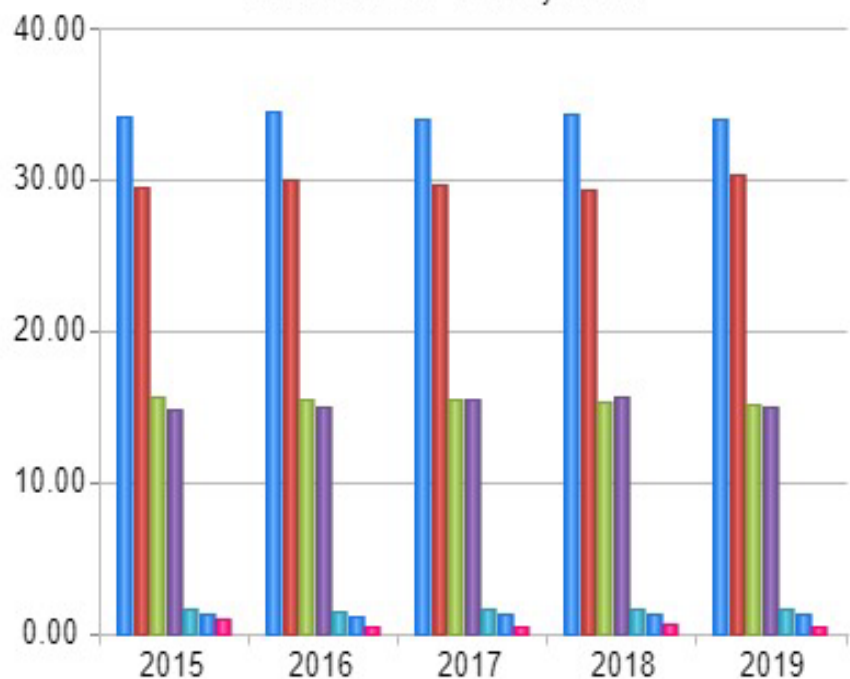


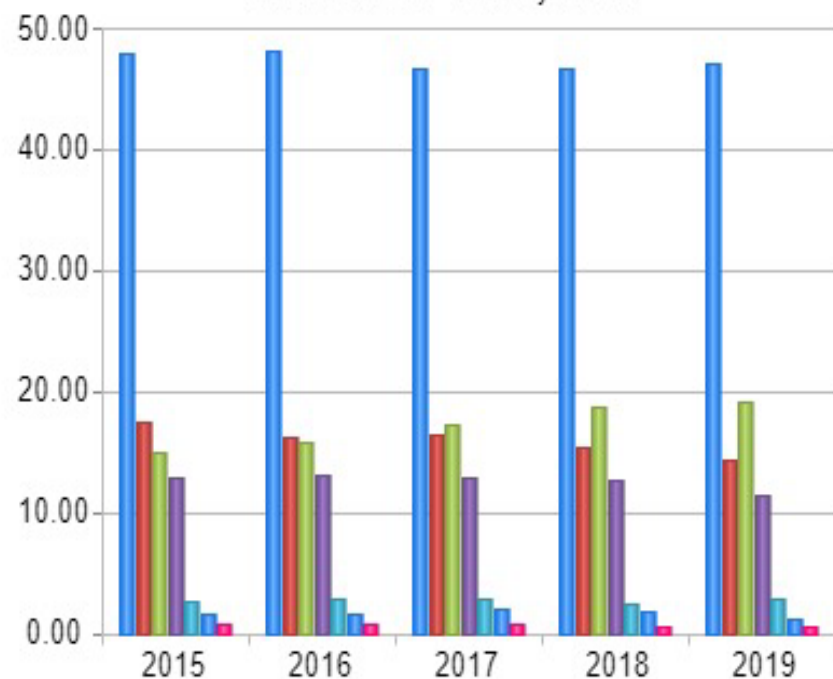
North America and the Caribbean - Interconnected economies

Import Partner Share (%)
Source: WITS - Country Profile



- North America
- East Asia & Pacific
- Europe & Central Asia
- Latin America & Caribbean
- South Asia
- Middle East & North Africa
- Sub-Saharan Africa

Export Partner Share (%)
Source: WITS - Country Profile



- North America
- Latin America & Caribbean
- East Asia & Pacific
- Europe & Central Asia
- Middle East & North Africa
- South Asia
- Sub-Saharan Africa

World Integrated Trade Solution

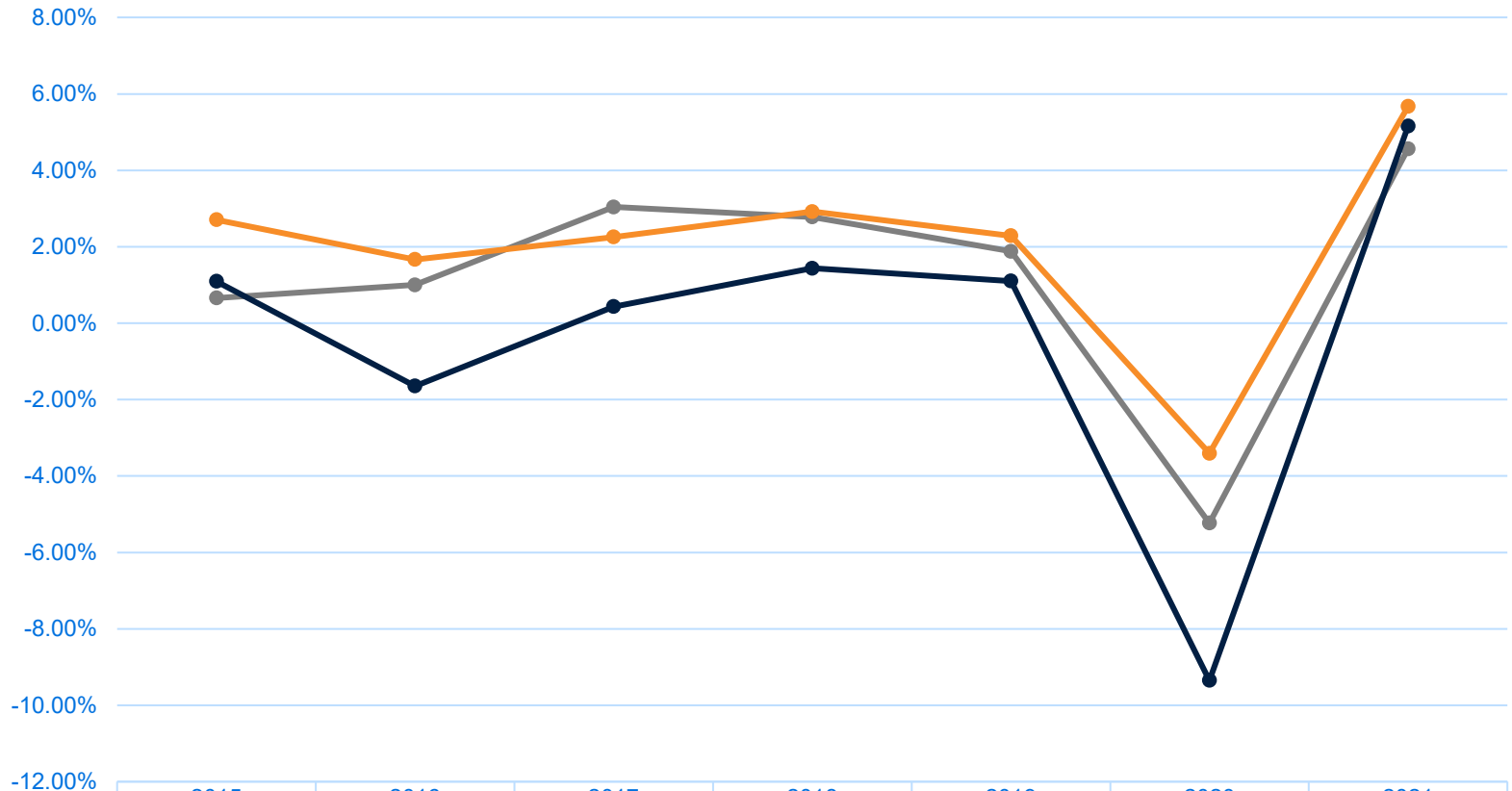
Challenging times ahead

The combined effect of lower growth and higher inflation

- Growth forecasts in 2022 have been revised downward in more than 80% of low-income countries.
- Global growth expected to be lower in the 2020s than it was in the 2010s.
- Global inflation expected to peak in mid-2022, then decline, but remain elevated even after fiscal tightening and resolution of external shocks.
- Emerging and developing economies are vulnerable to 1970s style recession caused by interest rate rises.

GDP Growth – An Uneven Recovery

GDP Growth, % (US, Canada and the Caribbean)



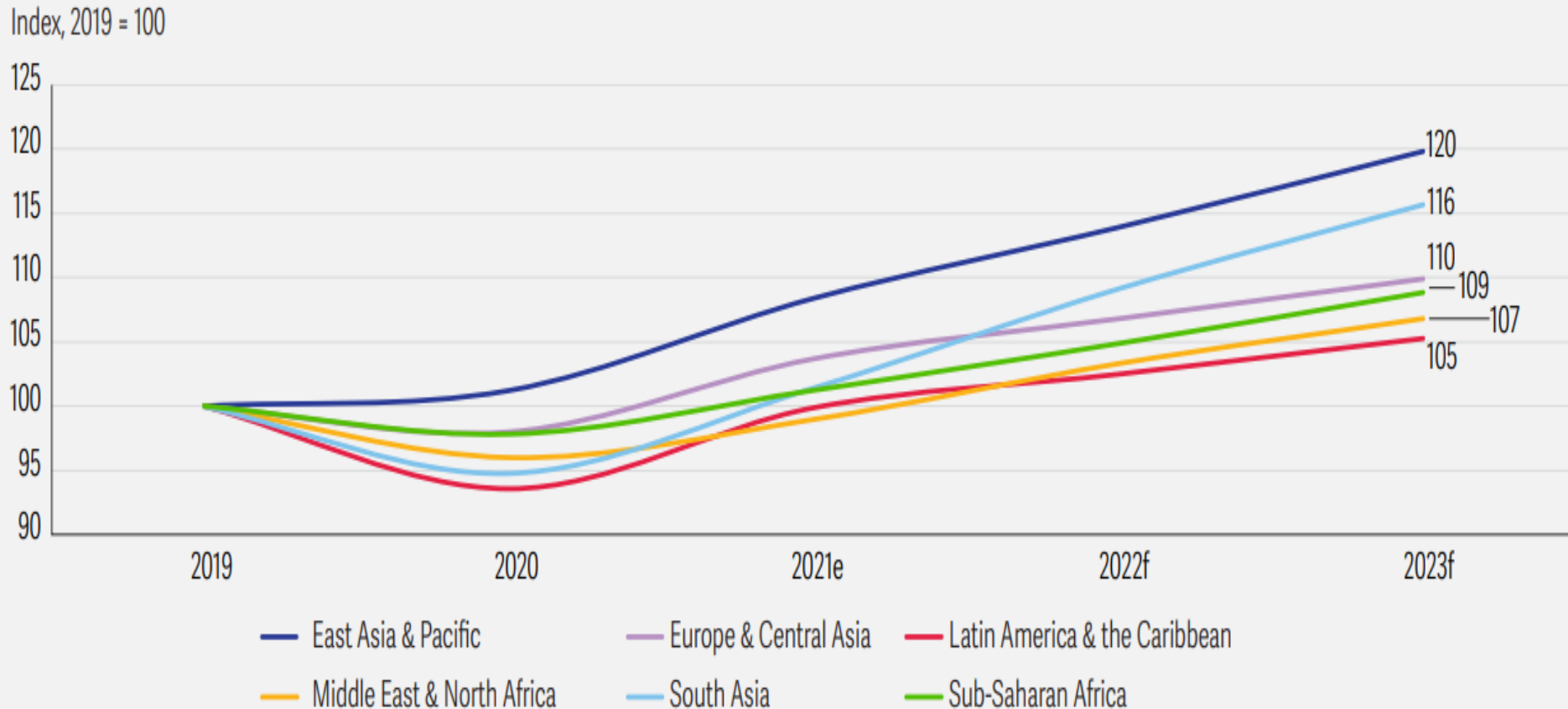
	2015	2016	2017	2018	2019	2020	2021
Canada	0.66%	1.00%	3.04%	2.78%	1.88%	-5.23%	4.56%
Caribbean small states	1.10%	-1.64%	0.43%	1.44%	1.10%	-9.35%	5.15%
United States	2.71%	1.67%	2.26%	2.92%	2.29%	-3.40%	5.67%

—●— Canada —●— Caribbean small states —●— United States

data.worldbank.org

GDP Growth – An Uneven Recovery

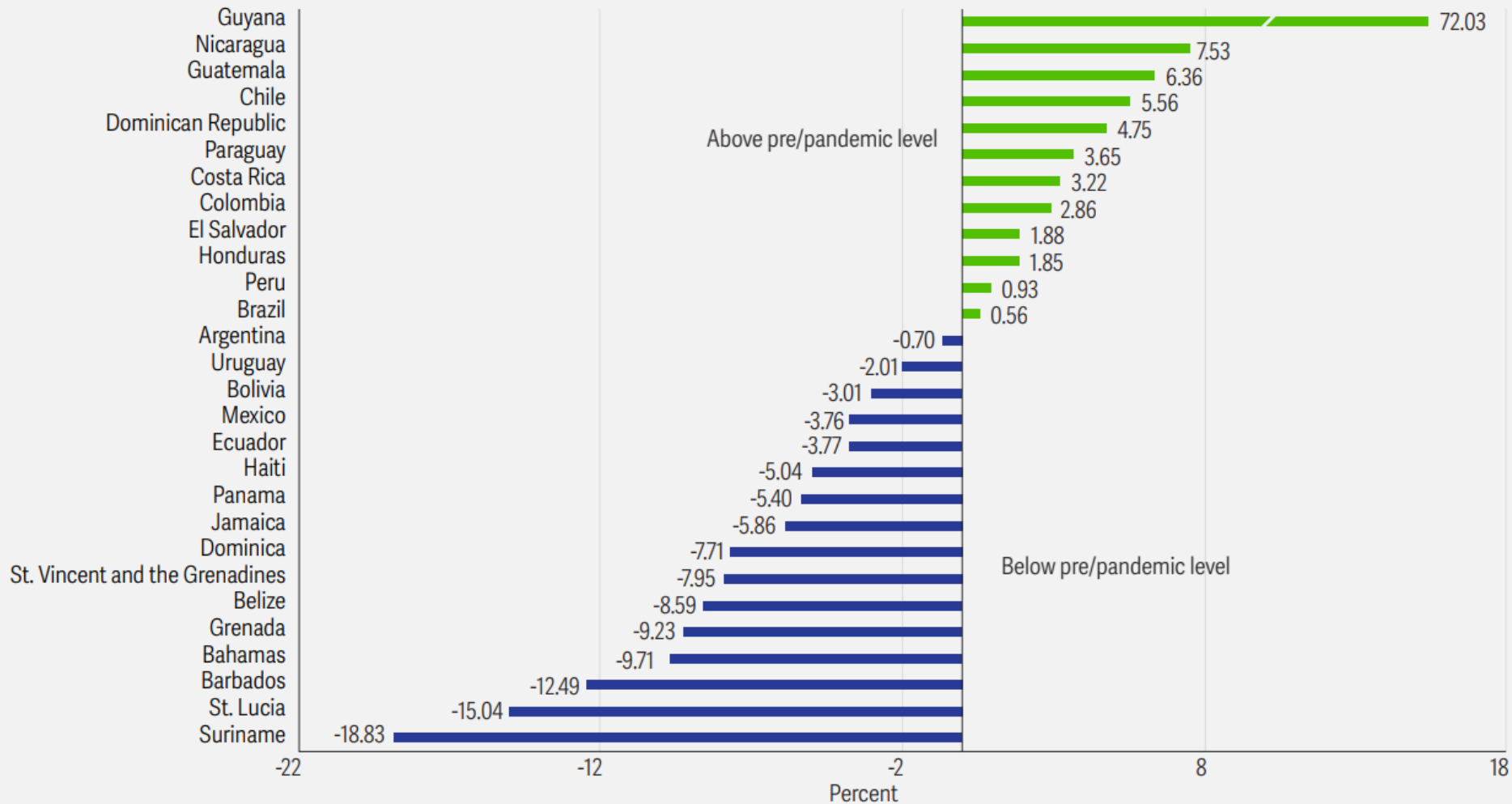
GDP relative to 2019 (pre-pandemic) - regional forecasts



World Bank, 'Semiannual Report for Latin America and the Caribbean' (April 2022)

Caribbean economies recovering at varying rates

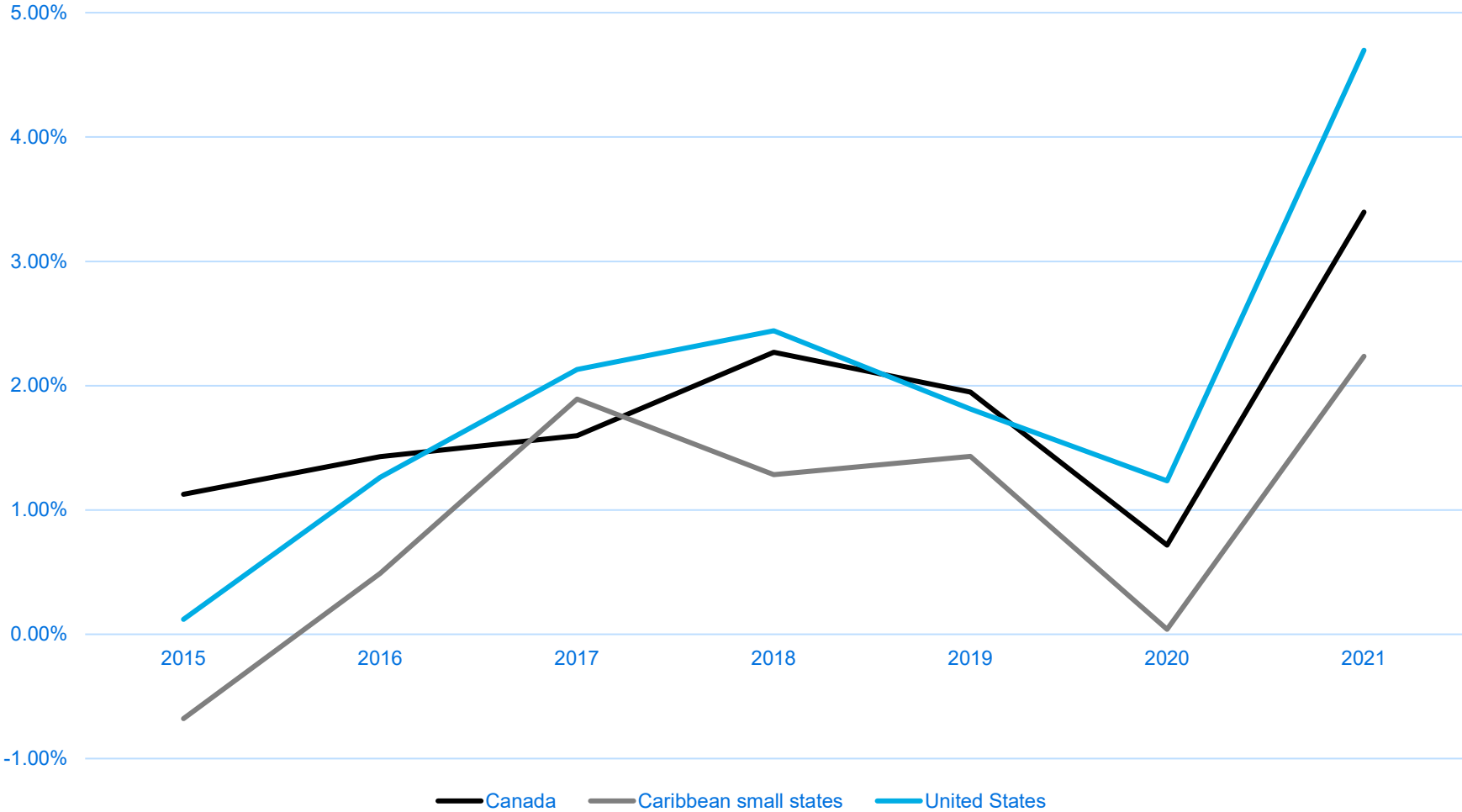
GDP in 2021 relative to 2019 (pre-pandemic) – select countries



World Bank, 'Semiannual Report for Latin America and the Caribbean' (April 2022)

The return of stagflation?

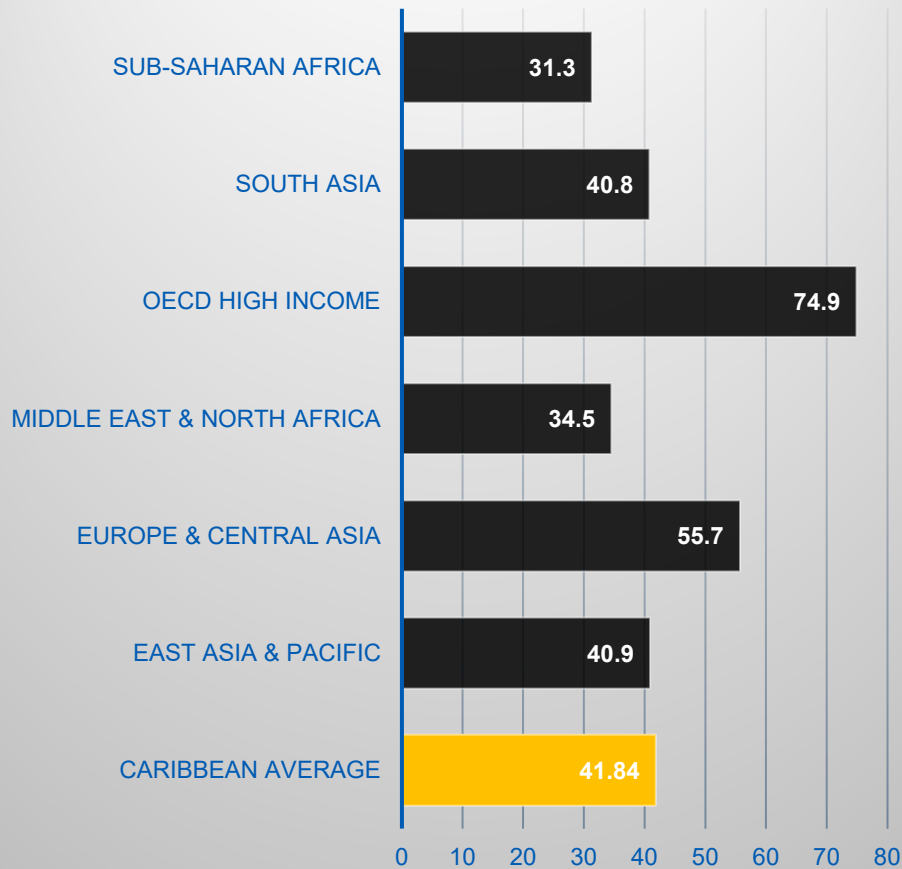
Inflation in the US, Canada and Caribbean, %



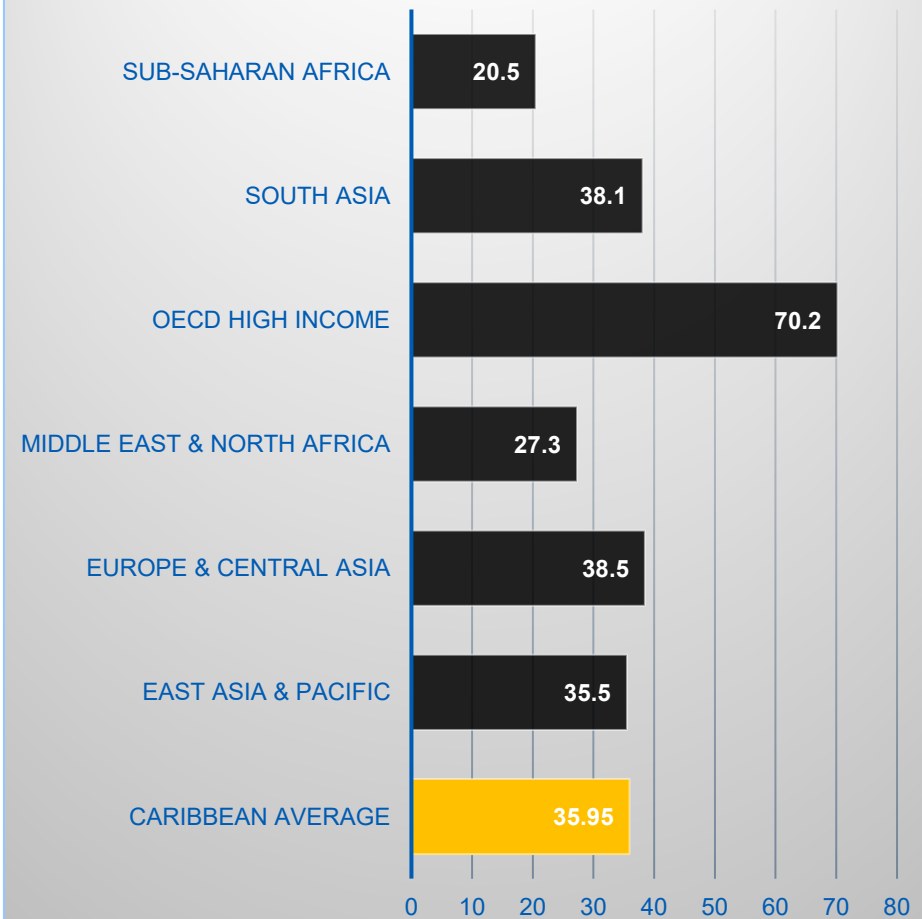
data.worldbank.org

Quality of insolvency frameworks in the Caribbean

Quality of Insolvency Frameworks, 2020



Recovery rate (cents on the dollar)



World Bank, 'Doing Business' (2020)

CHAPTER 15 OF THE U.S. BANKRUPTCY CODE

Corinne Ball

6 September 2022



WHAT RELIEF CAN CHAPTER 15 PROVIDE?

Guided by principles of comity, virtually anything...if the relief requested is not specifically excluded from Chapter 15 of the Bankruptcy Code or not manifestly contrary to U.S. law

Recognition of Foreign Proceeding (*Mod. Land (China) Co., Odebrecht*)

Third Party Releases (*Avanti, Syncreon*)

Discovery, including under Bankruptcy Rule 2004 (*Oro Negro*)

DIP Financing (*Just Energy*)

Tolling of Ability to Bring State Law and Foreign Law Avoidance Actions (*Norske*)

Discretion to Grant Additional Relief Provided for in Foreign Proceeding (*Condor*)

CASES

Recognition:

***In re Culligan Ltd.*, 2021 WL 2787926 (Bankr. S.D.N.Y. July 2, 2021)** (granting recognition under chapter 15 to the liquidation proceeding of a Bermuda company despite allegations that the company’s court-appointed liquidators filed the chapter 15 petition solely to enjoin shareholder litigation pending in a New York State court); ***In re Black Gold S.A.R.L.*, 2022 WL 488438 (B.A.P. 9th Cir. Feb. 17, 2022)** (reversing bankruptcy court order denying chapter 15 recognition of a Monaco bankruptcy proceeding because once the Bankruptcy Code’s requirements for chapter 15 recognition are satisfied, recognition is mandatory unless it would be “manifestly contrary” to U.S. public policy—a threshold that is rarely met in chapter 15 proceedings); ***In re Mod. Land (China) Co., Ltd.*, 2022 WL 2794014 (Bankr. S.D.N.Y. July 22, 2022)** (recognizing Cayman’s proceeding under chapter 15 of debtor that operated principally in China and ruling that N.Y. law governed debt can be modified or discharged in a Cayman proceeding).

Jurisdiction:

***In re Zawawi*, 637 B.R. 663 (M.D. Fla. 2022)**, affirming 634 B.R. 11 (Bankr. M.D. Fla. 2021) (holding that to be eligible as a chapter 15 debtor, foreign debtors need not meet the debtor eligibility requirements under section 109, applicable to debtors under other chapters of the Bankruptcy Code: they need only be “the subject of a foreign proceeding”).

CASES

- Sale Free and Clear:** *In re Talon Systems Inc., No. 13-11811 (Bankr. D. Del.)* (approving the sale of the debtors' assets free and clear); *In re Grand Prix Associates Inc., 2009 WL 1850966 (Bankr. D.N.J. June 26, 2009)* (same); *Just Energy Grp. Inc., CV-21-00658423-00CL (Ontario Superior Court of Justice Aug. 4, 2022)* (Canadian court granted motion requesting authorization to enter into purchase agreement with stalking horse bidders (former plan sponsors) and support agreement, as well as, among other things, authorizing various bid protections and a break-up fee; debtors will likely seek recognition of order in the chapter 15 case).
- Non-Debtor Third Party Releases:** *In re Avanti Commc'ns Grp. PLC, No. 18-10458 (Bankr. S.D.N.Y.)* (authorizing non-consensual non-debtor third party releases); *In re Syncreon Automotive (UK) Ltd., No. 19-11702 (Bankr. D. Del.)* (same); *In re Agrokor d.d., No. 18-12104 (Bankr. S.D.N.Y.)* (same); *but see In re PT Bakrie Telecom TBK, 2021 WL 1439953 (Bankr. S.D.N.Y. Apr. 15, 2021)* (refusing to grant a foreign representative's request for "additional relief" in the form of enforcement of an Indonesian court order approving a restructuring plan because the order included third-party releases—a non-standard practice under Indonesian law and without sufficient justification for same in the record).
- DIP Financing:** *In re Just Energy Grp. Inc., No. 21-30823 (Bankr. S.D. Tex.)* (authorizing relief under subchapter 3 for transactions with U.S. affiliates that are part of a foreign proceeding).

CASES

Discovery Under U.S. Laws:

***In re Perforadora Oro Negro*, No. 18-11094 (Bankr. S.D.N.Y.)** (authorizing extensive discovery under chapter 15); ***In re Platinum Partners Value Arbitrage Fund L.P.*, No. 16-12925 (Bankr. S.D.N.Y.)** (same); ***In re Larisa Markus*, No. 19-10096 (Bankr. S.D.N.Y.)** (authorizing discovery under chapter 15 and sanctions for failure to comply with discovery orders); ***In re Comair Ltd. (In Bus. Rescue)*, 2021 WL 5312988 (Bankr. S.D.N.Y. Nov. 14, 2021)** (granting foreign representative’s motion to conduct discovery of U.S.-based company relating to causes of action that foreign debtor might hold against the company and the extent of the debtor’s potential monetary recovery); ***In re Transbrasil S.A. Linhas Aéreas*, 2021 WL 3028768 (11th Cir. July 19, 2021)** (finding that an order denying a request to quash a subpoena was not final and could not be appealed immediately because the order was “merely a preliminary step” in the context of a broader proceeding; noting in *dicta* that if the only purpose of the chapter 15 case is to obtain discovery, a discovery order may be final and immediately appealable because the discovery order is effectively the entire proceeding).

Valuation of Business:

***In re Bluebrook Limited and other companies (IMO)* (U.K. High Court 2009) EWHC 2114** (court focused on price that a purchaser would pay for the business at the current time to value business in context of scheme of arrangement and demonstrated reluctance to enfranchise out-of-the-money stakeholders).

CASES

Relief Available Under Chapter 15:

***In re Condor Flugdienst GMBH*, 2021 WL 1166016 (Bankr. N.D. Ill. Mar. 26, 2021)** (ruling that, if requested relief is not specifically authorized under chapter 15, a U.S. bankruptcy court still has the discretion to grant such relief provided it would have been authorized in a cross-border “ancillary” bankruptcy proceeding under section 304).

Adversary Proceedings:

***In re Massa Falida do Banco Cruzeiro do Sul, S.A.*, 637 B.R. 675 (S.D. Fla. 2022)** (in adversary proceeding brought by foreign trustee of chapter 15 debtor, collateral estoppel did not preclude defendants, British Virgin Islands (BVI) entities that were owned by debtor's former controlling shareholders, from relitigating findings of Brazilian insolvency orders or investigative report upon which orders were based, even though the orders were entitled to comity; the findings were not actually litigated and none of the insolvency orders constituted a final judgment as to the issues that were crucial elements of foreign trustee's complaint and all of which remained to be litigated in Brazilian liability actions); ***but see In re Varig Logistica S.A.*, 2021 WL 5045684 (Bankr. S.D. Fla. Oct. 29, 2021)** (dismissing an adversary proceeding commenced in the chapter 15 case of a bankrupt Brazilian air carrier due to the pendency of litigation in a Brazilian bankruptcy court).

CASES

Ability to Address Contracts pursuant to Section 365:

***Jaffe v. Samsung Electronics*, 737 F.3d 14 (4th Cir. 2013)** (affirming the bankruptcy court's exercise of discretion when it applied section 365(n) of the Bankruptcy Code); ***In re Qimonda AG*, 433 B.R. 547 (E.D. Va. 2010)** (finding that section 365 could and often does apply where a bankruptcy court orders such discretionary relief).

Avoidance Actions:

***In re Norske Skogindustrier ASA*, No. 18-13571 (Bankr. S.D.N.Y.)** (tolling the foreign representative's ability to bring claims and recognizing ability of foreign representative to commence an adversary proceeding to avoid transfers and apply foreign law); ***In re Fairfield Sentry Ltd.*, No. 10-13164 (Bankr. S.D.N.Y.)** (finding court would not abstain from hearing actions seeking recovery or avoidance of transfers and applying tolling provisions of the bankruptcy code); ***Fogerty v. Petroquest Res., Inc. (In re Condor Ins. Ltd.)*, 601 F.3d 319 (5th Cir. 2010)** (recognizing power of a U.S. bankruptcy court to permit relief under foreign avoidance laws in chapter 15).

Enjoin Collection of Debts and Litigation in the U.S.:

***In re Just Energy Grp. Inc.*, No. 21-30823 (Bankr. S.D. Tex.)** (enjoining actions inconsistent with order in Canadian Proceedings); ***In re Condor Flugdienst GmbH*, No. 20-18167 (Bankr. N.D. Ill.)** (enjoining the prosecution of lawsuits in the U.S.); ***In re Odebrecht Oil & Gas*, No. 17-13130 (Bankr. S.D.N.Y.)** (enjoining all persons and entities from taking any action or asserting any claim within the U.S. that is inconsistent with the Brazilian Confirmation Order and Brazilian Reorganization Plans); ***In re Ocean Rig UDW Inc.*, No. 17-10736 (Bankr. S.D.N.Y.)** (enjoining creditors from commencing involuntary bankruptcy proceeding).

CHAPTER 11 VERSUS CHAPTER 15 – RELIEF AVAILABLE

Chapter 11	Issue	Chapter 15
✓	Sale Free and Clear	✓
?/✗	Non-Debtor Third Party Releases	✓
✓	DIP Financing	✓
✓	Avoidance Actions	✓
✓	Discovery Under U.S. Laws	✓
✓	Valuation of Business	✓
✓	Enjoin Collection of Debts and Litigation in the U.S.	✓
✓	Ability to Address Contracts pursuant to Section 365	✓

ISSUES TO WATCH

- **Inclusion of U.S. Debtor Entity and its Assets**
 - Extent to which a U.S. debtor entity and its assets or U.S. law governed debt can be included in foreign proceeding is somewhat uncertain, but cases such as *Just Energy* and *Modern Land* suggest chapter 15 can address such issues.
- **Recognition in Other Jurisdictions**
 - Recognition of foreign proceeding in jurisdictions other than the U.S. (*i.e.*, EU, Asia) may be necessary in order to protect assets from holdouts.
 - Analysis would need to be undertaken to determine necessity of recognition and best process to accomplish goals.
- **Limitations of a Chapter 15 Stay**
 - As opposed to the worldwide stay in chapter 11, the chapter 15 stay is intended to protect U.S. assets.
 - Cases have held that the chapter 15 stay enjoins foreign proceedings or actions that have an impact on U.S. assets.

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