

# Trade and Investment Agreements in CARICOM

Tobacco and Trade Seminar, PAHO,  
Bridgetown, Barbados, 18<sup>th</sup> May 2017

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# Objective

- The primary purpose of this brief presentation is to discuss Regional Investment Treaty Arrangements in the Caribbean, in particular, the draft CARICOM Investment Code

# The Caribbean Community

- CARICOM – a regional organisation of 15 Caribbean countries, constituted originally by the 1973 Treaty of Chaguaramas establishing the Caribbean Community and Common Market.
- Economic integration under the treaty deepened under the **2000 Revised Treaty of Chaguaramas establishing the Caribbean Community, including the CARICOM Single Market and Economy**. All Members of CARICOM except the Bahamas and Montserrat are parties to the Revised Treaty.

- The central aim of the Revised Treaty is the creation of a fully integrated internal market.
- In addition to the free movement of goods, the free provision of services and the free movement of skilled nationals, the Revised Treaty addresses the rights of establishment of CARICOM nationals and the free movement of capital.

- Community nationals are afforded the right of establishment, which includes the right to create and manage economic enterprises.
- Article 32 of the Revised Treaty prohibits new restrictions on the rights of establishment and Article 33 mandates the removal of existing restrictions on that right.
- Article 32 (5) defines a national of a member State.

- The removal of restrictions on the right of establishment extends to restrictions on the movement of managerial, technical and supervisory staff of economic enterprises and on establishing agencies, branches and supervisory staff of legal entities established in the Community. (Articles 35 (c) and (d))
- Treaty also prohibits new restrictions and mandates the removal of existing restrictions on the movement of capital payments and currency transactions (Articles 39 and 40)

- Non-discrimination is a guiding principle of the Revised Treaty. Any discrimination on grounds of nationality only is prohibited with respect to matters within the scope of application of the Treaty (Article 7).
- Member States of CARICOM are required, with respect to any right covered by the Treaty, to accord to each other treatment no less favourable than that accorded to Third States (Article 8).

- These treaty guarantees are important to the facilitation of cross-border investments in CARICOM.
- The Revised Treaty also contemplates the adoption of other measures to support the realisation of the CARICOM Single Market and Economy (CSME)
- Among the common supportive measures is the formulation of a Community investment policy, including a harmonised system of investment incentives (Articles 68 & 69)



# The CARICOM Draft Investment Code

- A draft **CARICOM Investment Code** is being developed as part of the process of elaborating the Community's investment policy.
- It is intended to be an agreement among CARICOM Member States that creates a common regime for the protection, promotion and facilitation of investments in CARICOM.

- The objectives of the draft CARICOM Investment Code (CIC) include attracting investment from investors of CARICOM Member States and third countries; greater cross border investment and reinvestment in CARICOM; and transparency and predictability in the treatment of investments in CARICOM.
- The CIC is intended to build upon the existing guarantees in the Revised Treaty.

- Like standard investment treaties, the draft CIC elaborates the obligations of a host party concerning the treatment of investors of another Party and their investments.
- These include obligations concerning national treatment, most-favoured-nation (MFN) treatment, the minimum standard of treatment including fair and equitable treatment, performance requirements, the appointment of key personnel, transfers, expropriation and compensation for losses resulting from war or civil strife.

- The draft CIC also elaborates measures to promote and facilitate investment flows as well as measures to ensure that investment supports economic development, including measures that promote the corporate social responsibility of investors.
- The CIC is expected to feature provisions to address the needs of the Less Developed Countries of CARICOM.

- The draft CIC includes mechanisms for the settlement of disputes between investors and host Parties and disputes between the Parties.
- The draft Code draws on the dispute settlement framework elaborated under the Revised Treaty.
- Mechanisms for dispute settlement include: adjudication before the Caribbean Court of Justice, arbitration, conciliation, consultations, mediation, good offices (Article 188 of the Revised Treaty)

- The Revised Treaty permits private entities to bring disputes with Member States before the CCJ ( Article 222)
- In addition to the intra-regional framework for the protection, promotion and facilitation of investment, CARICOM countries are developing a template to guide the negotiation of investment provisions in the Community's external trade agreements.

# Bilateral Investment Treaties

- All Member States of CARICOM, except St. Kitts and Nevis and Montserrat, have signed bilateral investment Treaties.
- The Bahamas has signed one BIT; either 2 or 3 BITS have been concluded by Antigua and Barbuda, Dominica, Grenada, St. Lucia, St. Vincent and the Grenadines and Suriname. At least 7 BITS each have been signed by Barbados, Belize, Guyana, Haiti. Jamaica and Trinidad and Tobago have each concluded more than 10 BITS.

- Investment provisions also feature in external trade agreements concluded by CARICOM countries, inclusive of bilateral trade agreements with Costa Rica, Cuba and the Dominican Republic and the Economic Partnership Agreement between CARIFORUM and the European Union.



# Differences between the draft CIC and the BITs

- (1) the draft CIC forms part of an intra- regional framework for investment which accords rights of establishment. Most of the BITs do not grant pre-establishment rights, with the exception of the BITs concluded by some CARICOM countries with Canada and the US that grant pre-establishment rights subject to limited reservations.
- Also, the EPA includes scheduled commitments on market access and national treatment with respect to commercial presence in services and non-services activities.

- (2) In contrast to the existing BITS, the draft CIC and the draft template for investment provisions in trade agreements reflect the practice of clarifying the scope of investor protection, with a view to balancing more effectively investment protection with the host State's right to regulate in the public interest.

- (3) the draft CIC contains provisions that aim to ensure that investment supports economic development. These include measures to promote and facilitate investment flows and to promote corporate social responsibility of investors and provisions that address the differences in the levels of development of the Parties. These provisions are not included in the BITS signed by CARICOM countries.

# Investment provisions in the EPA

- The EPA requires the Parties to cooperate and take any necessary domestic measures to ensure that investors are forbidden from and held liable for bribing public officials, act in accordance with core labour standards to which the Parties have subscribed, do not operate and manage their investments in a manner that circumvents the Parties' international environmental and labour obligations.

- The EPA also requires the Parties to ensure that foreign direct investment is not encouraged by lowering domestic environmental, labour or health and safety standards or by relaxing core labour standards or laws aimed at protecting and promoting cultural diversity.