the most favorable accorded to any major trading economy
 - (major trading economy is any country with more than 1% world share in merchandise trade or group with more that 1.5%)

Temporary Presence of Natural Persons for Business Purposes



- **Key Personnel** – National employed by a legal entity responsible for setting up or the proper control (all sectors liberalised under mode 3)
 - **Business visitors** – must be in a senior position, do not engage in direct transaction with the gen. public & do not receive payment from a source in the host
 - **Intra-corporate transfers** – must have been employed or partners for at least 1year, transferred on a temporary basis
 - **Managers** (directing, supervising auth. to recruit or dismiss or recom.)
 - **Specialists** (must possess uncommon knowledge)

Temporary Presence of Natural Persons (cont.)



For any activity that Antigua and Barbuda or the EU has allowed persons to invest in, graduate trainees should be granted access.

Graduate trainees – national employed by a legal entity for at least 1 year, possess a university degree, temporarily transferred for career development & training in business techniques or methods (recipient co. may be required to submit training programme)



Business Service Sellers (BSS)

Representatives of a service supplier seeking temporary entry to negotiate the sale of services or entering into agreements to sell services

- For all sector liberalized
- Temporary entry for 90days
- Do not engage in making direct sales to the public
- Do not receive remuneration from a source in the host State

For all sectors liberalised under modes 1, 2 & 3



Contractual Services Suppliers

National employed by a legal entity, with no commercial presence in the other territory, have concluded a bona fide contract requiring temporary presence to fulfill

Conditions

- Must have a registered business or an employee of a juridical person
- Must possess a university degree or equivalent and professional qualifications (except fashion model chef de cuisine & entertainment);

Conditions for CSS (cont.)



- Must first obtain a service contract must not exceed a period of twelve months (temporary entry and stay not more than 6 months);
- Must have been an employee of the juridical person for at least 1 year immediately preceding application;
- Must possess at least three years professional experience;
- Remuneration only for the contract; and
- Subject to Economic Needs Test (ENT) - The main criteria will be the assessment of the relevant market situation in the Member State or the region where the service is to be provided, including with respect to the number of, the impact on, existing services suppliers

Contractual Service Suppliers (CSS)



- The EC made commitments in 29 sectors
- For the EC 10 commitments enter into force in 2011
- For Bulgaria & Romania 2014

EC directives on mutual recognition of diplomas only apply to nationals of EU Member States. The right to practise a regulated professional service in one Member State does not grant the right to practise in another Member State. (In order for third-country nationals to obtain EC-wide recognition of their qualifications, it is necessary a Mutual Recognition Agreement to be negotiated)



Areas of access for CARIFORUM CSS in the EU

1. Legal advisory services in respect of international public law and foreign 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

Areas of access for CARIFORUM CSS in the EU (cont'd)



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

Areas of access for CARIFORUM CSS in the EU (cont'd)



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

Independent Professional



National, self-employed with no commercial presence in the other territory, have concluded a bona fide contract requiring temporary presence to fulfill

Conditions

- Self employed
- Must possess a university degree or equivalent and professional qualifications;
- Must first obtain a service contract must not exceed a period of twelve months (temporary entry and stay not more than 6 months);
- Must have at least 6 years professional experience at the date of application;
- Subject to Economic Needs Test (ENT)

Areas of access for CARIFORUM IP in the EU



Market access was granted in 11 sectors.

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

Other Provisions



Short Term visitors for business purposes

- Research and Design; Marketing research; Training seminars; Trade Fairs; Sales; Purchasing;

Provided they are not engaged in selling their services to the general public; do not receive remuneration in the territory of temporary stay, not to engage through a contract outside of the territory of temporary stay;

Temporary stay up to 90 days

Mutual Recognition (MR)



- Nothing in this Title shall prevent the Parties from requiring that natural persons must possess the necessary qualifications and/or professional experience specified in the territory where the service is supplied, for the sector of activity concerned.
- Professional bodies encouraged to Jointly develop & provide recommendations on MR of criteria applied re authorisation, licensing, operation and certification
- Negotiations to start no later than 3 years after entry into force of the Agreement

MR (cont.)

- Start with accounting, architecture, engineering & tourism
- Recommendations to be reviewed by the Joint Committee for consistency
- If consistent negotiate through comp. auth a MRA
 - Consistent with GATS Art. VII – , shall not be in a manner which constitutes a means of discrim. between countries in its application & shall afford oppor. for other interested Mem to negot.
- CF- EC Trade & Development Committee to review progress every 2 years





Movement of Natural Persons

- In those sectors in which economic needs tests (ENTs) are applied for Mode 4, the main criterion will be availability of persons with the requisite skills in the local labour market. With regard to other modes of supply, the main criteria for ENTs will be the assessment of the relevant market situation where the service is to be provided, with respect to the number of, and the impact on, existing service suppliers.

Cooperation



Cooperate by providing support through technical assistance, training & capacity building:

- Improve ability to gather information on & meet regulations & standards of the EC;
- Improve export capacity particularly marketing of tourism & cultural services, SMEs;
- Facilitate interaction & dialogue;

Cooperation (cont.)



- Address quality & standards needs under the agreement & domestic & regional markets. Also ensure participation in the development & adoption of sustainable tourism standards;
- Developing & implementing regulatory regimes; and
- Mechanisms for promoting investment & joint ventures & enhancing the capacities of IPA



CULTURE

&

ENTERTAINMENT

Classification of other Entertainment Services (UNCPC)



- 96191 Theatrical producer, singer group, band and orchestra entertainment services
- 96192 Services provided by authors, composers entertainers and other individual artists
- 96193 Ancillary theatrical services n.e.c.
- 96194 Circus, amusement park and similar attraction services
- 96195 Ballroom, discotheque and dance instructor services
- 96199 Other entertainment services n.e.c.

Protocol on Cultural Cooperation



- Based on the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions;
- Speaks to having ratified or intending to do so promptly;
- Highlights the importance of cultural cooperation taking into consideration the degree of development of cultural industries, imbalances of cultural exchanges and the existence of preferential schemes for the promotion of cultural content

Cultural Cooperation Protocol (cont.)



- Sets the framework for cooperation;
- Improve conditions for exchange of cultural activities & redressing the structural imbalances & asymmetrical patterns;
- Preferential treatment for cultural exchanges & dialogue
 - to develop cultural policies & industries;
 - create opportunities for cultural goods & services; and
 - Foster good practices in IP

Cultural Cooperation Protocol (cont.)

- Training and increased contacts between artists and other cultural professional & practitioners; and
- Facilitate the temporary stay of cultural professionals & practitioners for a period of 90 days within 12 months; Provided they are not engaged in selling their services to the general public; do not receive remuneration in the territory of temporary stay, not to engage through a contract outside of the territory of temporary stay



Cultural Cooperation Protocol (cont.)

- Technical Assistance for the development of cultural industries; implementation of cultural policies and promoting production & exchange; and for the usage and transfer of technologies and know-how;
- Promotion of networks; encourage joint productions;
- dissemination of publications



Cultural Cooperation Protocol (cont.)



Audio-visual

- Negotiation & implementation of co-production agreements
- Facilitate access to co-production agreements
- EC wide access for co-production
- Access to funding for the creative sector
- Cooperation on standards to ensure compatibility & interoperability of technologies
- Facilitate rental & leasing of technical material & equipment.
- Facilitate the digitalisation of audio-visual archives

EU Commitments in Entertainment Services



Mode 1

- 25 Member States have scheduled Unbound

Mode 2

- **CY, CZ, FI, MT, PL, RO, SK, SI:** Unbound
- **BG:** Unbound, except for theatrical producer, singer group, band and orchestra entertainment services (CPC 96191); services provided by authors, composers, sculptors, entertainers and other individual artists (CPC 96192); ancillary theatrical services (CPC 96193)
- **EE:** Unbound for other entertainment services (CPC 96199), except for cinema theatre services
- **LT, LV:** Unbound, except for cinema theatre operation services (part of CPC 96199)

EU Commitments in Entertainment Services (cont'd)



Mode 3

- **CY, CZ, FI, MT, PL, RO, SI, SK:** Unbound
- **BG:** Unbound except for theatrical producer, singer group, band and orchestra entertainment services (CPC 96191), services provided by authors, composers, sculptors, entertainers and other individual artists (CPC 96192) and ancillary theatrical services (CPC 96193)
- **EE:** Unbound for other entertainment services (CPC 96199) except for cinema theatre services
- **LV:** Unbound except for cinema theatre operation services (part of CPC 96199)

EU Commitments in Entertainment Services (cont'd)



- 26 Member States (excluding Belgium) granted access under Entertainment services (other than audio-visual) for CSS
 - EC 15 Provisionally in 2008
 - EC10 after 3 years
 - Bulgaria & Romania after 5 years
- Key personnel & graduate trainees
 - FR: The necessary authorisation for the access to management functions is subject to a condition of nationality when the authorisation for more than two years is required

CARIFORUM Commitments in Entertainment Services



Modes 1 & 2 – None

Mode 3 – None (Except GRD & KNA - May be required to employ national artists and entertainers; TTO unbound)

Mode 4 - Unbound except as indicated in the horizontal commitments - ENT for KP, GT, BV, CSS & IP

BRB (96191), LCA, TTO – None

BRB (96194) - Unbound except as indicated in the horizontal commitments



CHALLENGES OPPORTUNITIES

Challenges

- Absence of tax treaties to avoid double taxation
- Foreign exchange controls
- Language
- Ignorance of cultural norms, customs and values
- Lack of data to conduct proper analysis
- Protectionist policies
- Meeting the right people
- Cost of travel
- Ignorance of the laws
- Residential status requirement in some EU States



Challenges



- Absence of harmonisation and accreditation between institutions in CF & the EU
- Small size of firms
- Lack of business operation in the EU
- Unwillingness to collaborate
- Need to revise, implement & enforce required legislation

Opportunities

- Openness to foreigners
- Use of English
- Access to other markets (Also the link between the FCORs and the mianland)
- Contacts in place
- Pricing
- Positive attitude towards joint ventures/partnerships
- Diaspora populations
- Implementation of the Agreement (TA)
- Removal of the visa requirement for the FCORs
- Access to the FCORS - regular LIAT flights
- Utilizing the expertise in the FCORS to meet standards to access the EU markets



Opportunities

- Special opportunity for joint ventures
- Ability to add unique value-added
- Some States in the region have resources and personnel to provide training in some areas
- Promoting investment to increase demand



Observations



Entertainment Services Challenges

- Need to be viewed as a business
- Lack of organization among practitioners
- Lack of venture capital
- Lack of standards & monitoring
- Lack of Cultural policies in some Member States
- Lack of registration, certification mechanisms
- Differences in classifications
- Standards to be met in the EU is very expensive (Audio visual)
- The issue of languages – requirement for sub-titles or dubbing



Entertainment services (cont'd.)

Opportunities

- Trust in education to involve training in arts
- Real niche market due to unique value-added
- Contribution to the tourism
- Cultural expo as an avenue to attract & foster investment
- Development cooperation

Entertainment services cont.



Weaknesses

- Lack of investment
- Lack of training
- Angle of creativity – need for creative expertise
- Absence of sufficient specialists
- Insufficient draftspersons to prepare domestic legislation
- Lack of for a to involve ideas of everyday cultural practitioners
- Lack of established mechanism for registration & certification
- Lack of proper functioning of accreditation bodies

Other issues to consider (Demand-side)



Demand-side issues (market access, consumers, target markets, regulatory regimes)

- Which sectors/aspects of Culture are of priority
- Which EU Markets are priority targets
- Determine the regulatory requirements for access
- Identify persons & companies in the EU for partnership

Other issues to consider (Supply-side)



Supply-side issues (Competitiveness, product quality, HR, Technological capabilities)

- develop a central point for negotiating different aspects of cultural
- Identify best practices & standards
- Need to develop capacity to meet nat'l & int'l standards
- Increased investment in new technologies
- Technical assistance for professional development
- Development of policies and legislation
- Provide training to contest the EU market

Implementation issues



- CARIFORUM-EC cooperation and regional CARIFORUM integration
- Future Liberalisation
 - Identification of new sectors and the conditions of liberalisation
- Facilitatory Measures, Sectoral Measures & Measures on Mode of Supply
- Analysis of regulatory framework - Amending legislation & adopting new
 - Harmonisation & enactment of a modern regulatory framework

Implementation issues (cont.)



- Ensure MA & NT granted in accordance with the schedule
 - CF & EU
 - Analysis of schedule to det. opportunities avail.
 - What is needed for market penetration
- Train specialists to monitor other FTAs and address granting/receipt of MFN to service providers
- Develop policies and legislation to govern the behaviour of investors & maintenance of standards on investments



Implementation issues (cont.)

- Conduct nat'l consultations toward development of policies and legislation for the implementation of provisions & commitments in services & investment
- Conduct nat'l consultations towards the future liberalisation of services & investment commitments
- Review legislation & implement new legislation to facilitate trade in all sectors liberalised – assessment being conducted
- Complete the process of the CARICOM – DR services schedule

Implementation (cont.)



- Develop a national strategic development plan
- Development/implementation of required legislation for registration & certification
- Training
- Collection of data to plan/implement effectively
- Development/amendment of legislation to address the use of title and practice as an architect & engineer

Implementation issues (cont.)



Movement of Natural Persons –

- Mechanism to address the ENT
 - Collection of data
 - Thorough assessment of what policy is in place for temporary entry
 - What labour market test is in place (national & regional)
 - How do we assess the HR needs
- Effect given to the definitions & terms for Temporary presence
- Sensitization of all stakeholders on legal requirements for temporary movement
 - Training seminars with immigration & labour officials

Implementation issues (cont.)



- Development of projects for the sustainable development of tourism
- Establishment of programmes for environmental & quality standards applicable to tourism services
- Determine what are the technological needs of established tourism services industries
- Determine what is needed for the better participation of SME in the tourism sector
- Determine what are the development cooperation and technical assistance needs of the tourism sector.

Implementation (cont.)



- Government policies on culture and trade, intellectual property, ICT, industrial and innovation upgrading etc developed
- Model Co-production Treaty prepared
- Harmonized regional policies based on the Protocol prepared
- Market intelligence gathering system introduced
- Coordinated regional system for the classification, registration and certification of cultural professionals developed
- Technical assistance needs identified to strengthen industry associations and support services for the cultural industries
- Technical assistance needs of the different sectors identified



Implementation issues (cont.)

- establishment of enquiry points
- facilitate prior publication of new measures;
- specify and publicize application requirements;
- establish mechanisms for the timely response to application queries
- Create the policy framework for conducting e-commerce
- Develop & implement legislation on ICT
- **Thorough analysis of development cooperation needs for the services sector**
 - **Development of proposals & projects**

Way forward (cont.)



- What is necessary for your sector to become more competitive
- What activities must be undertaken to implement the provisions
- What you need to know about the EU & DR market
- How the cooperation provisions can assist your development
- Do you have the relevant laws & regulations in place
- Do you have the necessary technology
- Where is training required
- How effective is the organizational structure
- How do non-nationals operate in the market
- Greater collaboration/coordination between Ministries and agencies

Way forward



- Implement the provisions of the CSME that will allow for the free movement of Service Suppliers;
 - Registration, Certification, Recognition & MR
- Implement necessary regulations for the regulatory and administrative operation of professionals;
- Determine the areas of interest for developing co-production agreements
 - Negotiation of regional co-production agreements
- Determine the sectors of interest for exporting
- Create the relevant professional bodies to discuss with EU counterparts and agree on professional standards

Way forward



- More public-private collaboration
- Government-Government collaboration
- Utilize data studies to guide the sector.
- Follow-up on the mechanism(s) being developed (how other services sectors will be captured)
- Better dialogue with statistical officers



Thank you