

# **TRADE AND ECONOMIC CO-OPERATION AGREEMENT BETWEEN THE CARIBBEAN COMMUNITY (CARICOM) AND THE GOVERNMENT OF THE**

REPUBLIC OF CUBA

The Caribbean Community (CARICOM) and the Government of the Republic of Cuba (hereinafter referred to collectively as the Parties),

INSPIRED by the purposes of the Association of Caribbean States to promote an expanded economic space for regional trade and investment and to gradually and progressively foster economic integration, including the liberalization of trade, investment, transportation and other related areas:

AWARE of the need to accelerate the process of Caribbean integration and of the importance attached by the Parties to the various ongoing sub-regional integration processes aimed at increasing and facilitating international competitiveness of the region and facilitating its development:

RECOGNIZING the importance of improving the living standards of the Caribbean peoples and encouraging the progressive development of the economies of the Parties, taking into account the particular urgency of these aims for the less developed countries:

BEARING IN MIND the different levels of economic development between CARICOM Member States and Cuba:

CONSIDERING the desirability of promoting a free trade area, moving appropriately towards greater participation of the economies of the Parties in the world economy, developing more dynamic and balanced economic and trade relations based on mutual benefits and a gradual reduction in customs tariffs and trade obstacles:

COMMITTED TO the launch in the year 2001 of negotiations for the establishment of a Free Trade Area between the Parties:

TAKING INTO ACCOUNT the benefits of formulating clear and accurate guidelines that allow for an increased involvement of the business entities of the Parties in the economic development of CARICOM Member States and Cuba:

HAVING REGARD to the rights and obligations of CARICOM Member States under the Treaty establishing the Caribbean Community (CARICOM) and the rights and obligations of Cuba under the Treaty of Montevideo of 1980:

BEARING in mind that Article 25 of the Treaty of Montevideo of 1980 to which the Republic of Cuba is a signatory, authorizes the signing of Partial Scope Agreements with other countries and economic integration groupings in Latin America, as a means of promoting the integration of the Latin American and Caribbean region:

CONSIDERING the rights and obligations of Member States of CARICOM and of Cuba as Members of the World Trade Organization (WTO):

COMMITTED to establishing closer trade and investment relations,

AGREE AS FOLLOWS:

## **Article 1. Interpretation**

1. For the purpose of this Agreement -

(i) references to the Agreement shall include references to the Annexes to the Agreement; and

(ii) references to the territories of the Parties mean, in relation to each Member State of CARICOM and Cuba, respectively, its territory, as well as its air space and maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea, over which that State exercises, in accordance with national law and international law, jurisdiction and sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas.

2. For the purpose of this Agreement, the More Developed Countries of CARICOM

(hereinafter referred to as the MDCs) are:

(i) Barbados

(ii) Guyana

(iii) Jamaica

(iv) Suriname

(v) Trinidad and Tobago

3. For the purpose of this Agreement, the Less Developed Countries of CARICOM (hereinafter

Referred to as the LDCs) are:

(i) Antigua and Barbuda

(ii) Belize

(iii) Dominica

(iv) Grenada

(v) Montserrat

(vi) St. Kitts and Nevis

(vii) Saint Lucia

(viii) St. Vincent and the Grenadines

## **Article 2. Objective**

The objective of this Agreement is the strengthening of the commercial and economic relations between the Parties through:

(i) the promotion and expansion of trade in goods and services originating in the territories of the Parties by means of, inter alia, free access to the markets of the Parties, elimination of non-tariff barriers to trade, the establishment of a system of rules of origin, and harmonisation of technical, sanitary and phyto-sanitary measures;

(ii) the establishment of financial arrangements to facilitate the progressive development of two-way trade between the Parties;

(iii) the progressive liberalization of trade in services;

(iv) the encouragement of one Party in the market of the other Party so as to enhance the competitiveness of the Parties in the world market;

(v) the provision of facilities for the establishment and operation of joint ventures and other forms of economic co-operation activities;

(vi) the development of mechanisms that promote and protect the investments made by nationals of the Parties;

(vii) the promotion and development of co-operative activities;

(viii) the promotion of an ongoing system of consultation and coordination for the exchange of information and views on economic and social matters of mutual interest and, where feasible, for the adoption of common positions at international forums and vis-a-vis third countries and groups of countries.

(ix) the discouragement of anti-competitive business practices between the Parties;

(x) the continuity and progress of work initiated within the CARICOM-Cuba Joint Commission (the Joint Commission) established by both Parties for the development of mutual relations.

### **Article 3. Joint Commission**

1. The Parties hereby agree that the Joint Commission shall exercise the following functions

Under this Agreement -

- (i) supervise the implementation and administration of the Agreement and compliance with its provisions;
- (ii) resolve any dispute arising from the interpretation and execution of this Agreement;
- (iii) establish Committees and Export Groups, delegate responsibilities to them and supervise their work;
- (iv) keep this Agreement under periodic review, evaluate its performance and recommend measures for compliance with its provisions;
- (v) recommend any amendment or modification to this Agreement;
- (vi) carry out such other functions in relation to this Agreement as may be mandated by the Parties;

2. All decisions shall be taken by consensus. The decision of the Joint Commission in relation

To this Agreement shall have the status of recommendations to the Parties.

### **Article 4. Joint Commission Meetings**

1. In connection with its functions under this Agreement, the Joint Commission shall meet at least once a year on a date determined by the Parties.

2. Such meetings shall be chaired jointly by representatives of the Parties.

3. The meetings shall be held alternately in a CARICOM Member State and Cuba, or at any other location agreed by the Parties.

4. The agenda for each meeting shall be agreed between the Parties at least one month prior to each proposed meeting.

5. In the exercise of its functions under this Agreement, the Joint Commission may establish its own rules and procedures.

### **Article 5. Market Access**

1. The Parties agree to implement a programme of trade liberalisation between them, at the same time, taking particular account of, the differences in the levels of development between Cuba and the LDCs of CARICOM.

2. Each Party agrees to grant good produced in the territory of the other Party access to its market under the following arrangements:

(i) the goods set down in Annex I to this Agreement which originates in the Member States of CARICOM and which satisfy the conditions in the Rules of Origin that appear in Annex VI to this Agreement shall receive duty free access on entry into Cuba;

(ii) the goods set down in Annex II to this Agreement which originate in Cuba and which satisfy the conditions in the Rules of Origin that appear in Annex VI to this Agreement shall receive duty free access on entry into the MDCs of CARICOM.

(iii) the goods set down in Annex III to this Agreement which originate in the Member States of CARICOM, and which satisfy the Rules of Origin that appear in Annex VI to this Agreement shall receive, on entry into Cuba, Phased Reduction of the MFN rate of duty to zero (0) per cent in four (4) annual equal stages over a period commencing one year after the entry into force of this Agreement;

(iv) the goods set down in Annex IV to this Agreement which originate in Cuba, and which satisfy the Rules of Origin that appear in Annex VI to this Agreement shall receive, on entry into the MDCs of CARICOM, Phased Reduction of the Most Favoured Nation (MFN) rate of duty to zero (0) per cent in four (4) annual equal stages over a period commencing one year after the entry into force of this Agreement.

3. The LDCs of CARICOM shall not be required to extend the treatment provided for in paragraphs 2(ii) and (iv) to goods which originate in Cuba.

4. The Parties agree that they will not apply any quantitative restrictions with respect to trade under this Agreement, but

take into account the rights of the parties under the WTO Agreement and the obligations of CARICOM Member States under the Treaty establishing the Caribbean Community.

5. The Joint Commission may consider any request by the Parties for the modification of the Lists in Annexes I to IV.

## **Article 6. Treatment of Goods Produced In Free Trade Zones/export Processing Zones**

1. Goods produced in or shipped from Free Trade Zones/Export Processing Zones in the territory of a Party shall, when imported into the territory of the other Party, be subject to the MFN rate of duty.

2. Where either CARICOM or Cuba decides to alter the treatment accorded to goods produced in or shipped from Free Trade Zones/Export Processing Zones, the Joint Commission will be advised of the action at the earliest opportunity and will consider the measures necessary to maintain the parity provided for in paragraph 1 of this Article.

## **Article 7. Rules of Origin**

The Rules of Origin to be applied under this Agreement shall be those set out in Annex VI.

## **Article 8. Technical Standards**

The Joint Commission shall review the governing technical regulations of the Parties and consider measures that, in its opinion, are required to ensure that such regulations do not constitute barriers to trade between the Parties. The Joint Commission shall establish rules and procedures to resolve any issues that may arise in the application of technical regulations.

## **Article 9. General Exemptions**

Nothing in this Agreement shall prevent the adoption or enforcement by Cuba or any Member State of CARICOM of measures which are required -

(i) to protect public decency;

(ii) to protect human, plant and animal health, and to preserve the environment;

(iii) to protect public order;

(iv) to control the production, distribution and use of narcotics and psychotropic substances;

(v) to secure compliance with the laws and regulations pertaining to customs or

Marketing;

(vi) to secure compliance with the laws and regulations that govern foreign investments;

(vii) to protect intellectual property rights or prevent dishonest practices;

(viii) in connection with the production of and trade in gold and silver;

(ix) in connection with goods produced by prison labour;

(x) to protect national treasures of artistic, historical or archeological value;

(xi) to prevent or alleviate any critical food shortage; or

(xii) in connection with the preservation of non-renewable natural resources.

## **Article 10. Economic Cooperation**

1. Each Party agrees to promote mutual economic and social co-operation in support of the economic integration of the Parties and the economic and social development of each Party.

2. Without prejudice to the generality of paragraph 1, the Parties agree to develop co-operation in the following areas:

(i) Development of Human Resources

(ii) Science and Technology

(iii) Meteorology and Natural Disaster Preparedness

(iv) Culture

## **Article 11. Double Taxation Agreements**

The Parties agree to work towards the adoption of double taxation agreements between CARICOM Member States and Cuba.

## **Article 12. Trade Promotion**

1. The Parties agree to establish trade promotion programmes, facilitate official and business missions, organize trade fairs and exhibits, exchange information, conduct market research projects, and carry out any other activities related to the implementation of the liberalization programmes and, in particular, the opportunities arising from the trade measures agreed upon herein.

2. Each Party agrees to promote the involvement of its business sector in the pursuance of the objective of this Agreement. For this purpose, the Parties shall explore the possible establishment of a CARICOM-Cuba Business Council that reviews business opportunities, furnishes information and promotes trade.

## **Article 13. Business Facilitation**

1. The Parties agree to take all necessary steps, in accordance with their respective laws, to facilitate investment and the expansion of trade in goods and services between them. To this end, the Joint Commission will, as one of its first tasks under this Agreement, adopt a special programme of measures for the facilitation of business, including measures designed to achieve and maintain transparency and to encourage information exchange and also to harmonize customs procedures and technical standards.

2. The Parties agree, if and when necessary, to use their best endeavours to ensure that enterprises in their respective territories meet their obligations in respect of goods and services traded under this Agreement.

## **Article 14. Trade Financing**

1. The Parties recognize the essential role of trade financing in the development of trade. Accordingly, they agree to take all necessary steps to encourage banks and other financial institutions engaged in foreign trade in their respective territories to increase their support to exporters/importers in the territories of the Parties for the purpose of expanding trade between the Parties.

2. The support contemplated under paragraph 1 includes -

(i) the establishment of lines of credit;

(ii) the confirmation of letters of credit;

(iii) the provision of guarantees;

(iv) the discounting of bills of exchange, commercial paper and similar instruments;

(v) the provision of pre-shipment and post-shipment finance;

(vi) export credit insurance.

3. In order to promote the greater involvement of institutions in the territories of the Parties in

The financing of trade between the Parties, the Joint Commission will establish an Experts Group of financial specialists to promote training and information exchange, to review the scope for improving the availability, conditions and competitiveness of credit terms offered and to promote the development of collaboration, including the establishment of joint ventures for the financing of trade between the Parties.

## **Article 15. Trade In Services**

1. The Parties recognize the importance of trade in services for the development of their respective economies, and agree:

(i) To commence without delay, the exchange of information on their services sector, exchange of views on possible elements for a service regime;

(ii) Upon completion of the implementation of the CARICOM Services regime through the full application of the provisions of Protocol II amending the Treaty of Chaguaramas, or of the chapter of the Treaty containing these provisions, to commence as soon as possible negotiations for the establishment of a regime for trade in services between the Parties. In the establishment of the services regime, the Parties shall take into consideration their respective commitments in the General Agreement on Trade in Services (GATS) and the ongoing negotiations for services in the GATS:

(iii) To consider, in principle, inter alia, the following sectors or sub-sectors:

(a) Tourism and Travel-related services

(b) Entertainment Services

(c) Financial Services

(d) Professional Services

(e) Construction and related engineering services

(f) Computer and related services

(g) Telecommunication services

(h) Transport services

2. The Parties also agree to identify any elements essential to the development of trade in services which may be implemented prior to the conclusion on the Services Regime.

3. Pending conclusion of the negotiations referred to in paragraph 1 (ii) of this Article, and in accordance with the principles and rules of the General Agreement on Trade in Services (GATS), each Party shall accord immediately and unconditionally to services and service suppliers of the other Party, treatment no less favourable than that it accords to like services and service suppliers of any other country.

## **Article 16. Tourism**

1. In furtherance of Article 15 (iii) (a), the Parties agree:

(i) To take co-ordinated action to meet the commitments of the Parties under the Declaration for the Establishment of the Sustainable Tourism Zone in the Caribbean;

(ii) To prepare and promote, jointly, tourism products and programmes designed to encourage multi-destination travel, to increase the number of visitors to the territories of the Parties and to diversify and develop the tourism product;

(iii) To provide to each other, technical assistance in the area of human resource development, foreign language training, hospitality training, tourism planning and development and hotel management training;

(iv) To examine the feasibility of establishing a Regional Centre for the training and development of management and supervisory personnel for the tourism sector;

(v) To co-operate in the area of passenger transport and to keep under review the adequacy of airline and cruise ship services in the Caribbean;

(vi) To consider joint venture arrangements in the area of cruise shipping;

(vii) To undertake cultural exchanges and the exchange of entertainers on a commercial basis;

(viii) To encourage the participation of the business sector in their respective territories in special programmes and forums dealing with the supply of goods and services for the tourism, travel-related and entertainment sectors;

2. The Joint Commission shall establish Experts Groups on tourism, travel-related services and

Entertainment, comprised of specialists from both Parties to assist the Commission in the

Implementation of this Article.

3. The Experts Group shall meet at least once in every year and shall hold its first meeting

Within six (6) months of the signing of this Agreement.

## **Article 17. Investment**

The Parties agree to promote, protect and facilitate investments between them through the development and adoption of an agreement on reciprocal promotion and protection of investments. Such agreement will be annexed to this Agreement and form an integral part of it.

## **Article 18. Intellectual Property Rights**

1. The Parties agree to develop and adopt an agreement on Intellectual Property Rights, taking into account the rights and obligations provided for in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), contained in Annex 1C of the Agreement establishing the WTO, and other relevant international agreements to which all the Member States of CARICOM and Cuba are signatories. Such agreement will be annexed to this Agreement and form an integral part of it.

2. Pending the adoption of the Agreement referred to in paragraph 1, the provisions of the TRIPS and the other relevant international agreements to which all the CARICOM Member States and Cuba are signatories will apply to intellectual property rights issues which may arise between them.

## **Article 19. Transportation**

1. The Parties recognize the importance of developing transportation services, so as to facilitate trade between the Member States of CARICOM and Cuba.

2. For this purpose, the Parties agree to work on concrete lines of action consistent with international commitments which may result in the following:

(i) Disseminating information on air and maritime transport services that are offered currently via the air and maritime entities of Member States of CARICOM and of Cuba with the aim of increasing traffic between the Parties;

(ii) Creating joint ventures or other modalities of economic association within the scope of international transportation;

(iii) Organising a network of cargo agents for maritime transportation from the territories of the Parties;

(iv) Applying flexible and attractive tariffs for the Domestic Port Services by Member States of CARICOM and of Cuba to make transportation in the region more competitive;

(v) Establishing specific agreements to facilitate maritime and air transport between Member States of CARICOM and Cuba: in the air transportation field, this will be in accordance with the requirements of the International Civil Aviation Organisation (ICAO);

(vi) Exploring and identifying the possibilities of developing import-export transshipment hubs in order to support trade between the Parties and third party markets;

(vii) As a matter of priority, strengthening of the capability of the Parties to ensure operational safety and airworthiness in accordance with the requirements of ICAO;

(viii) Establishing co-operatives ventures among air and maritime transport authorities on matters relating to the safe, efficient and reliable provision of international transportation services within the territories of the Parties.

3. With the view of developing and implementing the concrete lines of action referred to in paragraph 2, the Parties undertake that within a 60 day period after signing this Agreement each Party will appoint the corresponding experts on international transportation, so as to draft the proper working schedules. The experts will coordinate the time and place to carry out these tasks.

4. The lines of actions as well as the resulting working schedules will take into account the measures adopted by the Special Committee for Transportation in the Association of Caribbean States (ACS).

5. The Joint Commission will look into all the provisions contained in this Article, and for this purpose the experts of both

Parties will accomplish joint reports that will be submitted to the Joint Commission as required.

## **Article 20. Safeguards**

1. The Parties acknowledge that, as Members of the WTO, they have recourse to the Agreement on Safeguards in the WTO.
2. A Party may apply a safeguard measure where its imports from the other Party are in such amounts that may seriously affect its national production of similar goods.
3. Safeguard measures shall consist of temporary suspension of the tariff preferences and the Re-instatement of the duties for the specific product.
4. Safeguard measures shall be applicable for an initial term that will not be longer than one year. This term may be renewed for another year in the event that the original causes for the safeguard prevail.
5. An importing country applying safeguard measures or wishing to renew such measures, shall call a meeting of the Joint Commission in order to hold consultations on an application or renewal. No consensus is required for the application or renewal of safeguard measures.

## **Article 21. Special Arrangements for Trade In Selected Agricultural Products**

In order to avoid the adverse impact on the demand for local products resulting in serious losses to producers/farmers, and having regard to the seasonal and perishable nature of agricultural products, the Parties agree that with respect to the agricultural products listed in Annex V which are being accorded duty free treatment, they may apply, if necessary, the Most Favoured Nation (MFN) rate of duty during the periods identified in the schedule.

## **Article 22. Unfair Trade Practices**

Where there is evidence of injury, material injury or threat of injury to the domestic industry of a Party due to unfair trade practices such as subsidies and dumping, that Party may apply corrective measures, provided the application of these measures is in conformity with the Agreement on Subsidies and Countervailing Measures and the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, contained, respectively, in Annex 1A to the Agreement establishing the WTO.

## **Article 23. Anti-competitive Business Practices**

1. The Parties will discourage anti-competitive business practices and work towards the adoption of common provisions to prevent such practices.
2. The Parties will undertake to establish measures and mechanisms to facilitate and promote competition policy and ensure their application between the Parties.

## **Article 24. Settlement of Disputes**

1. The Parties agree to adopt the following Rules for the Settlement of Disputes arising under this Agreement.
2. The Rules governing Settlement of Disputes (the Rules) shall apply to all disputes between the Parties relating to interpretation, application, execution or non-compliance with the provisions of the Agreement, with the exception of matters covered in the Annex on Investments.
3. The Parties shall first seek to resolve any dispute referred to in paragraph 2 above through informal consultations and seek to arrive at a mutually satisfactory solution. In the case of perishables, the Parties shall notify the Joint Commission immediately of the dispute and of the action being taken.
4. Where the Parties fail to arrive at a mutual solution within 30 days, or in the case of perishables within 10 days, pursuant to paragraph 3 above, the aggrieved Party may deliver to the other Party a request in writing for the intervention of the Joint Commission. The request to the Joint Commission shall contain sufficient information to enable examination of the request.
5. The Joint Commission shall ordinarily meet within 15 days of receipt of a request and, in the case of perishables, within 5 days of receipt of a request. In either case, the Joint Commission shall render its decision within 60 days of the date of the meeting (or if there is more than one meeting, the first meeting) convened to deal with the matter. However, in special



circumstances, the time-frame for meeting or for the rendering of a decision may be adjusted by mutual agreement between the Parties.

6. The Joint Commission may engage expert advisors in seeking solutions to disputes between the Parties.

## **Article 25. Amendments**

Where the Parties have agreed to an amendment or modification recommended by the Joint Commission under Article 3 (1) (v) of this Agreement, such amendment or modification shall enter into force on such date as may be agreed between them.

## **Article 26. Review of the Agreement**

The Joint Commission shall review the performance of and compliance with the objective of this Agreement within four (4) years of the effective date hereof. The Joint Commission shall, based on this review, recommend any measures deemed necessary to improve trade and economic relations between the Parties.

## **Article 27. Accession to the Agreement by other Member-states of the Association of Caribbean States**

1. This Agreement shall be open for accession by other member-states of the Association of the Caribbean States (ACS) subject to prior negotiations between the Parties and those member states which have requested to become parties to this Agreement and in accordance with Article 20, paragraph 2 of the Convention establishing the ACS.

2. The negotiations referred to in paragraph 1 shall take into account the fact that, under Article 5 (3) of this Agreement, the Parties hereto accord a differentiated treatment to the LDCs of CARICOM.

## **Article 28. Depository**

This Agreement shall be deposited with the Secretary General of the Caribbean Community who shall transmit certified copies to the Parties. The Government of the Republic of Cuba shall deposit this Agreement with the General Secretariat of the Latin American Association for Integration (ALADI), in accordance with the provisions of the Treaty of Montevideo of 1980 and the Resolutions of the Council of Ministers of External Affairs of the countries that are signatories to the said Treaty.

## **Article 29. Termination**

1. Either Party may terminate this Agreement by notice in writing. Such termination shall become effective six months after the other Party has received the above-mentioned notice.

2. The obligations of this Agreement shall cease to apply on the effective date of termination, except for outstanding commitments in respect of trade and related obligations, which shall remain effective for another year, unless the Parties agree to a longer period.

## **Article 30. Entry Into Force**

This Agreement and its Annexes shall enter into force on the 1<sup>st</sup> day of January 2001, or as soon thereafter as the Parties have notified each other through diplomatic channels that all internal legal procedures have been completed.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized, have executed this Agreement.

DONE at CANOUAN, ST. VINCENT AND THE GRENADINES in English and Spanish languages, both texts being equally authentic, on this FIFTH day of JULY 2000.

SIGNED:

BY THE CARIBBEAN COMMUNITY

SIGNED:

BY THE GOVERNMENT OF THE REPUBLIC OF CUBA

## **AGREEMENT ON RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Caribbean Community (CARICOM) and the Republic of Cuba, the Parties:

**Interested** in promoting greater economic cooperation amongst themselves, above all in the field of Investments made by Investors of one Party in the territory of the other Party;

**Recognising** the need to stimulate and protect Investments in a manner that will promote economic growth and development of both Parties;

**Acknowledging** the importance of respect for the sovereignty and laws of the Party within whose territory the Investment takes place;

**Resolved** to conclude this Agreement on Reciprocal Promotion and Protection of Investments;

Have agreed as follows:

### **Article I. Definition**

For the purposes of this Agreement:

1. Investments: means every kind of asset and in particular, though not exclusively, includes:

(a) movable and immovable property and any other property rights such as mortgages, liens or pledges as well as any other rights in rem in respect of every kind of asset;

(b) shares, stocks and debentures of companies and other kinds of interests in the property of such companies;

(c) the right to claim money or any performance having financial value related to a Investment;

(d) intellectual property rights, including rights with respect to copyrights, patents, trademarks, trade names, geographical indications, integrated circuits, industrial designs, trade secrets, technical processes and know-how and goodwill;

(e) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract, or exploit natural resources.

2. (a) An investor: means -

(i) in the case of a CARICOM investor, any natural person possessing the citizenship of or permanent residence in a CARICOM Member State in accordance with its laws; and

(ii) in the case of a Cuban investor, any natural person possessing the citizenship of and is permanently residing in Cuba in accordance with its laws; and

(iii) any corporation, company, association, partnership, or other organization, legally constituted under the laws of a Party, whether or not organized for pecuniary gain, or privately, or governmentally owned or controlled.

(2) Returns: means the amount yielded by an investment and, in particular, though not exclusively, includes profits, interests, capital gains, dividends, royalties or fees.

### **Article II. ADMISSION AND PROMOTION**

1. Each Party shall promote and admit in its territory, in conformity with their respective laws, the Investments of the Investors of the other Party. To that end, they shall, within six months of the entry into force of the Agreement, consult with each other through their designated agencies, with a view to identifying the most effective ways of achieving that purpose.

2. Each Party, shall, subject to its laws and in accordance with the provisions of Article VI, grant the necessary authorisations for these Investments, allow licensing agreements for manufacturing and for technical, commercial, financial and administrative assistance, and grant the necessary permits for the activities of the professional staff and consultants hired by the Investors of the other Party.

### **Article III. GENERAL PRINCIPLES GOVERNING TREATMENT**

Each Party shall treat Investments of the Investors of the other Party in a manner not less favourable than the treatment granted in similar situations to Investments of its Investors in accordance with their national laws and regulations governing foreign investment except for Investments in areas to be identified in the Appendix to this Annex.

2. Each Party shall treat investments of the Investors of the other Party in a manner not less favourable than the treatment granted in similar situations to Investments of third States except for Investments in the areas identified in the Appendix to this Annex.

3. The obligation to grant treatment no less favourable than is granted to third States does not apply to:

(i) any treatment or advantage resulting from any existing or future customs union or free trade area or common market or monetary union or similar agreement to which a Party is a party; or

(ii) any international agreement or arrangement relating wholly or mainly to taxation.

4. Where the provisions, under existing bilateral treaties between individual member states of CARICOM and Cuba, entitled Investments of Investors of the other Party, to treatment that is more favourable as determined by the Investor, than is provided for by this Agreement, the provisions of the bilateral treaties shall prevail to the extent that they are more favourable.

## **Article IV. FAIR AND EQUITABLE TREATMENT**

Each Party shall ensure fair and equitable treatment of Investments of Investors of the other Party under and subject to national laws and regulations.

## **Article V. COMPLIANCE WITH OBLIGATIONS**

Each Party shall comply with its commitments herein regarding Investments and shall, in no way, impair, through the adoption of arbitrary and discriminatory measures, the management, operation, maintenance, use, enjoyment, acquisition or disposal of said Investments.

## **Article VI. ENTRY AND STAY OF FOREIGNERS**

Subject to the national laws and regulations governing the entry and stay of foreigners and any arrangements which the Parties may negotiate, investors of each Party shall be allowed to enter and remain in the territory of the other Party for the purposes of establishing, developing or administering investments, or to advise on the establishment, development and administration of investments in which they have committed a substantial amount of capital or resources as determined by the local authorities.

## **Article VII. PERFORMANCE REQUIREMENTS**

No Party shall impose any performance requirements which are contrary to the World Trade Organisation Agreement on Trade Related Investment Measures as a condition for establishing, expanding or maintaining investments.

## **Article VIII. TRANSPARENCY**

Each Party shall publish all laws, judgments, practices and procedures and other rules and regulations regarding investments, or which may affect the same.

## **Article IX. 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, a state of national emergency, revolt, insurrection or riot in the territory of the latter Party 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 investors of any third State.

## **Article X. CONDITIONS FOR EXPROPRIATION**

Investments shall not be expropriated or nationalised either directly or indirectly through the application of measures of legal effect equivalent to expropriation unless the following conditions are complied with:

- a. the measures are taken in the public interest and under due process of law;
- b. the measures are not discriminatory;
- c. the measures are accompanied by the provision for the payment of adequate compensation. Such compensation shall amount to the market value of the relevant investments immediately before the measures were taken or the impending measures were publicly announced and shall include interest at a normal commercial rate until the date of payment. In determining the market value due weight shall be given to any factors which might have affected the value before the measures were publically announced by the authorities. In order to be effective for the claimants, compensation shall be paid and made transferrable , without undue delay, to the country designated by the claimants concerned and in the currency in which the Investment was made or any other freely convertible currency as agreed between the Parties and at the exchange rate applicable at the time of remittance;
- d. the measures are in accordance with Articles III and IV.

## **Article XI. FREE CONVERTIBILITY AND FREE TRANSFER**

Each Party in whose territory an investment has been made shall grant in respect of such investment the right in compliance with its laws relating to taxation to the unrestricted transfer of -

- (i) returns;
- (ii) the proceeds from the total or partial liquidation of an investment; provided however, that in periods of serious balance of payments difficulties such transfers may be phased over a period of three years;
- (iii) amounts for the repayment of loans incurred for the investment
- (iv) the net earnings of nationals of one Party who are employed and allowed to work in connection with an investment in the territory of the other Party;
- (v) payments deriving from indemnifications arising from expropriations and compensation for losses provided for in Articles X and XI of this Agreement

2. Such transfers shall be in the currency in which the Investment was made or any other freely convertible currency as agreed upon by the Parties and at the exchange rate applicable at the time of remittance.

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

- (i) bankruptcy, insolvency or the protection of the rights of creditors;
- (ii) issuing, trading or dealing in securities;
- (iii) criminal or penal offences;
- (iv) reports of transfers of currency or other monetary instruments; or
- (ii) ensuring the satisfaction of judgments in adjudicatory proceedings.

4. Each Party shall allow all transfers regarding investment, remitted to or proceeding from its territory, to be conducted freely and without delay.

## **Article XII. SETTLEMENT OF DISPUTES BETWEEN AN INVESTOR AND A CONTRACTING PARTY**

Any dispute between one Party and an Investor of the other Party concerning an Investment of the latter, in the territory of the former, shall, if possible, be settled amicably. If such a dispute has not been settled amicably within a period of three months from the date of written notification of the claim, either Party may submit the dispute to the courts of that Party or to national or international arbitration.

2. Where the dispute is referred to international arbitration, the investor and the Party concerned in the dispute may agree to refer the dispute to an international arbitrator or ad hoc arbitration tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law.

3. Neither Party shall give diplomatic protection or bring an international claim, in respect of a dispute which one of its

investors has consented to submit to arbitration, unless the other Party which is party to the dispute shall have failed to abide by and comply with the award rendered in such dispute by the arbitral tribunal. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute by the arbitral tribunal.

4. The awards of the arbitrator shall be definitive, compulsory and without appeal for the Contracting Party and the investor.

## **Article XVIII. SETTLEMENT OF DISPUTES BETWEEN THE PARTIES**

Disputes between the Parties concerning the interpretation or application of this Agreement should, if possible, be settled through diplomatic channels.

2. If a dispute between the Parties cannot thus be settled within six (6) months, it shall, upon the request of either Party, be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way. Within three months of the receipt of the request for arbitration, each Party shall appoint one member of the tribunal. Those two members shall select a national of a third State who, on approval by the two Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other members.

4. If within the periods specified in paragraph (3) of this Article, the necessary appointments have not been made, either Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decision by a majority of votes. Such decisions shall be binding on both Parties. Each Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Parties. The tribunal may, however, in its decision, direct that a higher proportion of costs be borne by one of the two Parties, and this award shall be binding on both Parties. The tribunal shall determine its own procedures.

## **Article XIV. CHOICE OF FORUM**

In the case of disputes arising between the Parties, which constitute a dispute under this Agreement and the existing bilateral agreements between CARICOM Member States and Cuba, with regard to the interpretation and application of this Agreement, the procedure established under the bilateral agreements regarding dispute settlement between the parties shall prevail.

## **Article XV. SUBROGATION**

If one Party or its agent ("the first Party") makes a payment under an indemnity against non-commercial risks given in respect of an Investment in the territory of the other Party, ("the second Party"), the second Party shall recognize:

- (i) the assignment to the first Party by law or by legal transaction of all the rights and claims of the party indemnified; and
- (ii) that the first Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified.

2. The first Party shall be entitled in all circumstances to the same treatment in respect of:

- (i) the rights and claims acquired by it by virtue of the assignment; and
- (ii) any payments received in pursuance of those rights and claims, as the Party indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

3. Any payments received in non-convertible currency by the first Party in pursuance of the rights and claims acquired shall be freely available to the first Party for the purpose of meeting any expenditure incurred in the territory of the second Party.

## **Article XVI. APPLICATION OF OTHER RULES**

If the provisions of law of either Party or obligations under international law existing at present or established hereafter between the Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by investors of the other Party to treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

## **Article XVII. GENERAL EXEMPTIONS**

Notwithstanding any other provisions of the Agreement, a Party shall not be prevented from taking prudential measures with respect to financial services, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise providing financial services, or to ensure the integrity and stability of its financial system. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under the Agreement.

2. This Agreement shall not preclude the application by either Party of measures necessary for the protection of its own national security interests.

## **Article XVIII. PRESENT AND FUTURE INVESTMENTS**

This Agreement shall be applicable to Investments carried out by the Investors of either of the Parties in the territory of the other, before or after its entry into force but is not applicable to conflicts where the facts or events originated before its entry into force