

FACTS ON THE EPA – CULTURAL SERVICES

BY EPA IMPLEMENTATION UNIT, MINISTRY OF FOREIGN AFFAIRS FOREIGN TRADE & CONSUMER AFFAIRS

The EPA was signed by 14 CARIFORUM states in October 2008, (Haiti signed in December 2009). It is a comprehensive, reciprocal Trade and Development Agreement between the European Union and CARIFORUM Member States that involves trade in goods and services, investment and trade related issues (competition, innovation, sustainable development for example) . It replaces the trade component of the Cotonou Agreement, which is a trade and development cooperation agreement between the European Union and the African, Caribbean and Pacific countries. It was signed in June 2000 in Cotonou, Benin, by 78 ACP countries (Cuba, is a member of the ACP Group, but was not eligible to sign the Agreement) and the then 15 Member States of the European Union. The EU increased its membership by 12 between 2004 and 2007 so that it now comprises twenty-seven (27) member states.

The reciprocal Economic Partnership Agreement allows the private sector to exploit market access opportunities in the EU, while the public sector agencies can develop projects for institutional strengthening which can benefit from EU support.

Ten weeks after signature, the fourteen (14) CARIFORUM Member States, which had signed the EPA in October 2008, and the European Union (the EU Member States plus the European Commission) completed their domestic arrangements and from

29th December 2008 (let us say 1st January 2009 for ease of reference), Vincentian and other regional entertainers and other cultural services suppliers have been eligible to benefit from the market access provisions set out in the EPA.

The Agreement covers trade in goods and services, investment (commercial presence) and trade related issues between the 27 members of the European Union and the 15 members of CARIFORUM. It is hoped that in the foreseeable future, the EPA will help to stimulate economic growth in our region. As far as St. Vincent and the Grenadines is concerned, services exports, including entertainment and other cultural services, are expected to play a key role in that growth.

❖ **HOW ARE CULTURAL SERVICES TREATED IN THE EPA**

In the EPA, the culture sector, particularly entertainment services, is addressed through two instruments.

- Firstly, there are market access commitments by 26 EU Member States for Entertainment Services from St. Vincent and the Grenadines and other CARIFORUM States. This access to the EU market is regulated by the conditions detailed in the Services and Investment chapters of the EPA.
- Secondly, there is a special Protocol on Cultural Cooperation that sets out the framework within which CARIFORUM States and EU Member countries shall cooperate in a wide range of cultural activities and exchanges of cultural products.

❖ **MODES OF SUPPLYING SERVICES**

A word about how services, including cultural services, are traded internationally -

In international trade agreements, market access or liberalization of trade in services covers four different means of delivery. These are referred to as Modes of Supply and it is important to understand how they work in order to appreciate how they would affect the marketing approach that your business might wish to employ, whether in the culture sector or any other services activity. The four modes of supply with respect to services are as follows:

Mode 1: *Cross Border trade*- This means that the service is sent from one country or territory to another, where only the service itself crosses the border (e.g., satellite broadcast of movies for cable TV, music downloads or the transmission of information by electronic mail, fax etc.).

Mode 2: *Consumption Abroad*- This involves the consumption of services by visitors to our country - for example, Europeans attending a music concert at a venue; tourists visiting St. Vincent and the Grenadines, where they might purchase Vincentian art or craft, music or other creative products; or foreign executives coming to St. Vincent and the Grenadines to attend training sessions in, for instance, solar technology.

Mode 3: *Commercial presence* or investment in a foreign market, where you, the services suppliers, cross the border to establish a commercial presence through which the service is supplied to clients in that market (e.g., a St. Vincent and the Grenadines show promoter, art gallery curator etc. establishes a business in an EU Member State).

Mode 4: *Presence of natural persons* or temporary entry for individuals to go into another country on short-term contracts to supply services directly to customers, not only as engineers or accountants, but also as performing artists, musicians, costume bands etc.

When considering market access into the EU under the EPA, we will focus on modes 3 & 4, commercial Presence & Temporary Entry of Suppliers, particularly the latter.

Mode 4 (temporary entry of natural persons) regulates the temporary entry of services providers to deliver a service under the stipulated conditions. It does not address immigration issues or the movement of workers seeking employment abroad. These activities are not classified as “trade in services” and are outside of the scope of trade agreements.

Vincentians are able to benefit from visa free entry, as visitors, to most EU countries. However, this does not mean we have the right to deliver services. The legal right to provide services in an EU Member State has been established under the provisions of

the EPA and Vincentians interested in doing so should apply for the requisite entry visa as a services provider.

❖ **Market Access Opportunities in Entertainment Services**

The new market access opportunities, which are open to entertainers and other cultural artists from St. Vincent and the Grenadines, include a number of activities, which, for the purposes of international services trade, fall within the UN classification of Entertainment Services.

Therefore, **Entertainment services** (other than audio-visual), refers to: Services provided by theatrical producers, singing groups, music bands and orchestras;

- Services provided by authors, composers, sculptors, entertainers and other individual artists;
- Ancillary theatrical services;
- Services delivered via a Circus, amusement park and similar attractions:
- Ballroom dancing, discotheque and other dance instructor services; and
- Other entertainment services.

Let us look at the temporary entry of Vincentian entertainers and other cultural services providers to operate as Contractual services suppliers

With respect to market access for entertainment services, the conditions and benefits are the same as for other Contract Services Suppliers (CSS) under the EPA. Therefore, Vincentian cultural services providers, who are registered as companies, will be able to send their members or employees to all EU states, except Belgium, to supply entertainment services.

Vincentians performing or visual artists, music or costume bands etc., who are organized as self-employed persons and create a company through which they provide their services, are also considered as Contractual Service Suppliers, *(Mode 4)*. *These self-established or employee-owned entertainment services companies, even if having only one employee (the performer himself/herself), are covered by EC commitments on Entertainment Services in the EPA and therefore, can enter an EU member state to satisfy a contract to perform.*

*This is an important commitment by the EU because the EPA represents the first agreement through which EU Member States have granted **legally-binding market access** for the supply of Entertainment Services through the temporary entry of Caribbean persons. Therefore, Vincentian artists, musicians, and other cultural practitioners and their crews, who are registered as businesses, now have a legal right to send their members or employees to EU Member States to supply entertainment services as long as they have contracts from clients in the particular EU Member States and they meet the normal immigration*

requirements. Previously, permission to enter EU member countries to supply entertainment services was granted entirely at the discretion of the immigration authorities in the target country. **This is one key difference, with respect to market access, between the before and the after EPA.**

It is noteworthy that although the USA has signed far-reaching trade agreements with a number of Andean countries, Central America, and the Dominican Republic, none of these FTAs has provisions to accommodate the temporary entry of service suppliers.

The formation of a company to facilitate your market access arises because that is one of the conditions associated with access as a Contractual Service Supplier and whereas “Entertainment Services other than audiovisual” is one of the 29 categories of services providers for which the EU has granted market access as CSS, none of the cultural services has been granted legally-binding access for Independent Professionals. Therefore, the way around this obstacle is by obtaining contracts and seeking access to deliver services as an employee - even if you are the sole employee of the company. This is perfectly legal and acceptable. The EU’s orientation is to deal with properly organized and professional services providers.

Incidentally, you can use the market access provisions for entertainers and other cultural artists, not only to promote your

particular type of cultural service, but also to help in promoting St. Vincent and the Grenadines as a tourist destination.

Conditions for temporary entry as Contractual Services Suppliers

The following conditions, which were agreed by both the EC and CARIFORUM for contractual service suppliers, will apply to Vincentian entertainers and other artists seeking temporary entry into the EU to fulfill contracts by supplying services directly to their clients or fans:

The individuals, seeking temporary entry, must **be employees of a company, which has obtained a service contract for a period of not more than twelve (12) months.** *In practice, this means that the members of a music band or other performing group, entering an EU Member State, would all have to be treated as employees of the band, which would be regarded as a company or “juridical person” for the purposes of benefiting under the legally guaranteed access provided by the EPA.*

- The persons must have been employed by the company for at least one year immediately preceding the date of submission of applications for visas to enter the particular EU country and supply services. In addition, they should have **at least three years professional experience** in the particular field. *Self-employed entertainers or other artists, with at least three years professional experience in*

their particular field, can also seek to benefit from this EPA-guaranteed access as employees of their businesses (a one-person company).

- The individuals, operating as Contractual Services Suppliers, **must be paid by their employer in the home country** during their stay in the country in which the service is being supplied. *This simply means that a Vincentian band, group or entertainment company, which employs the entertainers or artists and sends them to fulfill a contract in the EU, remains responsible for their remuneration. This should also avoid the difficulty of the individuals having to make payments, such as European payroll taxes, social security, and other deductions.*
- The temporary entry in a specific country will be for a cumulative period not exceeding six months (or 25 weeks in Luxembourg) during a 12-month period, or for the duration of the contract, whichever is less.
- Access granted into any EU country for an artist, entertainer or other cultural practitioner to supply services only applies to the specific contracted service activity and does not extend to other business activities. *In effect, performers cannot enter an EU country with a permit to perform as a vocalist at a number of entertainment venues, but decide to sell T-Shirts in order to make some extra cash.*

(Therefore, you must make appropriate arrangements in advance to sell CDs and other income-generating paraphernalia)

- The number of persons covered by a particular services contract shall not be larger than necessary to fulfill the contract. *In other words, if a band consists of 12 persons, including technicians, it cannot expect work permits or visas for 20 persons on a tour.*
- **Commercial Presence or Establishment of a Cultural Services Company**

Another market access approach open to Vincentian cultural services entrepreneurs involves the route of *supplying services through the establishment of the services provider in the country where the service is provided (Mode 3)*. Seventeen (17) EU Member States, including all of the traditional markets for Caribbean entertainers, such as: the United Kingdom, France, Germany, Italy, Spain and the Netherlands have granted access for our regional entertainment entrepreneurs to establish entertainment services companies. *In other words, Vincentian entrepreneurs can now take advantage of the EPA to set up entertainment services companies in the applicable EU Member countries.*

Consequently, if you establish a company in an EU country *to manage performers, produce shows, provide news and press*

agency services, operate an art gallery, teach dance, promote sports events, operate a sports facility, teach scuba diving, coach cricket etc., your company will be able to obtain work visas for managers or key personnel from St. Vincent and the Grenadines to work in its EU operation and they would be allowed to remain in the EU member state for up to three (3) years. Remember these do not have to be big companies, but you and your staff, where applicable, must have the necessary experience in the particular area of *Entertainment services*.

In this context, **“Key Personnel”**, such as managers and specialists (persons with special knowledge essential to the operation of the business) will be allowed entry for up to three (3) years on intra-corporate transfers. While **“Business Visitors”**, these are staff persons who are responsible for setting-up a commercial presence, will be allowed up to 90 days in any 12-month period.

❖ **The Protocol on Cultural Cooperation**

The market access granted by the EU to Caribbean suppliers of entertainment and other cultural services is complemented with an innovative Protocol, which provides for bilateral cooperation in a variety of cultural activities. While the market liberalization arrangements, discussed earlier, provide access for services providers looking to sell and deliver their services in the EU, the ***Protocol on Cultural Cooperation*** facilitates those who wish to enter the EU for other cultural activities, including collaborating

with creative persons in that market. The Protocol provides a framework for temporary entry, cooperation, and “exchanges of cultural activities, goods and services, *including inter alia*, the audio-visual sector”.

The Protocol’s starting point is the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which was adopted in Paris on 20th October 2005 and provides for developed countries like those in the EU to extend preferential treatment to developing countries, such as St. Vincent and the Grenadines.

The EPA’s Protocol on Cultural Cooperation outlines a comprehensive framework for cooperation between cultural professionals from CARIFORUM and the EU. It also addresses mechanisms for various cultural exchanges and technical support to CARIFORUM Member States. The principal issues covered in the Protocol include:

❖ **Cultural Exchanges and Training**

The Protocol facilitates entry into and temporary stay in the EU by Caribbean artists and other cultural practitioners (who are not engaged in commercial activities in the EU) in order that they might be able to increase contacts and collaborate on projects with European counterparts; improve their skills; learn new techniques; engage in creative production, including joint audio-visual production with EU partners.

The areas for cooperation include those elaborated earlier under the broad umbrella of “Entertainment Services” as well as the very Caribbean category of cultural service “mas performers and designers”. Vincentian cultural practitioners, seeking to benefit from this cooperation, will be allowed to remain in any EU country for up to 90 days in any 12-month period. *Previous EC trade agreements include very limited or no provision for cooperation on cultural projects with EU cultural professionals.*

In my view, the Protocol can be particularly useful for the less well-established Vincentian cultural practitioners, who can now enter EU states under the cooperation element for training, market exposure and collaboration with European colleagues. It is envisaged that over time these emerging Barbadian cultural talents will develop useful market knowledge and valuable contacts in the EU.

Unfortunately, from a commercial perspective, CARIFORUM cultural practitioners, who enter an EU Member State under the Protocol, rather than as Contractual Service Suppliers under the general market access provisions, are limited to a temporary stay in the EU of up to 90 days in any 12-month period and are also prohibited from selling their services to the general public. Nevertheless, they may be involved in the shooting of cinematographic films or television programmes. In addition, they may record music or participate in cultural events such as literary fairs, cultural festivals and the like.

❖ **A particularly interesting aspect of the Protocol is the provision on Cooperation in the Audio-visual Sector**

Historically, EU policies do not allow market access commitments in the audio-visual sector in any trade agreement, but the EPA Protocol on Cultural Cooperation provides possibilities for collaboration with EU cultural practitioners in order to facilitate access into the EU for Caribbean audio-visual material through special mechanisms. (*See Articles 5 & 6 of the Protocol*). In particular, co-produced audio-visual products and services involving European and Caribbean creative teams will qualify as domestic (EU) productions and meet the audio-visual content requirements in all EU states and in the Caribbean.

In the audio-visual sector, the Protocol also seeks to stimulate the negotiation and implementation of co-production agreements between individual EU states and CARIFORUM states. These co-production agreements are necessary in order to make it easier for Vincentian and other CARIFORUM audio-visual producers to access EC funding for creative projects. Caribbean and European governments have also agreed to allow temporary importation of equipment without duties for shooting films and television programmes.

❖ **Technical Assistance under the Protocol**

The Protocol provides for technical assistance through different vehicles, *inter alia*, training, exchange of information, sharing of

expertise and experiences, and advice on policies and legislation as well as on the usage and transfer of technologies. This technical support will include cooperation between private companies and between non-governmental organizations, as well as public-private partnerships. Some of the areas identified for possible development assistance, include:

- Facilitating training and professional exchanges between performing artists, including participation in auditions and cultural networks;
- Stimulating joint productions in the performing arts between producers from the Caribbean and those in the EU;
- Encouraging and facilitating the development of international theatre technology standards;
- Granting preferential treatment to audio-visual producers, including through the facilitation of participation in festivals, seminars and other similar initiatives;
- Facilitating the participation of CARIFORUM nationals in audio-visual co-productions, which can qualify for national treatment in the EU.
- Facilitating professional exchanges and training for librarians, writers, translators, and book publishers;
- Facilitating co-publishing and translations; and

- Facilitating exchanges of expertise and best practices regarding the protection of sites and historic monuments.