

Negotiating Trade, Innovation and Intellectual Property: Lessons from the CARIFORUM EPA Experience from a Negotiator's Perspective

UNCTAD – ICTSD Project on IPRs and Sustainable Development

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Introduction

For the purpose of negotiating the new trading arrangements under the Cotonou Agreement, the Caribbean Forum (CARIFORUM) is comprised of 15 small states of the African, Caribbean and Pacific (ACP) group.¹ The CARIFORUM States share the characteristics of being highly open to trade; vulnerable to external shocks; having high external debts; economies that are significantly skewed towards services; and relying on the United States as their major trading partner.

Of the 15 CARIFORUM States, only one, Haiti, is classified as a Least Developed Country (LDC). Haiti would therefore have access to the European Union (EU) market for its goods, in the absence of a negotiated WTO-compatible trading arrangement, under the latter's unilateral Everything But Arms (EBA) scheme. The goods from all the other CARIFORUM States would have to be traded under the standard EU General System of Preferences (GSP) in competition with all the other developing countries that qualified, and where the GSP doesn't apply facing the same or higher tariffs, as any other country, developed or developing.

The CARIFORUM States therefore concluded that a WTO-compatible trading arrangement for goods was necessary to protect, and decelerate the erosion of the trading advantage for its goods in the EU market. They also recognised that, as service economies, an agreement addressing only trade in goods, while offering some potential for growth, would not provide better opportunities for their key economic sectors.

In addition, CARIFORUM acknowledged the challenges it faced in trying to compete with low-cost producers, particularly those larger producers that can take advantage of economies of scale. In order to develop competitive advantages by differentiating its products, CARIFORUM States needed to improve their levels of innovation. The Economic Partnership Agreement (EPA) negotiations provided an opportunity for CARIFORUM to encourage partnerships with the EU that could give momentum to the development of national and regional innovation systems.

This Policy Brief provides a background on the negotiations between CARIFORUM States and the European Commission (EC) on innovation and intellectual property rights (IPRs) in the context of the EPA. It also analyses the main provisions reached and points to some lessons learned which could be of relevance for other sub-regions negotiating an EPA with the EU.



CARIFORUM began preparations by seeking to determine its negotiating guidelines based on the negotiating structure already used for the WTO and the Free Trade Area of the Americas (FTAA) negotiations. In this respect, it already realised that the level of IPRs protection provided in implementing the WTO obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) was being significantly underutilised. There was thus little advantage in negotiating an increase in this level of protection.

At the same time, CARIFORUM had some possible interest in developing three areas with the EU: the protection of biological diversity and traditional knowledge; the development of its geographical indications (GIs) and the strengthening of their protection; and the development of

its creative industries, particularly in the digital environment that evolved after the TRIPS Agreement was concluded. The CARIFORUM interests in GIs and the creative industries also reflect the need to diversify production structures and improve the returns from relevant value chains. These factors were also considered in the development of the CARIFORUM negotiating guidelines for market access in goods and services. The CARIFORUM guidelines informed its participation in the development of the ACP guidelines for the negotiations, and these in turn then informed the CARIFORUM negotiating positions and strategies.

It was also recognised by CARIFORUM that the EU had two well-known interests in the area of IPRs: strengthening the enforcement of existing IPRs and providing stronger protection for its GIs.

1. Negotiating Innovation with the EU

1.1 Introducing the concept of innovation in the negotiations

From the outset of the negotiations, CARIFORUM indicated the need to ensure an appropriate balance between the level of protection granted to IPRs and the level of development of CARIFORUM economies, particularly the level of innovation. Using the EU's internal articulation in the Lisbon Agenda of the importance, particularly for small and medium-sized enterprises (SMEs), of innovation for competitiveness and economic development, CARIFORUM led the discussion on the development of its innovation systems, including a regional innovation system.

Innovation is ultimately the result of social interactions between diverse economic actors taking place in an environment open to new ideas. But much of the work on innovation reveals many unknown factors in constructing an appropriate framework in which innovations can take place. Learning is a key process for innovation, but investment in education is complex and has long-term returns.

CARIFORUM was cognizant of the work taking place regionally and internationally on the promotion of innovation and the development of innovation systems. At the regional level, this included: discussion for the implementation of the Caribbean Community (CARICOM) Single Market and Economy (CSME);² programmes being developed by the Caribbean Export Development Agency; and competitiveness programmes being implemented at the national level, such as works of the Competitiveness Council of the Dominican Republic and universities across the region. Internationally, this included the work of the World Bank, the Inter-American Development Bank and others.³

CARIFORUM proposed that it should be granted access to the support programmes and activities provided by the EC and its member States for the establishment of innovation systems and the means of supporting innovation by small firms. CARIFORUM understandably met initial resistance to its proposals. At CARIFORUM's request, the representatives of other Commission Directorates with more specific responsibility for innovation were made available to the negotiators.

CARIFORUM also argued for its proposals based on the approach followed by the EC in its Neighbourhood Policy⁴ and its support for its outermost regions. CARIFORUM persuaded the EC to agree that- where the rules allowed for it- access to EC support and programmes on innovation by the CARIFORUM could be considered. It was also agreed that CARIFORUM participation could be considered in rules formulated for new support programmes, and that in support of regional integration, the approach in this new type of neighbourhood policy would take into account the possibility of partnership arrangements with neighbouring overseas departments of the EU.

The obvious *quid pro quo* for this apparent concession was consideration of the obligations CARIFORUM would be willing to undertake with respect to IPRs. In line with the overall importance of regional integration in the EC's mandate, this included consideration of where regional, as opposed to national, obligations could be undertaken. It should be noted at this point that, although the treaty establishing the CSME requires the consideration of a regional administration for IPRs (except copyright), the CARICOM-Dominican Republic trade agreement has intellectual property (IP) as a component of its yet unfinished built-in agenda.

1.2 Elaborating the concept of innovation

At the EC's request, CARIFORUM developed a short concept note on the relationship between trade and innovation and how it might be incorporated in the EPA. The first note proposed that the relevant EPA chapter outline the relationship between a given area of economic activity, the support that CARIFORUM would require to increase its level of innovation in that area, and the IPRs that might be considered for appropriate strengthening in tandem with the development of the appropriate innovation system. This, CARIFORUM argued, would allow for a determination of whether the appropriate balance between each of the elements had been achieved. It was also proposed by CARIFORUM that measures of innovation should be developed and that any increase in IP protection should follow measured increases in innovation.

CARIFORUM States aimed at immediate strengthening of the creative industries as being the natural priority for the development of an innovation system. Some work by Cooke, for example, suggested that a region of sovereign States might overcome some of the key challenges to the development of the sub-national regional innovation systems.⁵

The EC held the view that any area of economic activity should have at its disposal any IPR without different IPRs being in principle mutually exclusive. As such, they proposed, in the context of the EPA as a trade agreement, that the IPR obligations should be grouped in a stand-alone section within a chapter that covers both innovation and IPRs, allowing for the clarity expected from such an agreement. They also expressed the view that the best approach for nurturing innovation was not clear even within the EU. As such it would be unwise to craft legal language that would bind actions that had not been established as best practice.

Following this, CARIFORUM developed a second concept paper, expanding on its first one, which identified a

number of areas of possible interest for the development of innovation systems within CARIFORUM. One purpose of this was to test the two approaches to the structure of the text in the negotiations. As a result of this discussion and a number of other factors related to the status of the negotiations in other areas of the EPA, CARIFORUM saw no damage done if in the negotiated text the structure proposed by the EC was used. CARIFORUM was at this stage of the negotiation in a position to consider which rights might need strengthening in areas it considered to be of developmental priority.

Also at this stage, the EC proposed a sub-section on the protection for specific rights and another sub-section on the enforcement of IPRs under the IPRs section of the chapter. The enforcement section appeared to be based on the EU Enforcement Directive (2004). The obligations on the protection for specific rights were developed by different technical staff of the Commission and so were introduced over several negotiating sessions. At the same time, both Parties agreed to include sections on Principles and Cooperation.

On the protection of specific rights, CARIFORUM took note of recent work concerning the possible but limited effect on the trade flows of CARIFORUM economies given their size, level of development and production structure.⁶

As anticipated, the text that was presented last by the EC in the negotiations was on the protection of GIs. The negotiation of the GIs text proved to be quite intense, with experts on both sides labouring to find the appropriate approach, given the obvious imbalance in the use of GIs between the EC and CARIFORUM States. The EC indicated a limited range of GIs that were its priority interest and CARIFORUM responded with its own list of possible GIs that it would seek to have protected.



2. The Negotiated Results

2.1 The context

The title proposed by the CARIFORUM States for the chapter was “Trade and Innovation.”⁷ It was finally agreed to adopt the title “Innovation and Intellectual Property” to reflect what was agreed in the final structure. Nevertheless, CARIFORUM believes that it has taken a small but important step in changing the paradigm in which the subject of IP is dealt with in trade negotiations.

The chapter opens with important declaratory statements that set its context (Article 131 of the EPA between CARIFORUM States and EC). The declaratory statements place innovation and creativity before the consideration of IPRs and they establish the relationship between the protection of IPRs and different levels of development. The objectives of the chapter have been equally carefully crafted. Article 132 (b) of the EPA highlights the role of innovation in the competitiveness of not only SMEs, but

2.2 Provisions on innovation

The first section of the chapter addresses the obligations that concern the facilitation and promotion of innovation. It contains three related elements: regional activities, access to support and identification of priorities for cooperation.

With respect to regional activities, the CARIFORUM States agreed, under Article 133, to increase action at the regional level with a view to providing enterprises with a regulatory and policy framework conducive to fostering competitiveness through innovation and creativity. The provision maintains the necessary balance between regulatory and policy frameworks, and must be understood in the context of the relationship between the policies and frameworks and different levels of development, at the regional level.

With respect to access to support activities there is a broad identification of EC innovation-related programmes and activities within which CARIFORUM participation is to be facilitated and promoted. The binding obligation is tempered somewhat by the need to respect rules that might constrain such participation. However, the second paragraph of Article 134 of the EPA allows the participation by CARIFORUM to be reviewed and creates the opportunity for the EC to either amend the rules or establish rules for new programmes and activities that would avoid such constraints.

As with each of the chapters in the EPA, the areas of priority for cooperation are identified. The EPA must be recognised, in accordance with its Article 2, as part of

also micro-enterprises. This is important as it reflects the difference between the definition of small enterprises in the EU and small enterprises in the context of CARIFORUM.

The objectives also reflect a balance between the science and technology innovation system and that of the creative industries. This was difficult to achieve, as for many a reference to creative industries includes activities in the very sensitive cultural sector. The issue was also addressed in the negotiations on market access for services. The final result was to include a specific cultural protocol that should allay any fears that might arise about the intent of the objective of the chapter⁸. The final objective contains an important reference to the neighbourhood policy of the EU and CARIFORUM (Article 132 (g)). This opens a number of opportunities for the negotiation of a successor agreement to the Cotonou Agreement.

the Cotonou Agreement in which, rather than specifying details of programmes and activities in the agreement, a mechanism is elaborated that allows the beneficiary states to determine and programme their own needs. While this mechanism has been widely criticised for its bureaucracy, it has provided a vehicle for the successful negotiation of programme support for a number of CARIFORUM industries.

The first area of priority for cooperation is to improve competitiveness and innovation (Article 135). In this context, the promotion of creativity and design, particularly by micro, small and medium-sized enterprises is important for CARIFORUM. This includes the networking of design centres in both the EC and CARIFORUM. Exchanges and linkages between economic operators are also to be promoted, including activities to promote technology transfer.

The role of science and technology is recognised next under Article 136. Again, the use of networks and the exchange of personnel will be promoted to allow for the more effective participation of CARIFORUM researchers in EU research programmes. The involvement of micro, small and medium-sized enterprises is also to be promoted, linking this area to improving competitiveness and innovation. Also included is CARIFORUM participation in the Knowledge and Innovation Communities of the European Institute of Innovation and Technology.⁹ The effective participation of the CARIFORUM depends on greater efforts in the areas of information and

communication technologies. In this respect, particular attention should be paid to standards and interoperability issues to fully realise these objectives. It should be noted that cooperation in the development of non-commercial content is also included.

Finally eco-innovation, renewable energy, information society and communication sectors were identified as priorities for cooperation (Articles 137 and 138). In addition to identifying similar approaches of networking,

2.3 Provisions on IP

The section on IPRs begins by outlining the principles under Article 139. Additionally, it provides transition periods for implementation but allows for them to be adjusted. Accordingly, without prejudice to international obligations, the EC and the CARIFORUM States are expected to give effect to the provisions of the EPA on IPRs no later than 1 January 2014, (1 January 2021 for Haiti), unless the parties determines otherwise taking into account the development priorities and levels of development of the CARIFORUM States. Hence, a notable feature of the IPRs section is the reference to the development needs of CARIFORUM States, their levels of development and specifically their development priorities. Particular care is taken to ensure that the EPA does not impair a state's capacity to promote access to medicines, protect public health and nutrition. The principles include regional integration (Article 141) and the way in which technology transfer between CARIFORUM and the EU can be facilitated (Article 142).

The section addresses next the standards concerning the protection of IPRs. It principally updates the standards to the agreements reached at the World Intellectual Property Organisation (WIPO) since the conclusion of the TRIPS Agreement more than a decade ago, particularly those relating to the new digital environment. The EU sought in particular stronger protection for GIs, trademark protection over the Internet, implementation of the Joint Recommendations on well-known trademarks, and trademark license, as well as accession to WIPO treaties related to administration of IP rights.

In this context, CARIFORUM States had already been considering accession to the 1996 Internet treaties (WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty) to protect their creative sectors from Internet-related infringements. While recognising the care necessary for the implementation of technological measures for the protection of copyright in a way that does not restrict fair use and interoperability, CARIFORUM

partnerships and exchanges, project areas related to environment and energy efficiency are to be facilitated.

In anticipation of changing priorities over time, Article 7 (2) under Part I of the agreement contains an obligation for ongoing review and revision of the EPA. Furthermore, it places these priority activities articulated in the Innovation and Intellectual Property chapter into the overall context of the development of CARIFORUM innovation systems.

and the EU agreed to comply with these treaties under Article 143 of their EPA.

In addition to strengthening the protection provided to GIs for products other than wines and spirits, the section establishes a mechanism through which potential CARIFORUM GIs can be developed. This is intended to take place mainly before the end of the transition period, i.e., 2014, in accordance with Article 145 (2) of the EPA. This additional protection is expected to transfer a larger part of the relevant value chain to the producers and strengthen many rural economies within CARIFORUM.

The asymmetrical patent obligations contain a specific declaration recognising the importance of the implementation of the amendment of the TRIPS Agreement agreed in December 2005 (Article 147 (B)). The amendment provides procedures for the export of pharmaceutical products produced under compulsory license to countries with little or no manufacturing capacity for pharmaceutical products.

A provision on the protection of genetic resources, traditional knowledge and folklore was considered useful in the context of CARIFORUM interests in eco-innovation. Although Article 150 of the EPA opens the door for the use of a declaration of source requirement for a patent applicant, it recognises the intense activities taking place multilaterally and provides for a review of the provision to make any amendments that the conclusion of these consultations require. In the interim, it ensures that the Convention on Biological Diversity (CBD) and the patent provisions are implemented in a mutually supportive way.

The need to address information asymmetries that might arise in contractual licensing arrangements between small and large firms was also a critical CARIFORUM objective. Small firms easily find themselves negotiating licensing agreements for patented technology that, while protected at the time in the right-holders jurisdiction, might be due to enter the public domain imminently or may never have

been protected in the jurisdiction of the potential licensee. In addition, many license agreements require that any innovations made by the licensee become the property of the original right-holder. It was therefore agreed that the EC and CARIFORUM would address such potential disincentives to this means of technology transfer and innovation. To achieve this, the parties agreed, under Article 142 (2), to take appropriate measures to prevent or control licensing practices or conditions pertaining to IPRs which may adversely affect the international transfer of technology and that constitute an abuse of IPRs or an abuse of obvious information asymmetries in the negotiation of licences.

Drawing lessons from international discussions on technology transfer, particularly in relation to Article 66.2 of the TRIPS Agreement, the text of the EPA improves on the language contained in that provision which asks developed countries only “to provide incentives to the enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least developed country members...” According to Article 142 (2) of the EPA, the EU will facilitate and promote the use of incentives granted to European institutions and enterprises for the transfer of technology to institutions and enterprises of all CARIFORUM States in order to enable the CARIFORUM States to establish a viable technological

2.4 Provisions on Enforcement of IPRs

The penultimate part of the section addresses the most challenging aspect of the negotiations, the text on the enforcement of IPRs that runs from Article 151-163 of the EPA. Many of the measures were expressed in language that has evolved in European jurisprudence and required careful explanation to CARIFORUM. In many cases, with minor adjustments, the measures are consistent with current CARIFORUM legal practice. One concern that needed careful attention was not to tie the hands of the CARIFORUM judicial officials, particularly in common law jurisdictions.

2.5 Cooperation

The final section of the Chapter on Innovation and IPRs addresses the cooperation required to extract the maximum benefits from the provisions on standards for protection and enforcement under Article 164. The language of these priority areas was carefully negotiated to relate the

base. It shall also endeavour to bring any *known* measures to the attention of the Trade and Development Committee established by Article 230 of the EPA between the EC and CARIFORUM States.

Each of the IP obligations stands in a relationship to the section on innovation. Industrial design protection is related to the establishment and networking of design centres. The protection of genetic resources, including plant varieties, should help to incentivise eco-innovation. Introducing the WIPO copyright treaties should help to protect the small entertainer and is tied to the services market access gain for the temporary movement of entertainers.

The experience within CARIFORUM has been that the administration of IPRs does not necessarily involve the cost burden anticipated by many. With their appropriate adjustment, and even at the fairly low levels of use in small economies, user fees can finance the establishment and development of such administrative units. Nonetheless, CARIFORUM is still looking carefully at models of regional administration like the Organisation Africaine de la Propriété Intellectuelle (OAPI) and has committed to taking advantage of such regional arrangements in accordance with its development priorities.

The most significant concern arose from the proposals to secure evidence for prosecuting infringement cases (Article 154) and extending the application of border measures to all IP infringements and to such infringing products being exported (Article 163). In the latter case, it was finally agreed that such a measure could extend in the first instance to those rights for which a customs officer might reasonably be able to determine the validity of a claim of possible infringement, namely for GIs and designs. Agreement was also reached to collaborate to eventually expand the scope of this approach to goods infringing all IPRs.

obligations undertaken in the section on standards to the provision of appropriate cooperation. The clearest cases are the GIs, where the obligation itself contains a cross-reference back to the development of CARIFORUM GIs as a cooperation priority.

Conclusion

The CARIFORUM States were in a position to take advantage of the limited timeframe for negotiations as they already had in place an operational external trade negotiating structure, the Caribbean Regional Negotiating Machinery (CRNM) and its College of Negotiators. CRNM had been used for previous multilateral negotiations. This operational structure also had a training component. Many officials in CARIFORUM States, some of whom had trained with the CRNM, also reflected this previous experience in their quick understanding of the technical issues.

As a result of this collaboration in previous external trade negotiations, many of the trade officials from different member states had developed an understanding of each other's positions. The fairly deep integration of CARICOM, and within it the Organisation of Eastern Caribbean States (OECS), and the prior negotiations between CARICOM and the Dominican Republic, combined with this previous experience, contributed to the success of the intensive internal consultation process.

The trade negotiating experience also showed the value of the cross-fertilisation of ideas across negotiating disciplines. As such, gains made in some areas were transferred to others. The intensity of the negotiating process, however, afforded few opportunities to take greater advantage of this. Equally, few opportunities were taken to communicate and collaborate at the technical level with negotiators in the other ACP regions. While the regular post-facto political level interactions were helpful for clarifying positions, the generation of coherent strategies and approaches could have been enhanced by greater interaction of this nature.

In the specific negotiation area covering innovation, the objective had to be to try to agree on approaches that would create an environment conducive to innovation. An important element of this environment had to be a legal framework that would help protect small entities from those with greater resources which could take advantage of this.

In addition, it may be easier to conceive regional innovation systems in the way they are addressed in the literature,¹⁰ at the sub-national level. It is therefore recommended that the ACP regions focus the innovation negotiating priorities on national priorities surrounding a core of regional interests. It may be possible to find a precedent in the way in which goods and services are negotiated with schedules for each state in the region.

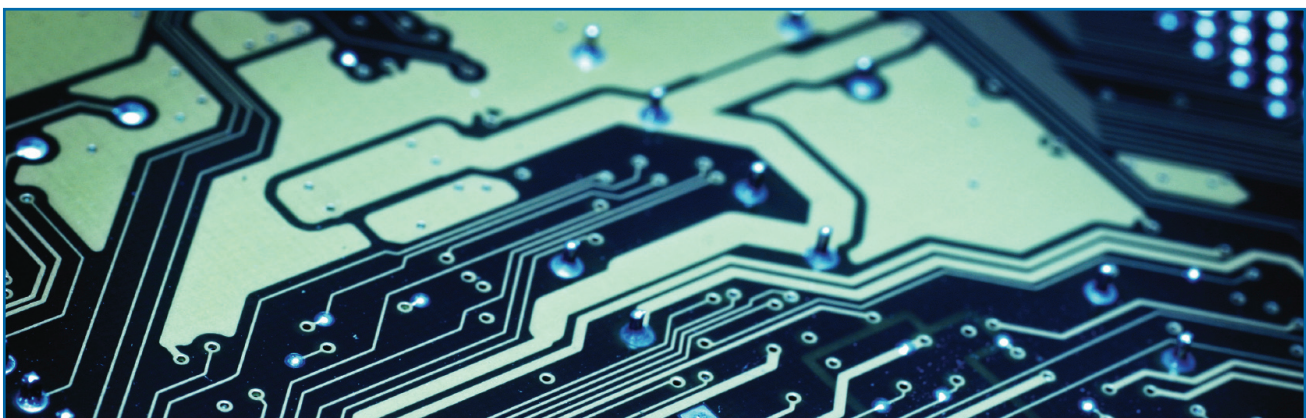
Concerning the possible regional priority areas for development cooperation, biological forestry reserves in many ACP countries provide a comparative advantage that should be converted to a sustainable competitive advantage. This might be done by developing regional plant breeding programmes. In addition, these countries might consider establishing a joint committee with the EC to develop and monitor the exploitation of its biological diversity.

On the standards of IP protection, it is suggested that the other ACP regions consider these only as built-in agenda items as the EC acknowledges that the existing levels of protection supersede the current requirements for economic development.

With respect to the enforcement of IPR protection, it is submitted that negotiations by these regional groups for any such obligation be dependent on evidence of their capacity to manage the activities required by the obligation.

Finally, the EPA between the CARIFORUM States and EC must not be seen as a template for an EPA in other ACP regions. It has been carefully crafted to suit the particular circumstances of the region, as was intended by having regional negotiations rather than ACP-wide negotiations. Other ACP regions should, however, identify any CARIFORUM provisions to their advantage and use these as a platform to negotiate improved provisions.

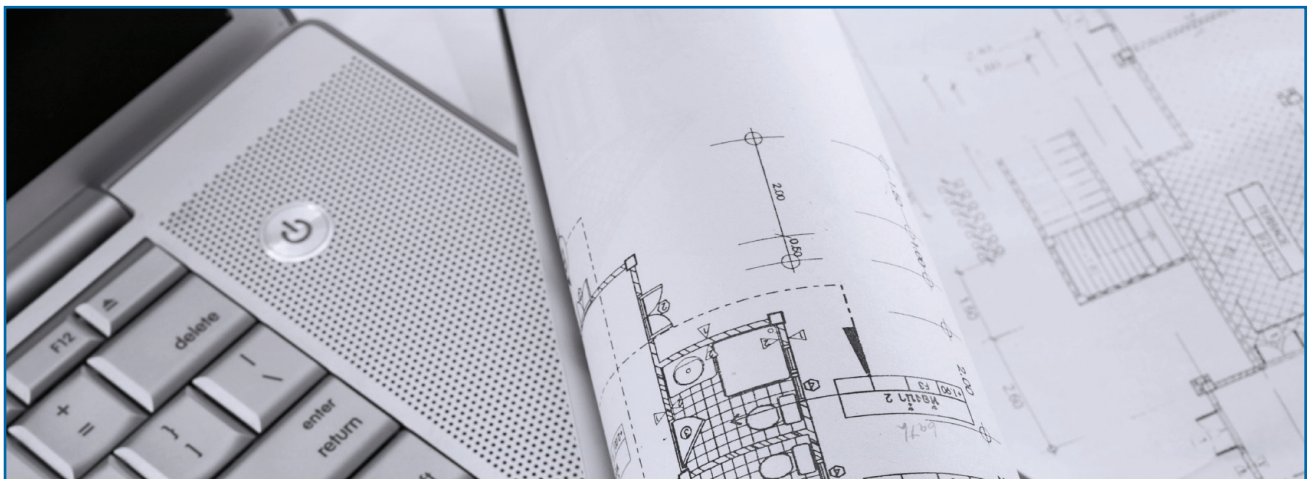
The key to achieve the appropriate arrangements which stimulate innovation is to identify how the diversity within each region can add to the potential of others to innovate.



KEY CONCLUSIONS AND RECOMMENDATIONS

- In the EPA negotiations with the EU, CARIFORUM successfully negotiated the inclusion of provisions that will assist in the development of innovation systems, anticipating the contribution of such systems to moving away from commodity dependence. In doing so, CARIFORUM determined, based on national and sub-regional development plans, a number of priority areas for the development of such innovation systems.
- In developing its negotiating position, CARIFORUM paid close attention to the EU's own efforts to support innovation, particularly for its SMEs. It argued successfully to open such present and future support programmes for the participation of CARIFORUM.
- Some important lessons learned from the CARIFORUM EPA negotiations that other ACP regions and countries negotiating with the EU might wish to consider are:
 - The establishment of close collaboration amongst the negotiators within the region;
 - The focus on creating an environment for the development of national innovation systems while determining the synergies that might allow the establishment of regional innovation systems;
 - The need for ACP regions to focus innovation negotiating priorities on national priorities, surrounding a core of regional interests;
- The value of a close examination of the EU innovation support programmes and technology transfer mechanisms and obligations;
- The importance of finding the right synergies between the innovation objectives of the region and those of the EU;
- The value of good substantive knowledge of both obligations and flexibilities in IPRs as provided by the TRIPS Agreement for trade negotiations, e.g. research exception to patents, educational and personal use exceptions to copyright etc.
- The determination of the scope of IP protection appropriate for each innovation area identified, thus ensuring an appropriate balance between the scope of protection and the level of development of the region, particularly with regards to the level of innovation;
- The need to negotiate the enforcement of IPR protection, based on evidence of the region's capacity to manage the activities required by the obligation.

*The Policy Brief is based on a think piece prepared for the 'ICTSD Regional Dialogue on the European Economic Partnership Agreement, Intellectual Property, Innovation and Sustainable Development for the CEMAC Countries,' held from 28th - 29th April 2008 in Yaoundé, Cameroon. An Annex containing the main provisions mentioned herein is attached for ease of reference.



Endnotes

- 1 Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, the Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago. In the context of these negotiations Cuba is not included.
- 2 See the relevant work of Girvan (2006) and Nurse (2007).
- 3 See the relevant work of Barton (2007), Blomström (2002), De Ferranti (2002), Cooke (2001), Maloney and Melo (2001).
- 4 The ENP is a framework of co-operation with neighbouring countries developed by the EU in 2004. The ENP applies to the EU's immediate neighbours by land or sea: Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, the Palestinian Authority, Syria, Tunisia and the Ukraine. The central element of the ENP is the bilateral ENP Actions Plan agreed between the EU and each partner. The ENP Action Plans include political and economic measures with short- and medium-term priorities. IPRs are one of the areas addressed by these Actions Plans (see <http://ec.europa.eu>). Some overseas countries and territories of Europe are in the Caribbean and neighbour CARIFORUM countries.
- 5 See in particular Cooke (2003). *Strategies for Regional Innovation Systems: Learning Transfer and Applications*, UNIDO Policy Paper. Vienna: UNIDO.
- 6 See the relevant work of Blyde (2006) and Branstetter (2004).
- 7 Part II, Title IV, Chapter 2 of the CARIFORUM-EC EPA.
- 8 Economic Partnership Agreement between CARIFORUM States and EC, Protocol III, On cultural cooperation.
- 9 The European Institute of Innovation and Technology (EIT) regulation came into force on 29 April 2008. The EIT is a new initiative which aims to become a flagship for excellence in European innovation in order to face the challenges of globalization. The Knowledge and Innovation Communities (KICs) bring together the three elements of the knowledge triangle and are excellence-driven partnerships between universities, research organisations, companies and other innovation stakeholders. The KICs are selected by the EIT Board.
- 10 Similar recommendations are made in the report from the Knowledge for Africa's Development Conference held in South Africa in May 2006 and the follow up seminar held in September 2006. Other useful publications can be found on the World Bank's Knowledge for Development (K4D) website, particularly the Africa and the Knowledge Economy page (see <http://www.worldbank.org/wbi/knowledgefordevelopment>).

References

- Barton, John H. (2007). *New Trends in Technology Transfer: Implications for National and International Policy*. ICTSD Issue Paper No. 18. Geneva: International Centre for Trade and Sustainable Development.
- Blomström, M., A. Kokko and F. Sjöholm (2002). *Growth and Innovation Policies for a Knowledge Economy: Experiences from Finland, Sweden, and Singapore*. World Bank, unpublished. Washington D.C.: World Bank.
- Blyde, Juan S. (2006). *Assessing the Impacts of Intellectual Property Rights on Trade Flows in Latin America*. INTAL-ITD Occasional Paper 34. Buenos Aires: Institute for the Integration of Latin American and the Caribbean.
- Blyde, Juan S. (2006). *Assessing the Impacts of Intellectual Property Rights on Trade Flows in Latin America*. INTAL-ITD Occasional Paper 34. Buenos Aires: Institute for the Integration of Latin American and the Caribbean.
- Branstetter, Lee G., Raymond Fisman and C. Fritz Foley (2004). *Do stronger Intellectual Property Rights increase International Technology Transfer? Empirical Evidence from Firm-level Panel Data*. Policy Research Working Paper Series 3305. Washington D.C.: World Bank.
- Caribbean Trade and Adjustment Group (2001). *Improving Competitiveness for Caribbean Development*. CRNM/CTAG/ FINAL REPORT/ Rev2/08/01. Kingston, Jamaica: Caribbean Regional Negotiating Machinery.
- Cooke, Philip (2001). *Regional Innovation Systems, Clusters and the Knowledge Economy*. Centre for Advanced Studies, University of Wales. Cardiff: University of Wales.
- Cooke, Philip (2003). *Strategies for Regional Innovation Systems: Learning Transfer and Applications*, UNIDO Policy Paper. Vienna: UNIDO.
- De Ferranti, D., G. Perry, D. Lederman and W. Maloney (2002). *From Natural Resources to the Knowledge Economy: Trade and Job Quality*. World Bank Regional Report. Washington D.C.: World Bank.
- Girvan, Norman (2006). *Towards a Single Economy and a Single Development Vision*. CARICOM Secretariat. Georgetown, Guyana: CARICOM.
- EU, Economic Partnership Agreement between the CARIFORUM States, of the one Part, and the European Community and its Member States, of the Other Part, Working Document, *Draft*, , 29 October 2007.
- Maloney, W. and A. Rodriguez-Clare (2005). *Innovation Shortfalls*. World Bank, unpublished. Washington D.C.: World Bank.
- Maloney, W. F. (2002). "Missed Opportunities: Innovation and Resource-based Growth in Latin America". *Economia* 3(1): 111-167. Washington D.D.: Brookings Institution Press.
- Maloney, W. F. and G. Perry (2005). *Towards an Efficient Innovation Policy in Latin America*. CEPAL Review 87: 25 - 43. Santiago, Chile: United Nations Economic Commission for Latin America and the Caribbean.
- Melo, Alberto (2001). *The Innovation Systems of Latin America and the Caribbean*. Washington D.C.: Inter-American Development Bank.
- Nurse, Keith et al. (2007). *The Cultural Industries in CARICOM - Trade and Development Challenges*. Kingston, Jamaica: Caribbean Regional Negotiating Machinery.
- Yang, Guifang, and Keith E. Maskus (2003). *Intellectual Property Rights, Licensing and Innovation*. Policy Research Working Paper 2973. Washington D.C.: World Bank.
- Zafar, A. and Keiko Kubota (2003). *Regional Integration in Central Africa - Key Issues*. Africa Regional Working Paper Series No. 52. Washington D.C.: World Bank.

Annex

[Extracts from] Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Members States, of the other part

Chapter 2

Innovation and intellectual property

Article 131: Context

1. The Parties agree that fostering innovation and creativity improves competitiveness and is a crucial element in their economic partnership, in achieving sustainable development, promoting trade between them and ensuring the gradual integration of CARIFORUM States into the world economy.
2. They also recognise that the protection and enforcement of intellectual property plays a key role in fostering creativity, innovation and competitiveness, and are determined to ensure increasing levels of protection appropriate to their levels of development.

Article 132: Objectives

The objectives of this Chapter are to:

- (a) promote the process of innovation, including eco-innovation, of enterprises located in the Parties;
- (b) foster competitiveness of enterprises and in particular micro-, small and medium-sized enterprises of the Parties;
- (c) facilitate the production and commercialisation of innovative and creative products between the Parties;
- (d) achieve an adequate and effective level of protection and enforcement of intellectual property rights;
- (e) contribute to the promotion of technological innovation and to the transfer and dissemination of technology and know-how;
- (f) encourage, develop and facilitate cooperative research and development activities in science and technology between the Parties, as well as to develop lasting relations between the Parties' scientific communities;
- (g) encourage, develop and facilitate cooperative production and development activities in the creative industries between the Parties, as well as to develop lasting relationships between the Parties' creative communities;
- (h) promote and strengthen regional cooperative activities involving the outermost regions of the European Community, so as to allow these regions and the CARIFORUM States to mutually benefit from their proximity and neighbourhood situation by developing an innovative and competitive regional area.

Section 1

Innovation

Article 133: Regional integration

The Parties recognise that measures and policies to be taken at the regional level are necessary to fully attain the objectives of this Section. The CARIFORUM States agree to increase action at the regional level with a view to providing enterprises with a regulatory and policy framework conducive to fostering competitiveness through innovation and creativity.

Article 134: Participation in framework programmes

1. The participation of the Parties and the Signatory CARIFORUM States shall be facilitated and promoted in existing and future framework programmes, specific programmes and other activities of the other Party, in so far as it is permitted by each Party's internal rules governing access to the programmes and activities concerned.

2. The CARIFORUM-EC Trade and Development Committee may make recommendations in order to facilitate the participation of CARIFORUM institutions and enterprises in the programmes referred to in paragraph 1 and shall periodically review such participation.

Article 135: Cooperation in the area of competitiveness and innovation

1. The Parties recognise that the promotion of creativity and innovation is essential for the development of entrepreneurship and competitiveness and the achievement of the overall objectives of this Agreement.
2. Subject to the provisions of Article 7 and 134, the Parties agree to cooperate, including by facilitating support, in the following areas:
 - (a) promotion of innovation, diversification, modernisation, development and product and process quality in businesses;
 - (b) promotion of creativity and design, particularly in micro, small and medium enterprises, and exchanges between networks of design centres located in the EC Party and the CARIFORUM States;
 - (c) promotion of dialogue and exchanges of experience and information between networks of economic operators;
 - (d) technical assistance, conferences, seminars, exchange visits, prospecting for industrial and technical opportunities, participation in round tables and general and sectoral trade fairs;
 - (e) promotion of contacts and industrial cooperation between economic operators, encouraging joint investment and ventures and networks through existing and future programs;
 - (f) promotion of partnerships for research and development activities in the CARIFORUM States in order to improve their innovation systems; and (g) intensification of activities to promote linkages, innovation and technology transfer between CARIFORUM and European Community partners.

Article 136: Cooperation on science and technology

1. The Parties will foster the participation of their research and technological development bodies in the cooperation activities in compliance with their internal rules. Cooperative activities may take the following forms:
 - (a) joint initiatives to raise the awareness of the science and technology capacity building programmes of the European Community, including the international dimension of 7th Framework Programme for Research and Technological Development (FP7) and possible successor programmes, as appropriate;
 - (b) joint research networks in areas of common interest;
 - (c) exchanges of researchers and experts to promote project preparation and participation in FP7 and in the other research programmes of the European Community;
 - (d) joint scientific meetings to foster exchanges of information and interaction and to identify areas for joint research;
 - (e) promotion of advanced science and technology studies which contribute to the long term sustainable development of both Parties;
 - (f) development of links between the public and private sectors;
 - (g) evaluation of joint work and the dissemination of results;
 - (h) policy dialogue and exchanges of scientific and technological information and experience at regional level;
 - (i) exchange of information at regional level on regional science and technology programmes;
 - (j) participation in the Knowledge and Innovation Communities of the European Institute of Innovation and Technology.

2. Special emphasis will be put on human potential building as a long-lasting basis of scientific and technological excellence and the creation of sustainable links between the scientific and technological communities of the Parties, at both national and regional levels.
3. Research centres, higher-education institutions, and other stakeholders, including micro, small and medium enterprises, located in the Parties shall be involved in this cooperation as appropriate.
4. The Parties shall promote the participation of their respective entities in each other's scientific and technological programmes in pursuit of mutually beneficial scientific excellence and in accordance with their respective provisions governing the participation of legal entities from third countries.

Article 138: Cooperation on eco-innovation and renewable energy

1. With a view to achieving sustainable development and in order to help maximise any positive and prevent any negative environmental impacts resulting from this Agreement, the Parties recognise the importance of fostering forms of innovation that benefit the environment in all sectors of their economy. Such forms of eco-innovation include energy efficiency and renewable sources of energy.
2. Subject to the provisions of Article 7 and 134, the Parties agree to cooperate, including by facilitating support, in the following areas:
 - (a) projects related to environmentally-friendly products, technologies, production processes, services, management and business methods, including those related to appropriate water-saving and Clean Development Mechanism applications;
 - (b) projects related to energy efficiency and renewable energy;
 - (c) promotion of eco-innovation networks and clusters, including through public-private partnerships;
 - (d) exchanges of information, know-how and experts;
 - (e) awareness-raising and training activities;
 - (f) preparation of studies and provision of technical assistance;
 - (g) collaboration in research and development; and
 - (h) pilot and demonstration projects.

Section 2

Intellectual Property

Subsection 1

Principles

Article 139: Nature and scope of obligations

1. The EC Party and the Signatory CARIFORUM States shall ensure an adequate and effective implementation of the international treaties dealing with intellectual property to which they are parties and of the Agreement on Trade-related Aspects of Intellectual Property, contained in Annex IC to the Agreement establishing the World Trade Organisation (hereinafter referred to as the TRIPS Agreement).
2. The EC Party and the Signatory CARIFORUM States agree that the principles set out in Article 8 of the TRIPS Agreement apply to this Section. The Parties also agree that an adequate and effective enforcement of intellectual property rights should take account of the development needs of the CARIFORUM States, provide a balance of rights and obligations between right holders and users and allow the EC Party and the Signatory CARIFORUM States to protect public health and nutrition. Nothing in this Agreement shall be construed as to impair the capacity of the Parties and the Signatory CARIFORUM States to promote access to medicines.
3. For the purpose of this Agreement, intellectual property rights include copyright (including the copyright in computer programmes, and neighbouring rights); utility models; patents including patents for bio-technological

inventions; protection for plant varieties; designs; layout-designs (topographies) of integrated circuits; geographical indications; trade marks for goods or services; protection for data bases; protection against unfair competition as referred to in Article 10bis of the Paris Convention for the Protection of Industrial Property, and protection of undisclosed confidential information on know how.

4. In addition and without prejudice to their existing and future international obligations, the EC Party and the Signatory CARIFORUM States shall give effect to the provisions of this Section and ensure their adequate and effective implementation no later than 1 January 2014 unless the CARIFORUM-EC Trade and Development Committee determines otherwise taking into account the development priorities and levels of development of the Signatory CARIFORUM States. The EC Party and the Signatory CARIFORUM States shall be free to determine the appropriate method of implementing the provisions of this Section within their own legal system and practice.
5. The EC Party and the Signatory CARIFORUM States may, but shall not be obliged to, implement in their law more extensive protection than is required by this Section, provided that such protection does not contravene the provisions of this Section.

[...]

Article 141: **Regional integration**

1. The EC Party and the Signatory CARIFORUM States undertake to continue to consider further steps towards deeper integration in their respective regions in the field of intellectual property rights. This process shall cover further harmonisation of intellectual property laws and regulations, further progress towards regional management and enforcement of national intellectual property rights, as well as the creation and management of regional intellectual property rights, as appropriate.
2. The EC Party and the Signatory CARIFORUM States undertake to move towards a harmonised level of intellectual property protection across their respective regions.

Article 142: **Transfer of technology**

1. The EC Party and the Signatory CARIFORUM States agree to exchange views and information on their practices and policies affecting transfer of technology, both within their respective regions and with third countries. This shall in particular include measures to facilitate information flows, business partnerships, licensing and subcontracting. Particular attention shall be paid to the conditions necessary to create an adequate enabling environment for technology transfer in the host countries, including issues such as development of human capital and legal framework.
2. The EC Party and the Signatory CARIFORUM States shall take measures, as appropriate, to prevent or control licensing practices or conditions pertaining to intellectual property rights which may adversely affect the international transfer of technology and that constitute an abuse of intellectual property rights by right holders or an abuse of obvious information asymmetries in the negotiation of licences.
3. The EC Party shall facilitate and promote the use of incentives granted to institutions and enterprises in its territory for the transfer of technology to institutions and enterprises of the CARIFORUM States in order to enable the CARIFORUM States to establish a viable technological base. The EC Party shall endeavour to bring any known measures to the attention of the CARIFORUM EC Trade and Development Committee for discussion and review.

Subsection 2

Standards concerning intellectual property rights

Article 143: **Copyright and related rights**

A. International agreements

1. The EC Party and the Signatory CARIFORUM States shall comply with:
 - (a) The World Intellectual Property Organisation (WIPO) Copyright Treaty (Geneva, 1996); and

- (b) The WIPO Performances and Phonograms Treaty (Geneva, 1996).
2. The Signatory CARIFORUM States shall endeavour to accede to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961).

B. Cooperation on collective management of rights

The EC Party and the Signatory CARIFORUM States shall facilitate the establishment of arrangements between their respective collecting societies with the purpose of mutually ensuring easier access to and delivery of licences for the use of content at the regional level throughout the territories of the EC Party and the Signatory CARIFORUM States so that right holders are adequately rewarded for the use of such content.

[...]

Article 145: Geographical indications

A. Protection in the country of origin

[...]

2. The Signatory CARIFORUM States shall establish a system of protection of geographical indications in their respective territories no later than 1 January 2014. The Parties shall cooperate through the CARIFORUM-EC Trade and Development Committee in accordance with the provisions of Article 164(2)(c) towards the development of geographical indications in the territories of the CARIFORUM States. To this end, and within six months from the entry into force of the Agreement, the CARIFORUM States shall submit to the consideration of the CARIFORUM EC Trade and Development Committee a list of prospective Geographical Indications originating in the CARIFORUM States for its discussion and comments.

[...]

Article 147: Patents

[...]

B. Patents and public health

The EC Party and the Signatory CARIFORUM States recognise the importance of the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001 by the Ministerial Conference of the WTO and the Decision of the WTO General Council of 30 August 2003 on paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, and agree to take the necessary steps to accept the Protocol amending the TRIPS Agreement, done at Geneva on 6 December 2005.

[...]

Article 150: Genetic resources, traditional knowledge and folklore

1. Subject to their domestic legislation the EC Party and the Signatory CARIFORUM States respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the involvement and approval of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices.
2. The EC Party and the Signatory CARIFORUM States recognise the importance of taking appropriate measures, subject to national legislation, to preserve traditional knowledge and agree to continue working towards the development of internationally agreed sui generis models for the legal protection of traditional knowledge.
3. The EC Party and the Signatory CARIFORUM States agree that the patent provisions of this subsection and the Convention on Biological Diversity shall be implemented in a mutually supportive way.
4. The EC Party and the Signatory CARIFORUM States may require as part of the administrative requirements for a patent application concerning an invention which uses biological material as a necessary aspect of the invention, that the applicant identifies the sources of the biological material used by the applicant and described as part of the invention.

5. The EC Party and the Signatory CARIFORUM States agree to regularly exchange views and information on relevant multilateral discussions:
 - (a) In WIPO, on the issues dealt with in the framework of the Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore; and,
 - (b) In the WTO, on the issues related to the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore.
6. Following the conclusion of the relevant multilateral discussions referred to in paragraph 5, the EC Party and the Signatory CARIFORUM States, at the request of the EC Party or a Signatory CARIFORUM State, agree to review this Article within the Joint CARIFORUM-EC Council in the light of the results of such multilateral discussions.

Subsection 3

Enforcement of intellectual property rights

Article 151: General obligations

1. Without prejudice to their rights and obligations under the TRIPS Agreement, and in particular of its Part III, the EC Party and the Signatory CARIFORUM States shall provide for the measures, procedures and remedies necessary to ensure the enforcement of the intellectual property rights covered by this Section. Those measures, procedures and remedies shall be fair and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.
2. Those measures and remedies shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

Article 163: Border measures

1. The EC Party and the Signatory CARIFORUM States shall, unless otherwise provided for in this Section, adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation, exportation, re-exportation, entry or exit of the customs territory, placement under a suspensive procedure or placement under a customs free zone or a customs free warehouse of goods infringing an intellectual property right may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation or the retention of such goods.
2. The provisions of Articles 52 to 60 of the TRIPS Agreement shall be applicable. Any rights or duties established under such provisions concerning the importer shall be also applicable to the exporter or to the holder of the goods.

Subsection 4

Cooperation

Article 164 : Cooperation

1. Cooperation shall be directed at supporting implementation of the commitments and obligations undertaken under this Section. The Parties agree that cooperation activities will be particularly important in the transition period referred to in Articles 139 and 140.
2. Subject to the provisions of Article 7, the Parties agree to cooperate, including by facilitating support, in the following areas:
 - (a) Reinforcement of regional initiatives, organisations and offices in the field of intellectual property rights, including the training of personnel and the development of publicly available databases, with a view to improving regional regulatory capacity, regional laws and regulations, as well as regional implementation, with respect to intellectual property commitments undertaken under this Section, including on enforcement. This shall in particular involve support to countries not party but wishing to adhere to regional initiatives, as well as regional management of copyright and related rights.

- (b) Support in the preparation of national laws and regulations for the protection and enforcement of intellectual property rights, in the establishment and reinforcement of domestic offices and other agencies in the field of intellectual property rights, including the training of personnel on enforcement; as well as for the establishment of means of collaboration between such agencies of the Parties and the Signatory CARIFORUM States, also in order to facilitate accession and compliance by the Signatory CARIFORUM States to the Treaties and Conventions referred to in this Section.
- (c) Identification of products that could benefit from protection as geographical indications and any other action aimed at achieving protection as geographical indications for these products. In so doing, the EC Party and the Signatory CARIFORUM States shall pay particular attention to promoting and preserving local traditional knowledge and biodiversity through the establishment of geographical indications.
- (d) The development by trade or professional associations or organisations of codes of conduct aimed at contributing towards the enforcement of intellectual property rights in consultation with the competent authorities of the Parties and the Signatory CARIFORUM States.

About the author

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The views expressed in this Policy Brief are those of the author, and do not necessarily represent the views of the United Nations Conference on Trade and Development (UNCTAD) or those of the International Centre for Trade and Sustainable Development (ICTSD).

UNCTAD and ICTSD welcome feedback and comments on this document. These can be sent to Ahmed Abdel Latif at aabdellatif@ictsd.ch

ICTSD has been active in the field of intellectual property since 1997, among other things through its programme on Intellectual Property Rights (IPRs) and Sustainable Development, which since 2001 has been implemented jointly with UNCTAD. One central objective of the programme has been to facilitate the emergence of a critical mass of well-informed stakeholders in developing countries that includes decision-makers and negotiators, as well as representatives from the private sector and civil society, who will be able to define their own sustainable human development objectives in the field of IPRs and advance these effectively at the national and international level.

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