

Overview on Regional and International Trends and Best Practices relating to Information Society Issues

Presentation at the

First Consultation Workshop for

Working Group 1 – ITU-EC HIPCAR Project

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Objective

- This presentation considers the relationship of key components of the legal frameworks necessary for the creations of the Information Society:-
 - To review the relationship between these legal frameworks
 - To provide a review of the conditions of binding Trade agreements, and the impact on the region's interaction with the global information society

Overview

- Countries (and Regions) are looking to develop how they integrate with the information society with a view to:-
 - Leveraging the growing ubiquity of the World Wide Web as a channel for service delivery
 - Leveraging the processing power of information systems to increase business efficiency and effectiveness
- Such commitments serve to increase the focus on the adherence to best practice, and harmonisation of regulatory approaches within trade blocs

Overview – relationship of information society concepts

- The Information society is based on the premise of utilising automated processing systems to enhance service delivery to markets and persons *anywhere in the world*.
- A fundamental presumption to achieve this goal is the provision of **telecommunications services**:
 - by extending the infrastructure grid to as many persons worldwide,
 - by commoditizing those services such that the cost of access is generally affordable
- The cumulative effect of positioning ICT-based services as the ubiquitous leveling agent for personal and economic development across the globe

Overview – relationship of information society concepts

- Upon the foundation of ubiquitous telecommunications is a platform supporting the transport and storage of commercial information.
- As the core imperatives of commerce remain unchanged, this commercial information's ready transmission creates opportunities for enhanced business relationships
- This ease of exchange of such commercial information introduces new paradigms:
 - Where information is used to support transaction in transactions related to physical goods, and traditional services
 - Where information itself is the key commodity traded

Overview – relationship of information society concepts

- In either instance, that the information is created, transmitted and stored in a new electronic form there are particular challenges associated with the new frontier:
 - In the instance where information supports trade in traditional, physical goods and services there needs to be clarity in how traditional commercial assumptions are effected
 - In the instance where information is the commodity traded, there needs to be protection of the creator/ owner of the commodity; and
 - In both instances, there needs to be rationalisation of the how malfeasance is detected, prosecuted and concluded in a reality of trans-border transactions based on an intangible product.

Appropriate Administration for the Information Society

- Administration of this paradigm is largely the oversight of domestic and international **trade facilitation systems**, with associated considerations of protection and enforcement:
 - Law enforcement,
 - Customs administration, and
 - expeditious judicial arbitration
- Further, to provide comfort to both consumers and investors these systems should encourage:
 - transparency in governance, and
 - the protection of personal and commercial privacy
- These frameworks are essential before particular forms of commerce can be effected (e.g. e-payments, e-government etc.)

Frameworks to effect appropriate administration

What are Regional and International Agreements impacting CARIFORUM's implementation of administrative frameworks?

Key common facets to telecommunications reform

- To ensure *ubiquity of access*, the establishment Universal Service Programmes
- To ensure *commoditisation of basic services*, the encouragement of open, competitive domestic and international markets
 - particular focus in ensuring transparency and openness in licensing,
 - the convergence of technologies affording the separation of regulatory oversight of the provision of network and service components; and
 - Regulatory focus on mitigating against the abuse of market power by providers

These issues are elaborated on in Working Groups 2 & 3 of the HIPCAR Project

Key Instruments in Trade Facilitation Reform

- To ensure harmonisation of CARIFORUM laws with regard to default expectations and legal validity of **contract-formation** practices:
 - Electronic Transactions
 - Electronic Signatures
 - Electronic Evidence
 - Model best practice frameworks established by OECD, UNCITRAL
 - Model frameworks associated due to close linkages based on the concept of e- document authenticity.

Impact of existing international agreements

- Due to the recent development of e-commerce concerns, there is little evidence of existing trade agreements that reflect these considerations.
- However Article 120 of CARIFORUM/ EU Economic Partnership Agreement (EPA) includes:

EPA, Art. 120

1. The Parties shall maintain a dialogue on regulatory issues raised by electronic commerce, which will *inter alia* address the following issues:
 - (a) the recognition of certificates of electronic signatures issued to the public and the facilitation of cross-border certification services;
 - (b) the liability of intermediary service providers with respect to the transmission, or storage of information;
 - (c) the treatment of unsolicited electronic commercial communications;
 - (d) the protection of consumers in the ambit of electronic commerce;
 - (e) any other issue relevant for the development of electronic commerce.
2. Such cooperation can take the form of exchange of information on the respective legislation of the Parties and the Signatory CARIFORUM States on these issues as well as on the implementation of such legislation.

These seem to identify core concepts to be addressed by CARIFORUM members in preparation of appropriate legal framework for compliance with the EPA.

Key Instruments in Contract enforcement

- To ensure harmonisation of CARIFORUM laws with regard to Law Enforcement and Judicial arbitration in the e-environment:
 - Cyber Crime
 - Interception of Electronic Communications
 - Electronic Evidence
 - Convention of Cyber-Crime (2001, 2006) provides frameworks of protection from computer-related fraud, illicit content, network security and protection of copyright

Impact of existing international agreements

- No perceived contention seem to arise RE: Law enforcement and judicial arbitration
- On Customs administration it is notable that the EPA includes:

EPA Art. 119

Objective and principles

1. The Parties, recognising that electronic commerce increases trade opportunities in many sectors, agree to promote the development of electronic commerce between them, in particular by cooperating on the issues raised by electronic commerce under the provisions of this Title.
2. The Parties agree that the development of electronic commerce must be fully compatible with the highest international standards of data protection, in order to ensure the confidence of users of electronic commerce.
- 3. The Parties agree that deliveries by electronic means shall be considered as the provision of services, within the meaning of Chapter 3 of this Title, which cannot be subject to customs duties.**

Subsection (3) of the EPA Article prescribes a point of Policy that was resisted by Least Developed Countries in the contentious DOHA round of WTO negotiations

Key Instruments in Regulatory confidence

- To ensure harmonisation of CARIFORUM laws with regard to ensuring consumer and investor confidence in regulatory certainty and protection of privacy:
 - Freedom of Information
 - Privacy and Data Protection
 - Model best practice frameworks established by OECD, EC
 - Former framework focused on transparency of Public Authorities primarily
 - Latter framework focused on appropriate confidentiality of Public **and** Private Sectors

Impact of existing international agreements

- No perceived contention seem to arise RE: Freedom of Information and Data Protection frameworks.
- Notable that Articles 197 to 200 of the EPA provide substantial direction as to the inclusion of appropriate provisions for Data Protection including:
 - Detailed general objectives
 - Definitions
 - (Content and Enforcement) Principles and General Rules

The EPA – what it is and why it is important

- Economic Partnership Agreements are a form of trade partnership, required by the Cotonou Agreement, which covers economic relations between the EU and African, Caribbean and Pacific (ACP) States
- Goods and services coming from ACP countries previously enjoyed preferential access to the EU markets under the Lomé Agreement. However, with increasing opposition from WTO states, the ACP countries and the EU agreed to develop new WTO-compatible trading arrangements, progressively removing barriers to trade between them and enhancing cooperation in all areas relevant to trade.

The EPA – what it is and why it is important

- For the CARIFORUM nations, signing the EPA ensures the following, among others:

Services and Investment

- In general the liberalization of various service sectors should lead to increased investment and greater efficiencies.
- The regional Services Sector stands to benefit from development assistance from the EU to address a range of needs, including development of regulatory regimes to build the capacity of regional services firms, market intelligence, etc., to facilitate greater interaction with EU firms.
- Regional investors can benefit from liberalization in almost all sectors in the EU with only some exclusions in a few sectors and limitations in mainly the new EU member states.

The EPA implementation framework

- CARIFORUM members have made commitments on market access and national treatment based on one of the following four modes of supply:
 - cross border supply
 - consumption abroad
 - commercial presence
 - presence of natural persons
- countries must expressly make commitments through their respective schedule of commitments. These schedules may contain modifications or derogations from the overall text.
- CARIFORUM states are required to adjust regulatory framework to conform to obligations agreed to in the EPA

Summary of Conclusions

- To ensure the maximisation of economic benefits of the Internet-economy, CARIFORUM Member States must create legal frameworks to support administration of information-based products and services
- International model frameworks abound from OECD, UN and EC, from which best practice can be implemented in a timely fashion
- Other than telecoms, international trade commitments constraining policy frameworks seem limited to CARFORUM/ EU EPA
- EPA provides comprehensive guidelines regarding Electronic Commerce, Data Protection, e-Customs
- EC provides strong policy directions with regard to Access to Information Freedom of Information, Cyber-Crime and Interception of Communications

Thank You.

Questions?