EXPLANATORY MEMORANDUM TO

THE EUROPEAN COMMUNITIES (DEFINITION OF TREATIES) (CARIFORUM ECONOMIC PARTNERSHIP AGREEMENT) ORDER 2009

2009 No. [ ]

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The instrument is intended to give effect under domestic law to the Economic Partnership Agreement between the CARIFORUM States[1], of the one part, and the European Community and its Member States of the other part (hereafter referred to as "the Agreement"). The Agreement is designed to be a World Trade Organisation (WTO) compatible and development-friendly trade agreement. The Agreement requires ratification by the European Community and all its Member States, and the CARIFORUM states.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Agreement will need to be specified as a Community Treaty by Order in Council in accordance with section 1(3) of the European Communities Act 1972 in order to have legal effect in the UK but will not require any further new legislation to be introduced by the United Kingdom and no other implementation is required.

4.2 The Order is intended to give effect under domestic law to the Agreement on the ground that it is a "mixed competence" agreement which is binding on Member States under Article 300(7) EC and to which the UK must give effect.

4.3 The Agreement has been published in full in a Command Paper.

4.4 Procedurally, the Commission has already presented a proposal for a Decision by the Council and the representatives of the Governments of the Member States which, when adopted, will complete the decision-making process for the conclusion and ratification of the Agreement on behalf of the European Community and its Member States. The proposed Decision has been the basis for Explanatory Memoranda (7505/08 and 8012/08) to the relevant Parliamentary Scrutiny Committees.

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[1]The 15 members of CARIFORUM are Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

4.5 The Decision will only be adopted by the Council and the Representatives of Governments of the Member States once all Member States' parliamentary procedures for ratification of the Agreement are complete, when the Agreement will enter into force.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Minister of State for Development, Trade and Consumer Affairs at the Department for Business, Enterprise and Regulatory Reform has made the following statement regarding Human Rights:

"In my view the provisions of the European Communities (Definition of Treaties) (Cariforum Economic Partnership Agreement) Order 2009 are compatible with the Convention rights."

7. Policy background

- ***What is being done and why***

7.1 The Agreement represents the outcome of negotiations undertaken by the European Commission (acting on behalf of the European Communities and their Member States) with the CARIFORUM States.

7.2 Since the 1970s African, Caribbean and Pacific (ACP) countries had non-reciprocal trade preferences to EU markets. The EU and ACP were required to eliminate these trade preferences by 31 December 2007, following a WTO ruling where the preferences were deemed incompatible with WTO rules. The Agreement replaced these trade preferences and has been designed to ensure WTO compatibility by being reciprocal and non-discriminatory.

7.3 The Agreement was initialled on 16 December 2007 by all 15 members of CARIFORUM. The CARIFORUM States were included in the list of countries in Annex 1 of the EU EPA Market Access Regulation Council Regulation (EC) No 1528/2007 of 20 December 2007. This provided duty free quota free access for goods coming from the CARIFORUM States into the European Community market from 1 January 2008 (except for rice and sugar which are subject to short transition periods).

7.4 The Agreement was signed on the 15th October 2008, by all CARIFORUM States apart from Guyana and Haiti. Guyana signed on the 20th October 2008. Haiti has not yet signed the Agreement. However, it has indicated it intends to sign. The current text includes references to Haiti as a country that is party to the Agreement. If Haiti do sign this makes no difference to ratification. If Haiti decides not to sign the Agreement, then it will need to be amended with a new Council decision that notes the non ratification of Haiti and agrees amendments with the CARIFORUM States to remove them. In this case we will need to ratify an amendment to the Agreement on the basis of the Council decision so the original ratification is required regardless.

7.5 The Agreement is a comprehensive agreement and its scope is wide ranging. Areas covered include trade in goods, services, investment and e-commerce, competition policy, innovation and intellectual property, transparency in public procurement, environmental and social aspects, and personal data protection. The Agreement also establishes a range of institutions necessary for the implementation and monitoring of the Agreement.

7.6 The Agreement enables both parties to take measures to protect their national markets in particular circumstances. These measures include a safeguard clause which allows both parties (EC and CARIFORUM States) to raise duties or impose quotas for those sectors and industries that are threatened. This includes safeguard provisions for CARIFORUM infant industries.

7.7 Development is a strong goal of the Agreement. The Agreement opens with a chapter on sustainable development reinforcing the principle that development objectives, including the reduction and eventual eradication of poverty, shall be applied at every level of implementation of the Agreement.

7.8 The UK Government believes that the Agreement represents a balanced outcome to the negotiations and considers the Agreement to be compatible with UK policy on EPAs. UK policy has centred on a number of key principles[2] set out in the DFID/DTI Position Paper of 2005 and the UK has consistently stated that EPAs should deliver long term development, economic growth and poverty reduction for ACP countries.

7.9 The Agreement provides for a gradual reduction of tariffs on goods coming from the EU into CARIFORUM States over a twenty five year period. In 2011, CARIFORUM will reduce tariffs on 52.8% of the goods imported from Europe and by 2033, 86.9% will have been liberalised. This flexibility and long term market opening was pressed for by the UK during negotiations. The CARIFORUM States chose to exclude 13.1% of their imports from liberalisation including some agricultural and processed agricultural products, and as such, the most vulnerable domestic producers are protected from EU competition.

7.10 The UK Government is pleased that this Agreement includes improved Rules of Origin (ROOs) that are simpler than those applicable under the Cotonou Agreement[3], particularly in relation to agriculture, fisheries and textiles.

7.11 The Agreement includes provisions on Mode IV services which allow for the temporary movement of natural persons. This includes commitments to allow professional employees of CARIFORUM firms not established in Europe or contractual service suppliers to enter the EU to supply services for up to 6 months in

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[2] These principles include the belief that: ACP countries should be able to decide the scope of issues covered within their EPA; they should have flexibility over their market opening; EPAs should provide them with duty and quota free market access into the EU with improved Rules of Origin; they should benefit from effective safeguards to protect their markets when required; and EU partners should provide ACP countries with effective development assistance to benefit from new trade opportunities while ensuring aid is not made conditional on signing an EPA.

[3] Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part and the European Community and its Member States of the other part, signed on 23 June 2000 in Cotonou, Bénin (Treaty Series No. 24 (2003) Cm 5882)

29 specified service sectors. Such access can be important in promoting the transfer of knowledge and technology through business experience and networking opportunities. No new legislation is required to give effect to the Mode IV services commitments and the UK Border Agency have confirmed that no administrative or policy changes are required.

7.12 The UK supported the Commission's view that other aspects, in addition to trade in goods, should be included in the Agreement and welcomes the inclusion of provisions on services and investment. However, we have always maintained that these inclusions should be at the request of the ACP countries and these countries should decide upon the pace and scope of the agreements themselves. The CARIFORUM region was a strong advocate of securing a comprehensive agreement that went beyond trade in goods.

- ***Consolidation***

7.13 Not applicable.

8. Consultation outcome

8.1 As part of the process of concluding this Agreement we have consulted with officials in DFID, BERR, HMRC, DEFRA, UKBA and the UK's representatives in Brussels. In forming policy positions, British NGOs, Caribbean officials and the government departments listed above were consulted.

8.2 The Parliamentary EU Committees were consulted on the proposals relating to signature (and provisional application) and conclusion of the Agreement.

9. Guidance

9.1 This Agreement will not lead to any new regulatory measures. There is therefore no need for new guidance.

10. Impact

10.1 The scale of affected UK trade and business as a result of ratification of the Agreement has been considered by Economists within BERR and the assessment is that there is unlikely to be a significant impact on business and the public purse. The CARIFORUM countries have a low share of UK exports and investment (0.19% and 0.5% respectively in 2007) and both the costs and the benefits to the UK would be negligible.

10.2 There will also be no implementation required or regulatory changes.

10.3 For the reasons stated above, an Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The Agreement will not lead to any new regulatory measures and there is therefore no impact on small business.

12. Monitoring and review

12.1 There was a review clause added to the Agreement that stated the Agreement would be reviewed in 5 years.

13. Contact

13.1 Sarah Richardson at the Trade Policy Unit at the Department for Business, Enterprise and Regulatory Reform/ Department for International Development, telephone 020 7023 1621 or email s-richardson@dfid.gov.uk can answer any queries regarding the instrument.