

# **AGREEMENT BETWEEN THE CARIBBEAN COMMUNITY (CARICOM), ACTING ON BEHALF OF THE GOVERNMENTS OF ANTIGUA AND BARBUDA, BARBADOS, BELIZE, DOMINICA, GRENADA, GUYANA, JAMAICA, ST. KITTS AND NEVIS, SAINT LUCIA, ST. VINCENT AND THE GRENADINES, SURINAME AND TRINIDAD AND TOBAGO AND THE GOVERNMENT OF THE REPUBLIC OF COSTA RICA**

The Caribbean Community (CARICOM), acting on behalf of the Governments of Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago, of the one part, and the Government of the Republic of Costa Rica, of the other part (hereinafter collectively referred to as "the Parties),

HAVING DECIDED TO:

Strengthen the special bonds of friendship, solidarity and cooperation between their Governments and peoples;

Contribute to the harmonious development and expansion of world and regional trade and provide a catalyst for broader international cooperation;

Improve their existing trade relations and create opportunities for further economic development;

Create an expanded and more secure market for the goods produced in and the services supplied in or from their territories;

Reduce distortions in trade;

Establish clear and mutually beneficial rules to regulate trade between the Parties;

Ensure a transparent and predictable commercial framework for the planning of productive activities and investment;

Observe their respective rights and obligations under the Marrakesh Agreement establishing the World Trade Organization and other relevant bilateral and multilateral cooperation instruments, or economic integration instruments to which they are party;

Promote regional integration in the Americas;

Enhance the competitiveness of their companies in the world markets;

Create new employment opportunities, improve working conditions and the quality of life in their respective territories;

Undertake all of the above in a manner consistent with the protection and conservation of the environment;

Promote sustainable development;

Preserve their capacity to safeguard public welfare;

Promote the active participation of private economic agents in the efforts of deepening and broadening the economic relations between the Parties;

HAVE AGREED as follows:

## **Part ONE. General Part**

# **Chapter I. Initial Provisions and Institutional Arrangements**

## **Section I. Initial Provisions**

### **Article I.01. Establishment of the Free Trade Area**

The Parties, consistently with Article XXIV (Territorial Application - Frontier Traffic - Customs Unions and Free Trade Areas) of the General Agreement on Tariffs and Trade and its related Understanding of the Marrakesh Agreement establishing the World Trade Organization, hereby establish a free trade area.

### **Article I.02. Objectives**

1. The objectives of this Agreement, as elaborated more specifically through its principles, rules and provisions, including national treatment, most-favored-nation treatment and transparency, as referred to in this Agreement, are to:

- (a) establish and develop a free trade area in accordance with its provisions;
- (b) stimulate trade expansion and diversification between the Parties;
- (c) eliminate barriers to trade and facilitate the cross-border movement of goods and services between the territories of the Parties;
- (d) promote conditions of fair competition in the free trade area;
- (e) increase substantially investment opportunities in the territories of the Parties;
- (f) create effective procedures for the implementation and application of this Agreement, for its joint administration and for the resolution of disputes;
- (g) promote regional integration in the Americas and contribute to the progressive elimination of barriers to trade and investment; and
- (h) establish a framework for further bilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement.

2. The Parties shall interpret and apply the provisions of this Agreement in a manner consistent with its objectives set out in paragraph 1 and in accordance with applicable rules of international law.

### **Article I.03. Relation to other Agreements**

1. The Parties affirm their existing rights and obligations with respect to each other under the Marrakesh Agreement establishing the World Trade Organization and other agreements to which such Parties are party.

2. In the event of any inconsistency between this Agreement and such other agreements, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.

### **Article I.04. Observance of the Agreement**

Each Party shall ensure, in conformity with its applicable law and constitutional provisions, compliance with the provisions of this Agreement in its territory.

### **Article I.05. Succession of Treaties**

Any reference to any other international treaty or agreement shall be understood to be in the same terms as any successor treaty or agreement to which the Parties are party.

## **Section II. Institutional Arrangements**

### **Article I.06. The Joint Council**

1. The Parties hereby establish the Joint Council of Costa Rica and CARICOM comprising public officials of both Parties at the

ministerial level, or their representatives.

2. The Joint Council (hereinafter referred to as " the Council") shall have the following functions:

(i) supervise the implementation and administration of the Agreement, its Annexes and Appendices and oversee their further elaboration;

(ii) instruct the Committees, Subcommittees and Working Groups identified in Article I.08 to carry out those functions assigned to them respectively and any other function pertaining to the objectives of this Agreement.

(iii) supervise the functions of the Free Trade Coordinators and consider the recommendations of the Free Trade Coordinators;

(iv) establish and supervise the work of all committees, subcommittees and working groups created in this Agreement;

(v) resolve any dispute which may arise out of the interpretation, execution or non-compliance of this Agreement, its Annexes and Appendices in accordance with its powers under Chapter XIII (Dispute Settlement);

(vi) establish and delegate responsibilities to ad hoc or standing committees, working groups or expert groups;

(vii) supervise the work of all ad hoc or standing committees, working groups and expert groups established under this Agreement, its Annexes and Appendices;

(viii) consult with governmental, inter-governmental and non-governmental entities as necessary;

(ix) keep this Agreement, its Annexes and Appendices under periodic review, evaluating the functioning of this Agreement and recommending measures it considers suitable to better achieve its objective;

(x) carry out any other functions which may be assigned to it by the Parties;

(xi) consider any other matter that may affect the operation of this Agreement, its Annexes and Appendices and take appropriate action.

3. The Council shall convene in ordinary session at least once a year and in extraordinary sessions on the request of either Party.

4. The meetings of the Council shall be chaired jointly by the Parties. All decisions shall be taken by consensus. The decisions of the Council shall have the status of recommendations to the Parties.

5. Meetings shall be held alternately in Costa Rica and in a Member State of CARICOM or such other place as may be agreed between Costa Rica and CARICOM.

6. The Agenda for each ordinary meeting of the Council shall be settled by the Parties in good time before each proposed meeting.

7. Each Party shall designate a representative to transmit and receive correspondence on its behalf.

8. The Council may modify in fulfillment of the objectives of this Agreement:

(a) the schedule of a Party contained in Annex III.04.2 (Tariff Elimination), with the purpose of adding one or more goods excluded in the Tariff Elimination Schedule;

(b) the phase-out periods established in Annex III.04.2 (Tariff Elimination), with the purpose of accelerating the tariff reduction;

(c) the rules of origin established in Annex IV.03 (Specific Rules of Origin); and

(d) the Uniform Regulations on Customs Procedures.

9. The modifications referred to in paragraph 8 shall be implemented by the Parties in conformity with Annex I.06.9.

## **Article I.07. The Free Trade Coordinators**

1. The Parties hereby establish the Free Trade Coordinators, comprising the Ministry of Foreign Trade in the case of Costa Rica and the CARICOM Secretariat in the case of CARICOM, whose primary function shall be to monitor the implementation of this Agreement.

2. The Free Trade Coordinators (hereinafter called "the Coordinators), shall:

- (a) recommend to the Council the establishment of other committees, subcommittees and working groups as they consider necessary to assist the Council;
- (b) follow up any decisions taken by the Council, where appropriate;
- (c) submit and receive notifications pursuant to this Agreement, unless otherwise provided in this Agreement;
- (d) consider any other matter that may affect the operation of this Agreement as mandated by the Council;
- (e) arrange for administrative assistance to be provided to arbitration panels and to the work of the committees established under this Agreement;
- (f) recommend to the Council the levels of remuneration and expenses that will be paid to the appointed panelists, experts, and their aides, in accordance with this agreement as set out in Annex I.07.2(f).

3. The Coordinators shall meet as often as required.

4. Each Party may request in writing at any time that a special meeting of the Coordinators be held. Such a meeting shall take place within thirty (30) days of receipt of the request.

## **Article I.08. Committees**

1. There shall be the following Standing Committees which shall operate under the guidance of the Council:

- (i) Committee on Market Access;
- (ii) Committee on Trade in Services and Investment;
- (iii) Committee on Anti-Competitive Business Practices;
- (iv) Any other Committee which may be established by the Council pursuant to Article I.07.2(a).

2. Each Committee referred to in paragraph 1 shall, inter alia, have the following functions:

- (i) monitor the implementation of the provisions of the Agreement, Annex or Appendix within its area of competence;
- (ii) consider all matters relating to the subject area within its competence, including such matters as may be referred to it by the Parties;
- (iii) consult on issues of mutual concern relating to its subject area which arise in international fora;
- (iv) facilitate information exchange among the Parties;
- (v) Create working groups or convene expert panels on topics of mutual interest relating to its subject area;
- (vi) any other function assigned to it by the Council.

3. Each Committee shall meet as may be agreed by its members and shall regulate its own proceedings.

## **Chapter II. General Definitions**

### **Article II.01. Definitions of General Application**

For the purposes of this Agreement, except otherwise specified:

Citizen means, for each Party, a national of that Party as set out in Annex II.01;

Coordinators means the Free Trade Coordinators established by Article 1.07 (The Free Trade Coordinators);

Customs Valuation Agreement means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade of 1994, including its interpretative notes, which is part of the WTO Agreement;

Days means calendar days, including weekends and holidays;

Dispute Settlement Understanding (DSU) means the Understanding on Rules and Procedures Governing the Settlement of

Disputes, which is part of the WTO Agreement;

Enterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately owned or governmentally owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association;

Exporting Party means the Party from whose territory a good or service is exported;

GATT 1994 means the General Agreement on Tariffs and Trade of 1994, which is part of the WTO Agreement;

Harmonized System means the Harmonized Commodity Description and Coding System, including the General Classification Rules and its explanatory notes;

Heading means a tariff classification code of the Harmonized System at the fourdigit level;

Import Duty includes customs duty as defined in the national legislation of each Party and all other duties, taxes or charges that are collected on or in connection with the importation of goods, but does not include:

- (a) charges equivalent to an internal tax imposed consistently with the relevant provisions of GATT 1994;
- (b) any antidumping or countervailing duty that is applied pursuant to a Partys domestic law;
- (c) any fee or other charge in connection with importation commensurate with the cost of services rendered; and
- (d) any premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels;

Importing Party means the Party into whose territory a good or service is imported;

Identical or similar goods means "identical goods and "similar goods, respectively, as defined in the Customs Valuation Agreement;

Joint Council means the Joint Council of Costa Rica and CARICOM established by Article I.06 (The Joint Council);

Less developed countries of CARICOM means Antigua and Barbuda, Belize, Dominica, Grenada, Saint Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines;

Measure includes any law, regulation, procedure, administrative requirement or practice;

National means a natural person who has the nationality or citizenship of a Party in accordance with its legislation. It is understood that the term equally applies to a natural person who, in accordance with that Partys legislation, has the status of permanent resident in its territory;

Originating good means a good complying with the rules of origin established in Chapter IV (Rules of Origin);

Party means any State with respect to which this Agreement has entered into force in accordance with Article XIX.03 (Entry into Force) and Article XIX.04 (Provisional Application);

Person means a natural person or legal person;

Subheading means a tariff classification code of the Harmonized System at the six-digit level;

Tariff Elimination Schedule means the schedule referred to in the Annexes on Tariff Elimination Schedule to Chapter III (National Treatment and Market Access of Goods);

Territory means, for each Party, the territory of that Party as set out in Annex II.01; and

WTO Agreement means the Marrakesh Agreement Establishing the World Trade Organization, done on April 15, 1994, or any successor Agreement to which both Parties are party.

## **Annex II.01. Specific Definitions**

For the purposes of this Agreement, unless otherwise specified:

Citizen means:

- (a) with respect to Costa Rica:

- (i) Costa Ricans by birth, according to Article 13 of the Political Constitution of the Republic of Costa Rica;
  - (ii) Costa Ricans by naturalization, according to Article 14 of the Political Constitution of the Republic of Costa Rica;
- (b) with respect to CARICOM:
- (i) persons deriving their status as citizens of Member States of CARICOM from the law enforced in individual Member States of CARICOM;
  - (ii) persons having a connection with the Member States of CARICOM of a kind which entitles them to be regarded as belonging to or, if it be so expressed, as being natives or residents of those States for the purposes of the laws thereof relating to immigration;

Territory means:

- (a) with respect to Costa Rica, the territory, air space and maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea, over which it exercises, in accordance with international law and its domestic law, sovereign rights with respect to the natural resources of such areas; and
- (b) for each Member State of CARICOM its territory, air space as well as its maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea, over which that State exercises, in accordance with international law, jurisdiction and sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas.

## **Part TWO. Trade In Goods**

### **Chapter III. National Treatment and Access of Goods to the Market**

#### **Article III.01. Definitions**

For purposes of this chapter:

Agricultural goods means the products listed in Annex 1 (Product Coverage) of the WTO Agreement on Agriculture with any subsequent changes agreed in the WTO to be automatically effective for this Agreement;

Advertising films means recorded visual media, with or without soundtracks, consisting essentially of images showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of either Party, provided that the films are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public, and provided that they are imported in packets each of which contains no more than one copy of each film and that do not form part of a larger consignment;

Commercial samples of negligible value means commercial samples having a value, individually or in the aggregate as shipped, of not more than one (1) U.S. dollar, or the equivalent amount in the currency of the other Party, or so marked, torn, perforated or otherwise treated that they are unsuitable for sale or for use except as commercial samples;

Consumed means:

- (a) actually consumed; or
- (b) further processed or manufactured so as to result in a substantial change in value, form or use of the good or in the production of another good;

Duty-free means free of customs duties;

Export subsidies means subsidies contingent upon export performance including the export subsidies listed in Article 9 (Export Subsidy Commitments) of the WTO Agreement on Agriculture; any subsequent changes agreed to in the WTO would be automatically incorporated into this Agreement;

Goods imported for sports purposes means sports requisites for use in sports contests, demonstrations or training in the territory of the Party into whose territory such goods are imported;

Goods intended for display or demonstration includes their component parts, ancillary apparatus and accessories;

Printed advertising materials means the brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials and posters, that are used to promote, publicise or advertise a good or service,

are essentially intended to advertise a good or service, and are supplied free of charge, classified in Chapter 49 of the Harmonised System; and

Repair or alteration does not include an operation or process that either destroys the essential characteristics of a good or creates a new or commercially different good.

## **Article III.02. Scope of Application**

This chapter shall apply to the trade in goods between the Parties.

## **Section I. National Treatment**

### **Article III.03. National Treatment**

1. Each Party shall accord national treatment to the goods of the other Party, in accordance with Article III (National Treatment on Internal Taxation and Regulation) of the GATT 1994, including its interpretative notes. To this end, Article III (National Treatment on Internal Taxation and Regulation) of the GATT 1994, including its interpretative notes and any other equivalent provision of a successor agreement to which both Parties are party, are incorporated into and made part of this Agreement.

2. The provisions of paragraph 1 regarding national treatment shall mean, in relation to a Party, including its departments, municipalities or provinces, a treatment no less favourable than the most favourable treatment accorded by that Party, including its departments, municipalities or provinces, to any, directly competitive or substitutable goods of domestic origin.

## **Section II. Tariffs**

### **Article III.04. Tariff Elimination**

1. Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty, or adopt a new customs duty, on an originating good.
2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods in accordance with the Tariff Elimination Schedule established in Annex III.04.2.
3. Upon the request of any Party, the Parties shall consult to consider the possibility of accelerating the elimination of customs duties set out in Annex III.04.2 or incorporating into one Party's Tariff Elimination Schedule goods not subject to the elimination schedule. An agreement between the Parties to accelerate the elimination of a customs duty on a good or to include a good in a Party's elimination schedule shall supersede any duty rate or staging category determined pursuant to their Schedules for such good when approved by each such Party in accordance with its applicable legal procedures.
4. The agreement adopted based on paragraph 3, regarding the accelerated elimination of a customs duty for an originating good, shall prevail over any customs duty or tariff elimination schedule set out in the Annexes to this Article.
5. Notwithstanding paragraphs 1 and 2, any Party may maintain or increase a customs duty as authorised by the Dispute Settlement Understanding of the WTO, or any other agreement under the WTO Agreement.
6. Originating goods produced in free trade zones in the territory of a Party shall be subject to the most favoured nation treatment (MFN tariff) when imported into the territory of the other Party, except for the products included in Annex III.04.6, which shall benefit from the Tariff Elimination Schedule.
7. The Parties agree that, from the date of entry into force of this Agreement, and in accordance with the functions assigned to the Joint Council in Article I.06.8(a), upon request of either Party, the Joint Council may meet with the purpose of including other goods into Annex III.04.6.

### **Article III.05. Temporary Admission of Goods**

1. Each Party shall grant temporary duty-free admission for:
  - (a) professional equipment necessary for carrying out the business activity, trade or profession of a business person who qualifies for temporary entry pursuant to Chapter XI (Temporary Entry);
  - (b) equipment for the press or for sound or television broadcasting and cinematographic equipment;

(c) goods imported for sports purposes and goods intended for display or demonstration; and

(d) commercial samples and advertising films;

Imported from the territory of the other Party regardless of their origin and regardless of whether like, directly competitive or substitutable goods are available in the territory of the Party.

2. Except as otherwise provided in this Agreement, neither Party may condition the temporary duty-free admission of a good referred to in paragraph 1(a), (b) or

(c), other than to require that such good:

(a) be imported by a national or resident of the other Party who seeks temporary entry;

(b) be used solely by or under the personal supervision of such person in the exercise of the business activity, trade or profession of that person;

(c) not be sold or leased while in its territory;

(d) be accompanied by a bond in an amount no greater than hundred and ten percent (110%) of the charges that would otherwise be owed on entry or final importation, or by another form of security, releasable on exportation of the good;

(e) be capable of identification when exported;

(f) be exported on the departure of that person or within such other period of time as is reasonably related to the purpose of the temporary admission; and

(g) be imported in no greater quantity than is reasonable for its intended use.

3. Except as otherwise provided in this Agreement, neither Party may condition the temporary duty-free admission of a good referred to in paragraph 1(d), other than to require that such good:

(a) be imported solely for the solicitation of orders for goods, or services provided from the territory, of the other Party or non-Party;

(b) not be sold, leased or put to any use other than exhibition or demonstration while in its territory;

(c) be capable of identification when exported;

(d) be exported within such period as is reasonably related to the purpose of the temporary admission; and

(e) be imported in no greater quantity than is reasonable for its intended use.

4. When a good is temporarily admitted duty-free under paragraph 1 and does not fulfill all the required conditions set out in paragraphs 2 and 3, the importing Party may impose:

(a) the customs duty and any other charge on the good that would be owed on entry or final importation of such good; and

(b) any criminal, civil or administrative sanction that the circumstances determine.

5. Subject to Chapters IX (Services) and X (Investment):

(a) each Party shall allow a container used in international traffic that enters its territory from the territory of the other Party to exit its territory on any route that is reasonably related to the economic and prompt departure of such container;

(b) neither Party may require any bond or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a container;

(c) neither Party may condition the release of any obligation, including any bond, that it imposes in respect of the entry of a container into its territory on its exit through any particular port of departure; and

(d) neither Party may require that the carrier bringing a container from the territory of the other Party into its territory be the carrier that takes such container to the territory of the other Party.

### **Article III.06. Duty-Free Entry of Certain Commercial Samples and Printed Advertising Materials**



Each Party shall grant duty-free entry to commercial samples of negligible value and to printed advertising materials imported from the territory of another Party, regardless of their origin, but may require that:

(a) such samples be imported solely for the solicitation of orders for goods or services provided from the territory of the other Party or non-Party; or

(b) such advertising materials be imported in packets each of which contains no more than one copy of each such material and that neither such materials nor packets form part of a larger consignment.

### **Article III.07. Goods Re-Entered after Repair, Renovation or Improvement**

Where a non-originating good is exported by a Party to the territory of the other Party for repair, renovation or improvement, that good on its re-entry shall be granted treatment as an originating good if the value of the non-originating materials used in the repair, renovation or improvement did not exceed sixty five percent (65%) of the cost of repair, renovation or improvement. This treatment is subject to the condition that the essential character of the good is not altered.

The temporary admission of a good exported by a Party to the territory of the other Party for repair, renovation or improvement shall be allowed without the payment of customs duty for that period of time as stated in the national law of that Party.

### **Article III.08. Customs Valuation**

The Customs Valuation Agreement and any successor agreement shall govern the customs valuation rules applied by the Parties to their reciprocal trade.

## **Section III. Non-tariff Measures**

### **Article III.09. Import and Export Restrictions**

1. Subject to this Article and the Parties rights set out in Article XX (General Exceptions) and Article XXI (Security Exceptions) of the GATT 1994, the Parties shall eliminate immediately all non-tariff barriers upon entry into force of this Agreement.

2. Except where otherwise provided in this Agreement, the Parties undertake not to apply restrictions with respect to trade under this Agreement.

3. The Parties affirm that the GATT 1994 rights and obligations prohibit, in any circumstances in which any form of restriction is prohibited, export price requirements and, except as permitted in the enforcement of countervailing and antidumping orders and undertakings, import price requirements.

4. Where one of the Parties maintains a prohibition or restriction on the importation or exportation of goods originating in the other Party, that Party shall establish that the measure is compatible with this Agreement or the WTO Agreement as the case may require.

5. The Parties agree not to introduce any new prohibition or restriction on the importation or exportation of goods originating in the other Party, after the entry into force of this Agreement.

### **Article III.10. Customs User Fees**

Customs User Fees shall be applied according to the internal legislation of each Party.

### **Article III.11. Consular Fees**

Upon entry into force of this Agreement, no Party shall require consular fees or duties, nor shall require consular formalities for originating goods of the other Party.

### **Article III.12. Marks of Origin**

The Parties confirm their rights and obligations under Article IX (Marks of origin) of the GATT 1994 and any successor agreement.

### **Article III.13. Support, Internal Aid and Subsidies to Exports**

The Parties hereby reaffirm their rights and obligations derived from the relevant WTO Agreements in all that pertains to support, internal aid, and subsidies to exports.

### **Article III.14. Export Competition and Domestic Support for Agricultural Goods**

1. To the extent possible, the Parties share the objective of the progressive reduction and elimination of all forms of trade distorting export competition measures on agricultural goods and shall pursue expansion in the scope of coverage of disciplines in this area.
2. The Parties share, to the extent possible, the objective of achieving the maximum possible reduction or elimination of domestic support measures that distort production and trade of agricultural goods.
3. To the extent possible, the Parties agree to cooperate within the Agriculture Negotiations in the WTO to achieve the effective implementation of Special and Differential Treatment Provisions for developing countries and a review of the criteria for the "green box category to ensure that it does not distort production and trade.

### **Article III.15. Export Taxes**

Except as set out in Annex III.15 neither Party may adopt or maintain any duty, tax or other charge on the export of any good to the territory of the other Party.

### **Article III.16. Safeguard Measures**

1. The Parties reaffirm their rights and obligations under Article XIX (Emergency Action on Imports of Particular Products) of the GATT 1994, the WTO Agreement on Safeguards, and any other successor agreement.
2. The Parties shall, within one (1) year of the entry into force of this Agreement, meet to review this Article.

### **Article III.17. Consultations and Committee on Market Access**

1. The Parties hereby establish a Committee on Market Access, comprising representatives of each Party.
2. The Committee on Market Access shall meet periodically, and at any other time on the request of either Party or the Council, to ensure the effective implementation and administration of Chapter III (National Treatment and Access of Goods to the Market), Chapter IV (Rules of Origin), Chapter V (Customs Procedures), Chapter VII (Sanitary and Phytosanitary Measures), Chapter VIII (Technical Barriers to Trade) and any Uniform Regulations. In this regard, the Committee on Market Access shall:
  - (a) monitor the implementation and administration by the Parties of Chapter III (National Treatment and Access of Goods to the Market), Chapter IV (Rules of Origin), Chapter V (Customs Procedures), Chapter VII (Sanitary and Phytosanitary Measures), Chapter VIII (Technical Barriers to Trade) and any Uniform Regulations to ensure their uniform interpretation;
  - (b) at the request of either Party, review any proposed modification of or addition to Chapter III (National Treatment and Access of Goods to the Market), Chapter IV (Rules of Origin), Chapter V (Customs Procedures), Chapter VII (Sanitary and Phytosanitary Measures), Chapter VIII (Technical Barriers to Trade) or any Uniform Regulations;
  - (c) recommend to the Council any modification of or addition to Chapter III (National Treatment and Access of Goods to the Market), Chapter IV (Rules of Origin), Chapter V (Customs Procedures), Chapter VII (Sanitary and Phytosanitary Measures), Chapter VIII (Technical Barriers to Trade) or any Uniform Regulations and to any other provision of this Agreement as may be required to conform with any change to the Harmonized System; and
  - (d) consider any other matter relating to the implementation and administration by the Parties of Chapter III (National Treatment and Access of Goods to the Market), Chapter IV (Rules of Origin), Chapter V (Customs Procedures), Chapter VII (Sanitary and Phytosanitary Measures), Chapter VIII (Technical Barriers to Trade) and any Uniform Regulations referred to it by a Party; and
  - (e) recommend to the Council the establishment of subcommittees or technical groups, where appropriate.
3. Each Party shall to the greatest extent practicable, take all necessary measures to implement any modification of or addition to Chapter III (National Treatment and Access of Goods to the Market), Chapter IV (Rules of Origin), Chapter V (Customs Procedures), Chapter VII (Sanitary and Phytosanitary Measures), Chapter VIII (Technical Barriers to Trade) and any

Uniform Regulations within one hundred and eighty (180) days after the Council agrees on such modification or addition, or in such time as the relevant amendment to the legislation may be enacted.

4. The Parties shall convene on the request of either Party a meeting of their officials responsible for customs, immigration, inspection of food and agricultural products, border inspection facilities, and regulation of transportation for the purpose of addressing issues related to movement of goods through the Parties' ports of entry.

5. Nothing in Chapter III (National Treatment and Access of Goods to the Market) shall be construed to prevent a Party from issuing a determination of origin or an advance ruling relating to a matter under consideration by the Committee on Market Access or from taking such other action as it considers necessary, pending a resolution of the matter under this Agreement.

## **Chapter IV. Rules of Origin**

### **Article IV.01. Definitions**

For the purposes of this Chapter:

F.O.B. means free on board regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer;

Generally accepted accounting principles means the principles used in the territory of each Party, which provide substantial authoritative support with regard to the recording of income, costs, expenses, assets and liabilities involved in the disclosure of information and preparation of financial statements. These indicators may be broad guidelines of general application, as well as those standards, practices and procedures usually employed in accounting;

Good means any merchandise, product, article or material;

Goods wholly obtained or produced entirely in the territory of one or both

Parties means:

(a) minerals and other natural resources extracted or taken from the territory of one or both Parties;

(b) plants and plant products harvested in the territory of one or both Parties;

(c) live animals born and raised in the territory of one or both Parties;

(d) goods obtained from live animals in the territory of one or both of the Parties;

(e) goods obtained from hunting, trapping, fishing, gathering or capturing in the territory of one or both Parties;

(f) goods (fish, shellfish and other marine life) taken from the sea, seabed or subsoil outside the territory of one or both of the Parties by a vessel registered, recorded or listed with a Party, or leased by a company established in the territory of a Party, and entitled to fly its flag;

(g) goods produced on board a factory ship from the goods referred to in subparagraph (f), provided such factory ship is registered, recorded or listed with a Party, or leased by a company established in the territory of a Party, and entitled to fly its flag;

(h) goods, other than fish, shellfish and other marine life, taken or extracted from the seabed or the subsoil, in the area outside the continental shelf and the exclusive economic zone of either of the Parties or of any other State as defined in the United Nations Convention on the Law of the Sea, by a vessel registered, recorded or listed with a Party and entitled to fly its flag, or by a Party or person from a Party;

(i) waste and scrap derived from:

i) production in the territory of one or both Parties; or

ii) used goods collected in the territory of one or both Parties, provided such goods are fit only for the recovery of raw materials; and

iii) goods produced in the territory of one or both Parties exclusively from goods referred to in subparagraphs (a) through (i), or from their derivatives, at any stage of production;

Indirect material means a good used in the production, testing or inspection of a good, but that is not physically

incorporated in that good; or a good that is used in the maintenance of buildings or the operation of equipment related to the production of a good, including:

(a) fuel and energy;

(b) tools, dies and molds;

(c) spare parts and materials used in the maintenance of equipment and buildings;

(d) lubricants, greases, compounding materials and other materials used in production process, equipment operation or maintenance of buildings;

(e) gloves, glasses, footwear, clothing, safety equipment and supplies;

(f) equipment, apparatus and accessories used for the verification or inspection of goods;

(g) catalysts and solvents; and

(h) any other goods that are not incorporated in the good, but the use of which, in the production of the good, can reasonably be demonstrated to be a part of that production;

Material means a good that is used in the production of another good;

Non-originating good or non-originating material means a good or a material that does not qualify as originating under this Chapter;

Production means growing, mining, extracting, harvesting, fishing, trapping, gathering, collecting, capturing, hunting, manufacturing or processing of a good;

Producer means a person who grows, mines, extracts, harvests, fishes, traps, gathers, collects, captures, hunts, manufactures or processes a good;

Related person means a related person as defined in the Customs Valuation Agreement and in accordance with the domestic law of each Party;

Transaction value means:

(a) the price actually paid or payable for a good or material with respect to a transaction by the producer of the good according to the principles of Article 1 of the Customs Valuation Agreement, adjusted in accordance with the principles of Article 8.1, 8.3 and 8.4 of said Agreement, where the good or material is sold for export; or

(b) where there is no transaction value or the transaction value is unacceptable under Article 1 of the Customs Valuation Agreement, the value determined in accordance with Articles 2 through 7 of the Customs Valuation Agreement; and

Used means employed, used or consumed in the production of goods.

## **Article IV.02. Application Instruments**

For the purposes of this Chapter:

(a) the basis for tariff classification is the Harmonized System; and

(b) all costs referred to in this Chapter shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the Party in which the good is produced.

## **Article IV.03. Originating Goods**

1. Except as otherwise provided in this Chapter, a good shall be deemed to originate in the territory of a Party where:

(a) it is wholly obtained or produced entirely in the territory of one or both Parties as defined in Article IV.01;

(b) it is produced entirely in the territory of one or both Parties exclusively from originating materials under this Chapter; or

(c) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification as set out in Annex IV.03 as a result of production occurring entirely in the territory of one or both of the Parties, or the good otherwise satisfies the applicable requirements of that Annex where no change in tariff classification is

required, and the good satisfies all other applicable requirements of this Chapter.

2. For the purpose of this Chapter, the production of a good from non-originating materials that comply with a change of tariff classification and other requirements, according to the provisions of Annex IV.03, shall be done entirely in the territory of one or both Parties.

#### **Article IV.04. Value of Non-originating Materials**

The value of a material used in the production of a good shall:

- (a) be the transaction value of the material determined in accordance with Article 1 of the Customs Valuation Agreement;
- (b) in the event that there is no transaction value or the transaction value of the material is unacceptable under Article 1 of the Customs Valuation Agreement, be determined in accordance with Articles 2 through 7 of the Customs Valuation Agreement;
- (c) where not covered under subparagraph (a) or (b), include freight, insurance, packing and all other costs incurred in transporting the material to the place of importation; or
- (d) in the case of a domestic transaction, be determined in accordance with the principles of the Customs Valuation Agreement in the same manner as an international transaction, with such adjustments as may be required by the circumstances.

#### **Article IV.05. De Minimis**

1. Except as provided in paragraphs 2 and 3 a good shall be considered to be an originating good if the value of all non-originating materials used in the production of the good that do not undergo an applicable change in tariff classification set out in Annex IV.03 does not exceed seven percent (7%) of the transaction value of the good adjusted on an F.O.B. basis, provided that the good satisfies all other applicable requirements of this Chapter.
2. Except as specified in a product-specific rule of origin of Annex IV.03 applicable to a good, paragraph 1 does not apply to a non-originating material used in the production of a good included in Chapters 1 through 24 of the Harmonized System, unless the non-originating material is provided for in a different subheading from the good for which origin is being determined under this Article.
3. A good provided for in Chapters 50 through 63 of the Harmonized System, that is a non-originating good because certain fibres or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex IV.03, shall nonetheless be considered an originating good if the total weight of all such fibres or yarns in that material does not exceed ten percent (10%) of the total weight of that material.

#### **Article IV.06. Accumulation**

For purposes of determining whether a good is an originating good, the production of the good in the territory of one or both of the Parties by one or more producers, at the choice of the exporter or producer of the good for which preferential tariff treatment is claimed, shall be considered to have been performed in the territory of either of the Parties by that exporter or producer, provided that:

- (a) all non-originating materials used in the production of the good undergo an applicable tariff classification change set out in Annex IV.03, in the territory of one or both of the Parties; and
- (b) the good satisfies all other applicable requirements of this Chapter.

#### **Article IV.07. Sets or Assortments of Goods**

Sets, as defined in general rule 3 of the Harmonized System, shall be regarded as originating when all goods contained in the set qualify as originating goods. Nevertheless, when a set is composed of originating and non originating goods, the set as a whole shall be regarded as originating provided that the value of the non originating goods does not exceed seven per cent (7%) of the FOB value of the set.

#### **Article IV.08. Indirect Material**

The indirect materials shall be considered originating goods, regardless of where they are produced.

#### **Article IV.09. Accessories, Spare or Replacement Parts and Tools**

Accessories, spare or replacement parts and tools delivered with the good as part of the standard accessories, spare parts, or tools of the good shall not be considered to determine whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex IV.03 provided that:

- (a) the accessories, spare or replacement parts and tools are not invoiced separately from the good regardless of whether they are broken down or detailed separately in the same invoice; and
- (b) the quantity and value of the accessories, spare or replacement parts or tools are customary for the good.

#### **Article IV.10. Packaging Materials and Containers for Retail Sale**

Packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good they contain, be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in the Annex IV.03.

#### **Article IV.11. Packaging Materials and Containers for Shipment**

Packaging materials and containers in which the good is packed for shipment shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in the Annex IV.03.

#### **Article IV.12. Operations and Practices That Do Not Confer Origin**

1. Except for sets referred to in Article IV.07 or as specified in a product-specific rule of origin of Annex IV.03 applicable to the good, a good shall not be considered to be an originating good merely by reason of:

- (a) disassembly of the good into its parts;
- (b) a change in the end use of the good;
- (c) the mere separation of one or more individual materials or components from an artificial mixture;
- (d) mere dilution with water or another substance that does not materially alter the characteristics of the good;
- (e) removal of dust or damaged parts from, oiling of, or applying anti-rust paint or protective coatings to, the good;
- (f) testing or calibration, division of loose shipments, grouping into packages, or attaching identifying labels, markings or signs to the good or its packaging;
- (g) simple operations destined to assure the preservation of the goods during transportation or storage, such as ventilation, cooling, extraction of damaged parts, drying or addition of substances;
- (h) dusting, sifting, classifying, selecting, washing, cutting;
- (i) placing marks, labels or similar distinctive signs;
- (j) cleaning, including removal of oxide, grease, paint or other coatings;
- (k) packaging or repackaging of the good;
- (l) the slaughtering of animals; or
- (m) operations which consist solely of welding, soldering, fastening, riveting, bolting and like operations, or otherwise putting together of all finished parts or components to constitute a finished product.

2. Origin shall not be conferred upon a good by any price setting practice or activity in respect of which it may be demonstrated, on the basis of a preponderance of evidence, that the object was to circumvent the provisions under this Chapter.

#### **Article IV.13. Direct Transport**

1. In order for goods to benefit from the preferential tariff treatment provided under this Agreement, they shall be subject to direct expedition from the exporting Party to the importing Party.

2. For the purpose of paragraph 1, goods may:

(a) be transported directly from the exporting Party to the importing Party; or

(b) be transported in transit through one or more countries, either Party or non Party of this Agreement, with or without transshipment or temporary storage under surveillance of customs authorities of such countries, provided that:

i) the transit is justified by geographical reasons or by considerations related to international transport requirements;

ii) they do not enter into domestic trade or consumption in such countries; and

iii) they do not undergo further production or be subject to any other operation outside the territory of the Parties, other than unloading, reloading or any other operation necessary to preserve the good in good condition or to transport it to the territory of a Party.

## **Chapter V. Customs Procedures**

### **Article V.01. Definitions**

1. For the purpose of this Chapter:

Customs authority means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations; including the verification procedures relating to the Certificate of Origin as provided for in Article V.08;

Certifying authority means the customs authority or any entity which is responsible for the certification of the Certificate of Origin pursuant to Article V.03;

Determination of origin means a determination as to whether a good qualifies as an originating good in accordance with Chapter IV (Rules of Origin);

Exporter in the territory of a Party means an exporter located in the territory of a Party required under this Chapter to maintain records in the territory of that Party regarding exportations of a good;

Commercial import means a good imported into the territory of a Party for commercial, industrial or similar purposes;

Importer in the territory of a Party means an importer located in the territory of a Party required under this Chapter to maintain records in the territory of that Party regarding importations of a good;

Preferential tariff treatment means the duty rate applicable to an originating good; and

Uniform Regulations means "Uniform Regulations established under Article V.12.

2. Unless defined in this Article, terms defined in Article IV.01 (Definitions) are incorporated into this Chapter.

### **Article V.02. Certificate of Origin**

1. The Parties shall establish by the date of entry into force of this Agreement, a Certificate of Origin, which shall serve to certify that a good being exported from the territory of a Party into the territory of the other Party qualifies as an originating good. This Certificate of Origin may be modified by agreement of the Parties.

2. Each Party may require that a Certificate of Origin for a good imported into its territory is completed in the language required under its law.

3. Each Party shall require its exporters to make a declaration on the Certificate of Origin, indicating compliance with the rules of origin prescribed in Chapter IV (Rules of Origin) for the export of a good for which an importer may claim preferential tariff treatment.

4. The certifying authority of the exporting Party shall certify on the Certificate of Origin that the declaration made by the exporter is accurate.

5. Each Party shall provide that, where an exporter in its territory is not the producer of the good, the exporter may make a

declaration on the Certificate of Origin on the basis of:

(a) its knowledge of whether the good qualifies as an originating good; or

(b) its reasonable reliance on the producer's written declaration made on the Certificate of Origin or on a separate document, that the good qualifies as an originating good;

6. Each Party shall prescribe that the Certificate of Origin issued by a certifying authority, in accordance with paragraph 4, is applicable to a single import of one or more goods.

7. Each Party shall prescribe that the Certificate of Origin shall be accepted by the customs authority of the importing Party within the period of six (6) months from the signature date.

### **Article V.03. The Functions and Obligations of the Certifying**

Authorities Responsible for Origin Certification

1. The certifying authority required to carry out the certification procedures shall:

(a) verify the accuracy of the declaration presented to them by the final producer or the exporter, by means of the systems or procedures which ensure the accuracy of the data; and

(b) provide to the other Party the administrative cooperation required for the control of documentary proof of the origin.

2. The certifying authorities designated by the Parties shall, no later than thirty (30) days after entry into force of this Agreement, transmit through the Ministry of Foreign Trade, in the case of Costa Rica, and the CARICOM Secretariat, in the case of CARICOM, the approved list of the designated authorities to issue the certificates mentioned in this Chapter, along with a list of the authorized signatories, their specimen signatures and the stamps of the designated authorities.

3. Any changes to such listings shall become effective fifteen (15) days after receipt of notification thereof.

### **Article V.04. Obligations Regarding Imports**

1. Each Party shall require an importer requesting preferential tariff treatment for a good imported into its territory from the territory of another Party to:

(a) make a written declaration in the import document, based on a valid Certificate of Origin, that the good qualifies as an originating good;

(b) have the Certificate of Origin in its possession at the time the declaration is made; and

(c) provide, on the request of that Party's customs authority, a copy of the Certificate of Origin.

2. Each Party shall provide that if the importer fails to comply with any requirement under paragraph 1, the preferential tariff treatment shall be denied to the good imported into the territory of the other Party, for which the preferential tariff treatment had been requested.

### **Article V.05. Obligations Regarding Exports**

1. Each Party shall prescribe that an exporter having made a declaration on the Certificate of Origin in accordance with paragraph 3 of Article V.02, and who has reason to believe that the Certificate of Origin contains incorrect information, shall promptly notify in writing, any change which may affect the accuracy or validity of the Certificate of Origin or written declaration to any person having received the Certificate, as well as to the customs authority of the exporting Party.

2. The customs authority of the exporting Party shall notify the customs authority of the importing Party of the notification made by the exporter referred to in Paragraph 1.

### **Article V.06. Exceptions**

On condition that it does not form a part of two or more import consignments undertaken or planned for the purpose of evading the fulfillment of Articles V.04 and V.05, the Certificate of Origin for the import of goods in the following cases shall not be required for:



- (a) a commercial import of a good, the transaction value of which does not exceed one thousand (\$1,000) US dollars or its equivalent amount in the Party's currency, except that it may require that the invoice accompanying the importation include a statement certifying that the good qualifies as an originating good;
- (b) a non-commercial importation of a good whose transaction value does not exceed one thousand (\$1,000) US dollars or its equivalent amount in the Party's currency; and
- (c) an import of a good for which the importing Party has waived the requirement for a Certificate of Origin.

## **Article V.07. Records**

Each Party shall prescribe that:

(a) an exporter in its territory that makes a declaration as contained in the Certificate of Origin in accordance with paragraph 3 of Article V.02, shall maintain in its territory, for five (5) years, in the case of Costa Rica, and seven (7) years, in the case of CARICOM, after the date on which the Certificate of Origin was signed, all records and documents related to the origin of a good, including those referring to:

(i) the purchase, cost, value and payment for the good that is exported from its territory;

(ii) the purchase, cost, value, and payment for all materials, including indirect materials, used in the production of the good that is exported from its territory; and

(iii) the production of the good in the form in which the good is exported from its territory.

(b) in accordance with the procedures for verification of origin established in Article V.08, the exporter shall provide the customs authority of the importing Party, the records and documents referred to in subparagraph (a) above. When records and documents are not in the exporters hands, he may request from the producer of the materials the records and documents so that with the authorization of the latter they are delivered through him to the customs authority for verification; and

(c) an importer claiming preferential tariff treatment for a good imported into its territory, from the territory of the other Party, shall maintain in that territory, for five (5) years, in the case of Costa Rica, and seven (7) years, in the case of CARICOM, after the date of import of the good, the Certificate of Origin and all other records relating to the importation required by the importing Party.

## **Article V.08. Procedures for Verification of Origin**

1. For purposes of determining whether goods imported into its territory from the territory of the other Party qualify as originating goods, a Party may conduct a verification procedure solely by means of:

(a) the submission to the customs authority of the exporting Party of requests for information including written questionnaires to be completed by exporters or producers of the territory of the other Party;

(b) verification visits to the premises of an exporter or producer in the territory of the other Party to examine the records and documents and inspect the premises used in the production of goods; and

(c) other procedures agreed upon by the Parties whenever necessary.

2. Prior to conducting a verification procedure pursuant to paragraph 1, a Party shall notify the customs authority of the exporting Party of its intention to carry out a verification. Within five (5) days of receipt of this notification, the customs authority in the exporting Party shall notify the exporter and/or the producer of the goods.

3. The customs authority of the importing Party shall obtain through the customs authority of the exporting Party the written consent of the exporter or producer of the goods whose premises are to be visited. Within five (5) days of receipt of this written consent, the customs authority in the exporting Party shall notify the customs authority of the importing Party.

4. Where an exporter or a producer does not give written consent to a request for a verification visit nor provide any information requested as provided for in this Article within thirty (30) days of receipt of the notification referred to in paragraph 2 or within the extended period, the Party which has notified its intention to carry out a verification procedure may deny preferential tariff treatment to goods which would have been subject of such verification.

5. The notification of visits, which is provided for in Paragraph 2, shall include:

- (a) the identity of the customs authority issuing the notification;
- (b) the name of the exporter or producer whose premises are to be visited;
- (c) the date and place of the proposed verification visit;
- (d) the object and scope of the verification visit, including specific reference to the goods which are the subject of the verification;
- (e) the names and designation of the officials who will carry out the visit; and
- (f) the legal basis for the verification visit.

6. The customs authority of the exporting Party may, at the request of the Party wishing to carry out verification pursuant to paragraph 1, call on the producer or the exporter to make available, inter alia, documentation and accounting records and permit inspection of materials, production facilities and processes.

7. Where a verification has been notified, any modification of the information referred to in this Article shall be notified in writing to the customs authority of the exporting Party, who in turn shall immediately notify the modification to the producer or the exporter. Such modifications shall be notified by the importing Party no later than fifteen (15) days of receipt of the notification.

8. Where the request for information involves the completion of a questionnaire, the exporter shall complete and return the questionnaire within thirty (30) days of receipt of the notification. Within this period, the exporter may request in writing from the importing Party an extension, which shall be no longer than thirty (30) days.

9. The customs authority of the importing Party may grant to the customs authority of the exporting Party an extension of not more than ten (10) days for the submission of any documents which may be required to support an application for verification of origin under the Agreement.

10. Each Party shall provide that, where its customs authority receives a notification regarding a verification visit, the customs authority may, within seven (7) days of receipt of the notification, postpone the proposed verification visit for a period not exceeding fifteen (15) days from the date of receipt of such notification or for such longer period as the Parties may agree.

11. The Parties shall permit an exporter or a producer whose goods are the subject of a verification visit to designate two observers, to be present during the visit provided:

- (a) the observers do not participate in a manner other than as observers; and
- (b) the failure of the exporter or producer to designate observers shall not result in the postponement of the visit.

12. The Party conducting the verification procedure shall provide the producer or exporter whose goods are the subject of the verification procedure with a written determination of whether or not the goods qualify as originating goods, including findings of fact and the legal basis for the determination, within twenty-one (21) days of the conclusion of the verification procedure.

13. The procedure to verify origin performed by the customs authority of the importing Party, as set out in the present Article, shall be completed within a maximum term of one (1) year and shall commence from the first request for information, a written questionnaire or a verification visit. Notwithstanding the above, in cases duly justified, such term could be extended for one time only in accordance with the provisions set out in the Uniform Regulations.

14. Each Party shall provide that, if within the term set out in paragraph 13 or the extension set out in the Uniform Regulations, its customs authority does not issue the resolution of the origin determination, the good or goods subject to the origin verification shall have the right to preferential tariff treatment.

15. Where verifications by a Party indicate that an exporter has certified more than once false or unsupported representations that a good imported into its territory qualifies as an originating good, the importing Party may suspend preferential tariff treatment to identical goods exported by such person until such time as that person complies with the provisions of Chapter IV (Rules of Origin).

16. Each Party shall provide that where its customs authority determines that a certain good imported into its territory does not qualify as an originating good based on a tariff classification or a value applied by the Party to one or more materials used in the production of the good, which differs from the tariff classification applied to the materials by the Party from whose territory the good was exported, the Party's determination shall not become effective until it notifies its

determination in writing to both the importer of the good and the exporter who made the declaration on the Certificate of Origin for the good.

17. A Party shall not apply a determination made under paragraph 16 to an import made before the effective date of the determination, where the customs authority of the Party from whose territory the good was exported has issued an advanced ruling on the tariff classification or on the value of such materials, or has given consistent treatment to the entry of the materials under the tariff classification or value at issue, on which a person is entitled to rely.

18. If a Party denies preferential tariff treatment to a good pursuant to a determination made under paragraph 16 it shall postpone the effective date of denial for a period not exceeding ninety (90) days where the importer of the good, or the exporter who made the declaration on the Certificate of Origin for the good, demonstrates it has relied in good faith to its detriment on the tariff classification or value applied to such materials by the customs authority of the Party from whose territory the good was exported.

19. In no case shall the customs authorities of the Parties interrupt an import procedure regarding the goods covered by a Certificate of Origin.

## **Article V.09. Review and Appeal**

1. Each Party shall grant substantially the same rights of review and appeal of rulings on determination of origin and advance criteria established for an importer in its territory, to an exporter or producer of the other Party that makes a declaration on the Certificate of Origin in accordance with paragraph 3 of Article V.02 for a good that has been the subject of a determination of origin in accordance with paragraph 12 of Article V.08.

2. The rights referred to in paragraph 1 shall include access to at least one level of administrative review independent of the official or office responsible for the determination under review; and access to a level of judicial or quasi-judicial review of the determination or decision taken at the final level of administrative review, according to the national legislation of each Party.

## **Article V.10. Penalties**

Each Party shall establish measures imposing criminal, civil or administrative penalties for violations of its laws and regulations relating to that set forth in this Chapter.

## **Article V.11. Advanced Rulings**

The Parties shall establish provisions regarding advanced rulings, through administrative mechanisms established in this Agreement subsequent to the decision of the CARICOM authorities on this issue.

## **Article V.12. Uniform Regulations**

1. The Parties shall establish, and implement, through their respective laws, regulations or administrative policies no later than six (6) months after the date of entry into force of this Agreement, and at any time thereafter, upon agreement of

The Parties, Uniform Regulations regarding the interpretation, application and administration of this Chapter, Chapter IV (Rules of Origin) and other matters as may be agreed by the Parties.

2. Each Party shall implement any modification of or addition to the Uniform Regulations no later than one hundred and eighty (180) days after the Parties agree on such modification or addition, or in such time as the relevant amendment to the legislation enters into force.

## **Article V.13. Cooperation**

1. Each Party shall notify the other Party of the following determinations, measures and rulings, including, to the greatest extent practicable, those that are prospective in application regarding:

(a) a determination of origin issued as the result of a verification conducted pursuant to Article V.08;

(b) a determination of origin that the Party is aware is contrary to:

(i) a ruling issued by the customs authority of the other Party with respect to the tariff classification or value of a good, or of

materials used in the production of a good; or

(ii) consistent treatment given by the customs authority of the other Party with respect to the tariff classification or value of a good, or of materials used in the production of a good; and

(c) a measure establishing or significantly modifying an administrative policy that is likely to affect future determinations of origin.

2. The Parties shall cooperate:

(a) in the enforcement of their respective customs-related laws or regulations implementing this Agreement, and under any customs mutual assistance agreement or other customs-related agreement to which they are party;

(b) to the extent practicable and for purposes of facilitating the flow of trade between them, in such customs-related matters as the collection and exchange of statistics regarding the importation and exportation of goods, the harmonization of documentation used in trade, the standardization of data elements, the acceptance of an international data syntax and the exchange of information.

## **Article V.14. Invoicing by a Third-Country Operator**

When the good subject to exchange is invoiced by a third-country operator, the exporter of the country of origin shall indicate on the respective Certificate of Origin, in the section for "observations, that the good subject to declaration shall be invoiced from that third-country, identifying the name, denomination or trade name and the address of the operator having the responsibility to invoice the good.

## **Article V.15. Confidentiality**

Each Party shall maintain, in accordance with its law, the confidentiality of confidential business information collected pursuant to its legislation.

# **Chapter VI. Antidumping Measures**

## **Article VI.01. Antidumping Measures**

1. Except as otherwise provided in this Chapter, the WTO Agreement shall govern the rights and obligations of the Parties in respect of the application of antidumping measures.

2. In the interest of promoting improvements to, and clarifications of, the relevant provisions of the WTO Agreement, the Parties recognise the desirability of:

(a) establishing a domestic process whereby the investigating authorities can consider, in appropriate circumstances, broader issues of public interest, including the impact of antidumping duties on other sectors of the domestic economy and on competition;

(b) providing for the possibility of imposing antidumping duties that are less than the full margin of dumping in appropriate circumstances;

(c) having a transparent and predictable method for the imposition and collection of antidumping duties that provides for the expeditious assessment of definitive antidumping duties; and

(d) assessing the conditions of competition among the imported products and the conditions of competition between the imported products and the like domestic product pursuant to Article 3.3 of the WTO Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

3. In the interest of ensuring procedural fairness and transparency in antidumping investigations, the Parties reaffirm their full adherence to their obligations under the relevant provisions of the WTO Agreement including in respect of:

(a) notification to the government of the exporting country upon receipt of a properly documented application for the initiation of an investigation;

(b) public notice and notification to all interested parties of the initiation of an investigation;

(c) notification to all interested parties of the information required by the investigating authorities in the investigation, and

the provision of ample opportunity to present evidence in respect of the investigation;

(d) making available the application for the initiation of an investigation to all interested parties and the government of the exporting country upon the initiation of an investigation;

(e) making available to all interested parties all evidence submitted by other parties, subject to the requirements to protect confidential information;

(f) the provision of a reasonable opportunity for interested parties to defend their interests, including in the context of a public hearing, by presenting their views, commenting on evidence and views of others, and offering rebuttal evidence and arguments;

(g) the provision of a reasonable opportunity for interested parties to see all information that is relevant to the presentation of their case, subject to the requirements to protect information designated as confidential by the provider;

(h) the provision to interested parties of an explanation of the methodologies used in determining the margin of dumping, and the provision of opportunities to comment on the preliminary determination;

(i) procedures for the submission, treatment and protection of confidential information submitted by parties, procedures to ensure that confidential treatment is warranted and procedures to ensure that adequate public summaries of confidential information are available;

(j) public notice and notice to all interested parties of preliminary and final determinations, which include sufficiently detailed explanations of the determinations of dumping and injury including in respect of all relevant matters of fact and law;

(k) public notice and notice to interested parties of the imposition of any provisional or final measures; and

(l) the provision of procedures for the judicial review of administrative actions relating to final determinations and reviews of determinations.

4. In an investigation, each Party shall provide the other Party with information concerning the point of contact in the investigating authority for that investigation.

## **Chapter VII. Sanitary and Phytosanitary Measures**

### **Article VII.01. Sanitary and Phytosanitary Measures**

1. The Parties reaffirm their rights and obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

2. Each Party shall, as far as possible:

(a) facilitate the provision to the other Party of technical advice, information and assistance, on mutually agreed terms and conditions, to enhance the Parties sanitary and phytosanitary (SPS) measures and related activities, processes and systems;

(b) extend the assistance mentioned in subparagraph (a), inter alia, in the areas of:

(i) processing technologies;

(ii) exchange of information on new research data;

(iii) infrastructure;

(iv) institutional and regulatory co-operation;

(v) harmonization;

(vi) mutual recognition and equivalence agreements;

(vii) risk assessment;

(viii) transparency;

(ix) recognition of pest or disease free areas;

- (x) control, inspection and approval procedures;
- (xi) identification, consultation and resolution of SPS-related problems;
- (xii) technical expertise; and (xiii) training and equipment.

## **Chapter VIII. Technical Barriers to Trade**

### **Article VIII.01. Technical Barriers to Trade**

1. The Parties reaffirm their rights and obligations under the WTO Agreement on Technical Barriers to Trade (TBT Agreement).

2. The Parties shall develop programs for technical cooperation aimed at achieving full and effective compliance with the obligations set forth in the TBT Agreement. To this end, the Parties shall encourage their competent authorities in the area of technical regulations, conformity assessment procedures and standards, to undertake the following activities:

- (a) Promote bilateral institutional and regulatory information exchange and technical cooperation;
- (b) Promote bilateral coordination by appropriate agencies in multilateral and international fora on technical regulations, conformity assessment procedures and standards;
- (c) Facilitate the provision to the other Party of technical advice, information and assistance, on mutually agreed terms and conditions, to enhance the Parties TBT measures and related activities, processes and systems;
- (d) Extend the assistance mentioned in subparagraph (c), inter alia, in the areas of:
  - (i) processing technologies;
  - (ii) exchange of information on new research data;
  - (iii) infrastructure;
  - (iv) institutional and regulatory co-operation;
  - (v) harmonization;
  - (vi) mutual recognition and equivalence agreements;
  - (vii) transparency;
  - (viii) conformity assessment procedures;
  - (ix) identification, consultation and resolution of TBT-related problems;
  - (x) technical expertise; and
  - (xi) training and equipment.

3. The Parties shall include technical cooperation and coordination issues related to standards, technical regulations and conformity assessment procedures on the agenda of the Free Trade Coordinators as required.

## **Part THREE. Services and Investment**

### **Chapter IX. Services**

#### **Article IX.01. General Provisions**

1. The Parties recognise the increasing importance of trade in services in their economies. In their efforts to gradually develop and broaden their relations, the Parties shall cooperate in the WTO and plurilateral fora, with the aim of creating the most favourable conditions for achieving further liberalisation and additional mutual opening of markets for the trade in services.

2. With a view to developing and deepening their relations under this Agreement, the Parties agree that within two (2) years of the date of entry into force of this Agreement, they will review developments related to trade in services and consider the

need for further disciplines in this area.

3. Upon request of a Party, the other Party shall provide information, on a timely basis, on measures that may have an impact on the trade in services.

## **Article IX.02. Services**

1. The Parties herein recognise the importance of their rights and obligations assumed in the General Agreement on Trade in Services (GATS).

2. Each Party shall ensure that its competent authorities, within a reasonable time after the submission of an application for a license or certification by a national of the other Party:

(a) where the application is complete, make a determination on the application and inform the applicant of that determination; or

(b) where the application is not complete, inform the applicant without undue delay of the status of the application and the additional information that is required under the Party's law.

3. (a) The Parties to this Agreement shall encourage bodies responsible for

The regulation of professional services in their respective territories to:

(i) ensure that measures relating to the licensing or certification of nationals of the other Party are based on objective and transparent criteria, such as competence and the ability to provide a service; and

(ii) co-operate with the view to developing mutually acceptable standards and criteria for licensing and certification of professional service providers.

(b) The following elements may be examined with regard to the standards

And criteria referred to in subparagraph (a)(ii):

(i) education - accreditation of schools or academic programs;

(ii) examinations - qualifying examinations for licensing, including alternative methods of assessment such as oral examinations and interviews;

(iii) experience - length and nature of experience required for licensing;

(iv) conduct and ethics - standards of professional conduct and the nature of disciplinary action for non-conformity with those standards;

(v) professional development and re-certification - continuing education and ongoing requirements to maintain professional certification;

(vi) scope of practice - extent of, or limitations on, permissible activities;

(vii) local knowledge - requirements for knowledge of such matters as local laws, regulations, language, geography or climate; and

(viii) consumer protection - alternatives to residency requirements, including bonding, professional liability insurance and client restitution funds, to provide for the protection of consumers.

(c) These bodies shall report on the result of their discussions related to the development of mutually acceptable standards mentioned in subparagraph (a)(ii) and, as appropriate, provide any recommendations to the Coordinators.

(d) With respect to the recognition of qualification and licensing requirements, the Parties note the existence of rights and obligations with respect to each other under Article VII (Recognition) of the GATS.

(e) For the purpose of this paragraph, professional services means services, the provision of which requires specialised post-secondary education, or equivalent training or experience, and for which the right to practise is granted or restricted by a Party, but does not include services provided by tradespersons or vessel and aircraft crew members.

## **Chapter X. Investment**

## **Article X.01. General Provisions**

1. The Parties recognise the increasing importance of investment in their economies. In their efforts to gradually develop and broaden their relations, the Parties shall cooperate in the WTO and plurilateral fora, with the aim of creating the most favourable conditions for achieving further liberalisation and additional mutual opening of markets for investment.
2. With a view to developing and deepening their relations under this Agreement, the Parties agree that within two (2) years of the date of entry into force of this Agreement, they shall review developments related to investment, and consider the need for further disciplines in this area.
3. Upon the request of a Party, the other Party shall provide information, on a timely basis, on measures that may have an impact on investment.

## **Article X.02. Definitions**

For the purposes of this Chapter:

Investors means, for either Party, the following subjects who have made investments in the territory of the other Party in accordance with the legislation of the latter and the provisions of this Chapter:

- (a) any natural person who is a national of one of the Parties; or
- (b) legal persons, including companies, business associations, corporations, branch offices and any other organization duly incorporated or constituted in accordance with the laws of that Party, which has its seat in the territory of that Party and carries on business in the territory of that Party whether or not it is for profit;

Investment means any kind of asset, defined in accordance with the laws of the host country, which the investor of one Party invests in the territory of the other Party in accordance with the latter's laws and regulations, and includes, in particular, though not exclusively:

- (a) movable and immovable property and any other rights in rem such as mortgages, liens or pledges, and similar rights;
- (b) shares, stock, securities and debentures of companies or any other form of participation in a company;
- (c) claims to money or to any performances having an economic value directly related to an investment;
- (d) intellectual property rights, including copyright and related rights, trade marks, geographical indications, drawings, models and industrial designs, patents, layout-designs, distinctive signs and know-how;
- (e) rights conferred by law or under contract, to undertake any economic and commercial activity, including any rights to search for, cultivate, extract or exploit natural resources.

Any change in the form of an investment does not affect its character as an investment; and

Returns means all amounts yielded by an investment and in particular, though not exclusively, profits, interests, capital gains, dividends, royalties, fees or other current income.

## **Article X.03. Promotion and Admission**

1. Each Party shall encourage and create favorable conditions in its territory for investments of the other Party, and shall admit such investments in accordance with its laws and regulations.
2. Once a Party has admitted an investment in its territory, it shall provide, in accordance with its laws and regulations, all necessary permits related to such investment.

## **Article X.04. Protection**

1. Investments of either Party shall at all times be accorded fair and equitable treatment, and shall enjoy full legal protection and security in accordance with international law.
2. Neither of the Parties shall obstruct, in any manner, either through arbitrary or discriminatory measures, the enjoyment, use, management, conduct, operation and sale or other disposition thereof of such investments. Each Party shall comply with any obligation assumed regarding investments of the other Party.



3. Returns from investments and in the event of their re-investment the returns therefrom shall enjoy the same protection as the investment.

## **Article X.05. National and Most Favored Nation Treatment**

1. In accordance with its laws and regulations, each Party shall accord to investments of the other Party in the former's territory, treatment no less favourable than that granted to investment of its own investors.

2. Each Party shall accord to investments and returns of the other Party in the former's territory, treatment no less favourable than that granted to investments of investors of any non-Party.

3. Each Party shall accord the treatment which is more favourable to the investment of the other Party, either national or most favored nation treatment.

4. Nothing in this Article shall be construed so as to oblige a Party to extend to investments of investors of the other Party advantages resulting from any existing or future association or participation in a free trade area, customs union, common market, economic and monetary union or any other similar institution of economic integration.

5. Nothing in this Article shall be construed so as to oblige a Party to extend to investments of investors of the other Party deductions, fiscal exemptions or any other similar advantages resulting from double taxation agreements or any other agreement regarding tax matters negotiated by one Party and any other non-Party.

## **Article X.06. Expropriation and Compensation**

1. Investments of either Party in the territory of the other Party shall not be nationalized, expropriated or subjected to measures having an equivalent effect (hereinafter referred to as "expropriation"), except in cases when any of such measures have been adopted for the public good, in accordance with the due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation.

2. The compensation shall amount to the market value of the expropriated investment immediately before the expropriation or impending expropriation became public knowledge, whichever is earlier. It shall include interest from the date of dispossession of the expropriated property until the date of payment. Interest shall be based on the average deposit rate prevailing in the national banking system of the Party where the expropriation was made. Compensation shall be paid without undue delay, in convertible currency, and be effectively realizable and be freely transferable.

3. The investor affected shall have a right, under the law of the Party making the expropriation, to prompt review, by a judicial or other independent authority 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 Article.

4. Nothing set out in this Article shall affect the ability of a government of a Party to negotiate with the other Party or any other non-Party, quantitative restrictions of its exports or its ability to assign export quotas negotiated through appropriate mechanisms and criteria. Consequently, any dispute in this regard will be resolved in accordance with the trade agreements applicable between the Parties. Thus, nothing in this Article shall be used as a basis for an investor to argue that the effects derived from the distribution or administration of a quota represent an indirect expropriation.

## **Article X.07. Compensation for Losses**

Investors of one Party whose investments in the territory of the other Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, insurrection, riot or any other similar event, shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Party accords to investments of its own investors or investments of investors of any non-Party, whichever is more favourable to the investment of the investor of the former Party. All payments that may result shall be deemed freely transferable.

## **Article X.08. Transfers**

1. Each Party shall permit investors of the other Party, in accordance with its laws and regulations, the unrestricted transfer of payments related to their investments. Such transfers include, in particular, though not exclusively, the following:

(a) initial capital and additional amounts needed to maintain, expand and develop the investment;

(b) funds in repayment of loans made pursuant to Article X.02, subparagraph (c) under the definition investment;

(c) compensation referred to in Articles X.06 and X.07;

(d) proceeds derived from the partial or total sale or liquidation of the investment;

(e) proceeds derived from any compensation owed to an investor by virtue of a resolution of the dispute settlement procedures established by this Chapter;

(f) returns;

(g) the earnings of nationals of one Party who are allowed to work in connection with an investment in the territory of the other.

2. Transfers referred to in this Article shall be effected in freely convertible currency at the applicable exchange rate on the date of the transfer without undue delay on a non-discriminatory basis. Transfers shall be considered to have been made "without undue delay when they have been made within the period normally necessary for the completion of the transfer.

3. Notwithstanding the provisions of paragraph 1 of this Article, each Party shall be entitled, under circumstances of exceptional or serious balance of payments difficulties, to limit transfers temporarily, on a fair and non-discriminatory basis, and in accordance with internationally accepted criteria. Limits on transfers adopted or maintained by a Party, as well as their elimination, under this paragraph shall be notified promptly to the other Party.

4. When transfers are restricted by a Party due to balance of payments difficulties, the Party shall implement measures or a programme in accordance with the rules of the International Monetary Fund.

5. Notwithstanding the above, a Party may prevent a transfer through the equitable and non-discriminatory application of its laws relating to:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities;

(c) criminal or administrative offenses;

(d) failure to report transfers of currency or other monetary instruments; or

(e) ensuring the satisfaction of judgments and awards in adjudicatory proceedings.

#### Article X.09 Application of Other Rules

If the laws of one of the Parties or any current or future obligation under International Law, provide more favourable conditions than those granted by this Chapter to investments of investors of the other Party, the most favourable provision shall apply.

### **Article X.10. Subrogation**

If a Party or its designated agency, makes a payment under an indemnity against non-commercial risks given in respect of an investment in the territory of the other Party, the latter Party shall recognize the assignment, under the law of that country, of any right or claim from the investor to the former Party, or its designated agency, as well as the entitlement by virtue of subrogation, to exercise the rights and enforce the claims of that investor. This subrogation shall entitle the former Party, or its designated agency, to assert any such right or claim to the same extent as its predecessor.

### **Article X.11. Settlement of Investment Disputes between One Party and Investors of the other Party**

1. Any investment dispute which may arise between one Party and an investor of the other Party with respect to matters regulated by this Chapter, shall be notified in writing by the investor to the host Party. Such notification shall include in detail all relevant information. To the extent possible, the dispute shall be settled amicably between the parties.

2. If a dispute has not been settled amicably within a period of six (6) months from the date of the notification referred in paragraph 1 above, it may be submitted, at the choice of the investor concerned, either to the competent Courts or Administrative Tribunals of the Party in whose territory the investment was made, or to international arbitration. Where the dispute is referred to international arbitration, the investor may submit the dispute to either:

(a) the International Centre for the Settlement of Investment Disputes (ICSID), established by the "Convention on the Settlement of Investment Disputes between States and Nationals of other States" opened for signature at Washington D.

C. on 18 March 1965, provided both Parties are signatories of the ICSID Convention; or

(b) the Additional Facility Rules of ICSID, provided that one of the Parties, but not both, is a party to the ICSID Convention; or

(c) an ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), where none of the Parties is a signatory of the ICSID Convention.

3. Once the investor has submitted the dispute either to a competent Tribunal of the disputing Party or to an arbitral procedure, the selection of one or the other shall be final.

4. The arbitral award shall be based on:

(a) the provisions of this Chapter and any other binding agreements between the Parties;

(b) the national laws of the Party where the investment was made, including the rules dealing with conflicts of laws; and

(c) the rules and generally recognized principles of International Law.

5. The arbitral awards shall be final and binding on both parties to the dispute. Each Party assumes the commitment to implement the awards in accordance with its national laws.

6. The Parties shall abstain from addressing through diplomatic channels any matter submitted either to the domestic tribunals or to arbitration tribunals according to the terms of this Article, until such proceedings are concluded. Once the judicial proceedings or the international arbitration is concluded, a Party shall not make any diplomatic demand relating to the dispute, except where the disputing Party has not complied with the judicial or arbitral decision.

## **Chapter XI. Temporary Entry**

### **Article XI.01. Temporary Entry**

1. The Parties recognise that there is a growing importance of investment and services related to trade in goods. In accordance with their applicable laws and regulations, they shall facilitate the temporary entry of:

(a) nationals who are intra-company transferees (managers, executives, specialists) and business visitors;

(b) nationals who are providing after-sales services directly related to the exportation of goods by an exporter of that same Party into the territory of the other Party;

(c) spouses and children of nationals described in (a) above; and

(d) legal residents in the territory of one of the Parties who are intracompany transferees (managers, executives, specialists) and have been continuously employed by the company at least one (1) year immediately preceding the date of application for entry, provided they comply with the immigration requirements of the other Party.

2. With a view to developing and deepening their relations under this Chapter, the Parties agree that within two (2) years of the date of entry into force of this Agreement, they will review developments related to temporary entry and consider the need for further disciplines in this area.

3. No later than six (6) months after the date of entry into force of this Agreement, Parties shall make available explanatory material regarding the requirements for temporary entry under this Article in such a manner as to enable citizens of the other Party to become acquainted with them.

4. For the purposes of this Chapter:

After-sales services include those provided by persons installing, repairing and servicing, supervising installers, and setting up and testing commercial or industrial (including computer software) equipment, provided the services are being performed as part of an original or extended sales or lease agreement, warranty, or service contract. "Setting up" does not include hands-on installation generally performed by construction or building trades. After-sales services also include persons providing familiarisation or training sessions to potential users;

Business visitors are short-term visitors who do not intend to enter the labour market of the Parties, but seek entry to engage in activities such as investigating business opportunities, buying, selling or marketing of goods or services,

negotiating contracts, conferring with colleagues, attending conferences, trade fairs or trade missions;

National means a natural person who is a citizen of a Party; and

Temporary entry means the right to enter and remain for the period authorised by the Parties in accordance with their laws and regulations.

## **Part FOUR. Administrative and Institutional Provisions**

### **Chapter XII. Publication, Notification, Information and Administration of Laws**

#### **Article XII.01. Contact Points**

1. Each Party shall designate, within sixty (60) days of the entry into force of this Agreement, a contact point to facilitate communications between the Parties on any matter covered by this Agreement.
2. On the request of a Party, the contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

#### **Article XII.02. Publication and Notification**

1. Each of the Parties shall publish and notify the other Party, within a period of forty (40) days from the coming into force of this Agreement, of measures such as laws, regulations, judicial decisions, procedures and administrative regulations of general application which are related to the provisions of this Agreement.
2. As far as practicable, each of the Parties shall publish and notify the other Party of any measure indicated in paragraph 1 that it proposes to adopt, and shall provide the interested Party with a reasonable opportunity for making observations on the proposed measures.
3. The provisions of this Article do not obligate any of the Parties to reveal information of a confidential nature, the dissemination of which may constitute an impediment to the compliance with any laws, or is contrary to the public interest, or infringes the rules or regulations of public or private organisations.
4. Each of the Parties, at the request of the other Party, shall provide it with information and shall promptly respond to any question pursuant to the proposed or actual measures, notwithstanding that the interested Party had or had not been previously informed of the measure in question.

#### **Article XII.03. Notification and Supplying Information**

1. To the maximum extent possible, each Party shall notify the other Party of any proposed or actual measure that the Party considers might affect the operation of this Agreement or otherwise substantially affect that other Party's interests under this Agreement.
2. On the request of the other Party, a Party shall promptly provide the information and respond to questions pertaining to any actual or proposed measure, whether or not that other Party has been previously notified of that measure.
3. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

#### **Article XII.04. Review and Appeal**

1. The Parties reaffirm their guarantees of the right to a hearing in accordance with the fundamental principles of justice and due process of law enshrined in their respective legislation.
2. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, revision of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.
3. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right

to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

4. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by, and shall govern the practice of, the offices or authorities entrusted with administrative enforcement.

## **Chapter XIII. Dispute Settlement**

### **Article XIII.01. Cooperation**

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

### **Article XIII.02. Scope of Coverage**

Except as otherwise provided for in this Agreement, the provisions of this Chapter shall apply:

(a) to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement; or

(b) wherever a Party considers that an actual or proposed measure of the other Party is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex XIII.01.

### **Article XIII.03. WTO Dispute Settlement**

1. Disputes regarding any matter arising under both this Agreement, and the WTO Agreement or any agreement negotiated according to it, or any successor agreement, may be settled in either forum at the discretion of the complaining Party.

2. Once dispute settlement procedures have been initiated under Article XIII.07 or dispute settlement proceedings have been initiated under the WTO Agreement, the forum selected shall be used to the exclusion of the other.

3. For the purposes of this Article, dispute settlement proceedings under the WTO Agreement are deemed to be initiated when a Party requests the establishment of a panel, such as under Article 6 (Establishment of Panels) of the Dispute Settlement Understanding (DSU).

### **Article XIII.04. Perishable Goods**

1. In the disputes related to perishable goods, the Parties and the panel referred to in Article XIII.07 shall do everything to accelerate the procedure to the maximum extent possible. For this purpose, the Parties shall try to reduce by mutual agreement the time frames established in this Chapter.

2. In cases of urgency, including those which concern perishable goods, consultations shall commence as soon as possible and no later than fifteen (15) days from the date of delivery of the request.

### **Article XIII.05. Consultations**

1. A Party may request in writing, consultations with the other Party regarding any actual or proposed measure, or any other matter that it considers might affect the operation of this Agreement in terms of Article XIII.02.

3. The Parties shall employ their best endeavours to arrive at a mutually satisfactory resolution in any matter through consultations under this Article. To this end, the Parties shall:

(a) provide sufficient information to enable a full examination of how the actual or proposed measure, or other matter, might affect the operation of this Agreement; and

(b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information.

## **Article XIII.06. Alternative Methods of Dispute Resolution**

At any time, the Parties may agree to have recourse to alternative methods of dispute resolution, including good offices, conciliation or mediation.

## **Article XIII.07. Establishment of a Panel**

1. Unless the Parties agree to have recourse to alternative methods of dispute resolution, the Parties agree to establish a panel to examine any matter they fail to resolve through consultations pursuant to Article XIII.05.
2. The complaining Party may request in writing the establishment of a panel if the Parties fail to resolve a matter pursuant to Article XIII.05 within:
  - (a) thirty (30) days after the delivery date of the request for consultations; or
  - (b) fifteen (15) days after the delivery date of the request for consultations for matters referred to in paragraph 2 of Article XIII.04.
3. The complaining Party shall state in the request, the measure or other matter complained of, and shall indicate the provisions of this Agreement that it considers relevant; and shall deliver the request to the other Party.
4. The Parties may consolidate two (2) or more proceedings regarding other matters that they determine are appropriate to be considered jointly.
5. The arbitration proceedings shall be considered invoked upon the delivery of the request for the establishment of the panel to the Party complained against and the Parties shall take all necessary action in accordance with Article XIII.10 for the establishment of the panel.
6. Unless otherwise agreed by the disputing Parties, the panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

## **Article XIII.08. Roster**

1. No later than three (3) months after the entry into force of this Agreement, the Parties shall establish and maintain a roster of up to twenty (20) individuals, at least ten (10) of whom must not be citizens of either of the Parties, who are willing and able to serve as panelists. The roster members shall be appointed by consensus by the Parties for terms of three (3) years. Unless either of the Parties disagrees, a roster member shall be considered re-appointed for a further period of three (3) years.
2. Roster members shall:
  - (a) have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements;
  - (b) be chosen strictly on the basis of objectivity, reliability and sound judgment;
  - (c) be independent of, and not be affiliated with or take instructions from, any Party; and
  - (d) comply with the code of conduct to be established by the Joint Council.

## **Article XIII.09. Qualifications of Panelists**

1. All panelists shall meet the qualifications set forth in paragraph 2 of Article XIII.08.
2. Individuals may not serve as panelists for a dispute in which they have participated pursuant to Article XIII.06

## **Article XIII.10. Panel Selection**

1. The panel shall be comprised of three (3) members.
2. The disputing Parties shall endeavour to agree on the chair of the panel and on the other two (2) panelists within fifteen (15) days of the delivery of the request for the establishment of the panel. If the disputing Parties are unable to agree on the chair within this period, within five (5) days the Party chosen by lot shall select the chair, if not the other Party shall designate

one. The designated chair shall not be a citizen of the Parties.

3. Within fifteen (15) days of selection of the chair, each Party shall select a panelist who must not be a citizen of that Party.

4. If a Party fails to select its panelist within such period, the Parties shall choose by lot the panelist from among the roster members who are not citizens of that other Party.

5. All efforts shall be made to select panelists from the roster. The Parties may, by consent, select individuals not listed on the roster.

6. If a disputing Party believes that a panelist is in violation of the code of conduct, the disputing Parties shall consult and, if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

### **Article XIII.11. Rules of Procedure**

1. The Joint Council shall establish by the date of entry into force of this Agreement, Model Rules of Procedure, in accordance with the following principles:

(a) the procedures shall ensure a right to at least one hearing before the panel, as well as the opportunity to provide initial and rebuttal written submissions; and

(b) the panel's hearings, deliberations and initial report, and all written submissions to and communications with the panel, shall be confidential.

2. Unless otherwise agreed by the Parties, the panel shall conduct its proceedings in accordance with the Model Rules of Procedure.

3. Unless the Parties otherwise agree, within twenty (20) days from the date of the delivery of the request for the establishment of the panel, the terms of reference of the panel, shall be:

"To examine, in the light of the relevant provisions of the Agreement, the matter referred to its consideration by the complaining Party (in terms of the request for establishment of the panel) and to make findings, determinations and recommendations as provided in paragraph 2 of Article XIII. 13 and Article XIII.14".

4. If the complaining Party argues that a matter has nullified or impaired benefits as stated in the Annex XIII.01, the terms of reference statement shall so indicate.

5. If a Party requires the panel to make findings as to the degree of adverse trade effects on any Party of any measure found not to conform with the obligations of this Agreement or to have caused nullification or impairment in the sense of the Annex XIII.01, the terms of reference shall so indicate.

### **Article XIII.12. Role of Experts**

On the request of a Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it considers appropriate.

### **Article XIII.13. Initial Report**

1. Unless the Parties otherwise agree, the panel shall issue its initial report on the basis of the submissions and arguments presented by the Parties and on any information before it pursuant to Article XIII.

2. Unless the disputing Parties otherwise agree, the panel shall, within ninety (90) days after the last panelist is selected, present to the disputing Parties an initial report containing:

(a) findings of fact, including any findings pursuant to a request under paragraph 5 of Article XIII.11;

(b) its determination as to whether the measure at issue is or would be inconsistent with the obligations of this Agreement, or is cause for nullification or impairment in the sense of the Annex XIII.01 or any other decision requested in the terms of reference statement; and

(c) the preliminary decision, including any recommendations.

3. Panelists may furnish separate opinions on matters not unanimously agreed.

4. A Party may submit written comments to the panel on its initial report within fourteen (14) days of presentation of the report. In such an event, and after considering such written comments, the panel, on its own initiative or on the request of any disputing Party, may:

(a) make any further examination that it considers appropriate; and

(b) reconsider its initial report.

### **Article XIII.14. Final Report**

1. Unless the Parties otherwise agree, the panel shall present to the Parties a final report, agreed to by the majority, including any separate opinions on matters not unanimously agreed, within thirty (30) days of the presentation of the initial report.

2. No panel may, either in its initial report or its final report, disclose which panelists are associated with the majority or minority opinions.

3. Unless the Parties agree otherwise, the final report of the panel shall be published fifteen (15) days after it is transmitted to the Parties.

### **Article XIII.15. Implementation of Final Report**

1. The final report of the panel shall be binding on the Parties in the terms and within the time limits ordered by the panel. The period of time to implement the final report shall not exceed six (6) months from the date of notification of the final report to the Parties, unless another period of time for implementation is agreed upon by the Parties.

2. When the final report of the panel declares that the measure is incompatible with this Agreement, the Party complained against shall abstain from implementing the measure or shall eliminate it.

3. When the final report of the panel states that the measure causes nullification or impairment in the sense of Annex XIII.01, it shall determine the level of nullification or impairment and may suggest mutually satisfactory adjustments for the Parties.

### **Article XIII.16. Suspension of Benefits**

1. Where the Party complained against fails to implement the recommendation or rulings of a panel, or where there is a disagreement between the Parties as to the existence or consistency with this Agreement of the measures taken to comply with the recommendations or rulings of a panel, the Parties shall have recourse to the Joint Council for the settlement of the dispute.

2. In such a case, the Joint Council shall meet, on the request of a Party, within fifteen (15) days from the expiration of the time frame to implement the final report. In special circumstances the time frame may be adjusted by mutual agreement between the Parties.

3. The Joint Council may engage the assistance of expert advisors with regard to Article XIII.12 in the settlement of disputes between the Parties regarding the implementation of a panel ruling or report.

4. If the Joint Council is unable to resolve the dispute regarding implementation according to paragraph 2, within the next ten (10) days, the panel shall be reconvened to determine whether the Party complained against has effectively implemented the final report.

5. The suspension of benefits or other obligations are temporary measures available in the event that the recommendation and rulings in the final report are not implemented within the stipulated period of time of Article XIII.15.1.

6. The complaining Party may suspend the application of benefits of equivalent effect to the Party complained against if the panel determines:

(a) that a measure is incompatible with the obligations of this Agreement and the Party complained against does not comply with the final report within the time frame established by the panel;

(b) that a measure causes nullification or impairment in the sense of Annex XIII.01 and the Parties do not arrive at a mutually satisfactory agreement of the dispute in the time frame that the panel has established.



7. The suspension of benefits shall last until the Party complained against complies with the panels final report or until the Parties reach a mutually satisfactory agreement on the dispute, as the case may be.

8. In considering the suspension of the benefits consistent with paragraph 6:

(a) the complaining Party shall first seek to suspend benefits in the same sector or sectors affected by the measure, or by any other measure that the panel has found to be inconsistent with the obligations of this Agreement, or to have caused nullification or impairment in the sense of Annex XIII.01; and

(b) where the complaining Party considers it is not feasible or effective to suspend benefits in the same sector or sectors, it may suspend benefits in other sectors.

9. At any time after the suspension of benefits, upon the written request of any disputing Party, delivered to the other Party, the Parties shall establish a panel to determine whether the final report has been implemented or not, or whether the level of benefits suspended by a Party pursuant to paragraph 6 is manifestly excessive. To the extent possible, the panel will be constituted by the same panelists that presided over the initial dispute.

10. The panel proceedings for the purposes of paragraph 9 shall be conducted in accordance with the Model Rules of Procedure. The panel shall present its final decision within the sixty (60) days after the last panelist is selected, or such other period as the Parties may agree.

### **Article XIII.17. Judicial or Administrative Proceedings**

1. If an issue of interpretation or application of this Agreement arises in any domestic judicial or administrative proceeding of a Party that any Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Party. The Joint Council shall endeavor to agree on an appropriate response as expeditiously as possible.

2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation of the Joint Council to the court or administrative body in accordance with the rules of that forum.

3. If the Joint Council is unable to agree, any Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

### **Article XIII.18. Private Rights**

Neither Party shall provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

### **Article XIII.19. Alternative Dispute Resolution**

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.

2. To this end, each Party shall provide appropriate procedures to ensure the observance of agreements to arbitrate and for the recognition and enforcement of arbitration awards in such disputes.

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

4. The Joint Council shall facilitate the establishment of an Advisory Committee on Private Commercial Disputes comprising persons with expertise or experience in the settlement of private international commercial disputes. The Committee shall report and provide recommendations to the Joint Council on general issues referred to it by the Joint Council regarding the availability, use and efficiency of arbitration and other procedures for the settlement of such disputes in the free trade area.

## **Part FIVE. Other Provisions**

### **Chapter XIV. Competition Policy**

#### **Article XIV.01. Cooperation**

1. The Parties shall seek to make progress towards the adoption of common provisions to prevent the benefits under this Agreement from being undermined by anticompetitive activities.

2. Likewise, the Parties shall make an effort to establish mechanisms to facilitate and promote the development of competition policy and to guarantee the application of regulations on free competition in and between the Parties in the free trade area.

## **Article XIV.02. Future Work Program**

Within a period of two (2) years of the date of entry into force of this Agreement, the Parties shall analyse the developments regarding paragraphs 1 and 2 of Article XIV.01 and shall consider adopting disciplines in this Chapter.

# **Chapter XV. Government Procurement**

## **Article XV.01. Government Procurement**

1. The Parties agree to promote greater liberalisation and greater transparency in their government procurement markets.

2. Within a period of two (2) years of the date of entry into force of this Agreement, the Parties shall analyse the developments regarding paragraph 1 and shall consider adopting disciplines in this Chapter.

# **Part SIX. Final Provisions**

## **Chapter XVI. Exceptions Article Xvi.01 General Exceptions**

For the purposes of Part Two (Trade in Goods), Article XX (General Exceptions) of the GaTt 1994 and its interpretative notes, or any equivalent provision of a successor Agreement to which both Parties are party, are incorporated into and made part of this Agreement.

## **Article XVI.02. National Security**

Pursuant to Article XXI (Security Exceptions) of the GATT 1994, nothing in this Agreement shall be construed:

(a) to require any Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;

(b) to prevent any Party from taking any actions considered necessary for the protection of its essential security interests:

(i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment;

(ii) adopted in time of war or other emergency in international relations; or

(iii) relating to the implementation of national policies or international agreements regarding the non-proliferation of nuclear weapons or other nuclear explosive devices; or

(c) to prevent any Party from taking action in pursuance of its obligations under the United Nations Charter for the Maintenance of International Peace and Security.

## **Article XVI.03. Taxation and Double Taxation**

1. Except as provided for in this Article, nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such conventions, those conventions shall prevail to the extent of the inconsistency.

3. Notwithstanding paragraph 2:

(a) Article III.03 (National Treatment) and such other provisions of this Agreement as are necessary to give effect to that

Article, shall apply to taxation measures to the same extent as in Article III of the GATT 1994; and

(b) Article III.15 (Export Taxes) shall apply to taxation measures.

4. The Parties agree to conclude a bilateral double taxation agreement within a reasonable time after the date that this Agreement enters into force.

5. The Parties agree that, upon conclusion of a bilateral double taxation Agreement, they will agree to an exchange of letters setting out the relationship between the double taxation Agreement and this Article.

#### **Article XVI.04. Balance of Payments**

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining measures that restrict transfers when the Party experiences serious balance of payments difficulties, or the threat thereof, and such restrictions are consistent with Chapter X (Investment) and this Article.

2. Restrictions imposed on transfers related to trade in goods, shall not substantially impede those transfers from being made in a freely usable currency at a market rate of exchange and may not take the form of tariff surcharges or similar measures.

#### **Article XVI.05. Exceptions to the Disclosure of Information**

Nothing in this Agreement shall be construed to require any Party to furnish or allow access to information, the disclosure of which would impede law enforcement or would be contrary to the Party's laws protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions.

### **Chapter XVII. Final Provisions**

#### **Article XVII.01. Annexes and Footnotes**

The Annexes and Footnotes to this Agreement constitute an integral part of this Agreement.

#### **Article XVII.02. Amendment**

1. The Parties may agree on any amendment, modification, or addition to this Agreement.

2. When so agreed and approved in accordance with the applicable legal procedures of each Party, an amendment, modification or addition shall constitute an integral part of this Agreement.

#### **Article XVII.03. Entry Into Force**

This Agreement shall enter into force on 1 March, 2004, or as soon thereafter as the Parties have exchanged written notifications that certifies all necessary legal procedures have been completed.

#### **Article XVII.04. Provisional Application**

1. This Agreement may be provisionally applied by any two States of the Parties mentioned in the Preamble which have notified that they have completed the necessary legal procedures and have agreed to apply the provisions of this Agreement provisionally pending its definitive entry into force in accordance with Article XVII.03.

2. CARICOM shall notify Costa Rica of any Member State mentioned in the Preamble which has completed the necessary legal procedures and has agreed to apply this Agreement provisionally.

#### **Article XVII.05. Reservations**

This Agreement shall not be the subject of reservations or unilateral interpretative declarations.

#### **Article XVII.06. Accession**

1. Any country or group of countries may accede to this Agreement subject to such terms and conditions as may be agreed

between such country or group of countries and the Parties, and following approval in accordance with the applicable legal procedures of each country.

2. It is mutually understood and agreed that negotiations for the accession of Haiti to this Agreement shall take into account that this Agreement and its Annexes establish preferential treatment by Costa Rica for the less developed Member States of CARICOM by reason of their lesser degree of development.

3. This Agreement shall not come into force between a Party and any acceding country or group of countries if, at the time of accession, either does not consent to such application.

4. The instrument of accession shall enter into force upon the exchange of notifications certifying that the applicable legal procedures have been fulfilled.

### **Article XVII.07. Termination**

1. This Agreement shall remain in force, unless terminated by either Party on six (6) months' written notice to the other Party. The rights acquired and the obligations assumed under this Agreement shall cease on the effective date of termination, except as provided in paragraph 2.

2. Obligations undertaken prior to termination with respect to trade in goods shall continue in force, for a further period of one (1) year, unless the Parties agree to a longer period.

3. In the case of accession of a country or group of countries in accordance with the provisions of Article XVII.06, even when a Party has denounced the Agreement, it shall remain in force for the other Parties.

### **Article XVII.08. Authentic Texts**

Both the English and Spanish texts of this Agreement, in duplicate, are equally authentic.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized, have affixed their signatures to this Agreement in the City of Kingston, Jamaica, on this 9 th day of March Two Thousand and Four.

THE MOST HONOURABLE PERCIVAL J. PATTERSON, PRIME MINISTER OF JAMAICA

HIS EXCELLENCY DR. ABEL PACHECO, PRESIDENT OF THE REPUBLIC OF COSTA RICA