



A Proposal for a Comprehensive Economic and Trade Agreement between CARICOM And China

Submitted by:

Sarah Baksh

Mikayla Darbasie

Shannon Potter

Carissa Rodulfo

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About the University of the West Indies TradeLab Clinic

Dr. Jan Yves Remy and Dr. Ronnie Yearwood supervise one of TradeLab's newest clinics which is being offered as a collaborative effort between two departments of the University of the West Indies Cave Hill Campus: the Shridath Ramphal Centre for International Trade Law, Policy & Services (SRC) and the Faculty of Law (Cave Hill).

The SRC is the leading centre devoted to assisting the Caribbean region with issues of international economic law, regionally and on the global front, and is home to the Masters in International Trade Policy (MITP). The Faculty of Law at the Cave Hill Campus (in Barbados) is the oldest law faculty of the University of West Indies's three campuses, with the other two campuses located in Trinidad (St. Augustine) and Jamaica (Mona). The TradeLab pilot clinic is being offered as an elective to third-year students from the Faculty of Law.

Dr. Remy is the Deputy Director of the SRC and teaches on the MITP course; and Dr. Yearwood is a Lecturer in Law in the Faculty of Law, at The University of West Indies, Cave Hill Campus (UWI).

As the Academic Supervisors, Dr. Remy, and Dr. Yearwood, signed up students to work in teams of three or four. They worked with mentors of the TradeLab network as well as Research Fellows from the TradeLab alumni who assisted the students with research tasks.

This memorandum was completed by one of three student teams working for beneficiaries from the Caribbean region.

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ABBREVIATIONS

BIT	Bilateral Investment Treaty
bn	billion
BRI	Belt and Road Initiative
CARICOM	Caribbean Community
CDB	Caribbean Development Bank
CET	Common External Tariff
CETA	Comprehensive Economic and Trade Agreement
CHEC	China Harbour Engineering Corporation
CSME	CARICOM Single Market and Economy
DDT	Double Taxation Treaty
DFC	International Development Finance Corporation
DFQF scheme	Duty-free quota-free scheme
EPA	Economic Partnership Agreement
ESA	Economic Sustainability Agreement
EU	European Union
FET	Fair and Equitable Treatment
FDI	Foreign Direct Investment
FPS	Full Protection and Security
FTA	Free Trade Agreement
GDP	Gross Domestic Product
ICT	Information and Communications Technology
IDB	Inter-American Development Bank
IIA	International Investment Agreement
IMF	International Monetary Fund
km	kilometre
LDC	Less-developed country
m	million
MFN	Most-favoured-nation



NT	National treatment
OECD	Organisation for Economic Co-operation and Development
OECS	Organisation of Eastern Caribbean States
RTC	Revised Treaty of Chaguaramas
SIDS	Small Island Developing States
TPR	Trade Policy Review
trn	trillion
TTO	Trinidad & Tobago
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
USA	United States of America
USD	United States Dollar
WTO	World Trade Organization

EXECUTIVE SUMMARY

- [1] States must adapt to the changing circumstances to ensure their continued development as power shifts in an increasingly multipolar world. Globalisation has made States more interdependent, particularly economically, as institutions such as the World Trade Organization (WTO) have promoted and facilitated a rules-based free trade system. Smaller States, such as CARICOM, have become increasingly reliant on international trade to develop their nations given trade's importance to a State's development. However, over the years, CARICOM States' trade performance has decreased for a myriad of reasons. Aside from having poor direct investment inflows and contending with increasing global competition, a large part of this decrease is due to CARICOM States' dependence on their long-standing trading relationships with Europe and the United States of America (USA).
- [2] The East Asian market constitutes approximately 60% of the world's consumers and is deemed one of the fastest-growing regions in the world, thus it has been highlighted as a potential region for CARICOM States to diversify their export markets. China is the largest of the entities that comprise the East Asian market. It is the world's largest trading nation and has growing influence because of its economic prowess. Given China's growing dominance and the erosion of the trading relationship between CARICOM and its traditional partners – Europe and the USA – it is essential to explore the possibility of engaging in deeper multilateral economic relations with China. Consequently, this memorandum seeks to map and analyse CARICOM and China's economic relationship to propose a CETA.
- [3] The purpose of this memorandum is to analyse the economic relationship between the Caribbean Community (CARICOM) and China with a proposal for the creation of a Comprehensive Economic and Trade Agreement (CETA) between the two Parties. This proposal takes into account the Parties' trade objectives and their economic relationship, including current economic arrangements between several CARICOM States and China and trading patterns in both goods and services between the Parties. It also examines current Chinese agreements with comparator States such as Costa Rica, Iceland and Mauritius. Additionally, this proposal identifies the possible political ramifications and risks for CARICOM States in creating a CETA. In formulating the proposed CETA, this memorandum was laid out in the following way:
- [4] **Chapter 1** introduces the Parties: CARICOM and China and examines their place in the global economy and their interests in each other and the possible sectors for trade liberalisation.

- [5] **Chapter 2** lays out the trade objectives of the Parties and identifies key values and points of focus. The similarities in the policies of the two parties are examined so that possible areas of partnership and the type of relationship that the parties can have may be determined.
- [6] **Chapter 3** examines the trade, investment and economic trade agreements between CARICOM and China such as the double taxation treaties (DTT), the bilateral investment treaties (BITs) and the Belt and Road Initiative (BRI). This chapter also looks at the impact of Chinese investment and shows that the relationship between the two Parties appears to be predominantly through loans and grant funding but argues there is also the existence of high trade potential between the Parties.
- [7] **Chapter 4** analyses the current trading relationship between the Parties as well as of the trade relationship of the Parties as compared to the traditional CARICOM trading partners and considers implications of the current trade relationship between CARICOM and China.
- [8] **Chapter 5** look at trade arrangements between China and comparator States such as Costa Rica, Iceland and Mauritius with the aim of understanding the possible trade impacts of entering into an economic and trade agreement with China. Ultimately, this chapter seeks to provide insight into the provisions and measures that CARICOM should consider for the CETA.
- [9] **Chapter 6** discusses the proposed CETA. This chapter demonstrates that the CETA is largely an amalgamation of international treaties such as free trade agreements (FTAs) and international investment agreements (IIAs) while encompassing aspects of economic sustainability and shows the importance of this combination for the creation of a more substantive agreement. This chapter also uses the analyses from previous chapters to discuss possible markets for exploration such as construction, e-commerce, energy, financial services and tourism. Lastly, the chapter includes proposed provisions for the CETA with a discussion on both general and specialised clauses.
- [10] **Chapter 7** details pertinent external considerations that entering into such an agreement with China would entail. This includes an examination of the possible shift in political relationships, the depletion of CARICOM States' national resources, the conditions that may be attached to being party to this CETA and the possibility of a breakdown in regional integration as well the possible erosion of integration efforts.
- [11] **Chapter 8** concludes by summarising the findings of this project and notes that it can be used to realise and readjust CARICOM's trade relationships with other States.

CHAPTER 1: CARICOM AND CHINA: CONNECTING WITH THE DRAGON

[12] This chapter seeks to introduce the Parties, CARICOM and China, examine their location in the global economy and highlight their interests in each other.

1.1 CARICOM

[13] The Caribbean can be defined through cultural, historical, geographical, geological and political lens.¹ However, a simpler understanding of the nations that constitute this region may be through their membership in CARICOM: a regional integration organisation. CARICOM emerged following the fall of the West Indian Federation in 1962 and establishment of the Caribbean Community and Common Market, later known as CARICOM in 1973 through the Treaty of Chaguaramas, originally signed by the Prime Ministers of Barbados, Guyana, Jamaica and Trinidad & Tobago. CARICOM's purpose is to promote integration amongst its Member States by advocating for the four main pillars upon which it rests: economic integration; foreign policy coordination; human and social development; and security. Thus, the 1973 Treaty of Chaguaramas was revised in 2002 (now the Revised Treaty of Chaguaramas or "RTC") to allow for the establishment of a CARICOM single market and economy (CSME) to further economic integration of the region. Currently, CARICOM has fifteen full-time Members stretching from the Bahamas in the North to Guyana and Suriname in the South. It also has five associate Member States and seven observer States.²

[14] Many CARICOM States have bilateral economic relations but there has been a greater effort by CARICOM, as a regional body, to engage on a multilateral level with other States or regions to

¹ Antonio Gaztambide-Géigel, 'The Invention of the Caribbean in the 20th century (The definitions of the Caribbean as Historical and Methodological Problem)' (2004) 53(3) Social and Economic Studies 127, 149 -150.

² The full-time Members are Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname and Trinidad & Tobago. The associate Members are Anguilla, Bermuda, British Virgin Islands, Cayman Islands and Turks and Caicos Islands. The observer States are Aruba, Colombia, Curaçao, Dominican Republic, Mexico, Puerto Rico, Sint Maarten and Venezuela. Of the full-time members, The Bahamas, Haiti and Montserrat are not part of the CSME: The Bahamas is not a participant; Haiti is a partial participant and Montserrat is a signatory for and de facto participant.

improve trading relations and/or trade performance. Thus, CARICOM has entered into agreements with Colombia,³ Costa Rica,⁴ Cuba,⁵ Dominican Republic,⁶ Venezuela⁷ and the EU⁸.

[15] Presently, all CARICOM Members have been categorised as developing countries by the United Nations (UN) and one, Haiti, is a least developed country.⁹ This categorisation reflects the country's basic economic conditions and given the present economic climate of low economic growth and high debt levels of CARICOM members,¹⁰ it is prudent that CARICOM pursue economic arrangements with other States rather than continue relying on their Western traditional trading partners – Europe, the USA, and to a lesser extent, Canada. Given China's emerging superpower status and its growing global influence, an economic arrangement between these Parties has the potential to reap benefits for CARICOM.

1.2 CHINA

[16] The People's Republic of China is located in East Asia and is one of the largest countries in the world. It has one of the world's fastest-growing economies and is the world's largest exporter and second-largest importer of goods.¹¹ Consequently, China has been called an emerging superpower. Under the Xi Jinping administration, China has displayed its global ambitions by declaring and maintaining its core interests.¹² In 2009, State Councillor Dai Bingguo officially interpreted "China's core interests" in three aspects: (i) fundamental system and state security; (ii) state sovereignty and territorial integrity; and (iii) the stable development of the economy and

³ Agreement on Trade, Economic and Technical Cooperation between CARICOM and the Government of the Republic of Colombia (1 January 1995).

⁴ CARICOM-Costa Rica Free Trade Agreement (15 November 2005).

⁵ CARICOM-Cuba Trade and Economic Cooperation Agreement (1 January 2001).

⁶ CARICOM-Dominican Republic Free Trade Agreement (5 February 2002).

⁷ CARICOM-Venezuela Trade and Investment Agreement (1 January 1993).

⁸ Economic Partnership Agreement between the CARIFORUM States and the European Community (1 January 2009).

⁹ Department of Economic and Social Affairs of the United Nations Secretariat, 'Country Classification' (United Nations, 2014)

<https://www.un.org/en/development/desa/policy/wesp/wesp_current/2014wesp_country_classification.pdf> accessed 4 March 2020.

¹⁰ Sebastian Acevedo et al, 'Caribbean Small States - Challenges of High Debt and Low Growth' (International Monetary Fund 2013) <<https://www.imf.org/external/np/pp/eng/2013/022013b.pdf>> accessed 11 June 2020.

¹¹ 'Country Profile: China' (OEC) <<https://oec.world/en/profile/country/chn/>> accessed 4 March 2020.

¹² Benjamin Haas, 'Marriott apologises to China over Tibet and Taiwan error' (*The Guardian*, 12 January 2018) <<https://www.theguardian.com/world/2018/jan/12/marriott-apologises-to-china-over-tibet-and-taiwan-error>> accessed 6 March 2020; 'US Must Respect China's Core Interests, Treasure Ties: China Daily Editorial' (*China Daily*, 27 June 2018) <<http://www.chinadaily.com.cn/a/201806/27/WS5b339b69a3103349141df4ef.html>> accessed 6 March 2020.

society. The 2011 China White Paper of Peaceful Development¹³ added “peaceful development” and “national reunification” to “China’s core interests”.¹⁴

[17] China’s foreign policy is motivated by applying its national interests to foreign relations.¹⁵ Its foreign policy has prompted the launch of a global campaign to expand its global influence which includes monetary contributions to international organisations such as the UN,¹⁶ promotion of the BRI,¹⁷ creation of the China Development Bank,¹⁸ development of the first China overseas military base in Djibouti,¹⁹ the advancement of its language and culture through the Confucius Institute,²⁰ and joining the Inter-American Development Bank.²¹ These actions serve to further China’s global agenda²² and foster relations with States all over the globe. China has engaged in bilateral relations with many countries in the Latin American and Caribbean region particularly through the BRI. Thus, there is scope to deepen the economic relationship between China and CARICOM.

1.3 THE LOCATION OF CARICOM AND CHINA IN THE GLOBAL ECONOMY

[18] To better understand the Parties’ position in the global economy, an assessment of their respective market structures and economic patterns is relevant. However, this information illustrates a clear

¹³ ‘China’s White Paper on Peaceful Development’ (*Ministry of Foreign Affairs of the People’s Republic of China*, 9 September 2011) <https://www.fmprc.gov.cn/mfa_eng/topics_665678/whitepaper_665742/t856325.shtml> accessed 12 March 2020.

¹⁴ Jinghao Zhou, ‘China’s Core Interests and Dilemma in Foreign Policy Practice’ (2019) 34(1) *Pacific Focus* <<https://doi.org/10.1111/pafo.12131>> accessed 6 March 2020, 33.

¹⁵ Rukmani Gupta ‘China’s National Interests: Exploring the Domestic Discourse’ (2012) 32(5) *Strategic Analysis*, 804.

¹⁶ Tung Cheng-Chia and Alan H. Yang, ‘How China Is Remaking the UN In Its Own Image’ (*The Diplomat*, 9 April 2020) <<https://thediplomat.com/2020/04/how-china-is-remaking-the-un-in-its-own-image/>> accessed 11 June 2020.

¹⁷ Jan P. Voon and Xinpeng Xu, ‘Impact of the Belt and Road Initiative on China’s soft power: preliminary evidence’ (2019) 1 *Asia-Pacific Journal of Accounting & Economics* 120.

¹⁸ China Development Bank, ‘International Products’ (*China Development Bank*, 2015) <<http://www.cdb.com.cn/English/cpfw/gjyw/dkrz/>> accessed 11 June 2020.

¹⁹ Krishnadev Calamur, ‘China’s First Overseas Military Base’ (*The Atlantic*, 12 July 2017) <<https://www.theatlantic.com/news/archive/2017/07/china-djibouti/533385/>> accessed 15 May 2020.

²⁰ Sheng Ding, *The Dragon’s Hidden Wings: How China Rises with Its Soft Power* (Lexington Books 2008) ch 7; Stephen John Hoare-Vance, ‘The Confucius Institutes and China’s Evolving Foreign Policy’ (MA thesis, University of Canterbury 2009); Falk Hartig, ‘Confucius Institutes and the Rise of China’ (2012) 17 *Journal of Chinese Political Science* 53.

²¹ ‘China joins IDB in ceremony at Bank headquarters’ (*IDB*, 12 January 2009) <<https://www.iadb.org/en/news/china-joins-idb-ceremony-bank-headquarters>> accessed 15 May 2020.

²² Kathy Gilsinan, ‘China’s Bargain on Global Influence Is Paying Off’ (*The Atlantic*, 6 May 2020) <<https://www.theatlantic.com/politics/archive/2020/05/china-global-influence-who-united-states/611227/>> accessed 15 May 2020.

disparity between the Parties since CARICOM's impact as constituted of small island developing States (SID) is vastly outmatched by China's global economic dominance.

1.3.1 CARICOM IN THE GLOBAL ECONOMY

[19] Caribbean countries endure several challenges in fulfilling their effective global economic participation. As CARICOM is comprised of fifteen different States, there are differences in individual market structures and economies. There is also increasing competition globally and foreign direct investment (FDI) inflow constraints for SIDS within CARICOM. Domestically, persistent fiscal deficits, ballooning debt and anaemic growth plague Caribbean countries while policies of austerity to address the aforementioned have had mixed results.²³ However, the RTC establishes the CSME as an integrative developmental strategy for the removal of trade and professional restrictions between its Member States and to mitigate weak financial market development.²⁴

[20] Import duties are not applied to goods of CARICOM origin; tariffs and most unauthorised quantitative restrictions are removed in the Member States and there are regional standards for the production of goods throughout the region.²⁵ In terms of services expansion, Article 46 of the RTC allows university graduates, artistes, musicians, media workers and sportspersons to seek employment in any Member States once regarded by the competent authorities in the receiving Member States. These provisions facilitate the right to establish businesses, to provide regional services, the free movement of capital and the coordination of economic policies.²⁶ This aims to create a unified economic framework for CARICOM that is essential for pursuing affiliations with external States. While the remaining barriers to intraregional trade prevent the formation of a fully functioning customs union, it is unlikely that their removal alone would instigate a

²³ Troy Lorde, Antonio Alleyne, Roger Hosein & Mu Yifei, 'Should the Caribbean Look to the East? An Assessment of Caribbean Export Potential' (2019) 34(1) *The International Trade Journal* 136.

²⁴ See: Preamble of the Revised Treaty of Chaguaramas Establishing the Caribbean Community (CARICOM) including the CARICOM Single Market and Economy (adopted 7 May 2001, entered into force 4 February 2002) 2259 UNTS 293, which speaks to the '*deepening regional economic integration through the establishment of the CSME in order to achieve sustained economic development based on international competitiveness, co-ordinated economic and foreign policies, functional co-operational and enhanced trade and economic relations with third States...*'.

²⁵ ECLAC, 'Trade Policy in CARICOM: Overview of the Main Trade Policy Measures' (30 December 1999) UN Doc LC/CAR/G.591.

²⁶ 'Definition of CSME' (*CARICOM Single Market and Economy*, 15 September 2019) <https://www.csmeonline.org/news/about-the-csme/> accessed 16 May 2020.

significant improvement in intraregional trade.²⁷ Trade remains delimited by other factors such as inefficient regional transport facilities²⁸ and the small size of the regional market. It is for this reason that CARICOM’s integration goals also focus on fostering international competitiveness through the creation of a harmonised economic area as well as boosting intraregional trade.²⁹ However, in the international sphere, CARICOM’s trade predominantly lies with Canada, Europe and the USA, and has stagnated. This will be further analysed using the data below.

	CARICOM EXPORTS TO COUNTRY (\$USD)	AS % OF TOTAL COUNTRY WORLD IMPORTS	AS % OF TOTAL CARICOM WORLD EXPORTS	CARICOM IMPORTS FROM COUNTRY (\$USD)	AS % OF TOTAL COUNTRY WORLD EXPORTS	AS % OF TOTAL CARICOM WORLD IMPORTS
CANADA ³⁰	0.48M	0.11%	2.9%	0.55M	0.13%	1.9%
EU ³¹	2.18M	0.04%	12.8%	2.65M	0.05%	9.0%
USA ³²	6.16M	0.27%	36.2%	11.1M	0.74%	37.8%

Table 1: CARICOM’s Trading Relationship with Canada, the EU and USA (2015)

²⁷ Integration and Regional Programs Department and Institute for the Integration of Latin America and the Caribbean, ‘CARICOM Report No. 2’ (Inter-American Development Bank 2005).

²⁸ Dr. Justin Ram, ‘Air Transport: Competitiveness and Connectivity in the Caribbean’, (30 May 2018) 48th Annual Meeting Air Transport Study <<https://pt.slideshare.net/caribank/48th-annual-meeting-air-transport-study-dr-justin-ram-105570207>>; The author notes that the decline in this intra-regional travel was owed to the high taxes and fees associated and suggests that increasing regional travel and transport is key for the region’s economic growth.

²⁹ *ibid.*

³⁰ International Trade Centre, ‘Bilateral trade between Caribbean Community (CARICOM) and Canada’ (*Trade Map*)

<https://www.trademap.org/Bilateral_TS.aspx?nvpm=1%7c%7c37%7c124%7c%7cTOTAL%7c%7c%7c2%7c1%7c1%7c2%7c2%7c1%7c1%7c1%7c1%7c1> accessed 12 June 2020; International Trade Centre, ‘Bilateral trade between Caribbean Community (CARICOM) and Canada’ (*Trade Map*)

<https://www.trademap.org/Bilateral_TS.aspx?nvpm=1%7c%7c37%7c124%7c%7cTOTAL%7c%7c%7c2%7c1%7c1%7c1%7c2%7c1%7c1%7c1%7c1%7c1> accessed 12 June 2020.

³¹ International Trade Centre, ‘Bilateral trade between Caribbean Community (CARICOM) and European Union (EU 28)’ (*Trade Map*)

<https://www.trademap.org/Bilateral_TS.aspx?nvpm=1%7c%7c37%7c%7c14719%7cTOTAL%7c%7c%7c2%7c1%7c1%7c1%7c2%7c2%7c1%7c1%7c1%7c1%7c1> accessed 12 June 2020; International Trade Centre, ‘Bilateral trade between Caribbean Community (CARICOM) and European Union (EU 28)’ (*Trade Map*)

<https://www.trademap.org/Bilateral_TS.aspx?nvpm=1%7c%7c37%7c%7c14719%7cTOTAL%7c%7c%7c2%7c1%7c1%7c1%7c1%7c2%7c1%7c1%7c1%7c1%7c1> accessed 12 June 2020.

³² International Trade Centre, ‘Bilateral trade between Caribbean Community (CARICOM) and United States of America’ (*Trade Map*)

<https://www.trademap.org/Bilateral_TS.aspx?nvpm=1%7c%7c37%7c842%7c%7cTOTAL%7c%7c%7c2%7c1%7c1%7c2%7c2%7c1%7c1%7c1%7c1%7c1> accessed 12 June 2020; International Trade Centre, ‘Bilateral trade between Caribbean Community (CARICOM) and United States of America’ (*Trade Map*)

<https://www.trademap.org/Bilateral_TS.aspx?nvpm=1%7c%7c37%7c842%7c%7cTOTAL%7c%7c%7c2%7c1%7c1%7c1%7c2%7c1%7c1%7c1%7c1%7c1> accessed 12 June 2020.

[21] **Table 1** shows that the trading between CARICOM and these States occurred at varying the levels in 2015 – with CARICOM having the lowest exports and imports rates with Canada, and the strongest with the USA. However, the data also demonstrated that CARICOM trade with these countries acts as a major economic driving force. This is because, taken cumulatively, trade with these three States account for approximately 50% of CARICOM’s total exports and 48% of the region’s total imports. There is an evident imbalance in these relationships because while these States (mainly the USA and the EU) have effectively penetrated CARICOM’s market, yet the relationship is not reciprocal. CARICOM’s exports and imports to these States have accounted for less than 1% in both spheres. This is largely because of the size of the region, as well as the region’s inability to innovate in the goods and services it offers.

	CARICOM EXPORTS TO COUNTRY (\$USD)	AS % OF TOTAL COUNTRY WORLD IMPORTS	AS % OF TOTAL CARICOM WORLD EXPORTS	CARICOM IMPORTS FROM COUNTRY (\$USD)	AS % OF TOTAL COUNTRY WORLD EXPORTS	AS % OF TOTAL CARICOM WORLD IMPORTS
CANADA ³³	0.81M	0.18%	4.8%	0.75M	0.17%	2.4%
EU ³⁴	4.08M	0.06%	24%	3.7M	0.06%	11.6%
USA ³⁵	6.03M	0.23%	35.5%	13.8M	0.84%	43.5%

Table 2: CARICOM’s Trading Relationship with Canada, the EU and USA (2019)

[22] **Table 2** is similar to **Table 1** in several aspects. In 2019, the data again portrayed that CARICOM has the strongest exports and imports rates with the USA and the weakest with Canada. Since 2015, there has been a decrease in exports to the USA by 2.11% (\$0.13m) but an increase in exports to the EU by 87.1% (\$1.9m) and to Canada by 68.7% (\$0.33m). Additionally, since 2015, there has been a significant increase in imports from the USA by 24.3% (\$2.7m), with increases occurring simultaneously in both the EU at 39.6% (\$1.05m) and Canada at 36.3% (\$0.20m). However, despite these apparent changes, it notably persists that CARICOM’s exports and imports to these States have nonetheless remained at less than 1% of their total market activity. This indicates that these States have sought to expand their trading relationships with other States beyond CARICOM, but CARICOM has not done the same. This may indicate that region is not a trading priority for these developed States, producing a relationship in which CARICOM neither equally nor substantially benefits.

³³ Bilateral trade between Caribbean Community (CARICOM) and Canada (n 30).

³⁴ Bilateral trade between Caribbean Community (CARICOM) and European Union (EU 28) (n 31).

³⁵ Bilateral trade between Caribbean Community (CARICOM) and United States of America (n 32).

[23] Therefore, to gain more traction in expanding trade, the region is actively seeking to extend and diversify its relationships. Therefore, in improving its worldwide market involvement, one State with whom CARICOM can enhance its association with is China.

1.3.2 CHINA IN THE GLOBAL ECONOMY

[24] Contrastingly, China is a major powerhouse in the global economy. Although anticipated to experience a slowdown in expansion, its high investment rates, large labour force and “steady convergence” estimates that China will be the largest economy by 2041.³⁶ Growth rates for the Chinese economy have accrued double digits annually over the last thirty years. In assessing China’s economic complexity, one must observe the product space. The product space is a network for connecting products that are likely to be co-exported and can be used to predict the evolution of a country’s export structure. The top exports of China are broadcasting equipment (\$231bn), computers (\$146bn), office machine parts (\$90.8bn), integrated circuits (\$80.1bn) and telephones (\$62bn), using the 1992 revision of the Harmonised System classification.³⁷

[25] China’s economy possesses an Economic Complexity Index of 0.691 making it the 33rd most complex economy.³⁸ China exports 540 products with revealed comparative advantage (meaning that its share of global exports is larger than what would be expected from the size of its export economy and from the size of a product’s global market). As of 2017, China had a positive trade balance of \$873bn in net exports³⁹ in comparison to their trade balance in 1995 when they still had a positive balance of \$79.8bn in net exports. Also, in 2017, China imported \$1.54tn, making it the 2nd largest importer in the world. Within the last 5 years, the imports of China have increased at an annual rate of 1.3%, from \$1.42tn in 2012 to \$1.54tn in 2017. The most recent imports are led by integrated circuits which represent 13.5% of the total imports of China, followed by crude petroleum, which accounts for 9.4%.⁴⁰ Again in 2017, China exported \$2.41tn, making it the largest exporter in the world. Exports have gradually increased at an annualised rate of 2.5%,

³⁶ Osvaldo Rosales, ‘The People’s Republic of China and Latin America and the Caribbean: Towards a Strategic Relationship’ (Economic Commission for Latin American and the Caribbean 2010) <http://www.eclac.org/publications/xml/1/39521/China_Lation_America_Caribbean_strategic_relationship_906.pdf> accessed 12 February 2020.

³⁷ AJG Simoes, CA Hidalgo, ‘The Economic Complexity Observatory: An Analytical Tool for Understanding the Dynamics of Economic Development’ (Workshops at the Twenty-Fifth AAAI Conference on Artificial Intelligence 2011) <<https://oec.world/en/profile/country/chn/#Exports>> accessed 14 March 2020.

³⁸ *ibid.*

³⁹ *ibid* <<https://oec.world/en/visualize/line/hs92/show/chn/all/all/1995.2017/>>.

⁴⁰ *ibid* <https://oec.world/en/visualize/tree_map/hs92/import/chn/all/show/2017/>.

from \$2.12tn in 2012 to \$2.41tn in 2017.⁴¹ Broadcasting equipment drives exports at a rate of 9.6% of total Chinese exports, followed by computers which tract 6.08%.

[26] China's negotiations with developing countries and the core of its foreign economic scheme hinge on an apparent principled cycle. Its premise is that by trading, investing and lending, economic expansion opportunities emerge for both China and its developing partners. As such, China contends that this economic advancement structure grounds its social and political geopolitical security.⁴² Despite the USA-China trade war,⁴³ if China manages its obstacles strategically and continues to structurally readjust, it will likely cement its position as an endorser of a multipolar global economic framework. This will be beneficial to States of varying income-earning capacities. Consequently, this can create opportunities for a market for CARICOM exports as it is evident that China is one of the main drivers of global growth.⁴⁴

1.4 CARICOM'S INTEREST IN CHINA

[27] The potential for social and economic development within the region drives the engagement between CARICOM and China. China offers a long-standing relationship which can be an important source for development assistance, FDI and trade. China's membership in the Caribbean Development Bank (CDB) and Inter-American Development Bank (IDB) is important as it can advance deeper financial and economic co-operation with the region.⁴⁵ However, it cannot be ignored that development and economic sustainability is only achievable between CARICOM and China provided there is a reformulation of the dynamics of the trade and economic relationship. This can be achieved through a formalised agreement whose provisions would set out the dynamic of the trade and economic relationship, ideally giving CARICOM some advantage since it is outmatched by China's global dominance.

[28] Additionally, China creates economic opportunities to be exploited by both Parties through its investment agreements which CARICOM perceives as being faciliatory in reducing the disparity

⁴¹ *ibid* <https://oec.world/en/visualize/tree_map/hs92/export/all/show/2017/>.

⁴² Mingjiang Li, 'The Belt and Road Initiative: Geo-economics and Indo-Pacific Security Competition' (2020) 96(1) *International Affairs* 169.

⁴³ Chi Hung Kwan, 'The China-US Trade War: Deep-Rooted Causes, Shifting Focus and Uncertain Prospects'. (2019) 15(1) *Asian Economic Policy Review* 55; Gordon H. Hanson, 'The Impacts of the U.S.-China Trade War' (2020) 55 *Business Economics* 69.

⁴⁴ Annita Montoute, 'Caribbean-China Economic Relations: What are the Implications?' (2013) 1 *Caribbean Journal of International Relations & Diplomacy* 110.

⁴⁵ Bruce Golding, 'China-Caribbean Ties for Development and Progress' (*China Daily*, 2 March 2010) <http://www.chinadaily.com.cn/cndy/2010-02/03/content_9418077.htm> accessed 13 February 2020.

between developed and developing States such as SIDS and other vulnerable countries. CARICOM values China's approach to enhancing the effective economic participation of all States.⁴⁶ Further, CARICOM sees strengthening its association with China as vital because of its aptitude to revolutionise the world economic arrangement.

[29] Finally, China presents the Caribbean with a feasible opportunity to diversify its global trade partnerships. Research demonstrates that East Asia, a market with 60% of the world's consumers, has long been identified as a region to which the Caribbean should look to as they seek to diversify their export markets.⁴⁷ Subsequently, the primary motive for an improved relationship with China would be strategic alignment of the Caribbean with one of the fastest-growing regions in the world.⁴⁸

1.5 CHINA'S INTEREST IN CARICOM

[30] China has interests in the Caribbean for multiple reasons. Firstly, the "One China Policy" furthers China's desire to curtail recognition of Taiwan by CARICOM States. When States uphold the "One China Policy", they often receive economic support from China. This incentive allows China to maintain its supremacy over Taiwan as some CARICOM States may be unwilling to risk China's disfavour, and consequent lack of economic support.

[31] Secondly, China's foreign policy towards the Caribbean is a reflection of its broader foreign policy objectives in an increasingly globalised economy.⁴⁹ Due to its economic reform in foreign investment and technology, China rose in prominence in global market exportation. Its global geostrategic ambitions prompted its association and involvement with international organisations, including regional institutions such as the IDB and CDB which extends its reach to more nations, including those in the Caribbean. Unsurprisingly, this model of participation has resulted in China taking greater interest in regions it had not previously done so. This is because their involvement with regional institutions such as the IDB and CDB can aid in monitoring and assessing States' economic situations. This gives China insight into how they invest and trade with CARICOM States. China's membership in institutions such as the IDB and CDB indicates

⁴⁶ Montoute (n 44) 111.

⁴⁷ Norman Girvan, *Societies at Risk? The Caribbean and Global Change* (Discussion Paper No. 17, UNESCO 1997).

⁴⁸ Lorde et al (n 23).

⁴⁹ Montoute (n 44) 113.

that economic globalisation has favoured China, unlike CARICOM States. Consequently, current relations between the Parties must be viewed within such a context.

[32] Thirdly, China is also interested in the Caribbean as part of its objectives for attaining food and energy security and sustaining its rapid economic growth. China's growth is happening at a phenomenal rate and so are its energy needs. China therefore wants to acquire oil reserves wherever they exist, and the Caribbean is one such place. The Caribbean is the source of minerals: asphalt and gas in Trinidad & Tobago; bauxite in Jamaica and Guyana and timber and minerals in Guyana. The Caribbean also has vast amounts of maritime resources and Guyana, Belize and Suriname have land for agricultural production.⁵⁰

[33] Finally, the Caribbean provides an attractive market for Chinese products and investments. The Caribbean can be an entry point for Chinese products to the Canadian, EU and USA markets. CARICOM countries provide a "production platform" due to preferential arrangements provided by the Caribbean Basin Economic Recovery Act, Caribbean-Canada Trade Agreement and the CARIFORUM-EU EPA. The Caribbean also provides openings for Chinese investments and business opportunities for Chinese firms and employment of Chinese labour.⁵¹

⁵⁰ Richard Bernal, 'The Dragon in the Caribbean: China-CARICOM Economic Relations' (2010) 99(408) The Round Table: The Commonwealth Journal of International Affairs 281.

⁵¹ *ibid.*

CHAPTER 2: CHINA AND CARICOM'S TRADE OBJECTIVES

[34] In this chapter the trade policy of CARICOM and China are outlined to identify key values and points of focus. The similarities in the policies of the two parties are examined so that possible areas of partnership and the type of relationship that the parties can have may be determined.

2.1 CARICOM'S TRADE OBJECTIVES

[35] The information presented in this section is taken from the RTC 2001 and the Strategic Plan for the Community which was approved in 2014. CARICOM's goals are expressed in broad and aspirational terms making it difficult to pinpoint its strategy as it relates to economics and trade. Despite this difficulty the broadly expressed goals may prove to be beneficial as they offer more flexibility as time passes and the relationship between CARICOM and China develops.

2.1.1 THE RTC

[36] The Community's Agricultural Policy is found in Article 56. The goals of this Policy include the improvement of the agricultural sector, increased quality and production of agricultural products, food security and poverty alleviation and the sustainable exploitation of natural resources.

[37] The trade objectives of CARICOM are outlined in Article 78. The goal of the Community Trade Policy is the sustained growth of the Community and international trade and the mutually beneficial exchange of goods and services among the Member States and between the Community and third States. This goal signifies the importance of maintaining Community trade and economic development while establishing ties with other trade partners like China. This is further supported by the goal of the Community Industrial Policy outlined in Article 51 which is market-led, internationally competitive and sustainable production of products for the promotion of the Region's economic and social development.

[38] In Article 78(2) the objectives which are to be pursued in the fulfilment of the trade policy include the full integration of the markets of Member States, widening of the Community market area, the active promotion and export of internationally competitive Community products and securing favourable trade terms for Community products exported to third States and groups of States.

[39] Article 134 contains the Community Transport Policy the goal of which is the provision of adequate, safe and internationally competitive transport services for the development and

consolidation of the CSME. The objectives of this goal include the organisation of efficient, safe and affordable air and sea transport services throughout the Community, expanded transportation capabilities and the development of human resources for employment in all areas and at all levels of the transport sector.

[40] These objectives like those found in the Industrial and Trade Policies indicate a need to maintain positive relationships among CARICOM Members while strengthening ties with third States.

[41] Infrastructure cooperation in the field of transportation is also a goal that China has on its agenda according to its Policy Paper.⁵² Improved infrastructure in the region would increase the quality of life of its citizens and aid in revamping the region's tourism product. Cooperation in transportation could create opportunities in regional tourism as China may be a new and untapped tourism market that CARICOM considers to sustain the future of tourism which is a major industry particularly in the smaller island States within CARICOM.

2.1.2 STRATEGIC PLAN FOR THE CARIBBEAN COMMUNITY

[42] The trade and economic goals of CARICOM can also be determined by the Community's Strategic Plan. At the 35th Regular Conference of Heads of Government Meeting held in Antigua and Barbuda in July 2014, CARICOM approved its first five-year Strategic Plan. The plan identifies six Strategic Priorities for the Community for the period 2015-2019 which complement one another. The Strategic Priority areas are:

1. building economic resilience;
2. social resilience;
3. environmental resilience;
4. technological resilience;
5. strengthening the CARICOM identity and spirit of community; and
6. strengthening community governance.⁵³

⁵² 'China's Policy Paper on Latin America and the Caribbean' (*Ministry of Foreign Affairs of the People's Republic of China*, 24 November 2016)

<https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/t1418254.shtml> accessed 16 March 2020.

⁵³ CARICOM, 'Strategic Plan for the Caribbean Community 2015 – 2019: Repositioning CARICOM' (*CARICOM* 3 July 2014) 10-44.

2.1.3 **BUILDING ECONOMIC RESILIENCE**

- [43] The focus here is the creation of an enabling environment for the stabilisation and transitioning growth of the economies of Member States. This will be done by accelerating implementation and use of the CSME, integration into the global economy, introduction of measures for macroeconomic stabilisation and building competitiveness and unleashing key economic drivers to transition to growth.
- [44] The CDB has outlined the macroeconomic challenges faced by Caribbean economies to be low economic growth, high debt, low savings and declining reserves, output volatility and trade concentration, poor sovereign debt ratings and financial sector vulnerabilities and stability risks.⁵⁴ In its 2018 Blueprint for Caribbean Economies the CDB has outlined three policy priorities to correct the macroeconomic issues that they face namely, economic growth and diversification, prudent fiscal policy and a strong, resilient financial sector. The CDB suggests that reduced spending could assist with bringing public accounts into equilibrium. Social spending and subsidises often do not assist the groups that they are intended to help, additionally transfers to inefficient state-owned enterprises also results in wasted expenditure. Prudent borrowing and debt management are also advocated for by the CDB and it suggests that governments should save 10% of their revenue, keep debt levels below 50% of GDP with a 10% buffer to borrow for disaster recovery. To aid in strengthening the financial sector the CDB recommends the implementation of anti-money laundering best practices and increasing the technical capacity of banks and credit unions.
- [45] The principle of regional growth speaks to a collective agreement with China and negotiation to secure the best outcomes for both Parties. Guyana, Jamaica and Trinidad & Tobago have more to offer to China in terms of trade and natural resources than other CARICOM States. This must be taken into account when negotiating a trade agreement with China as competition between Member States undermines the goals that CARICOM has set for itself. Building regional economic resilience requires the collaboration among Member States when entering into a relationship with China.

⁵⁴ Justin Ram et al, 'A Policy Blueprint for Caribbean Economies' (2018) CDB Working Paper No. CDB/WP/18/01 <<https://www.caribank.org/sites/default/files/publication-resources/A%20policy%20blueprint%20for%20Caribbean%20economies.pdf>> accessed 30 May 2020.



2.1.4 BUILDING SOCIAL RESILIENCE

[46] CARICOM is focused on improving the lives of its people. This improvement will be advanced through strategies which include advancing human capital development through education reform and youth development, mainstreaming inclusiveness in public policy, advancing initiatives for health and wellness and enhancing citizen security and justice. The broad goal that CARICOM seeks to achieve through this Strategic Priority is sustainable human development with reduced levels of poverty and equitable access by vulnerable groups and significant improvement of citizen security by facilitating a safe, just and free Community. This is particularly important as the CBD found that in 2016 the murder rate in the Bahamas, Belize, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines and Trinidad & Tobago exceeded 25 per 100,000.⁵⁵ This rate is much higher than the 2015 murder rates of the USA and Singapore which were 4.9 and 0.2 respectively.⁵⁶ The CDB noted that violent crime has increased citizen insecurity, the cost of policing and threatens tourism income.⁵⁷ Persistent regional poverty has contributed to rising crime rates in the region.⁵⁸ In 2010, 19% of the population in Barbados was poor, in 2006, 36.1% of Guyana's population was poor, 15.5% of the population of Trinidad & Tobago was reported to be poor in 2005 and 20% of the population in Jamaica was reported as poor in 2012.⁵⁹

2.1.5 ENVIRONMENTAL RESILIENCE

[47] Climate change is a major concern for all CARICOM States as the region is prone to severe weather and especially given its recent struggle in the aftermath of several hurricanes which left many Members devastated.⁶⁰ Building environmental resilience should be pursued by advancing climate change adaptation and mitigation, advancing disaster mitigation and enhancing the management of the environment and natural resources. The ultimate goal of this Strategic Priority is to reduce the region's vulnerability to disaster risk and the effects of climate change and ensure effective management of the natural resources across the Member States. The Priority of Economic Resilience is connected to environmental resilience as the occurrence of a natural disaster can affect a countries ability to service its debt. The inclusion of 'hurricane clauses' in

⁵⁵ UN Office on Drugs and Crime: International Homicide Statistics Database.

⁵⁶ *ibid.*

⁵⁷ Ram et al (n 54).

⁵⁸ *ibid*

⁵⁹ *ibid*

⁶⁰ Most notable are Hurricanes Maria and Irma in Dominica and Barbuda respectively in 2017 and Hurricane Dorian in the Bahamas in 2019.

loan agreements can assist in achieving this goal as they provide immediate relief to Caribbean States when affected by natural disasters such as volcanic eruptions, earthquakes, floods or hurricanes.⁶¹ In 2015 Grenada restructured its debt and inserted a clause which stipulated an immediate, if temporary, debt moratorium if the country were struck by a natural disaster, this agreement guarantees financial relief in times of distress.

2.1.6 BUILDING TECHNOLOGICAL RESILIENCE

[48] CARICOM is currently taking steps to develop a regional digital economy within the CARICOM Digital Agenda 2025. In pursuit of this attention will be placed on developing a Single CARICOM information and communications technology (ICT) Space, bringing technology to the people and transforming them to digital citizens and digital entrepreneurs, strengthening cyber security and mobilising resources and commitment of Member States to invest in ICT. The goal of this Strategic Priority is to produce innovative, technology-driven economies and societies in the Region.⁶²

2.1.7 STRENGTHENING THE CARICOM IDENTITY AND SPIRIT OF COMMUNITY

[49] Four primary strategies are proposed by the Plan to achieve this Priority:

1. undertaking a comprehensive public education, public information, public relations and advocacy programmes that position CARICOM in the hearts and minds of the people of the Community and in so doing, fosters a sense of belonging and commitment to the region;
2. refining and promoting the CARICOM identity and civilisation;
3. facilitating opportunities for the people of the region to build social and economic relationships; and
4. strengthening relationships among the Member States.

The overarching goal sought from this Strategic Priority is the refinement and intensification of the “CARICOM identity” that binds the people of the Member States

⁶¹ Robin Wigglesworth and Colby Smith, “Hurricane clause’ in bonds helps countries struck by disaster’ (*Financial Times*, 4 June 2019) <<https://www.ft.com/content/4917e73a-8305-11e9-b592-5fe435b57a3b>> accessed 30 May 2020.

⁶² For example, the Eastern Caribbean Central Bank are contemplating the launch a digital currency which will make transactions safer and more efficient. See, Rachel McIntosh, ‘Eastern Caribbean Central Bank joins with Bitt Inc in Blockchain Initiative’ (*Finance Magnates*, 14 March 2018) <<https://www.financemagnates.com/cryptocurrency/news/cryptocurrencynewseastern-caribbean-central-bank-joins-bitt-inc-blockchain-initiative/>> accessed 30 May, 2020.

together and engenders a sustained sense of belonging. This goal is important as the people of the region must understand and believe in the CARICOM and work toward the achievement of its purpose together for it to be successful.

2.1.8 STRENGTHENED GOVERNANCE ARRANGEMENTS WITHIN CARICOM

[50] CARICOM is governed by Community law and is comprised of its Organs and Bodies and their binding decisions, the RTC and related Agreements and Policies and Protocols adopted by the Community. A formal structure for decision-making and implementation is provided for by the Treaty, dispute settlement is also provided for and includes recourse to the Caribbean Court of Justice. The ultimate goal is to ensure effective and efficient governance arrangements that support good decision making, successful implementation of the regional agenda and accountability by all actors. Proper administration is therefore key to accomplish CARICOM's goals. The importance of competent leadership and informed decision making is highlighted in this Priority.

[51] The strategic goals outlined above are driven and enabled by coordinated foreign and external relations which will contribute to CARICOM's active participation in the international arena and research and development and innovation.

2.2 CHINA'S TRADE OBJECTIVES

[52] In 2016 the Government of China published a White Paper detailing its strategy to develop political and economic relations with Latin America and the Caribbean.⁶³ The White Paper outlines how China seeks to establish a cooperative partnership with the Caribbean namely by adhering to the principles of equality and sincere mutual support, mutually beneficial cooperation, exchanges and mutual learning and development of collective and bilateral cooperation. It is clear from this that partnership with CARICOM is on China's agenda.

[53] The objectives of China are set out in specific terms. They give a clear picture of what China wants its relationship with the Caribbean to look like. Objectives which China seeks to achieve from a relationship with Latin America and the Caribbean involve political exchange and learning, the promotion of trade, investment and financial cooperation, social development,

⁶³ China's Policy Paper on Latin America and the Caribbean (n 52).

cultural exchange and education, international collaboration and cooperation in judicial and security affairs. The key objectives outlined in China's 2016 White Paper are as below.

2.2.1 POLITICAL COOPERATION

[54] Mutual respect for internal affairs, strengthening communication on bilateral relations and issues of mutual concern, exchanges of experience on governance and exchanges between legislatures are some of the ways that China wishes to partner with the Caribbean politically.

2.2.2 ECONOMIC COOPERATION

[55] To foster an economic partnership China has expressed an interest in collaborating in the trade of goods with competitive advantages and strengthening the trade in services and e-commerce in the Caribbean. Increased agreements on investment, avoidance of double taxation and tax evasion with the Caribbean are also of interest to China. Cooperation in the fields of energy, infrastructure, manufacturing, agriculture, science and technology and customs and quality inspection are also areas of partnership that China wishes to pursue with the region.

2.2.3 SOCIAL AND CULTURAL COOPERATION

[56] Environmental protection and climate change are important to China. Deepening policy dialogue, sharing information and technical cooperation in the fields of water resource planning and utilisation, ecosystem protection, river-lake management, disaster reduction and relief is also on China's agenda. Reducing poverty and hunger and developing social policies in favour of the poor along with cooperation in the disease control, regional or global epidemic diseases and response to public health emergencies are also of interest to China.

2.2.4 INTERNATIONAL COLLABORATION

[57] China wants to partner with the Caribbean on international political affairs, global economic governance, cyber security and the implementation of the 2030 Agenda for Sustainable Development by the UN Sustainable Development Summit.

2.2.5 COLLABORATION ON PEACE, SECURITY AND JUDICIAL AFFAIRS

[58] Deepening of professional exchanges in military and personnel training and UN peacekeeping is a goal that China has, along with cooperation in humanitarian relief and counterterrorism.

Providing judicial assistance in criminal matters by signing treaties concerning such matters is also part of China's agenda.

- [59] China's publication of its White Paper on Latin America and the Caribbean expresses its interest in building an economic relationship with CARICOM. Though the members of CARICOM are small in size there is much that they can offer to China. Currently China is engaged in several economic agreements with small States, some of which will be examined in **Chapter 5** to determine their common themes and effect on trade.
- [60] Having outlined the terms of the trade policies of both CARICOM and China, the question now is what does it all mean for the relationship between the two? A look at the policies published by both Parties reveal many areas of overlap which can be taken advantage of to build a beneficial trading relationship.
- [61] The social welfare of people is of great importance to both Parties. China has indicated this by their commitment to move towards social and cultural cooperation which entails social governance, poverty reduction and disaster mitigation. Vulnerable groups such as the elderly, the disabled and children as well as rural and disadvantaged groups were highlighted in the Chinese Policy Paper as being of particular concern. CARICOM has indicated its commitment to human development in its agricultural policy and its goal of building social resilience. CARICOM's focus on building regional pride also shows a desire to consider the human element in its development plan. Both Parties agree that the quality of life of its people is of key importance and that the development of human capital is to be championed as a key theme of any partnership.
- [62] Regarding agriculture, the policy of both Parties speaks to the promotion of food security. A major concern of CARICOM is the maintenance of the region's natural resources and China's commitment to set up and improve agricultural technology demonstrates a willingness to improve on current techniques which could be channelled towards preserving the environment.⁶⁴ The Chinese government has spoken of the special fund for China-Latin America agricultural co-operation and encourages more projects on agricultural cooperation which could benefit CARICOM.
- [63] Disaster management is also of critical importance to the CARICOM given the vulnerability of its members to hurricanes as outlined under the mandate of environmental resilience in the

⁶⁴ China's Policy Paper on Latin America and the Caribbean (n 52).



Strategic Plan.⁶⁵ This aligns with China's interests as disaster reduction and environmental protection through policy implementation and information sharing are on its agenda. Agreement in this area would also assist in the creation of a sustainable trade relationship between CARICOM and China as depletion of natural resources is also a concern to CARICOM States.

[64] CARICOM has outlined the development of the technological capabilities of the region on its agenda, and as the largest exporter in the world, China could be the perfect partner for CARICOM to learn from. The Chinese government has indicated that exchanges and mutual learning are among its guiding principles thus partnership in this area is ripe for discussion.

[65] In conclusion the objectives of both Parties show that they have many identical values and prioritise the same policy objectives such as equal, mutually beneficial partnership and the sharing of information. The broad terms used to articulate CARICOM's trade and economic objectives need to be tailored to reflect the kind of relationship that CARICOM wants to have with China as an equal trading partner. The identified areas of overlap provide the best starting point to shape these goals.

⁶⁵ CARICOM's Strategic Plan (n 53).



CHAPTER 3: CARICOM–CHINA’S TRADING, INVESTMENT AND ECONOMIC AGREEMENTS

[66] The following sections delve into the current trading, economic and investment agreements between CARICOM States and China such as the DTT, the BITs and the BRI. These sections also show that the relationship between the two Parties appears to be predominantly through loans and grant funding but argues there is also the existence of high trade potential between the Parties.

3.1 TRADE, INVESTMENT AND DEVELOPMENT

[67] It is important to assess the current import-export dynamics and investment relationships between CARICOM and China to determine whether they are natural trading partners. Research demonstrates that trading partners are natural if their trading structure is characterised by complementarity. There is also a theoretical model developed to show that a preferential trade agreement, such as the proposed CETA, between countries with strong and improving complementary trade structures is likely to be welfare enhancing.⁶⁶ In a more recent analysis of CARICOM’s trade potential with China concerning partner-based and sectoral advantages, economists posit that the region and China are complementary economies, i.e. natural trading partners. However, they argue that ‘bilateral trade with China is rising based on their importance in world trade compared with the bilateral trade of its traditional partners such as the European Union’.⁶⁷ This section will examine economic relations between CARICOM and China over the last four years and discuss the implications of this past engagement.

⁶⁶ Maurice Schiff, ‘Will the Real “Natural Trading Partner” Please Stand Up?’ (2001) 16(2) *Journal of Economic Integration* 246; Lorde et al (n 23).

⁶⁷ Antonio Alleyne & Dr. Yifei Mu, ‘Intensifying Bilateral Cooperation and Possibilities for Caribbean Industries in the Chinese Market: A Gravity Model Investigation of CARICOM Members’ (2014) 14(2) *Applied Econometrics and International Development* 145.

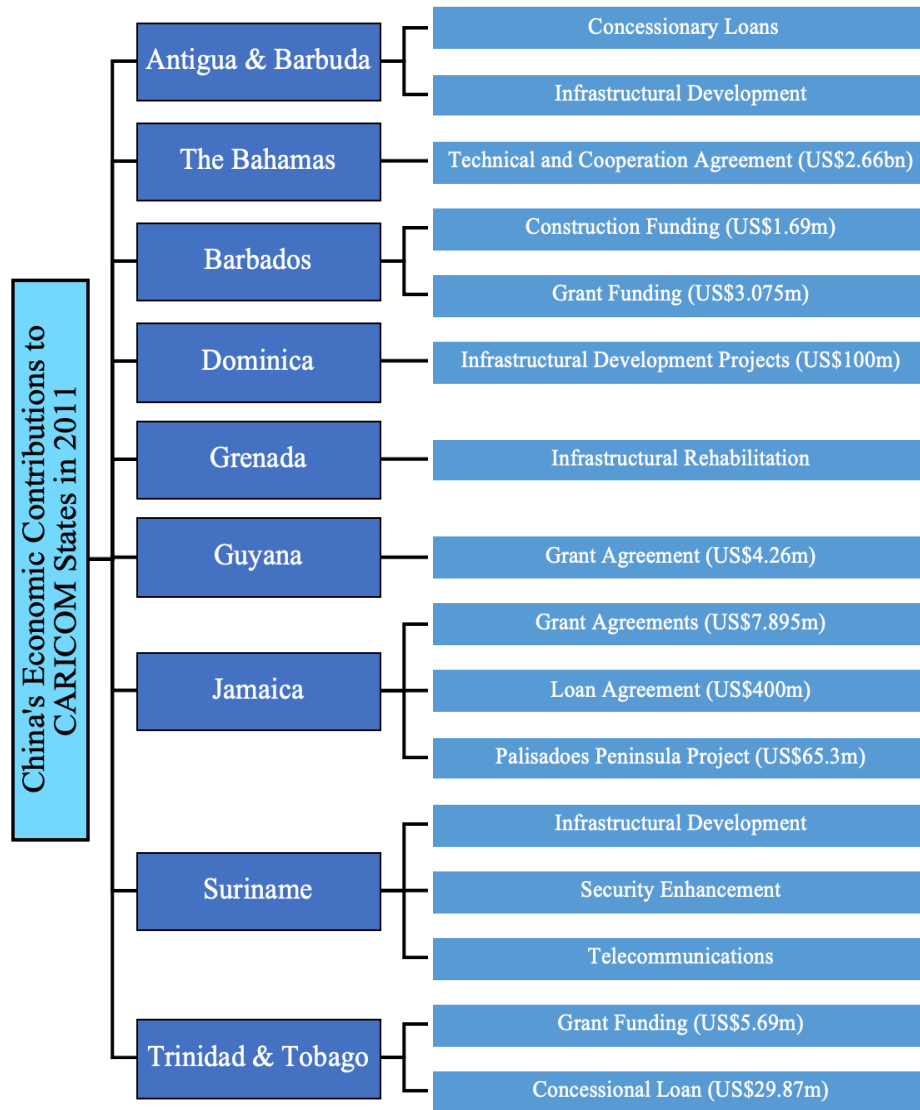


Figure 1: China's Economic Contribution to CARICOM States in 2011

[68] Beyond the scope of international trade, China has contributed significantly to the development of the Caribbean FDI in a number of projects or financial loans. **Figure 1**⁶⁸ highlights that Chinese investment in the region has largely been through grant funding and infrastructural development. Some of these are quite substantial (e.g. USD\$2.66bn for the Bahamas in a Technical and Co-operation Agreement) and undoubtedly showcase China's economic development model as a system to which the State commits itself. All of these were implemented following the 3rd Trade and Economic Forum in 2011 which sought to deepen economic relations between China and the Caribbean.

⁶⁸ Montoute (n 44) 120-121.

[69] Additionally, Jamaica has received approximately US\$2.1bn in funding from China in the past, mostly for infrastructure initiatives such as road construction and bridge rehabilitation. In 2017 alone the country received US\$326m for the Southern Coastal Highway Improvement Project.⁶⁹ Other Caribbean-based projects include the reconstruction of the Sam Lord's Castle hotel and expansion of the Grantley Adams Airport in Barbados, as well as the construction of the National Academy of the Performing Arts in Trinidad. However, the impact of these types of arrangements may prove to have substantial implications.

3.1.1 **THE IMPACT OF CHINESE INVESTMENT**

The Impact on Caribbean Debt

[70] One must consider the extent to which these Chinese investments play into regional debt. Caribbean debt persists as a dire problem due to environmental disasters which are ultimately exacerbated by the region's existing limited economies. The UN Economic Commission for Latin America and the Caribbean noted that the Caribbean has experienced over 385 climate-related disasters since 1990. The region suffered eight disasters with an annual cost of between 33% and 200% of the affected countries' gross domestic product (GDP).⁷⁰ Annual losses from catastrophic climate events in the Caribbean are estimated at US\$3bn. In addition to these vulnerability challenges, Caribbean countries are among the most highly indebted in the world: in 2018, the average Caribbean debt was 70.5% of GDP.⁷¹

[71] Chinese investment further adds to this growing deficit. For example, Trinidad & Tobago's 2018 debt figure with China is with regard to:⁷²

- Construction of the National Academy for the Performing Arts and Southern Academy for the Performing Arts;
- Outstanding debts from loans for the two are US\$440.3m and US\$180.8m respectively;
- Loan for the construction of the Couva Hospital currently stands at US\$924.5m;

⁶⁹ Chris Devonshire-Ellis, 'China's Belt & Road - The Caribbean & West Indies - Silk Road Briefing' (*Silk Road Briefing*, 13 June 2019) <<https://www.silkroadbriefing.com/news/2019/05/24/chinas-belt-road-caribbean-west-indies/>> accessed 17 February 2020.

⁷⁰ Catherine Benson Wahlén, 'Caribbean Leaders Discuss Debt for Climate Adaptation Swap, Caribbean Resilience Fund' (*SDG Knowledge Hub*, 10 October 2019) <<https://sdg.iisd.org/news/caribbean-leaders-discuss-debt-for-climate-adaptation-swap-caribbean-resilience-fund/>> accessed 19 May 2020.

⁷¹ *ibid.*

⁷² Renuka Singh, 'Gov't Foreign Debt Rising' (*Trinidad and Tobago Guardian*, 1 February 2020) <<http://www.guardian.co.tt/news/govts-foreign-debt-rising-6.2.1044809.8420c59b8c>> accessed 19 May 2020.

- The Government is also owing to a finance facility that allowed for the construction of six sporting facilities; and
- Debt for the purchase of a multi-purpose patrol vessel based on a credit facility, amounting to US\$138.6m.

Its debt to China has spiked from US\$2.2bn in 2018 to US\$6.2bn in 2019 as the government embarked on two new Chinese affiliated projects.⁷³ That new figure includes the existing debt inherited from former administrations and now includes the TT\$3bn for a newly-proposed La Brea Dry Dock facility and the TT\$1bn plan for Phoenix Park.⁷⁴ Another CARICOM State not a stranger to debt is Jamaica: it had one of the highest debt-to-GDP ratios in the world at more than 145% in 2012, according to the International Monetary Fund (IMF). About 4% of its national debt – of more than US\$626m – is owed to China, according to the Planning Institute of Jamaica.⁷⁵ After recent consultations with China, the Prime Minister of Jamaica, Andrew Holness, announced that Jamaica would not be negotiating any new loans with China and would instead focus on private-sector partnerships and reducing Jamaica’s debt. Actions like these demonstrate that if unchecked, China’s expanding engagement in the region risks leaving a series of economic white elephants, leaving the region in insurmountable debt. States like Suriname have expressed its fears that mounting debt to China, spanning decades, can have the impact of stalling future development and exposing the country to liabilities above its ability to repay.⁷⁶

The Terms of Agreements

[72] The effect of the terms in these agreements remain largely undisclosed and unexplored. The lack of disclosure concerning these arrangements harms the overall public procurement culture which is struggling to transform into one that is transparent and accountable.⁷⁷ However, when the substance of these agreements is publicised, waivers tend to be a predominant standardised feature within contracts of the magnitude China has signed with the Caribbean. In the case of Jamaica, for the US\$630m North-South Highway project signed with China Harbour Engineering

⁷³ Renuka Singh & Charles Kong Soo, ‘US Expert Warns: Be Cautious with Chinese Loans’ (*Trinidad and Tobago Guardian*, 24 March 2019) <<http://www.guardian.co.tt/news/us-expert-warns-be-cautious-with-chinese-loans-6.2.808079.ebf2720184>> accessed 19 May 2020.

⁷⁴ *ibid.*

⁷⁵ Tiffany Foxcroft, ‘Jamaica Has China to Thank for Much-Needed Infrastructure – But Some Locals Say It Comes at a Price’ (*CBC*, 28 November 2019) <<https://www.cbc.ca/news/world/china-power-belt-and-road-caribbean-jamaica-1.5374967>> accessed 18 May 2020

⁷⁶ Albert Han, ‘Why Jamaica Wants to Call Time on Chinese Borrowing’ (*South China Morning Post*, 17 November 2019) <<https://www.scmp.com/news/china/diplomacy/article/3038095/why-jamaica-wants-call-time-chinese-borrowing>> accessed 18 May 2020.

⁷⁷ Evan Ellis, ‘China’s Engagement with Trinidad and Tobago’ (*Global Americans*, 26 March 2019) <<https://theglobalamericans.org/2019/03/chinas-engagement-with-trinidad-and-tobago/>> accessed 18 May 2020.

Corporation (CHEC) on June 21, 2012, the government exposed itself to significant debt. According to clause 13.3 of the contract:

The Government shall unconditionally and irrevocably waive any right of immunity (to the fullest extent permitted by applicable law) which it or any of its assets now has or may acquire in the future in any jurisdiction.⁷⁸

The clause speaks specifically to the implication of a possible breach of contract on the part of the Government of Jamaica or such cases where actions of the Jamaica government result in losses to the CHEC. It mandates that the government of Jamaica forfeit any asset currently owned or future assets and could be utilised as a mechanism for debt collection through lawful expropriation and falls within the scope all publicly owned assets in Jamaica. This evidently illustrates a waiver of state immunity which can compromise the security of a State's sovereignty.

[73] Additionally, in another similar capacity, US\$46.7m contract, funded by the Eximbank for a road improvement project in Guyana, signed on January 9, 2017, says in Article 8.1:

The borrower hereby irrevocably waives any immunity on the grounds of sovereignty or otherwise for itself or its property in connection with any arbitration proceeding...or with the enforcement of any arbitral award pursuant thereto.⁷⁹

This means that the government of Guyana is effectively leaving its sovereign immunity vulnerable, that is, the State's freedom from being subject to the legislative, judicial and administrative powers of another State and submits to China's jurisdiction. Subsequently, the laws of Guyana relating to the Agreement would be rendered inapplicable. In essence, this allows China to invoke similar expropriation powers as it did to Sri Lanka after it was unable to satisfy its US\$1.12bn repayment and is widely known as a 'debt trap'.⁸⁰ Clauses like these leave CARICOM States extremely vulnerable as they compromise State sovereignty and risk the consequences of the inability to repay.

Chinese Investment Impact on Local Living

[74] Finally, the scale and impact of Chinese investments bring significant concerns for the local livelihood. In Jamaica, the North South Highway, completed in 2016, was one of the first major infrastructure projects financed and built by a Chinese state-owned company. However, the highway has left Jamaica with a \$730-million debt to China. And the \$32 toll for a 66-kilometre,

⁷⁸ Carla Bridglal et al, 'China's Opaque Caribbean Trail: Dreams, Deals and Debt' (*Caribbean Investigative Journalism Network*, 5 December 2019) <<https://www.cijn.org/chinas-opaque-caribbean-trail-dreams-deals-and-debt/>> accessed 18 May 2020.

⁷⁹ *ibid.*

⁸⁰ Rathindra Kuruwita, 'China to the Rescue in Sri Lanka' (*The Diplomat*, 15 April 2020) <<https://thediplomat.com/2020/04/china-to-the-rescue-in-sri-lanka/>> accessed 18 May 2020.

one-way trip —collected by the Chinese developer — means driving the highway isn't affordable for most Jamaicans.⁸¹ Therefore, there is a huge debate as to which party truly wins and which loses when investments of this magnitude are made. Barbadian authors have contended that their government actively demonstrates its preference for foreign investors – as exhibited in their reduction in corporate taxation in 2018.⁸² As a result, China State Construction Engineering Corporation (CSCEC) have benefited greatly from these tax breaks and contracts which have allowed them to establish their businesses on the island. This particular author believes that the government's frivolous actions of giving away money to many non-Bajan private and corporate investors for the purposes of international tourism has ultimately hurt the economy and the citizens of Barbados. Nevertheless, in order to reconcile their debt, economists like Dr. Don Marshall have suggested that Barbados leave the IMF alone completely and look to China for assistance through a concessionary finance agreement.⁸³ Thus, it appears that there appears to be much unsettlement pertaining to the manner in which China invests in the region. This reiterates the importance of the need for a concrete, substantive agreement between CARICOM and China to be concluded so that proper objectives, protocols and boundaries are established.

3.2 CURRENT INVESTMENT ARRANGEMENTS BETWEEN CARICOM AND CHINA

3.2.1 DOUBLE TAXATION TREATIES

[75] Double taxation occurs when both States have a right (whether via source taxation or worldwide taxation) to tax the income or profits of a particular person. This is subject to connecting factors which link the person to the country that wishes to assert this right, thus giving them a cause to tax. Double taxation is a barrier to trade because it increases the pecuniary burden of taxation which ultimately discourages or dissuades cross-border activities. A DTT attempts to relieve situations of double taxation between States. It is typically a bilateral agreement between countries which accounts for the allocation of taxation rights in an instance where both countries may possess the jurisdiction to tax. In short, a DTT carves out who will tax and in what circumstances. Though the main purpose of a DTT is to avoid double taxation, both States may

⁸¹ Tiffany Foxcroft (n 75)

⁸² Noel Chase, 'Barbados' Debt Crisis: The Effects of Colonialism and Neoliberalism' (BA thesis, University at Albany 2019) <https://scholarsarchive.library.albany.edu/lacs_honors/4> accessed 28 May 2020

⁸³ 'Business Monday: Take Non-IMF Route' (*Barbados Advocate*, 25 March 2019) <<https://www.barbadosadvocate.com/business/business-monday-take-non-imf-route>> accessed 18 May 2020.

still subject the person to double tax but at a reduced rate. Currently, China has DTT arrangements with three CARICOM States: Barbados, Jamaica and Trinidad & Tobago:

- Agreement Between the Government of Barbados and the Government of the People’s Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income
- Agreement Between the Government of Jamaica and the Government of the People’s Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income
- Agreement Between the Republic of Trinidad and Tobago and the Government of the People’s Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

The following table illustrates the major highlights of these agreements:

	BARBADOS	JAMAICA	TRINIDAD
ENTRY INTO FORCE	17 July 2000 <i>Protocol Adjustments:</i> February 18 th , 2010	16 March 1997	4 July 2004
TREATY MODEL	OECD Model	OECD Model	OECD Model
PROVISIONS	DIVIDENDS	Withholding tax charged by China shall not exceed 5% if the ownership of the Barbadian company is 25% or more. Other withholding tax is capped at 10%	Withholding tax charged by China shall not exceed 5% if the ownership of the TTO company is 25% or more. Other withholding tax is capped at 10%
	INTEREST	Withholding tax charged by China is capped at 10%	Withholding tax charged by China is capped at 7.5%
	ROYALTIES	Withholding tax charged by China is capped at 10%	Withholding tax charged by China is capped at 10%
	CAPITAL GAINS	There are no capital gains charged by China once Barbadian ownership is at minimum 25% of the equity	Gains derived by a resident of China/TTO from the alienation of immovable property and situated in the other Contracting State may be taxed in that other Contracting State
	PROCEDURES FOR THE ELIMINATION OF DOUBLE TAXATION	Credit Method Tax payable in China on profits/income from within China is a tax credit against Barbados tax payable	Credit Method Tax payable in China on profits/income from within China is a tax credit against Jamaica tax payable

	Where a Chinese resident gains income from Barbados, tax payable in Barbados is credited against the Chinese tax imposed on that resident	Where a Chinese resident gains income from Jamaica, tax payable in Jamaica is credited against the Chinese tax imposed on that resident	Where a Chinese resident gains income from TTO, tax payable in TTO is credited against the Chinese tax imposed on that resident
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Table 3: Highlights of the DTTs between China and CARICOM States

[76] Both the Organisation for Economic Co-operation and Development (OECD) and the UN have models for double taxation treaties. While the UN Model is the lesser utilised, there is much debate as to whether the OECD Model Double Taxation Conventional Treaty is inclusive or if it primarily favours first-world countries. The aforementioned existing double tax agreements with China are OECD Model derived. Jurisdiction to tax is on primarily a generative basis. Thus, the State which offers the economic opportunity to gain revenue or income is afforded the right to tax. Along with this, since the credit exemption method indicates that only the source state (where the income is derived) is afforded the right to tax the income generated in its jurisdiction, taxation rights between CARICOM and China are being shared equally.

[77] These treaties demonstrate low tax advantages which make the Caribbean the ideal region for international business that wants to conduct operations in China. The Caribbean provides a favourable pathway into China via its tax treaties with China accompanied by minimal tax frameworks that are in place for offshore entities. Subsequently, businesses reduce their tax burdens while simultaneously presenting investors the means of repatriating their Chinese earnings. The framework of protection liberties coupled with the tax incentives makes CARICOM the catalyst from which one can expedite a company expansion into China.

3.2.2 BILATERAL INVESTMENT TREATIES

[78] BITs are agreements between two States that provide terms and conditions for FDI by nationals or companies of one State in the other State. They are intended to encourage foreign investment by reducing political risk. BITs have been primarily used to protect international investment and to ensure fair treatment of investors. Most BIT provisions follow the categorical pattern of scope, substantive protection and dispute settlement. Thus, the layout of a BIT generally tends to be preamble; definitions (most importantly of “investor” and “investment”); admission conditions; guarantees against discrimination; fair and equitable treatment standard and full protection and security; guarantee against expropriation without compensation; and dispute settlement.

[79] Currently, China has BITs with five CARICOM States – Bahamas, Barbados, Guyana, Jamaica and Trinidad & Tobago. The following table illustrates the major highlights of these BITs.

	BAHAMAS – CHINA BIT (2009)	BARBADOS – CHINA BIT (1998)	CHINA – GUYANA BIT (2003)	CHINA – JAMAICA BIT (1994)	CHINA – TRINIDAD & TOBAGO BIT (2002)
ENTRY INTO FORCE	Signed, not in force	1 October 1999	26 October 2004	1 April 1996	7 December 2004

PROVISIONS					
DEFINITION OF INVESTMENT					
Asset based definition		x	x	x	x
Includes portfolio investments		x	x	x	x
Includes other specific assets (e.g. sovereign debt, ordinary commercial transactions, etc)		x	x	x	x
Lists required characteristics of investment					
Contains ‘in accordance with host State laws’ requirement		x	x	x	x
Sets out a closed (exhaustive) list of covered assets					
DEFINITION OF INVESTOR					
Specifying natural persons covered		x	x	x	x
Includes permanent residents					
Includes dual nationals		x	x	x	x
Specifying legal entities		x	x	x	x
Includes requirement of substantial business activity					
Defines ownership and control of legal entities					
DENIAL OF BENEFITS CLAUSE					
NATIONAL TREATMENT (NT)					
Post-establishment clause			x		x
Pre-establishment clause			x		x
None		x		x	
MOST FAVOURED NATION (MFN)					
Post-establishment clause		x	x	x	x
Exceptions from MFN obligations					
Economic integration agreements		x	x	x	x
Taxation treaties		x	x	x	x
Procedural issues (ISDS)					
FAIR AND EQUITABLE TREATMENT (FET)					
FET unqualified clause		x	x	x	x
FET modifiers (FET combined with NT or MFN)		x		x	
FULL PROTECTION AND SECURITY (FPS)					
Standard			x	x	x

No Clause		x			
PROHIBITION OF ARBITRARY AND DISCRIMINATORY TREATMENT			x		x
EXPROPRIATION		x	x	x	x
Indirect expropriation mentioned		x	x	x	x
PROHIBITION OF PERFORMANCE REQUIREMENTS					
TRANSFER OF FUNDS		x	x	x	x
UMBRELLA CLAUSE			x		x
STATE-TO-STATE DISPUTE SETTLEMENT		x	x	x	x
INVESTOR-TO-STATE DISPUTE SETTLEMENT		x	x	x	x

Table 4: Highlights of the BITs between China and CARICOM States

[80] **Table 4**⁸⁴ indicates that the BITs generally contain similar provisions. However, there are some very important distinctions. The China-Guyana and China-Trinidad & Tobago BITs are optimal, save for their umbrella clause. Perhaps it is that inclusion that undermines the BITs' optimality as umbrella clauses elevate an ordinary breach of contract to the level of treaty violation. A treaty violation is far greater as this breach invokes international law principles whereas a contract breach merely invokes domestic law. This may be disadvantageous to CARICOM States as they may often be the host State and Chinese investors can make simple contractual breaches more legally severe to the detriment of CARICOM States as BIT awards tend to be exorbitant. Notwithstanding, it cannot be ignored that these two BITs include all the protections: national treatment protection, most-favoured-nation protection, fair and equitable treatment standard, full protection and security, the prohibition of arbitrary and discriminatory treatment, and guarantees against expropriation without compensation. These protections ensure that investors are safe from being deprived of their investments or the value of their investments as well as safe from discriminatory treatment.

[81] Most notably, none of the BITs has a prohibition of performance requirements clause. Performance requirements are stipulations, imposed on investors, requiring them to meet certain specified goals with respect to their operations in the host country. In practice, many BITs include a prohibition of performance requirements clause, but many developing countries have used performance requirements to achieve both economic and non-economic goals. Such goals include

⁸⁴ UNCTAD, 'International Investment Agreements Navigator' (*Investment Policy Hub*) <<https://investmentpolicy.unctad.org/international-investment-agreements/iaa-mapping>> accessed 12 June 2020.

strengthening the industrial base and national added value, developing national expertise in a given sector, creating upstream and downstream economic links in a given economic sector, ensuring technology transfer, achieving better environmental or social outcomes, reducing unemployment, avoiding restrictive trade practices, preserving a significant part of national enterprises in key sectors, or guaranteeing security in the industrial sector.⁸⁵ The most commonly used performance requirements require the investor to ensure a level of local content for products and services, to achieve a specific level of local jobs, to engage in training programs for the workforce or build the capacities of suppliers of goods and services, to carry out research and development activity, to carry out environmental and social actions and to ensure technology transfer.⁸⁶ Performance requirements may be advantageous to CARICOM States as, for example, they can “force” employment of local workers which can have positive trickle-down effects such as technology transfer. The inclusion of specific performance requirements in the CETA will be further discussed in **Section 6.2.1.1**.

[82] BITs are valuable to CARICOM because they give easier and better access to China’s market and guarantee protection for CARICOM investors in China. Given that BIT protections apply to investments both prior and subsequent to its entry into force, the use of performance requirements or investment restrictions, such as ownership caps, to prevent foreign investors entering the market is likely to be hindered. It cannot be ignored that China added more fields to the industries where foreign investment is encouraged⁸⁷ thus incorporation of an investment chapter in the proposed CETA would be a vital addition. Much can be gleaned from the provisions of the current BITs between China and Guyana and Trinidad & Tobago. As BITs exist only between China and five CARICOM States, the investment chapter of the CETA would be best suited to incorporate those special BIT protections and have them applied to the remaining ten CARICOM States, drafting the chapter similar to the Guyana and Trinidad & Tobago BITs, paying special attention to incorporate advantageous provisions such as national treatment exceptions and performance requirements which will be further discussed in **Chapter 6**.

⁸⁵ Suzy Nikièma, ‘Performance Requirements in Investment Treaties Best Practices Series – December 2014’ (2012) International Institute for Sustainable Development, 1.

⁸⁶ *ibid* 2-3.

⁸⁷ KPMG, ‘The Catalogue of Industries for Encouraged Foreign Investment (2019 Edition) has been expanded’ (KPMG, 9 August 2019) <<https://home.kpmg/cn/en/home/insights/2019/08/china-tax-alert-20.html>> accessed 20 April 2020.

3.2.3 THE BELT AND ROAD INITIATIVE

[83] In September 2013 Chinese President Xi Jinping in a visit to Kazakhstan proposed that ‘China and Eurasian countries undertake a grandiose joint project, the Silk Road Economic Belt.’ China was of the view that the landlocked countries had poor development and poverty because they were not connected by road. The goal of the proposal was to create a land connection from Southeast Asia over China to Western European. In October 2013 President Xi Jinping made another proposal to the Indonesian Parliament that China and other relevant countries should build a modern maritime Silk Road for connecting China with the Association of Southeast Asian Nations, South Asian countries, Africa and Europe. From these two proposals the “One Belt, One Road” idea was born.⁸⁸ The initiative connected China to over sixty countries however, it attracted much scepticism and in 2016 was renamed as the “Belt and Road Initiative”.

[84] The goal of the BRI from the Chinese perspective is ‘to create economic corridors and cultural cooperation with win-win outcomes for all the participating countries’⁸⁹. The exportation of Chinese culture through the BRI has been facilitated by the presence of Confucius Institutes and Confucius Chinese language study classes in participating countries.⁹⁰ It can, therefore, be said that the BRI is a tool to expand Chinese soft power⁹¹ in participating countries.⁹² The BRI is more so a development strategy rather than an economic agreement or treaty. Six CARICOM States have joined the BRI: Barbados, The Bahamas, Guyana, Jamaica, Suriname and Trinidad & Tobago.⁹³

⁸⁸ Nazrul Islam, ‘Silk Road to Belt Road: Meeting the Culture’ in Nazrul Islam (ed), *Silk Road to Belt Road: Reinventing the Past and Shaping the Future* (Springer 2018) 9.

⁸⁹ *ibid.*

⁹⁰ Cal Wong, ‘One Belt, One Road, One Language?’ (*The Diplomat*, May 12, 2017) <<https://thediplomat.com/2017/05/one-belt-one-road-one-language/>> accessed 14 March 2020.

⁹¹ Soft power could be conceptualised as a process through which a country secures influence over other through the export of social and cultural goods.

⁹² Wong (n 90).

⁹³ ‘The Caribbean and the BRI’ (*OROReupe*, 8 May 2019) <<https://www.oboreurope.com/en/caribbean-bri/>> accessed 20 April 2020.

4.1.1 PREVALENT INDUSTRIES IN TRADE BETWEEN CARICOM AND CHINA

PRODUCT LABEL	TOTAL VALUE (MILLIONS OF \$USD)
All products	1.506
Mineral fuels, mineral oils & other products of their distillation, etc.	.763
Organic chemicals	.446
Wood & articles of wood	.261
Inorganic chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, etc.	.142
Ores, slag & ash	.086
Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical, etc.	.079
Copper and articles thereof	.038
Fish and crustaceans, molluscs and other aquatic invertebrates	.01
Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television, etc.	.009
Live animals	.005

Table 5: Value of CARICOM's Top 10 Exports to China (2015-2018)

PRODUCT LABEL	TOTAL VALUE (MILLIONS OF \$USD)
All products	11.4
Machinery, mechanical appliances, nuclear reactors, boilers; parts thereof	.601
Electrical machinery and equipment and parts thereof; sound records, electronics, etc.	.528
Ships, boats and floating structures	.406
Articles of iron or steel	.355
Plastics and articles thereof	.285
Mineral fuels, mineral oils and products of their distillation, etc.	.246
Vehicles other than railway or tramway rolling stock, and parts and accessories thereof	.232
Rubber and articles thereof	.202

Articles of apparel and clothing accessories, knitted or crocheted	.178
Furniture; bedding, mattresses, etc.	.173

Table 6: Value of CARICOM's Top 10 Imports from China (2015-2018)

[87] Table 5⁹⁵ indicates that CARICOM's top ten exports to China are predominantly raw materials while Table 4⁹⁶ shows that CARICOM's top ten imported products from China are finished manufactured products. This indicates that there may be existing opportunities in the Chinese market that are underexploited by CARICOM entrepreneurs for example plants and cut flowers, meats, dairy products and eggs. Chinese products may also be competing with local businesses, farmers and craftsmen for example ceramic products, beverages and vegetables. These tables also reiterate that imports from China substantially exceed the number of exports to China reemphasising the imbalance of the trading dynamics and the need for CARICOM to penetrate more Chinese sectors to mitigate the disparity.

4.1.2 TRADE BALANCE IMPLICATIONS OF THE CARICOM-CHINA RELATIONSHIP

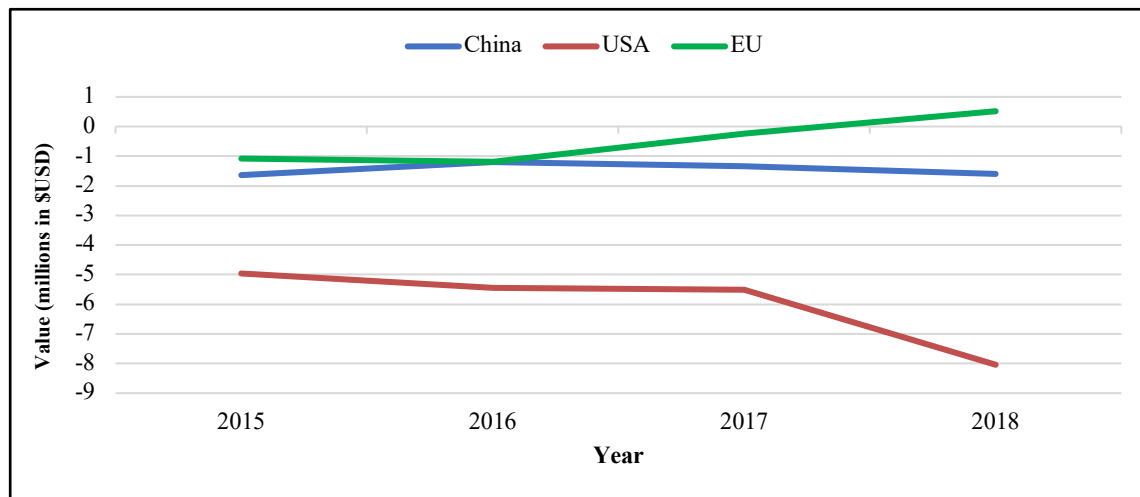


Figure 3: Trade Balance between CARICOM and China, USA and the EU (2015-2018)

⁹⁵ International Trade Centre, 'Bilateral trade between China and Caribbean Community (CARICOM)' (*Trade Map*)

https://www.trademap.org/Bilateral_TS.aspx?nvpm=1%7c156%7c%7c%7c37%7cTOTAL%7c%7c%7c2%7c1%7c1%7c2%7c2%7c1%7c1%7c1%7c1%7c1 accessed 12 June 2020.

⁹⁶ International Trade Centre, 'Bilateral trade between China and Caribbean Community (CARICOM)' (*Trade Map*)

https://www.trademap.org/Bilateral_TS.aspx?nvpm=1%7c156%7c%7c%7c37%7cTOTAL%7c%7c%7c2%7c1%7c1%7c1%7c2%7c1%7c1%7c1%7c1%7c1 accessed 12 June 2020.

September 2017 TPR China asked several questions related to intellectual property in Jamaica, specifically patent rights and the law related to it.⁹⁹ FDI in Jamaica is of interest to China as they inquired about the fiscal policies implemented by the government regarding private oil and gas enterprises and the establishment of agro-parks.¹⁰⁰ In the May 2019 TPR China inquired about intellectual property rights and FDI in Trinidad & Tobago.¹⁰¹ In September 2015 China's questions to Guyana during the TPR meeting were focused on FDI, mining, financial services and telecommunications.¹⁰²

[91] The main exports from Barbados, Guyana, Jamaica and Trinidad & Tobago are listed in **Table 8** in **Chapter 5** and are indicative of other areas for liberalisation which could be taken advantage of in an agreement with China. The exports include refined petroleum, crude petroleum, gold, rice, raw sugar, liquor, beer, orthopaedic appliances and aluminium.

[92] As it relates to opportunities in the service sector it has been posited that typical services offered in the region may no longer provide the level of opportunity that they once did. The tourism and international financial services industries account for two-thirds of Barbados' export earnings and have been rendered stagnant in recent years.¹⁰³ In 2014 the Government of Barbados received a report which described the country's tourism industry as a 'mature destination with aged products which are not in good condition.'¹⁰⁴ Mandle in his paper on Achieving Structural Change stated that Barbados needs to expand the range of its exports from its traditional sectors

⁹⁹ 'Trade Policy Review Jamaica: Minutes of the Meeting WT/TPR/M/359/Add.1' (World Trade Organisation, 19 February 2018)

<[https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=\(\(%20@Title=%20jamaica\)%20or%20\(@CountryConcerned=%20jamaica\)\)%20and%20\(%20\(%20@Symbol=%20wt/tpr/m/*%20and%20add*\)\)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=((%20@Title=%20jamaica)%20or%20(@CountryConcerned=%20jamaica))%20and%20(%20(%20@Symbol=%20wt/tpr/m/*%20and%20add*))&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true)> accessed 15 March 2020, 64-78.

¹⁰⁰ *ibid.*

¹⁰¹ 'Trade Policy Review Trinidad & Tobago: Minutes of the Meeting WT/TPR/M/388/Add.1' (World Trade Organisation, 24 September 2019)

<[https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=\(\(%20@Title=%20trinidad%20and%20tobago\)%20or%20\(@CountryConcerned=%20trinidad%20and%20tobago\)\)%20and%20\(%20\(%20@Symbol=%20wt/tpr/m/*%20and%20add*\)\)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=((%20@Title=%20trinidad%20and%20tobago)%20or%20(@CountryConcerned=%20trinidad%20and%20tobago))%20and%20(%20(%20@Symbol=%20wt/tpr/m/*%20and%20add*))&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true)> accessed 15 March 2020, 38-40.

¹⁰² 'Trade Policy Review Guyana: Minutes of the Meeting WT/TPR/M/320/Add.1' (World Trade Organisation, 2 June 2016)

<[https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=\(\(%20@Title=%20guyana\)%20or%20\(@CountryConcerned=%20guyana\)\)%20and%20\(%20\(%20@Symbol=%20wt/tpr/m/*%20and%20add*\)\)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=((%20@Title=%20guyana)%20or%20(@CountryConcerned=%20guyana))%20and%20(%20(%20@Symbol=%20wt/tpr/m/*%20and%20add*))&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true)> accessed 15 March 2020, 32-38.

¹⁰³ Jay R. Mandle, 'Achieving Structural Change in Barbados.' (October 4, 2017) 1.

¹⁰⁴ Environmental Planning Group and HLA Consultants Inc., 'Barbados Tourism Master Plan 2014-2013, Report IV: Our Visitors and the Barbados Visitor Economy' (Ministry of Tourism and International Transport, 2014) 133.

and build a plan to trigger and sustain structural change in the economy. To do this the innovation of an export-oriented class of entrepreneurs is needed along with support from the government through public policy to facilitate initiatives in the private sector. Inadequate delays and bureaucratic impediments have been identified by Mandle as being the two main causes of the country’s inability to tap into the entrepreneurial skill of the Barbadian population and suggests that pressure from a new class of entrepreneurs can eliminate these issues.

4.1.4 **CHINESE SECTORS FOR TRADE LIBERALISATION**

[93] To determine China’s interest in CARICOM the main goods that China exports to Barbados, Guyana, Jamaica and Trinidad & Tobago will be discussed. In 2017, China’s top exports were broadcasting equipment, computers, office machine parts, integrated circuits and telephones¹⁰⁵ and were valued at US\$609.9bn.¹⁰⁶ The data indicate that these are China’s most profitable exports and that these products will continue to be a focus of China’s as they engage with new partners.

PRODUCT CODE	PRODUCT LABEL	CHINA’S EXPORTS (VALUE* IN 2019)			
		BARBADOS ¹⁰⁷	GUYANA ¹⁰⁸	JAMAICA ¹⁰⁹	TRINIDAD ¹¹⁰
'39	Plastics and articles thereof	5,817	23,524	51,100	34,770
'84	Machinery, mechanical appliances, nuclear reactors, boilers; parts thereof	4,976	51,140	97,075	45,832
'85	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television	8,646	34,075	73,710	29,476

¹⁰⁵ Simoes and Hidalgo (n 37).

¹⁰⁶ *ibid.*

¹⁰⁷ International Trade Centre, ‘Bilateral trade between China and Barbados’ (*Trade Map*) <https://www.trademap.org/Bilateral_TS.aspx?nvpm=1%7c156%7c%7c052%7c%7cTOTAL%7c%7c%7c2%7c1%7c1%7c2%7c2%7c1%7c1%7c1%7c1%7c1> accessed 12 June 2020.

¹⁰⁸ International Trade Centre, ‘Bilateral trade between China and Guyana’ (*Trade Map*) <https://www.trademap.org/Bilateral_TS.aspx?nvpm=1%7c156%7c%7c328%7c%7cTOTAL%7c%7c%7c2%7c1%7c1%7c2%7c2%7c1%7c1%7c1%7c1%7c1> accessed 12 June 2020.

¹⁰⁹ International Trade Centre, ‘Bilateral trade between China and Jamaica’ (*Trade Map*) <https://www.trademap.org/Bilateral_TS.aspx?nvpm=1%7c156%7c%7c388%7c%7cTOTAL%7c%7c%7c2%7c1%7c1%7c2%7c2%7c1%7c1%7c1%7c1%7c1> accessed 12 June 2020.

¹¹⁰ International Trade Centre, ‘Bilateral trade between China and Trinidad and Tobago’ (*Trade Map*) <https://www.trademap.org/Bilateral_TS.aspx?nvpm=1%7c156%7c%7c780%7c%7cTOTAL%7c%7c%7c2%7c1%7c1%7c2%7c2%7c1%7c1%7c1%7c1%7c1> accessed 12 June 2020.

'72	Iron and steel	N/A	10,206	N/A	N/A
'73	Articles of iron or steel	3,355	21,784	42,786	35,385
'94	Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings	5,856	12,435	41,860	23,038
'95	Toys, games and sport requisites; parts and accessories thereof	N/A	N/A	N/A	9,673
'86	Railway or tramway locomotives, rolling stock and parts thereof; railway or tramway track fixtures	70,911	N/A	N/A	N/A
'87	Vehicles other than railway or tramway rolling stock, and parts and accessories thereof	N/A	11,699	39,173	17,892
'89	Ships, boats and floating structures	24,170	N/A	N/A	N/A
'61	Articles of apparel and clothing accessories, knitted or crocheted	N/A	11,171	29,993	8,745
'40	Rubber and articles thereof	2,751	8,247	28,256	20,719
'48	Paper and paperboard; articles of paper pulp, of paper or of paperboard	2,834	N/A	23,511	N/A
'64	Footwear, gaiters and the like; parts of such articles	N/A	N/A	22,472	N/A
'63	Other made-up textile articles; sets; worn clothing and worn textile articles; rags	3,547	8,495	N/A	9,951

Table 7: China's Exports to Barbados, Guyana, Jamaica and Trinidad & Tobago (2019)

[94] **Table 7** shows the value of the 10 most highly exported goods from China to Barbados, Guyana, Jamaica and Trinidad & Tobago of 2019. The data show that China's top exports to those countries are machinery, mechanical appliances, nuclear reactors, boilers and related parts; electrical machinery and equipment and parts thereof; sound recorders and reproducers, television, plastics and related articles; articles of iron or steel, furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; vehicles other than railway or

tramway rolling stock, and parts and accessories thereof; articles of apparel and clothing accessories, knitted or crocheted; rubber and articles thereof and other made-up textile articles, sets, worn clothing and worn textile articles and rags.

[95] To conclude CARICOM needs to consider the following when negotiating a possible trade agreement with China:

1. China’s willingness to enter into agreements which on the face are of no benefit to it and ulterior motives that may prompt China to pursue a trade relationship with the region.
2. The possible negatives of entering into a trade relationship with China as its initiatives like the BRI have proven to be burdensome for some of its partners in the past.
3. The importance of focusing on sectors that have a high trade complementarity as areas to be taken advantage of. The fact that China’s bilateral trade agreements with Latin American States in and around the Caribbean region have proven to be unsuccessful due to the lack of trade complementarity between the contracting States should not be overlooked.

4.2 THE TRADING RELATIONSHIP OF CARICOM AND CHINA COMPARED TO TRADITIONAL CARICOM TRADING PARTNERS

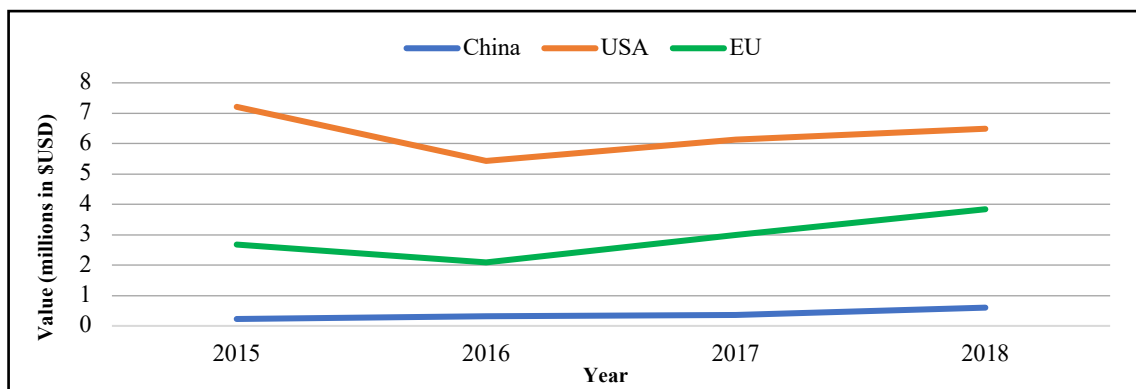


Figure 4: CARICOM Exports to China, the EU and USA (2015-2018)

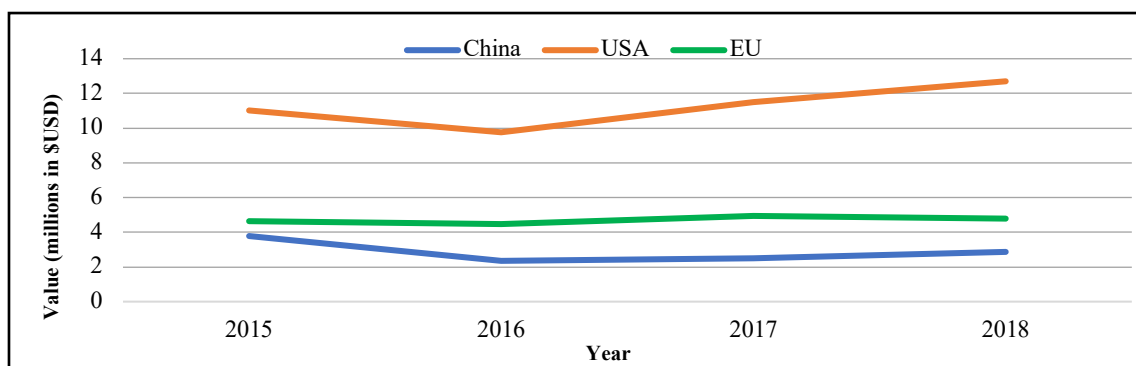


Figure 5: CARICOM's Imports from China, the EU and USA (2015-2018)

[96] **Figure 4**¹¹¹ illustrates that the USA exists as CARICOM's central trading partner and that trading between CARICOM and China is incredibly sparse in comparison. This may be evidence of the long-standing history of trading between the USA and CARICOM; one example being the Caribbean Basin Initiative (the Caribbean Basin Economic Recovery Act) which provided non-reciprocal duty free access into the USA market for a wide range of products originating in Central American and Caribbean beneficiary countries.¹¹² With the increasing number of migrants from the Caribbean into the USA, exports of Caribbean non-traditional products expanded. Subsequently, cultural similarities between the USA and CARICOM were enhanced; an element which is evidently not shared with China. Therefore, in order to diversify its trading operations, CARICOM needs to look past what is familiar in terms of history and culture and delve into developmental sectors of mutual interest in order to expand its economic relationship with China.

[97] **Figure 5**¹¹³ shows that unlike the exports market for the 2015-2018, China is slowly increasing in significance for import market vis-à-vis traditional partners, the USA and the EU. However, as imports from China increase, imports from the USA and the EU are not decreasing. This reiterates the previous contention that historical trading patterns and partners are still being maintained. Chinese imports therefore do not seem to be displacing those from the USA and the EU, but total imports are increasing with China in the equation. Thus, more active engagement needs to be done in various sectors to improve growth between the region and China.

4.3 IMPLICATIONS OF THE TRADING RELATIONSHIP BETWEEN CHINA & CARICOM

[98] From the illustrations shown in the above section, it is clear that the huge and increasing trade deficit that exists between CARICOM and China is unhealthy and unsustainable for long-term development. Both States ought to maximise their trading potential with one another. Currently, the trade relationship between China and the Caribbean is largely based on the importation of manufactured products from China and the exportation of raw materials from the Caribbean.

¹¹¹ Bilateral trade between Caribbean Community (CARICOM) and Canada (n 30); Bilateral trade between Caribbean Community (CARICOM) and United States of America (n 32); Bilateral trade between China and Caribbean Community (CARICOM) (n 94).

¹¹² Elizabeth Morgan, 'CARICOM Trade Relations: A Chequered Trade History' (*CARICOM Today*, 14 June 2019) <<https://today.caricom.org/2019/06/13/caricom-us-relations-a-chequered-trade-history/>> accessed 31 May 2020

¹¹³ Bilateral trade between Caribbean Community (CARICOM) and Canada (n 30); Bilateral trade between Caribbean Community (CARICOM) and United States of America (n 32); Bilateral trade between China and Caribbean Community (CARICOM) (n 94).

Scholars have already observed that the nature of the trade relationship with China holds the negative possibility of replicating that of the Caribbean with its traditional partners.¹¹⁴ Thus, if the trading relationship between both States can be structured in such a manner to promote an underlying economic efficiency of each respective State then the crisis of the aforementioned can be diverted.

4.3.1 PROMOTING PRODUCTIVE EFFICIENCY IN THE CHINESE ECONOMY

[99] Most of China's economic arrangements with States highlight their ambitions for productive efficiency. Productive efficiency occurs when the economy is utilising all of its resources efficiently by producing goods and services at the minimum average cost. This exists in the China-Iceland Free Trade Agreement (FTA) whereby the established transit route seeks to reduce China's overall global trading costs.¹¹⁵ This FTA will be further analysed in **Section 5.1.2**. Measuring productivity and efficiency are very important when evaluating production units, the performance of different industries or an entire economy. It helps identify sources of efficiency and productivity differentials which are essential to policies designed to improve performance.¹¹⁶

[100] If Chinese policymakers have moved too fast on infrastructure improvements, the opposite can be said of efforts to remove other barriers to productivity. Parts of China's export sector lead the world in efficiency, helping to make it the largest exporting country.¹¹⁷ However, China's domestic industries are still much less efficient than the export sector. This has constrained the growth of household income and distorted income distribution, constraining domestic consumption. Such underperformance is attributed to policies that create economic distortions and hinder the efficient allocation of resources among industries. Price controls, government involvement in business, and uncoordinated regulations drag down productivity in many of China's industries.

¹¹⁴ Girvan (n 47).

¹¹⁵ Laine Škoba, 'Opening negotiations on a plurilateral Trade in Services Agreement (TiSA)' (Library of the European Parliament 2013) <[https://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130582/LDM_BRI\(2013\)130582_REV1_EN.pdf](https://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130582/LDM_BRI(2013)130582_REV1_EN.pdf)> accessed 4 April 2020.

¹¹⁶ Adám Reiff et. al, 'Analysis of the Hungarian Economy: Productive Efficiency in the Hungarian Economy' (2002) 7 Hungarian Statistical Review 45.

¹¹⁷ S&P Global Ratings, 'Production Efficiency is Key to Maintaining China's Economic Growth' (*Finance Asia*, 20 September 2011) <<https://www.financeasia.com/article/production-efficiency-is-key-to-maintaining-chinas-economic-growth/272652>> accessed 4 April 2020.

4.3.2 PROMOTING DYNAMIC EFFICIENCY IN THE CARICOM ECONOMY

[101] An enhanced trading partnership with China is vital for improving the dynamic efficiency of the region's economies. Dynamic efficiency is concerned with how well a market delivers innovation and technological progress as well as responds to quickly changing economic circumstances. Dynamic efficiency leads to lower costs, new products and/or improved products. Technological transfer and access to FDI can improve CARICOM's dynamic efficiency by lowering costs of products. When an economy is dynamically efficient, it is better able to respond to shocks in the market which is critical for the region's economies that are particularly volatile.

[102] CARICOM Member States must investigate the potential viability and current export efficiency of locally produced merchandise in the larger Chinese market while noting comparative benefits the region has to offer. In 2015, as the number of exports increased, CARICOM exports were estimated to be greater than 50% below estimated potentials.¹¹⁸ It must be highlighted that due to the lack of economies of scale, growth potential on identified product categories should be sought outside the realm of price competitiveness. In efforts to enhance development through trade, further investigation on export efficiency in more non-traditional markets is suggested. The utilisation of well-established industries (international brands) with comparative advantages is an essential starting point; beyond price competition.

¹¹⁸ Lorde et al (n 23) 154.

CHAPTER 5: CHINA’S TRADE AGREEMENTS WITH OTHER COUNTRIES

[103] The objective of this chapter is to examine the content and impact of trade agreements between China and the comparator States to CARICOM such as Costa Rica, Iceland and Mauritius. This chapter is intended to illustrate the possible impacts on trade if an agreement was entered into with China. China’s FTAs, BITs and the BRI with the aforementioned countries will be examined with an impact analysis produced to guide the CARICOM States on the implications of trade with China. The analysis of these economic agreements will provide insight into the kind of provisions and measures that CARICOM should consider for the CETA.

[104] Costa Rica, Iceland and Mauritius were chosen as comparators to CARICOM States given their relatively small size, the similarities in GDP, imports and exports and trading partners. **Table 8** below provides an overview of these comparator States. Given the relatively large population size and wealth of Barbados, Guyana, Jamaica and Trinidad & Tobago, the statistics of these countries are provided for comparison. The similarities between these comparator countries and those CARICOM States make them good indicators of what a trade relationship with China would look like for CARICOM.

	POPULATION ¹¹⁹	SIZE (KM ²) ¹²⁰	GDP (\$USD) ¹²¹	IMPORTS ¹²²	EXPORTS ¹²³	TOP IMPORT ORIGINS ¹²⁴	TOP EXPORT DESTINATIONS ¹²⁵
COSTA RICA	5,080,148	51,100	IMF: \$63.46bn UN: \$57.44bn	Refined petroleum; cars; computers; broadcasting equipment; packaged medicaments	Bananas; tropical fruits; medical instrument; orthopaedic appliances; semiconductor devices	Brazil; China; Japan; Mexico; USA	Belgium; Germany; Luxembourg; Netherlands; USA

¹¹⁹ ‘World Population by Country’ (*World Population Prospects (2019 Revision) 2019*) <<https://worldpopulationreview.com/>> accessed 16 March 2020.

¹²⁰ *ibid.*

¹²¹ *ibid.*

¹²² Simoes and Hidalgo (n 37) <<https://oec.world/en/>> accessed 16 March 2020.

¹²³ *ibid.*

¹²⁴ *ibid.*

¹²⁵ *ibid.*

ICELAND	340, 583	100,250	IMF: \$26.82bn UN: \$20.27bn	Aluminium oxide; cars; refined petroleum; carbon-based electronics	Raw aluminium; fish fillet	France; Germany; Netherlands; Norway; UK	Germany; Netherlands; Spain; UK; USA
MAURITIUS	1,271,218	2,040	IMF: \$15.76bn UN: \$12.22bn	Refined petroleum; non-fillet frozen fish; cars; planes; helicopters; spacecraft; coal briquettes	Processed fish; raw sugar; non-knit men's shirts; refined petroleum	China; France; India; Japan; South Africa	France; South Africa; UK; USA Zambia
BARBADOS	287,265	430	IMF: \$5.34bn UN: \$4.55bn	Refined petroleum; passenger and cargo ships; cars; packaged medicament; computers	Hard liquor; gold; refined petroleum; packaged medicaments; orthopaedic appliance	China; Switzerland; Trinidad & Tobago; UK; USA	Guyana; Jamaica; Switzerland; Trinidad & Tobago; USA
GUYANA	785,342	214,969	IMF: \$4.61bn UN: \$3.44bn	Refined petroleum; excavation machinery; cars; large construction vehicles; package medications	Gold; rice; railway cargo containers; aluminium ore; raw sugar	China; Japan; Suriname; Trinidad & Tobago; USA	Canada; Luxembourg; Panama; Trinidad & Tobago; USA
JAMAICA	2,957,427	10,991	IMF: \$16.72bn UN: \$14.06bn	Refined petroleum; cars; petroleum gas; crude petroleum; packaged medicaments	Aluminium oxide; aluminium ore; beer; hard liquor; refined petroleum	China; Japan; Mexico; Trinidad & Tobago; USA	Canada; Germany; Netherlands; USA
TRINIDAD & TOBAGO	1, 398,168	272.8	IMF: \$23.23bn UN: \$24.09bn	Crude petroleum; iron ore; cars; other heating machinery; refined petroleum	Petroleum gas; refined petroleum; acyclic alcohols; ammonia; crude petroleum	Canada; China; Colombia; Russia; USA	Chile; Dominica Republic; Guyana; Peru; USA

Table 8: Statistics for Similarity Analysis between Comparator Countries

[105] The countries chosen are all relatively small States and though they differ in some respects, the similarities in their populations, geographical size, GDPs, trading partners and trade sectors make them good comparator States.

[106] Data from 2020 indicate that the population sizes of Trinidad and Mauritius are almost equal, and that Iceland and Barbados have comparable population sizes. As aforementioned, the countries chosen all differ in their geographical size with Guyana being the largest and Barbados being the smallest. The data also show that the GDP of Trinidad & Tobago is almost similar to that of the comparator State, Iceland, and the same applies to Jamaica and Mauritius.

[107] All of the countries chosen for comparison have refined petroleum and cars among their top imports whereas the exports vary greatly with few similarities. Both Barbados and Costa Rica export orthopaedic appliances; Guyana and Mauritius export raw sugar; Barbados, Jamaica, Mauritius and Trinidad & Tobago export refined petroleum; and Guyana, Iceland and Jamaica export aluminium products. All of the countries chosen for comparison, with the exception of Iceland, has China among their top import origins. Similarly, the USA is a top import origin for all of the countries listed except Iceland and Mauritius. Looking at intra-CARICOM trade, Barbados, Guyana and Jamaica have Trinidad & Tobago among their top import origins which indicates that Trinidad & Tobago is among one of the main exporters in CARICOM. In relation to exports, the USA is among the top export destinations for all of the countries chosen for comparison. China is not a major export destination for Barbados, Guyana, Jamaica or Trinidad & Tobago though it is a top import origin for all. This indicates that the current trading relationship between CARICOM States and China is unequal and more advantageous to China.

5.1 FREE TRADE AGREEMENTS

[108] China currently has signed and implemented seventeen FTAs with various countries.¹²⁶ The focus of this section is to assess the agreements with Costa Rica, Iceland and Mauritius to determine the possible effects of a similar arrangement with CARICOM.

¹²⁶ 'China's Free Trade Agreements' (*China FTA Network*)
<http://fta.mofcom.gov.cn/english/fta_qianshu.shtml> accessed 25 February 2020.

5.1.1 COSTA RICA

[109] The China-Costa Rica FTA entered into force on August 1, 2011 and is the 10th FTA that China has reached and executed.¹²⁷ Costa Rica is China's second-largest trading partner in Central America, while China is the second-largest trading partner of Costa Rica.¹²⁸ The FTA covers trade in goods and services and will be fully implemented by 2025.¹²⁹ Goods such as China's textiles, industrial products, machines, electrical appliances, vegetables, fruits, automobiles, chemical products, unprocessed fur products and leather products will benefit from the agreement. Similarly, Costa Rica will benefit from the tariff reduction on coffee, beef, pork, fruit juices, jams, processed fish products, mineral products and rawhide.¹³⁰ Additionally, both countries agreed to open service sectors to one another for bilateral trade and mutual investments. Costa Rica will allow free trade in forty-five sectors which include telecommunications, construction, real estate, education, environment services, information technology services and tourism. China will open seven sectors including IT services, real estate, market research, sports and translation and interpretation.¹³¹

[110] The key provisions of the China-Costa Rica FTA are outlined here to give a quick overview of the contents of the agreement. The provisions show that the focus of the Parties was to move towards the total elimination of trade barriers and the creation of a mutually beneficial trade relationship. Chapter 3 of the FTA provides for the elimination of trade barriers to goods specifically tariff and non-tariff measures, temporary admission of certain goods regardless of origin, import licensing procedures and administrative fees and formalities. The chapter also establishes a committee for monitoring matters covered by it. Rules of origin are provided for in Chapter 4. The customs procedures under the FTA are outlined in Chapter 5, the Parties are required to publish these procedures. Chapter 5 also provides for the establishment of simple customs procedures, automation of customs operations and cooperation regarding the advance notice of changes in customs procedures. Sanitary and phytosanitary measures are provided for in Chapter 6. Chapter 7 focuses on the prevention and elimination of all technical trade barriers which affected trade in goods and is aimed at strengthening cooperation between the Parties to

¹²⁷ 'China-Costa Rica FTA entered into force on August 1' (*China FTA Network*, 3 August 2011) <http://fta.mofcom.gov.cn/enarticle/encosta/encostanews/201108/7440_1.html> accessed 25 February 2020.

¹²⁸ *ibid.*

¹²⁹ China – Costa Rica Free Trade Agreement (China–Costa Rica) (1 August 2011).

¹³⁰ 'China-Costa Rica FTA Comes into Effect' (*China Briefing*, 2 August 2011) <<https://www.china-briefing.com/news/china-costa-rica-fta-comes-into-effect/>> accessed 25 February 2020.

¹³¹ *ibid.*

[111] The above tables show the bilateral trade relationship between China and Costa Rica. The tables show the values of the five most exported categories of goods between the two countries with the value of exports between them in all products from 2017-2019. **Table 9** shows Costa Rica's exports to China and the data indicate that exports have not seen any significant increase over the three years despite the spike in 2018. **Table 10** shows China's exports to Costa Rica from 2017-2019. Exports of all products have remained stable over the three years.

[112] Overall, the data show that China's exports to Costa Rica are far higher than Costa Rica's exports to China. The large disparity indicates that China benefits much more from the trade relationship between the two countries than Costa Rica does despite the commitment to reduce trade barriers to several goods. It must be noted that the FTA between China and Costa Rica is not in full effect as yet. Thus, the true effect of the agreement cannot be assessed until after 2025.

5.1.2 ICELAND

[113] The China-Iceland FTA is the first between China and a European country. It entered into force on July 1, 2014. China is Iceland's 4th largest importing country and its biggest trading partner in Asia and while exports from Iceland to China have been growing, China ranked as Iceland's 19th largest export market in 2012.¹³⁴ This FTA is expected to foster growth in the number of Icelandic exports to China with seafood from Iceland having the greatest growth of all exports and the exports of goods such as electrical scales and ferrosilicon are also increasing.¹³⁵ Increase of imports to Iceland from China can be attributed to their increasing quality and competitive pricing.¹³⁶

[114] Global warming has resulted in greater access through the Arctic's northern sea route and it is suspected that China's true motivation for entering this FTA is to gain greater access to this trade route.¹³⁷ Analysts have indicated that Iceland is of particular interest to China as it has been trying to gain a foothold in the Arctic which could provide passage for shipping and increase the extraction of natural resources like oil, gas, diamonds, gold and iron.¹³⁸ A Chinese expert on polar

¹³⁴ 'Fact Sheet on Iceland-China Free Trade Agreement' (*Government of Iceland*) <https://www.government.is/media/utanrikisraduneyti-media/media/fta-kina/China_fact_sheet_enska_15042013_Final.pdf> accessed 25 February 2020.

¹³⁵ *ibid.*

¹³⁶ *ibid.*

¹³⁷ David Jolly, 'Iceland and China Enter a Free Trade Agreement' (*NY Times*, 15 April 2013) <<https://www.nytimes.com/2013/04/16/business/global/16iht-iceland16.html>> accessed 25 February 2020.

¹³⁸ 'China, Iceland sign strategic free trade agreement' (*DW*, 15 April 2013) <<https://www.dw.com/en/china-iceland-sign-strategic-free-trade-agreement/a-16745190>> accessed 25 February 2020.

'94	Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings	10,699	10,518	13,212
'84	Machinery, mechanical appliances, nuclear reactors, boilers; parts thereof	16,328	35,716	9,525
'03	Fish and crustaceans, molluscs and other aquatic invertebrates	773	5,974	6,955
'87	Vehicles other than railway or tramway rolling stock, and parts and accessories thereof	3,335	8,412	5,591

Table 12: China's Exports to Iceland (2017-2019)

* - Unit of measurement: USD (thousands)

[116] **Tables 11 and 12** show the value of exports in all products between China and Iceland and the trade in the five most highly exported categories of products between the two countries from 2017-2019. The levels of exports from the two countries to one another appear to be comparable which indicates that the FTA has put them in an equally beneficial trading relationship.

[117] **Table 11** shows the goods that make up Iceland's top exports to China over the three-year period. The data show that fish products, one of Iceland's main exports, have increased from 2017-2019 by US\$33,064,000 despite seeing a drop in 2018. There was a decrease in exports of all products from 2018-2019. Despite this, the exports in all products from Iceland to China have increased by US\$33,512,000 over the three-year period showing that the FTA has benefitted Icelandic exports. **Table 12** shows China's exports to Iceland. The exports in all products from China to Iceland remained almost equal in 2017 and 2019 with a spike in 2018.

[118] Overall, the data show that Iceland has seen an increase in exports to China while China's exports to Iceland has remained stable as seen from export data from 2017 and 2019. This indicates that this FTA, while being beneficial to Iceland, has not done much to increase China's exports.

5.1.3 MAURITIUS

[119] On October 17, 2019 China signed an FTA with Mauritius. This is China's first FTA with an African nation. The agreement covers both goods and services and is expected to give Mauritius duty free access to approximately 8,547 products which represents 96% of China's tariff's lines.¹⁴³ As it relates to trade in goods 96.3% of goods in China and 94.2% of those in Mauritius

¹⁴³ Peter Upton, 'China Signs Free Trade Agreement with Mauritius' (*China Briefing*, 28 October 2019) <<https://www.china-briefing.com/news/china-mauritius-fta-signed-october-2019/>> accessed 28 February 2020.

benefit from a zero tariff. This accounts for 92.8% of the both country's total imports from one another. Remaining tariffs on taxed items will be reduced and, on most products, will not exceed 15%.¹⁴⁴ Steel products, textiles and other industrial products are China's major exports to Mauritius, they will benefit from this agreement. Sugar produced in Mauritius will begin to enter the Chinese market.

[120] The FTA covers more than forty service sectors including financial services, telecommunications, ICT, professional services, construction and health care. Additionally, nationals of Mauritius will be able to set up businesses in China as wholly owned entities and through joint enterprises with Chinese operators.¹⁴⁵

[121] The recent agreement has also made some improvements regarding investment when compared with the 1996 China-Mauritius agreement as it relates to its protection scope, protection level, and dispute settlement mechanism. This upgrade to investment protection will provide greater legal protection for Chinese enterprise to go to Mauritius and will help expand cooperation with Africa.¹⁴⁶ The FTA between the two countries was signed in late 2019 and data on its effect on the trade were not readily available at the time of writing.

5.2 THE BELT AND ROAD INITIATIVE

5.2.1 COSTA RICA

[122] As a participating country Costa Rica stands to enjoy the many funding tools available under the BRI framework. It must be noted however that the IMF has indicated that the initiative comes with the possibility of indebtedness and the risk of non-payment, a problem which has occurred in Mongolia, Pakistan and Sri Lanka.¹⁴⁷

5.2.2 ICELAND

[123] To date Iceland has not joined the BRI. Chinese Ambassador to Iceland Jin Zhijian in a 2019 interview on Icelandic Television Station Hringbraut spoke on the relationship between Iceland

¹⁴⁴ 'China and Mauritius Sign Free Trade Agreement' (*China FTA Network*, 18 October 2019) <http://fta.mofcom.gov.cn/enarticle/enrelease/201910/41657_1.html> accessed 28 February 2020.

¹⁴⁵ Upton (n 143).

¹⁴⁶ China and Mauritius Sign Free Trade Agreement (n 144).

¹⁴⁷ Fabíola Ortiz, 'Costa Rica endorses China's mega infrastructure initiative' (*Diálogo Chino*, 7 September 2018) <<https://dialogochino.net/en/infrastructure/11589-costa-rica-endorses-chinas-mega-infrastructure-initiative/>> accessed 28 February 2020.

and China and indicated they were in consultations about the BRI with the hope that a memorandum of understanding could be reached.¹⁴⁸

5.2.3 MAURITIUS

[124] Mauritius is one of only fifteen African countries not party to China's BRI. Reasons for its apparent reluctance according to Hannah Ryder, Chief Executive of Beijing-based consultancy Development Reimagined, to join the initiative include economics and governance considerations. Mauritius is unclear of the possible implications of joining the initiative and Chinese projects have come under more scrutiny from its government than from other African States which are party to the BRI.¹⁴⁹

5.3 BILATERAL INVESTMENT TREATIES

[125] This section takes a look at the BITs that China has with Iceland and Mauritius to examine common themes and the main interests that are the focus of these agreements. The BITs with Iceland¹⁵⁰ and Mauritius¹⁵¹ are drafted very similarly and address identical themes, this could be attributed to the fact that the agreements were concluded within two years of one another and both entered into force in 1997. Costa Rica also has a BIT with China which was signed in 2007 and entered into force in 2016.¹⁵² The provisions of the Costa Rica-China BIT are not included in this section as the authors were not able to find an English version of the agreement.

[126] The preambles of both the Mauritius-China BIT and the China-Iceland BIT speak of an intention between the Contracting Parties to create favourable conditions for investments by investors of the other Contracting Party, and the recognition that such an agreement would assist to increase prosperity in both States. The important similarities of the Mauritius-China BIT and the China-Iceland BIT are the provisions of MFN treatment; fair and equitable treatment; full protection and security; guarantees against expropriation; protection from strife; umbrella clause; and

¹⁴⁸ Davíð Stefánsson, Interview with Jin Zhijian, Chinese Ambassador to Iceland (Iceland, 13 May 2019).

¹⁴⁹ Abdi Latif Dahir, 'These are the African countries not signed to China's Belt and Road project' (*Quartz Africa*, 30 September 2019) <<https://qz.com/africa/1718826/the-african-countries-not-signed-to-chinas-belt-and-road-plan/>> accessed 28 February 2020.

¹⁵⁰ Agreement between the Government of the People's Republic of China and the Government of the Republic of Iceland concerning the Promotion and Reciprocal Protection of Investments (China-Iceland) (1 March 1997).

¹⁵¹ Agreement between the Government of the Republic of Mauritius and the Government of the People's Republic of China for the Reciprocal Promotion and Protection of Investments (Mauritius-China) (8 June 1997).

¹⁵² Agreement between the Government of the People's Republic of China and the Government of the Republic of Costa Rica concerning the Promotion and Reciprocal Protection of Investments (China-Costa Rica) (20 October 2016).



dispute settlement clauses. However, notable differences include: Article 2 of the Mauritius-China BIT which states that the Parties are to provide the nationals of the other Contracting Party with the facilities for obtaining visa and work permits in connection with investment related activities; and the China-Iceland BIT providing national treatment standard and prohibition on unreasonable, arbitrary or discriminatory measures. It is clear that the China-Iceland BIT includes more protections than the Mauritius-China BIT and thus would be the preferable template to draft the investment chapter of the CETA.

CHAPTER 6: A PROPOSAL FOR A CARICOM-CHINA COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT

6.1 THE DEFINITION AND SCOPE OF A COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT

[127] A Comprehensive Economic and Trade Agreement (CETA) falls into a new hybrid category of Free Trade Agreements (FTAs) that promote sustainable development to the forefront of bilateral trade.¹⁵³ These so-called New Generation FTAs seek to deepen co-operation between nations not only on non-tariff barriers to trade, as traditional FTAs do, but also in areas of social and environmental import.¹⁵⁴ This is achieved by protecting States' right to regulate and by expanding and increasing the scope of stipulations on labour, environmental protection and sustainable development.

[128] In October 2016, a CETA was concluded between Canada, the European Union and its Member States called the Canada-European Union Comprehensive Economic and Trade Agreement. It has been provisionally applied, so the treaty has eliminated 98% of the tariffs between Canada and the EU. All 28 European Union Member States approved the final text of CETA for signature, with Belgium being the final country to give its approval. The CETA is so supplemented by its own interpretative instrument/document. There are three noticeable central arrangements encompassed within the CETA – an international treaty, an economic sustainability agreement (ESA) and an international investment agreement (IIA).

[129] Its background as an international agreement ensures that international standards and protocols are maintained and aligned with its specific objectives. Additionally, as a relatively new formed convention, its structure and content become available to other States in the international community who may be seeking a similar style of arrangement. The economic aspect is essential since sustainable development bears on the decision-making process by requiring actors to evaluate the impacts of their project on sustainability; it does not mandate particular substantive

¹⁵³ See: European External Action, 'Information Paper: CARIFORUM-EU Economic Partnership Agreement: An Overview' (*European Union*, July 2008) <https://eeas.europa.eu/sites/eeas/files/epa_summary_0.pdf> accessed 17 March 2020.

¹⁵⁴ Peter Muchlinski, 'Negotiating New Generation International Investment Agreements' in Steffen Hindelang and Markus Krajewski (eds), *Shifting Paradigms in International Investment Law: More Balanced, Less Isolated, Increasingly Diversified* (OUP 2016).

outcomes.¹⁵⁵ While CETA’s provisions on sustainable development have the potential to provide broad protection to state regulations, future agreements must build on this foundation to secure their continued implementation. The investment element is essential since several stipulations enshrined in the agreement take a novel character, thereby expanding international investment law itself. Previously, trade and investment agreements provided little scope for the right to regulate ‘as a counterbalance to foreign investor rights and protections.’¹⁵⁶ Critics have opined that arbitrators interpreted state regulatory powers too narrowly.¹⁵⁷ CETA responds to this concern by strengthening the State's right to regulate, providing a legal framework in which arbitrators can balance investor rights against the State's need for ‘regulatory space’.¹⁵⁸

[130] This memorandum developed the following diagram to showcase the integrative nature of the CETA which will be further discussed:

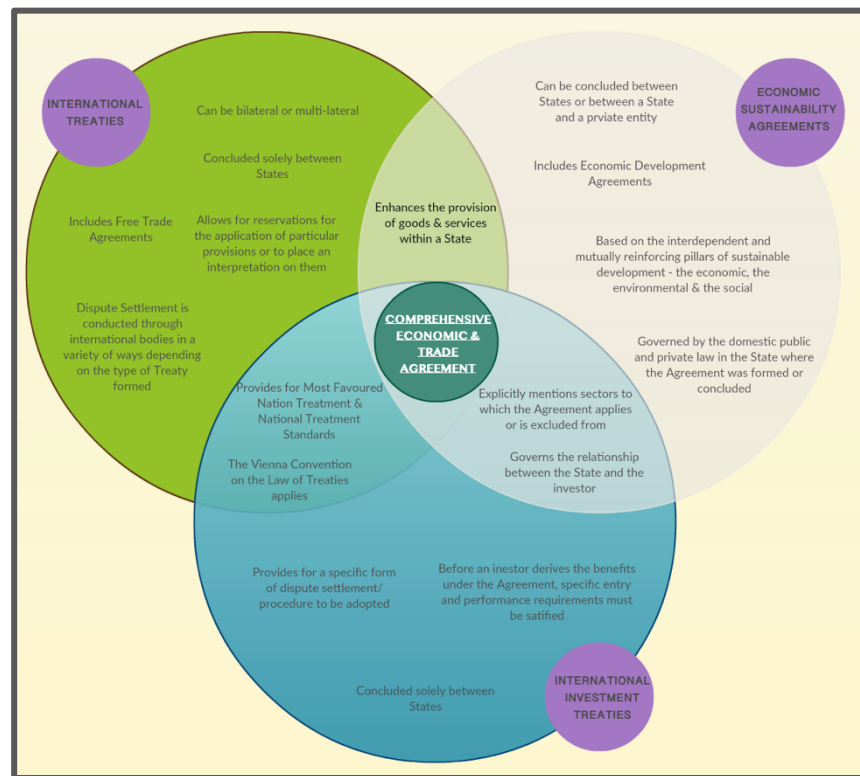


Figure 6: The Integrative Nature of the CETA

¹⁵⁵ Henning Grosse Ruse-Khan, ‘A Real Partnership for Development? Sustainable Development as Treaty Objective in European Economic Partnership Agreements and Beyond’ (2010) 13 Journal of International Economic Law 139, 145-146.

¹⁵⁶ Gus Van Harten, ‘The European Union’s Approach to ISDS: A Review of the Canada-Europe CETA, Europe-Singapore FTA, and European-Vietnam FTA’ (2016) 1 U. Bolognal Law Review 138, 161.

¹⁵⁷ Caroline Henckels, ‘Indirect Expropriation and the Right to Regulate: Revisiting Proportionality Analysis and the Standard of Review in Investor-State Arbitration’ (2012) 15 Journal of International Economic Law 223, 223-224.

¹⁵⁸ Van Harten (n 156).

6.1.1 THE INTERNATIONAL TREATY COMPONENT

[131] One commonly utilised international treaty between States is an FTA. An FTA is a pact between two or more nations to reduce barriers to imports and exports among them. Under a free trade policy, goods and services can be bought and sold across international borders with little or no government tariffs, quotas, subsidies, or prohibitions to inhibit their exchange.¹⁵⁹ This type of agreement is beneficial because it provides opportunities for economic expansion and FDI, as well as propel innovation in different markets relating to the methods by which goods and services are produced, marketed and sold. There is also the transfer of technology and expertise via enhanced globalisation.

[132] However, FTAs in their isolation can have some defects for the participating Parties which include but are not limited to:

Reduction in Taxation Revenue

[133] FTAs can largely alter how value enters society. Prior to their implementation, goods and services gain revenue for the States through tariffs and other charges. However, once effective, the income flows to corporations instead and it is the States' prerogative to collect the taxes from the profits generated in this new framework. This is why smaller, less developed States are often advised to avoid FTAs because they tend to struggle to replace revenue lost from import tariffs and fees.¹⁶⁰

Increased Job Outsourcing

[134] Reducing tariffs on imports allows enterprises to expand to other countries. Without them, imports from States with a slow cost of living cost less. This makes it burdensome for some enterprises in those same markets to compete, forcing them to reduce their workforce. Tariffs are a disincentive for companies to outsource their labour, and then import the product back to the consumers at the same price. This was one criticism of the North American Free Trade Agreement.¹⁶¹

¹⁵⁹ Adam Barone, 'Free Trade Agreement (FTA)' (*Investopedia*, 2020)
<<https://www.investopedia.com/terms/f/free-trade.asp>> accessed 27 April 2020.

¹⁶⁰ European Union Directorate-General for External Policies, 'Addressing Developing Countries' Challenges in Free Trade Implementation' (2017)
<https://www.europarl.europa.eu/meetdocs/2014_2019/documents/acp/dv/study/studyen.pdf> accessed 26 April 2020.

¹⁶¹ Congressional Research Service, 'The North American Free Trade Agreement (NAFTA), (2017)
<<https://crsreports.congress.gov/product/pdf/R/R42965/15>> accessed 26 April 2020.

Elimination of the Presence of Domestic Industry¹⁶²

[135] When large multinational undertakings engage with the local community, there is little opportunity for competition. These undertakings are integrated into a cross-section of different markets and function in a greater capacity than domestic enterprises. Even though this may encourage a dynamic economy, the undertakings tend to be the ones which can provide the consumer with better prices. Therefore, local competitors are driven out of the market.

Environmental Protection is Minimum or Non-Existent

[136] FTAs may not protect the environment. The Agreement itself is premised on developed countries gaining the opportunity to exploit the natural resources in other countries where restrictions or regulations may not be as stringent.¹⁶³ Lesser developed States often do not have proper environmental policies in place because they did not initially or historically possess the same pollution challenges as the developed world – a problem with which Caribbean nations are currently grappling. The quickest and most affordable means of providing goods and services become a point of emphasis, leading to extraction methods which ultimately are detrimental to environmental sustainability. This is how FTAs cause the depletion of natural resources.

Fewer Intellectual Property Protections

[137] Patents, processes, and other inventions, including branding, graphic displays, and imaging, are sometimes copied in the free trade environment.¹⁶⁴ This disadvantage lessens a company's opportunities to bring new jobs at the local level while providing reasonable wages. The products of the enterprises are also compromised, and they often have to compete with imitations of their own products. Even if there are intellectual property safeguards implemented due to an FTA, it is not guaranteed that foreign States will endeavour to enforce the laws with the same vicissitude as the domestic State.

[138] In light of the aforementioned, it is evident that traditional FTAs need to be supplemented by further arrangements in order to prevent or reduce these shortcomings. If not, it is plausible that

¹⁶² ADB Institute, 'Exploring the Trade-Urbanization Nexus in Developing Economies: Evidence and Implications' (2018) <<https://www.adb.org/publications/exploring-trade-urbanization-nexus-developing-economies>> accessed 26 April 2020.

¹⁶³ World Trade Organization, 'World Trade Report 2010: D. Trade Policies and Natural Resources' (2010) <https://www.wto.org/english/res_e/booksp_e/anrep-e/wtr10-2d_e.pdf> accessed 26 April 2020, 150.

¹⁶⁴ Northwestern Journal of International Law and Business, 'Trade and Technology with the Free Trade Zone: The Impact of the WTO Agreement, NAFTA and Tax Treaties on the NAFTA Signatories' (2017) <<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1520&context=njilb>> accessed 26 April 2020, 72.

the merits of the arrangement become vague or deluded, rendering the structure vulnerable to exploitation and ineffectiveness.

6.1.2 THE ECONOMIC SUSTAINABILITY COMPONENT (ESA)

[139] There is no set legal definition of the term ‘Economic Sustainability Agreement’. It is widely observed that the concept itself encompasses a functional description of an economic rather than a legal character.¹⁶⁵ The overall purpose of these agreements is to create the proper climate to promote long-term foreign investment in the host countries. Both Parties want to achieve a particular objective but also emphasise the reliance on the arrangement between States, or their public entities and foreign investors, including companies, covering a wide range of commercial activities which may include selling or purchasing commodities and industrial goods, leasing equipment, contracting for turn projects, acquiring technology, the mining of mineral or oil resources, or obtaining specialised services, and so forth.¹⁶⁶ In this way, the similarities with an investment covenant are easily recognisable.

[140] However, many ESAs are governed partly by public law and partly by private law and there need not be any close connection between the host state and that of the investor.¹⁶⁷ The fact that these types of arrangements are primarily governed by the domestic law of the Contracting State means that there is an apparent adaptation of an approach in which impartiality is questionable. The jurisdictional authority and power imbalance in this system puts the investor or commercial enterprise at a disadvantage (e.g. dispute settlement, legislation implantation, etc.). This is why the substance of the ESA needs to be merged with the essence of international investment agreements so as to substantiate its procedural provisions and international applicability in a CETA.

6.1.3 THE INVESTMENT COMPONENT

[141] The use of treaties to protect foreign investment represents a seismic shift away from the use of customary international law which had historically been the chief means of protecting aliens who

¹⁶⁵ Geiger Rainer, ‘The Unilateral Change of Economic Development Agreements’ (1974) *International and Comparative Law Quarterly* 73, 74.

¹⁶⁶ Lalive Jean, ‘Contracts between a State or State Agency and a Foreign Company’ (1964) *International Comparative Law Quarterly* 987, 990.

¹⁶⁷ Arnold McNair, ‘The General Principles of Law Recognized by Civilized Nations’ (1957) 33 *The British Yearbook of International Law* 1, 1; Curtis Christopher, ‘The Legal Security of Economic Development Agreements’ (1998) 29 *Harvard International Law Journal* 317, 319-321.

engaged in commerce. More concrete than customary international law and the other sources of international law like general principles, IIAs provide reasonably clear standards of protection for foreign investors which can be interpreted and applied by international tribunals.¹⁶⁸ As aforementioned in **Chapter 3** at [78], BITs play an important role in offsetting the risks associated with FDI and achieving mutual economic advancement between treaty Parties. They are legally binding agreements between two sovereign nations which comprise various protections for international investment for the stated purpose of advancing the economic linkages of the signatory Parties, with an ultimate objective of economic and social development.¹⁶⁹

[142] The CETA's investment criteria particularly unique because of the degree to which it has altered traditional provisions to become almost novel ones. This will be specifically highlighted in the discussion on the specialised clauses in **Section 6.2.3**. While the core concepts of investment protection may not have changed drastically, they have been further refined and explained in CETA and its annexes so as to take fully into account shifts in case law and changes in new texts of model BITs.¹⁷⁰ The investment chapter is one of the most critical dimensions of the CETA, providing a vital means of supplementing the drawbacks of a traditional FTA or ESA. It demotes specific investment standards to be maintained which are not encompassed in either of the agreements aforementioned.

[143] Thus, it is the consolidation and intermixture of these three components that makes the architecture of the CETA significantly and substantively far-reaching. Though a relatively new form of international agreement, it possesses the adequate tools to enhance the economic and trading relationships between States.

6.2 THE PROPOSED SUBSTANTIVE PROVISIONS OF THE CARICOM-CHINA CETA

[144] This section seeks to discuss and justify the provisions of the CARICOM-China CETA. Based on the prior analyses, the agreement will highlight markets which need to be further explored between the Parties. Additionally, the discussion of the specific detailed provisions of CARICOM-China CETA is divided into two parts – general clauses and specialised clauses.

¹⁶⁸ David Collins, *Introduction to International Investment Law* (Cambridge University Press 2016).

¹⁶⁹ Rudolph Dolzer and Christoph Schreuer, *Principles of International Investment Law* (OUP 2008).

¹⁷⁰ Makane Moïse Mbengue and Stefanie Schacher, *Foreign Investment Under the Comprehensive Economic and Trade Agreement (CETA)* (Springer International Publishing 2019).

While the general clauses exude the consistency of foundational trade and investment agreements, the specialised measures capture the objective of achieving economic sustainability for CARICOM.

6.2.1 MARKETS FOR EXPLORATION

[145] The CETA will enhance trade-in-services between the Parties in the following sectors:

6.2.1.1 Construction

[146] As demonstrated in **Chapter 1** at [68]-[69], China has been heavily involved in infrastructural development in the Caribbean. However, in reconciling the defects described in **Section 3.1.1** concerning how these investment opportunities are exploited,¹⁷¹ the CETA seeks to address this disproportionality through performance requirements. These are used to achieve both economic and non-economic goals such as strengthening the industrial base and national added value, developing national expertise in a given sector, creating upstream and downstream economic links in a given economic sector, ensuring technology transfer, achieving better environmental or social outcomes, reducing unemployment, avoiding restrictive trade practices, preserving a significant part of national enterprises in key sectors, or guaranteeing security in the industrial sector.¹⁷²

[147] The most commonly used performance requirements require the investor to ensure a level of local content for products and services, to achieve a specific level of local jobs, to engage in training programs for the workforce or build the capacities of suppliers of goods and services, to carry out research and development activity, to carry out environmental and social actions and to ensure technology transfer.¹⁷³ This can be effective in ensuring that Chinese investors hire a particular percentage of local workers in any investment they enter into. By mandating local hires, this can also trigger technology transfer and possible engagement of training programs for the workforce.

6.2.1.2 E-Commerce

[148] To a large extent, e-commerce is the driving force in the modern wave of business transactions by dictating the manner in which products and services are bought and sold. China is the global

¹⁷¹ Wei Liang, "China's Soft Power in Africa: Is Economic Power Sufficient?" (2012) 36(4) *Asian Perspective* 667, 682; Montoute (n 44) 123.

¹⁷² Nikiéma (n 85)

¹⁷³ *ibid* 2-3.

leader with the largest market by transaction value, with its projected share expected to reach half of the global market in the coming years.¹⁷⁴ In 2016 alone, China's e-commerce transactions amounted to US\$2.1tn with a 25% yearly growth.¹⁷⁵ This exponential growth is but one of the reasons why the Caribbean should look to investing in Chinese e-commerce. Contrastingly, many CARICOM Member States' economies are still heavily cash dependent¹⁷⁶ which creates a substantial problem in attempting to shift to online platforms. However, regional governments should adopt the necessary measures to modernise the existing infrastructure in order to move towards e-commerce. This includes adapting customs and border charges as well as ensuring the access and availability of the internet – requiring significant investment into the telemarketing sector by CARICOM governments. While this may appear costly, it would undeniably be conducive to a myriad of opportunities that it would benefit local businesses by enhancing commerce domestically and regionally.

[149] CARICOM has the potential to seize the advantages afforded by e-commerce. The Caribbean manufactures a variety of both perishable and non-perishable goods which is why it would be a wise economic venture to expand the reach of these products outside the Caribbean. The region may offer China preferential access to niche products that are made only in the Caribbean which include the indigenous non-traditional products such as food and textiles. However, Chinese consumers appear to believe it more beneficial to shop online.¹⁷⁷ Many Chinese citizens live in small third-tier cities, as such e-commerce affords them the ability to purchase products, they would not otherwise have been able to find. Moreover, due to the advanced infrastructure, Chinese consumers are able to receive their products much faster than their Western counterparts.¹⁷⁸ Due to all these reasons, CARICOM nations should capitalise on e-commerce and attempt to penetrate the Chinese market with their niche products.

[150] Given these considerations, it is proposed that the CARICOM-China CETA provisions seek to enhance e-commerce through various import duty concessions. However, there is the risk of poor-quality products being shipped between the countries. In particular, CARICOM States may be fearful of low-quality Chinese products being dumped into the Caribbean market. Thus, to

¹⁷⁴ 'China E-Commerce' (*China-ecommerce.com*) <<https://www.china-ecommerce.com/>> accessed 3 March 2020.

¹⁷⁵ 'E-Commerce Agency in China' (*Marketing To China*) <<https://www.marketingtochina.com/why-choose-us-to-develop-your-e-commerce-strategy-in-china/>> accessed 3 March 2020.

¹⁷⁶ Ed Kennedy, 'The State of E-Commerce in the Caribbean' (*St. Lucia Star*, 18 February 2018) <<http://caribbean.cepal.org/news/state-e-commerce-caribbean>> accessed 3 March 2020.

¹⁷⁷ *ibid.*

¹⁷⁸ *ibid.*

ensure consumer protection, quality assurance polices should be included within the agreement. This may be further guided by subjecting China to CSME Competition Law measures which will be further discussed in the specialised CETA clauses under **Section 6.2.3**.

6.2.1.3 Energy

[151] The existential threat of climate change severely and disproportionately affects CARICOM States because of actions from countries like China. However, China is currently the world's largest producer of wind and solar energy¹⁷⁹ and the largest domestic and outbound investor in renewable energy.¹⁸⁰ A desire to enhance the region's dynamic efficiency means that the Caribbean must look towards renewable energy development.¹⁸¹ Therefore, the CETA may offer special concessions to Chinese investors whose projects contain renewable energy components, with the understanding that there is an effective transfer of the technology and knowledge to the local CARICOM State.

[152] In another regard, dependent on the sector, performance requirements can require investors to help improve the environmental conditions in the communities where the investments are located. This may include requiring investors to be energy, water and resource efficient or to adopt mitigation strategies that aid in reducing the pollution released from the particular project or to promote the reduction of investment-related greenhouse gas emissions.

6.2.1.4 Financial Services

[153] This is one specific sector in which the relationship between CARICOM and China can thrive. This is because there has been evidence to show that outward investment in Caribbean financial services involve significant capital augmentation and organisational restructuring to enable

¹⁷⁹ Dominic Dudley, 'China Is Set to Become the World's Renewable Energy Superpower, According to New Report' (*Forbes*, 11 January 2019) <<https://www.forbes.com/sites/domicidudley/2019/01/11/china-renewable-energy-superpower/#7bc7bae8745a>> accessed 24 April 2020; Idun Haugan, 'The History of China's Green Energy Revolution' (*The Maritime Executive*, 28 February 2020) <<https://www.maritime-executive.com/editorials/the-history-of-china-s-green-energy-revolution>> accessed 24 April 2020; Organisation for Economic Cooperation and Development, 'Renewable energy' (OECD) <<https://data.oecd.org/energy/renewable-energy.htm>> accessed 26 April 2020.

¹⁸⁰ Joel Jaeger, Paul Joffe, and Ranping Song, 'China is Leaving the U.S. Behind on Clean Energy Investment,' (*World Resources Institute*, 6 January 2017) <<http://www.wri.org/blog/2017/01/china-leaving-us-behind-clean-energy-investment>> accessed 30 May 2020.

¹⁸¹ Martin Vogt, 'The Caribbean's Untapped Renewable Energy Potential' (*Renewable Energy World*, 2 June 2019) <<https://www.renewableenergyworld.com/2019/02/06/the-caribbeans-untapped-renewable-energy-potential/#gref>> accessed 30 May 2020.

expansion in China.¹⁸² One avenue by which this has been conducted by Barbados, but ultimately capitalised on by other regional jurisdictions, has been cross-border listing on the Hong Kong Stock Exchange which may yet be revisited.¹⁸³ As highlighted in **Chapter 3** at [77], the Caribbean has been internationally perceived as a low tax region; with some even being blacklisted by the EU due to their relaxed taxation policies.¹⁸⁴ The CETA ought to utilise these policies to demonstrate that CARICOM can be an offshore network for Chinese investors. It would therefore be possible for investors to reduce their taxation obligations and repatriate their profits to China. Additionally, this framework must exude the safeguarding of liberties and accompany various tax concessions which allows for one to promote corporation expansion into China.

6.2.1.5 Tourism

[154] China is the world's largest market for outbound travel,¹⁸⁵ having skyrocketed from 4.5 million travellers in 2000 to 150 million in 2018. This number is expected to double again as passport ownership increases from the current 10% of the population to 20% in the coming decade.¹⁸⁶ However, these travellers are not coming to the region despite encouragement from most Caribbean tourist boards.¹⁸⁷ This encouragement includes the relaxation of visa requirements for Chinese citizens travelling to Trinidad & Tobago.¹⁸⁸

[155] To attract these visitors, the region must overcome a few basic problems. Firstly, travel to the region from China is difficult. Currently, there is not a sufficiently high demand to warrant direct flights. Consequently, Chinese tourists must make multiple stops before reaching any Caribbean destination which results in a total flying time of at least 20 hours.¹⁸⁹ However, this does not

¹⁸² Dr. Dylan Sutherland et al, 'The Role of Caribbean Tax Havens and Offshore Financial Centres in Chinese Outward Foreign Direct Investment' (2nd Conference on Emerging Market Multinationals, Outward Investment from Emerging Economies, Copenhagen Business School, November 2010).

¹⁸³ Devonshire-Ellis (n 69).

¹⁸⁴ Bruce Zagaris, 'The EU Tax Blacklist and the Caribbean Financial Centres' (*Cayman Financial Review*, 7 May 2019) <<https://www.caymanfinancialreview.com/2019/05/07/the-eu-tax-blacklist-and-the-caribbean-international-financial-centres/>> accessed 30 May 2020.

¹⁸⁵ This may soon decline because of the recent COVID-19 pandemic as countries have placed travel restrictions on incoming Chinese nationals.

¹⁸⁶ Kate Springer, 'Tourism Industry Hit Hard as Chinese Tourists Stay Home' (*CNN*, 3 February 2020) <<https://edition.cnn.com/travel/article/wuhan-coronavirus-tourism-impact/index.html>> accessed 26 February 2020.

¹⁸⁷ 'Is the Chinese Tourism Market Illusory?' (*The Caribbean Council*) <<https://www.caribbean-council.org/chinese-tourism-market-illusory/>> accessed 26 February 2020.

¹⁸⁸ 'Trinidad & Tobago Joins Belt and Road Initiative' (*The Economist Intelligence Unit*, 30 May 2018) <<https://country.eiu.com/article.aspx?articleid=836780667&Country=Trinidad%20and%20Tobago&topic=Politics&subtopic=Forecast&subsubtopic=International+relations>> accessed 26 February 2020.

¹⁸⁹ *ibid.*

presume that China has no interest in Caribbean tourism. Their interest is evident through the resorts they have constructed in the Bahamas, Jamaica and St Maarten amongst other territories.¹⁹⁰ Additionally, there has been the inclusion of direct flights between China and Cuba. This in itself could be an indication of China's interest in the Caribbean tourist market. It could also presume the feasibility of direct flights between China and other Caribbean territories or shorter transit routes.

[156] In pinpointing this sector in trade-in-services, the CARICOM-China CETA may contain special provision for tourism. This may take the form of travel tax reductions and visa free travel between the Parties. Notwithstanding the need for proper facilitation of more convenient travel between the States, there is still an attached requirement for CARICOM to innovate its tourism sector. While tourism may account for a large percentage of the region's GDP, it is argued that this sector is not properly integrated within the region's economies. At present, national tourist offices and the tourism ministries of the respective territories are not able to establish effective linkages between tourism and the rest of the economy.¹⁹¹ Therefore, it is paramount that this sector is specifically highlighted in this agreement as it would allow for further development and integration of the sector into the economies of the Caribbean.

[157] The proposed measures contained within the detailed general and specialised clauses of the agreement will now be specifically highlighted and brief justifications will be provided for the specialised provisions.

6.2.2 GENERAL CLAUSES

- **Preamble**

The "Parties" [...] resolve to

Establish clear, transparent, predictable and mutually advantageous rules to govern their trade and investment; and recognising the importance of international security, democracy, human rights and the rule of law for the development of international trade and economic cooperation;

¹⁹⁰ Willem Oosterveld, Eric Wilms and Katarina Kertysova, *The Belt and Road Initiative Looks East: Political Implications of China's Economic Forays in the Caribbean and the South Pacific* (The Hague Centre for Strategic Studies 2018).

¹⁹¹ Vincenzo Zappino, 'Caribbean Tourism and Development: An Overview' (European Centre for Development Policy Management 2005) <<https://ecdpm.org/wp-content/uploads/2013/11/DP-65-Caribbean-Tourism-Industry-Development-2005.pdf>> accessed 12 April 2020.



Recognising that the provisions of this Agreement preserve the right of the Parties to regulate within their territories and the Parties' flexibility to achieve legitimate policy objectives, such as public health, safety, environment, public morals and the promotion and protection of cultural diversity;

Implementing this Agreement in a manner consistent with the enforcement of their respective labour and environmental laws and that enhances their levels of labour and environmental protection, and building upon their international commitments on labour and environmental matters; [...]

Have agreed as follows...

- **Definition of an investor**

The term "nationals" means,

- (a) in respect of CARICOM, CARICOM citizens within the meaning of Article 32(5)(a) of the Revised Treaty of Chaguaramas;*
- (b) in respect of the People's Republic of China, physical persons deriving their status as Chinese nationals from the laws of China;*

The term "companies" means,

- (a) in respect of CARICOM, any 'enterprise' within the definition of the Article 1 of the Revised Treaty of Chaguaramas, as well as any commercial or other company or association with or without legal personality having its seat in CARICOM, irrespective of whether or not its activities are directed at profit;*
- (b) in respect of the People's Republic of China a, corporations, firms or associations incorporated or constituted under the law in force in China;*

- **Definition of an investment**

For the purposes of this Treaty, the term "investments" comprises every kind of asset, in particular:

- (i) movable and immovable property as well as any other rights in rem, such as mortgages, liens and pledges;*
- (ii) shares of companies and other kinds of interest in companies;*
- (iii) claims to money which has been used to create an economic value or claims to any performance under contract or by concession having an economic value;*



- (iv) *intellectual property rights, in particular copyrights, patents, utility-model patents, registered designs, trademarks. Trade names, trade and business secrets, technical processes, know-how, and good will;*
- (v) *business concessions conferred by law or under contract, including concessions to search for, extract and exploit natural resources;*

any alteration of the form in which assets are invested shall not affect their classification as investment;

- **Conditions on the admission of foreign investors**

1. *Each Contracting Party shall encourage and promote investment by investors of the other Contracting Party in its territory. To this end, the Contracting Parties shall consult with each Other as to the most effective ways to achieve that purpose.*
2. *Each Contracting Party shall admit such investment in accordance with its laws and regulations.*
3. *Each Contracting Party shall use its best endeavours to facilitate the obtaining of visas and work permits by investors of the other Contracting Party.*

- **Guarantees against discrimination [National Treatment and Most-Favoured-Nation Treatment]**

1. *Neither Contracting Party shall in its territory subject investment or returns of nationals or companies of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own nationals or companies or to investments or returns of nationals or companies of any third State.*
2. *Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their management, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own nationals or companies or to nationals or companies of any third State.*
3. *Special incentives granted by one Contracting Party only to its nationals and companies in order to stimulate the creation of local industries are considered compatible with this Article provided they do not significantly affect the investment and activities of nationals and companies of the other Contracting Party in connection with an investment.*



- **Guarantee against expropriation without compensation**

1. *Investments of nationals or companies of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "compulsory acquisition") in the territory of the other Contracting Party except for a public purpose related to the needs of that Party and against adequate compensation.*

Adequate compensation shall amount to the market value of the investment compulsorily acquired immediately before the compulsory acquisition or impending compulsory acquisition was made known by the authorities, shall include interest at a normal commercial rate until the date of payment, shall be made without delay and be effectively realisable.

In determining the market value, the Contracting Parties agree that due weight shall be given to any factors which might have affected the value before the compulsory acquisition was made known by the authorities. Such compensation shall also be freely transferable subject to the right of each Contracting Party in exceptional balance of payments difficulties to exercise equitably and in good faith powers conferred by its laws to place limits on the amount transferred in cases where the compensation constitutes a large sum, provided however that the transfer of a minimum of 33-1/3 per cent a year is guaranteed. Unless otherwise agreed by the investor transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange control regulations in force. The national or company affected shall have a right, under the law of the Contracting Party making the compulsory acquisition, to prompt review, by a judicial authority, or such other independent authority as may be established by the law of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

2. *The provisions of paragraph (1) above shall also apply in the case where a Contracting Party compulsorily acquires the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which nationals or companies of the other Contracting Party own shares in respect of the investment of such nationals or companies.*



- **Dispute Settlement**

1. *Each Contracting Party hereby consents to submit to the International Centre for the Settlement of Investment Disputes (hereinafter referred to as "the Centre") for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington on 18th March 19651 any legal dispute arising between that Contracting Party and a national or company of the other Contracting Party concerning an investment of the latter in the territory of the former.*

A company which is incorporated or constituted under the law in force in the territory of one Contracting Party and in which before such a dispute arises the majority of shares are owned by nationals or companies of the other Contracting Party shall in accordance with Article 25 (2)(b) of the Convention be treated for the purposes of the Convention as a company of the other Contracting Party.

If any such dispute should arise and agreement cannot be reached between the Parties to the dispute through pursuit of local remedies in accordance with international law then, if the national or company affected also consents in writing to submit the dispute to the Centre for settlement by conciliation or arbitration under the Convention, either party may institute proceedings by addressing a request to that effect to the Secretary-General of the Centre as provided in Articles 28 and 36 of the Convention.

The Contracting Party which is a party to the dispute shall not raise as an objection at any stage of the proceedings or enforcement of an award the fact that the national or company which is the other party to the dispute has received in pursuance of an insurance contract an indemnity in respect of some or all of his or its losses.

2. *Neither Contracting Party shall pursue through the diplomatic channel any dispute referred to the Centre unless:*
 - (a) *the Secretary-General of the Centre, or a conciliation commission or an arbitral tribunal constituted by it, decides that the dispute is not within the jurisdiction of the Centre; or*
 - (b) *the other Contracting Party should fail to abide by or comply with any award by an arbitral tribunal.*

6.2.3 SPECIALISED CLAUSES

- **Preferential Treatment and Tariff Concessions**

All CARICOM Member States will be afforded the benefits derived from China's Duty-Free, Quota Free (DFQF) with the assurance of the quality maintenance of products and services and dumping mitigation. Further, CARICOM is exempted from the rule of origin relating to manufactured goods.

Justification:

[158] China's main form of preferential treatment agreement is their DFQF market scheme programme. It grants a zero-tariff rate for the Least Developed Countries (LDCs) which have diplomatic relations with China. However, stringent rules applied to the products considered. The exports must originate entirely from the producing country, or if external inputs must be used, they must go through a "substantial transformation".¹⁹² Though traditionally for the benefit of LDCs, this criterion has not been consistently applied.¹⁹³ The region's markets are significantly more vulnerable than China's and the size of the Chinese manufacturing sector would make it easy for them to dump excess products into the Caribbean markets. Consequently, it is important that should a provision similar to the DFQF scheme be agreed to, that there are strict rules concerning dumping and quality assurance. Additionally, considering many Caribbean products may require some foreign input, CARICOM must negotiate to be exempted from the rule of origin clause concerning manufactured goods in the DFQF scheme. Although 99% of all LDC imports into China in 2011 were under the DFQF scheme, China has imported little beyond oil, and a few other commodities from African LDCs.¹⁹⁴

¹⁹² Gabriella Scelta, 'Overview of China's Duty-Free, Quota-Free Market Access Programme for LDCs' (*United Nations LDC Portal*) <<https://www.un.org/ldportal/overview-of-chinas-duty-free-quota-free-market-access-programme-for-ldcs/>> accessed 28 March 2020.

¹⁹³ *ibid.*

¹⁹⁴ Sam Laird, 'Duty-Free, Quota-Free Market Access: What's in It for African LDCs?' (*International Centre for Trade and Sustainable Development*, 17 June 2013) <<https://www.ictsd.org/bridges-news/bridges-africa/news/duty-free-quota-free-market-access-what%E2%80%99s-in-it-for-african-ldcs>> accessed 15 April 2020.

- **Guarantee to Fair and Equitable Treatment (FET) and Full Protection and Security (FPS)¹⁹⁵**
 1. Each Party shall accord in its territory to covered investments of the other Party and to investors with respect to their covered investments fair and equitable treatment and full protection and security in accordance with paragraphs 2 through 5.
 2. A Party breaches the obligation of fair and equitable treatment referenced in paragraph 1 if a measure or series of measures constitutes:
 - (a) denial of justice in criminal, civil or administrative proceedings;
 - (b) fundamental breach of due process, including a fundamental breach of transparency, in judicial and administrative proceedings;
 - (c) manifest arbitrariness;
 - (d) targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief;
 - (e) abusive treatment of investors, such as coercion, duress and harassment; or
 - (f) a breach of any further elements of the fair and equitable treatment obligation adopted by the Parties in accordance with paragraph 3 of this Article
 3. The Parties shall regularly, or upon request of a Party, review the content of the obligation to provide fair and equitable treatment.
 4. When applying the above fair and equitable treatment obligation, a Tribunal may take into account whether a Party made a specific representation to an investor to induce a covered investment, that created a legitimate expectation, and upon which the investor relied in deciding to make or maintain the covered investment, but that the Party subsequently frustrated.
 5. For greater certainty, “full protection and security” refers to the Party’s obligations relating to the physical security of investors and covered investments.

Justification:

[159] This particular clause diverts from its traditional articulation in BITs. This is because it delimits both scope of the FET and FPS standards by stating exactly what the provisions entail. This is vital because the interpretation of the measures is now narrowed which means that breaches of the provisions are not only consequently reduced but must be very particular when bringing a claim. It puts safeguard measures in place for CARICOM as it would be more likely to violate this measure if it were generously drafted due to infrastructural and procedural inadequacies.

¹⁹⁵ Adopted and modified from Article 8.10 of the Canada-EU Comprehensive Economic and Trade Agreement.

- **Reservations and Exceptions Clauses**

This agreement allows for reservations and exceptions with respect to the MFN treatment, national treatment and other investor guarantees. Exempt from these obligations completely or in part are:

- *Certain non-conforming measures;*
- *Measures relating to sectors listed as exempt from MFN and national treatment;*
- *Certain intellectual property-related rights where derogations are permitted under the TRIPS Agreement; and*
- *Public procurement and subsidies or grants.*

Justification:

[160] Provisions like these primarily aim to protect certain business and economic sectors (through references to the respective schedules of the Parties) from the application of specified provisions of the Investment Chapter, such as the National Treatment provision. A similar exception can be seen in the Annex of the Jamaica–USA BIT.¹⁹⁶ It also ensures consistency with other existing international agreements such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), thus following another trend visible in recent IIAs.¹⁹⁷ The provision states that the National Treatment provision, amongst others, does not apply to a series of non-conforming measures that are listed in the schedules of the Parties as well as to specific types of procurement, subsidies or government support. This is essential as CARICOM’s top ten exports are in raw materials¹⁹⁸ therefore being able to have exceptions in that sector can advantage domestic investors and curtail exploitation of natural resources.

¹⁹⁶ The relevant provision reads:

‘Jamaica reserves the right to make or maintain limited exceptions to national treatment, as provided in Article II, paragraph 1 in the sectors or matters it has indicated below:
civil aviation; real estate; banking; shipping; communications (including postal and telegraph services, and broadcasting); mining and natural resources; government grants and other assistance to small-scale enterprises with total assets of U.S. \$50,000 or less; customs brokerages; car rental; real estate agencies; travel agencies; gaming; betting and lotteries.’

¹⁹⁷ Lukas Vanhonnaeker, *Intellectual Property Rights as Foreign Direct Investments: From Collusion to Collaboration* (Edward Elgar Publishing 2015).

¹⁹⁸ Montoute (n 44) 117.

- **The Right to Regulate¹⁹⁹**

1. For the purpose of this Chapter, the Parties reaffirm their right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, safety, the environment or public morals, social or consumer protection or the promotion and protection of cultural diversity.
2. For greater certainty, the mere fact that a Party regulates, including through a modification to its laws, in a manner which negatively affects an investment or interferes with an investor's expectations, including its expectations of profits, does not amount to a breach of an obligation under this Section.

Justification:

[161] The right to regulate as a concept in international investment law is 'the legal right exceptionally permitting the host State to regulate in derogation of international commitments it has undertaken by means of an investment agreement without incurring a duty to compensate.'²⁰⁰ For both Parties to this agreement, this means nothing in the agreement shall be construed to preclude them from adopting measures that it considers necessary for the protection of its essential security interests; it does not do so in order to state what is obvious under public international law, to wit that a State will prioritise its essential security interests over the interests of foreign investors; but rather it aims to ensure that should it take such measures it shall not have to compensate foreign investors.²⁰¹ The absence of a duty to compensate is the predominant effect in this context.

- **Competition Law Clause**

China will be subjected to all CSME Competition Law provisions contained in Chapter VIII of the Revised Treaty of Chaguaramas.

Justification:

[162] Although relatively unexplored, CSME Competition Law provides an essential avenue for the governing of the concept of 'free enterprise' within the region. Through the CARICOM-China CETA, Chinese business owners or investors will derive these benefits should they opt to base their enterprises for trade and commerce within CARICOM. Subsequently, when one considers the potential expanse of their resources and financing in establishing enterprises, it is irrefutably conceivable that local industry may be largely disadvantaged.

¹⁹⁹ Adopted and modified from Article 8.9 of the Canada-EU Comprehensive Economic and Trade Agreement.

²⁰⁰ Catherine Titi, *The Right to Regulate in International Investment Law* (Nomos and Hart Publishing 2014).

²⁰¹ Makane Moïse Mbengue (n 170).

[163] Flowing from this, CSME Competition Law is an essential mechanism by which competition in the economy can be regulated. The application of competition policy ensures that both Chinese and regional entities are competing fairly with one another. This promotes enterprise and efficiency, protection of consumer welfare, innovation in technological development, product quality assurance, etc.²⁰² Therefore, even if Chinese enterprises were to act as a key factor for regional economic advancement, the stipulations under CSME Competition Law would prevent the exploitation of CARICOM consumers and business, as well as the partition of markets along national lines. Chapter VIII (Rules of Competition & Consumer Protection) facilitate this while ensuring that the objectives of the CSME are maintained.

- **Treatment of Double Taxation Clause**

The treatment of double taxation is to be dealt with specifically under the CARICOM-China Double Taxation Treaty

Justification:

[164] An important consideration is how the taxation relationship between CARICOM-China itself will be governed. If Chinese enterprises may establish themselves in multiple CARICOM States through either permanent establishments or contractual incorporation – whether active in the respective States’ economy or not – there is significant potential for conflict in the allocation of taxing rights. Therefore, though it may be quite complex to articulate and monitor, it would be recommended that CARICOM and China inaugurate a single DTT. This is because if China were to conclude individual agreements with CARICOM States, it would leave room for a great deal of taxation arbitrage as it may allow for taxation avoidance in other CARICOM nations.

- **Tariff Adjustment Clause**

Special concessions (e.g. tariff exemptions or zero-rated tariffs) may be afforded to CARICOM States which fall into the category of ‘less developed States’ under Article 4 of the Revised Treaty of Chaguaramas through mutual agreement by both Parties. If consensus cannot be reached, a decision will be made through arbitration.

Justification:

²⁰² Alison Jones, Brenda Sufrin and Niamh Dunne, *Jones & Sufrin’s EU Competition Law: Text, Cases and Materials* (7th edn, OUP 2016).

[165] As discussed in **Chapter 7** at [173], the possibility exists that not all CARICOM Member States will benefit from this agreement. Therefore, this measure contemplates the alteration of trade and investment stipulations for the less developed CARICOM States to accommodate for their inability to facilitate certain arrangements or to enhance the economic viability of the State.

- **Special Assistance with Disaster Relief Clause**

It is strongly encouraged that support – whether monetary or physical – be bestowed upon a Contracting Party when faced with calamity derived from natural or man-made causes. This thereby reaffirms not only their comradery but also their commitment and dedication to the object and purpose of this agreement.

Justification:

[166] The abundance and wealth of Chinese resources can significantly contribute to the rehabilitation of the infrastructure of CARICOM States after suffering some form of substantial detriment. If China becomes a prominent stakeholder in the region and benefit for the economic opportunities arising out of the Caribbean, it is only equitable that maintaining the viability of investing in the region would also be in their respective interest.

- **Emergency Suspensory Clause**

CARICOM may suspend its investment obligations where sudden economic difficulties have arisen due to a natural disaster. This suspensory duration will only be allotted based on an economic analysis to determine the individual State(s) respective recovery period(s). All economic obligations (e.g. payment of tariffs) under the CETA may be suspended. No compensation will be payable to investors. and there will be no actionable infringement of the CETA.

Justification:

[167] This provision accommodates for the vulnerability status of CARICOM. By providing for suspension due to the detriment of a natural disaster, it puts CARICOM in a less defensive position rather than being forced to adopt a position of necessity under the BIT articulation or customary international law, or force majeure – all of which mandate the satisfaction of fairly high-threshold requirements.

CHAPTER 7: POLITICAL CONSIDERATIONS AND RISKS

[168] This chapter aims to discuss the political considerations and risks that can arise from a possible CETA between CARICOM and China. The CARICOM-China relationship is likely to impact CARICOM's relationship with other States and consequently the success of this CETA. CARICOM's relationship with the USA may be most affected by this CETA because of the USA's opinion of China and its aims in the region. Additionally, the CETA may be blocked by the CARICOM States that recognise and have diplomatic relations with Taiwan. There are also other risks such as the depletion of natural resources and the conditions that may be attached which can have long-term negative effects as well as the breakdown of regional integration because of the differing benefit levels for each CARICOM State.

7.1 UNITED STATES OF AMERICA

[169] The USA has generally been a trading partner to CARICOM States and provided them with development assistance. However, the region has dwindled in geo-political importance and with its small markets and some countries' improved development, development assistance from the USA has slowly declined.²⁰³ The growing influence of China would not be met kindly by the USA because it has historically been the dominant power in the region. There is an indication that the USA does not view China's objectives in the region as noble thus there may be retaliation by the USA government in the form of denying CARICOM States development assistance, reducing trade with the region and possibly preventing foreign direct investment from American investors.²⁰⁴ Nonetheless, CARICOM's increased relations with China may reignite the USA's interest in the region.²⁰⁵ In response to China's BRI, the USA established the United States International Development Finance Corporation (DFC) whose intention is to facilitate private-sector investment in developing countries through development finance tools.²⁰⁶ Notably, the DFC states that it will 'provide a robust alternative to the Chinese state-directed, debt-heavy model that can leave developing countries worse off.'²⁰⁷ This is just one illustration of the USA

²⁰³ Bernal (n 50) 294.

²⁰⁴ Caitlin Campbell and Zoe Valette, 'China's Expanding and Evolving Engagement with the Caribbean' (U.S.-China Economic and Security Review Commission Staff Report 2014) 2; Audie Cornish, Interview with Margaret Myers, Director of the China and Latin America program at the Inter-American Dialogue (NPR, 9 April 2015) <<https://www.npr.org/2015/04/09/398575535/u-s-intervention-in-the-caribbean-comes-on-chinas-heels>>.

²⁰⁵ Bernal (n 50) 297.

²⁰⁶ 'The United States International Development Finance Corporation 2019' (The White House, 8 March 2019) <https://www.dfc.gov/sites/default/files/2019-08/Shelby_Letter_USIDFC_Reorg_Plan_08032019.pdf> accessed 4 May 2020, 1.

²⁰⁷ *ibid* 1.

reengaging with the region because of the region's relations with China. This tug of war may be in the best interest of CARICOM States as the competition may gain CARICOM a more beneficial agreement. However, caution must be exercised as to not completely isolate one benefactor State.

7.2 TAIWAN

[170] China considers Taiwan to be a wayward province that needs to be reincorporated into mainland China. As such, CARICOM became and remains important to China because of the “One-China” policy which left China competing with Taiwan for diplomatic relations with CARICOM States.²⁰⁸ This has implications for the success of this CETA as some CARICOM States recognise Taiwan.²⁰⁹ However, this is not definite as some States have switched their allegiance over the years.²¹⁰ Nonetheless this is an important consideration because though in the past this divide has not created problems, a CARICOM-China CETA requires the commitment of all CARICOM States. It is not advised that CARICOM States adopt a “Two-Chinas” policy as a solution because Belize attempted to do so in 1987 and Beijing revoked its diplomatic relations with Belmopan.²¹¹ Perhaps States that recognise Taiwan can enter into reservations so that the provisions of the agreement do not apply to them and they get to maintain their diplomatic relations with Taiwan whilst not hampering the success of such an agreement for the wider CARICOM community.

7.3 OTHER RISKS

[171] In relation to goods, CARICOM's top ten exports are raw materials.²¹² This can lead to a serious depletion of CARICOM nations' natural resources which can cause environmental damage (if done in an unsustainable manner). CARICOM States are quite susceptible to the effects of climate change and environmental damage could worsen such effects. Additionally, the depletion of their natural resources and continued environmental degradation could result in decreased ways to generate revenue for CARICOM nations as they do not have many options for goods that are not tied to their natural resources or land. The ramifications of reliance on the exportation

²⁰⁸ Lorenzo Maggiorelli, 'Taiwan's Development Aid to Latin America and the Caribbean and the One China Policy' (2019) 7 *Razón Crítica* 177, 187.

²⁰⁹ CARICOM States that recognise Taiwan: Belize, Haiti, St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines.

²¹⁰ Bernal (n 50) 282.

²¹¹ Maggiorelli (n 208) 188.

²¹² Montoute (n 44) 117.

of raw materials is not unknown to CARICOM because this relationship would be similar to that of CARICOM and its traditional partners such as the EU and the USA.²¹³

[172] China's approach includes non-interference in a State's internal affairs, and they do not insist on a particular ideology nor values such as good governance, democracy and human rights as prerequisites for their engagement.²¹⁴ However, economic development assistance may come with different conditions. China generally insists on the use of Chinese labour so many Chinese state-owned construction companies bring Chinese labourers to developing countries to work on government-backed projects. In 2008, Chinese construction companies brought in approximately 740,000 Chinese workers to execute US\$58bn worth of projects rather than utilise the labour in the host countries (Angola, Uzbekistan, Iran and Indonesia), and between 2008 and 2011, 2,731 permits were issued to Chinese persons in the construction sector rather than using labourers from Trinidad & Tobago.²¹⁵ This indicates that Chinese overseas investment does not necessarily increase job opportunities in the host state.

[173] Given the various States that constitute CARICOM, it is obvious that States will derive differing benefits, perhaps even disproportionately. CARICOM States are not the same in size, population, natural resources and thus all may not have the same level of economic opportunity. This could lead to tension between CARICOM States who may see other States deriving more benefit from the CETA than them. As seen in **Section 3.2** the economic interaction between CARICOM States and China has been predominantly bilateral. Thus, there may be competition among Member States for assistance from China under the terms of the CETA which can impede the integration process. However, as a mitigatory measure, Article 4 of the RTC indicates the development status of each CARICOM Member which can serve as guidance for treatment of CARICOM States. Some provisions of the CETA relating to trade and investment can be adjusted in favour of the less developed CARICOM States to make allocation for their reduced capacity to facilitate certain arrangements within the CETA or to help boost economic opportunity within the State. For example, payment of tariffs or exports of goods may not be possible or may be difficult following a natural disaster. Thus, allocation should be made in the form of suspension of obligations for a period agreed upon by the affected CARICOM State(s) and China. Particularly

²¹³ Girvan 2011: 'Global and Regional Reconfigurations of Power: Implications for Caribbean-EU Relations'. Presentation at the Joint Caribbean-EU Strategy: Reflections and Analysis Workshop, Institute of International Relations, UWI, April 15, 2011; Montoute (n 44) 122.

²¹⁴ Hongyi Lai and Yiyi Lu, *China's Soft Power and International Relations* (Routledge 2012) 2; Montoute (n 44) 123.

²¹⁵ Liang (n 171); Montoute (n 44) 123.



for the less developed CARICOM States, they should be allowed a longer suspension period, a minimum time frame of which would be agreed upon and included in the CETA. Ideally, regional integration should be the foundational pillar for informing any engagement with China and taking into consideration the differing development levels and needs of each State and making adjustments to suit could help prevent the possible erosion of the integration movement.



CHAPTER 8: CONCLUSION

[174] As their economic and trading relationship has spanned decades, this memorandum has attempted to analyse the relationship between CARICOM and China in order to determine the form in which a definite agreement between the Parties is to be adopted. This was executed through a plethora of assessments which were dictated by the overall individual objectives of both CARICOM and China and the potential for their collective goals thereafter. Given the specialised needs of the region comprised of SIDS, whose vulnerable economies, markets and environment mandate due consideration, the CETA was proposed.

[175] The assessment has shown that CARICOM's economic vulnerability opposes China's global economic superiority. The improvement of the relationship between the Parties is vital for CARICOM to increase its international competitiveness. However, past economic and investment engagements between the Parties demonstrate that China has an evident influence on Caribbean debt, increasing susceptibility to exploitation and impact on local livelihood. This provides a foundation as to why a substantial, governing structural arrangement is necessary. Data exemplified the significant trade deficit that exists between CARICOM and China which will ultimately hinder the region's long-term development goals. The trading potential between the States must be further explored as there is potential for their relationship to replicate those of other CARICOM trading partners which have stagnated. As such, there must be promotion of various economic efficiencies in order to prevent this risk.

[176] The comparative analysis of agreements between China and other States functioned as a guide for how the regulation of investments and trade between CARICOM and China would be conducted. In particular, the substance of the China-Iceland FTA proved to be most beneficial to CARICOM due to the similarities in State characteristics such as population and geographical size. However, China's bilateral trade agreements with Latin American States in and around the Caribbean region have been unsuccessful due to the lack of trade complementarity between the contracting States. This shows the importance of correctly identifying trade partners and trade sectors to engage with for the creation of a viable relationship.

[177] In terms of sectors in which trade liberalisation potential exists between the Parties, petroleum, crude petroleum, gold, rice, raw sugar, liquor, beer, orthopaedic appliances and aluminium are goods that may prove to be promising for CARICOM. Chinese products which are to be focused on include their top exports of machinery, mechanical appliances, nuclear reactors, boilers,

electrical machinery and equipment, sound recorders and reproducers, television, plastics, iron or steel, furniture, bedding, mattresses, mattress supports, cushions and similar stuffed furnishings, vehicles other than railway or tramway rolling stock, apparel and clothing accessories and rubber. As for services, while there is potential, the data between the Parties are very sparse and therefore, the subsequent recommendations put forth were based on objective considerations.

[178] In light of these findings, the CETA was chosen to be the substantive agreement between the Parties. This is because its integrative, flexible nature would adequately provide for trade, investment and economic sustainability based international regulation and standards without significant compromising State sovereignty. The CARICOM-China CETA seeks to further expound upon the principles and necessary provisions to be included in such an agreement. Particular emphasis will be placed on the provisions regarding trade in goods and services and investment as well as economic stipulations such as rules of competition. Regarding trade in goods, it is noted that exports from the region to China are near negligible in value. As such, the authors propose to rectify this by proposing provisions to expand the reach of the Caribbean market to China through the export of a variety of non-perishable goods. Similarly, the authors have found that trade in services with China is significant undocumented and unexplored. Subsequently, the authors propose to reconcile this difference through a myriad of recommendations, specifically in the sectors of tourism, construction finance and e-commerce.

[179] Additionally, to enhance trade facilitation, it is suggested that the CETA adopt provisions similar to those outlined in the Chinese DFQF scheme. Regarding the facilitation of investment services between the two Parties, there would be much emphasis placed on the right to regulate and performance requirements to be adhered to as outlined in the investment chapter. However, the crux of the CETA comes within its specialised provisions relating to double taxation, subjecting China to the CSME Competition Law provisions enshrined in the RTC and providing an emergency suspensory measure which can be invoked due to economic difficulties accompanying a natural disaster.

[180] Nevertheless, the geopolitical considerations when articulating this CETA must also be given proper credence. This agreement would ultimately cement China's commitment to the region's development and is likely to impact CARICOM's relationship with other trading partners, primarily the USA, because of its opinion of China and China's aims in the region. The ultimate breakdown of the CETA may stem from the delicate nature of the 'One China' policy as some



CARICOM States recognise Taiwan. There are also other risks such as the depletion of natural resources, the possible conditions attached and the breakdown of regional integration because of the differing benefit levels for each CARICOM State through this CETA. Thus, the CARICOM-China CETA would have to be articulated in such manner that upholds political integrity and external commitments while simultaneously maintaining the objectives of CARICOM and by extension, the CSME.

[181] This memorandum is serviceable in many respects. In tracking the economic and trade history between CARICOM and China, both the shortcomings and successes of CARICOM's previous engagements can be realised and readjusted. While this CETA agreement may not come into fruition by way of form or substance, it is our hope that this memorandum will nonetheless assist in paving the way to not only understand what the region's current position with China is, but also the multitude of possibilities for development which can become material with structural arrangements.