

# Trade WINS

## Critical Issues For Business

### THE CARICOM/DOMINICAN REPUBLIC FREE TRADE AGREEMENT EXPLAINED

On August 22, 1998 the Agreement Establishing the Free Trade Area Between the Caribbean Community and the Dominican Republic was signed. The two parties (CARICOM and the Dominican Republic) came together to establish closer economic integration and to develop a more significant joint presence in trade negotiations. Several meetings have since taken place to finalise details of the agreement and a draft protocol on implementation was agreed upon by both parties in middle of 2000.

Globalisation and integration are already a part of the regional and sub-regional trade agenda and a successful Free Trade Area between the two parties will increase their viability at the level of hemispheric and global trade negotiations. The establishment of a Free Trade Area enhances levels of cooperation and aims

to stimulate economic development through trade liberalisation and increased competitiveness. It integrates systems such as customs, standards, investment and service delivery.

The agreement itself is a fairly complex, technical document. In this issue of **TRADE WINS**, we have tried to address the technical issues by answering several general questions on Free Trade Agreements and how they function. We have then provided a sort of "road map" which presents the key elements of each section of the FTA. You will find that we have removed the detailed information contained in the annexes of the agreement and placed them into appendices for easy reference. We hope that The CARICOM/Dominican Republic FTA Explained will help the private sector to understand what the agreement means for business.

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**TRADE WINS** is designed with Caribbean business in mind. The series is intended to bring issues of trade policy to the private sector and other interested parties.



## What's it all About?

The agreement should be read in the context of increasing trade liberalisation and the move towards hemispheric integration with the Free Trade Area of the Americas which is scheduled to come on stream in 2005. The creation of a Free Trade Area (which is established through a Free Trade Agreement) will grant each party access to the markets of the other and facilitate cooperation.

### What's a Free Trade Area?

You can think of a Free Trade Area as a geographical space which includes more than one country, developed for the purpose of furthering trade relations. It is established through the signing and implementation of a Free Trade Agreement (FTA) which sets out the terms and conditions of the arrangement. Free trade, in this context, implies the willingness of the parties (the countries involved) to grant certain concessions to each other in the area of trade. Essentially, this is about preferential treatment. It favours the goods and services of parties to the agreement over those of other countries.

### What Does it Mean For Me?

A Free Trade Area allows you - as a member of the private sector - to develop and access markets for your goods and services. It gives you the opportunity to share production and technical expertise and to take advantage of avenues for trade development and promotion.

### Is a Free Trade Agreement Legally Binding?

Once the parties have signed a Free Trade Agreement and agreed to all of the terms and conditions set out in the various annexes, appendices and attachments, it does become a contract. The agreement is said to "enter into force" or to take effect. This means that the parties (and the individual countries within a party, as is the case with CARICOM) will then ensure that their national legislation reflects the terms and conditions of the agreement. The FTA itself is not law but parties put legal mechanisms in place for its implementation. Parties also have recourse to internal mechanisms (such as councils established by the FTA), national courts and international tribunals for dispute settlement.

## What Does the Agreement Look Like?

The agreement is divided into four main sections. Each section contains a preamble and several articles. Core information is found in the first section with the details contained in annexes and appendices. (We have removed this detailed information and placed it in a series of appendices at the end of this document. If you need further information, for example, on how the Rules of Origin are structured and what kinds of measures are in place to prevent the spread of pests and disease through imports, you can turn to the appendices.)

### The Agreement Establishing the Free Trade Area Between the Caribbean Community and the Dominican Republic

This is the basis of the Free Trade Agreement. It tells us who the parties are and why they've come together to form an agreement. It also outlines the objectives, what the agreement covers and how the agreement will be administered. This agreement, on its own, is sometimes referred to as the Free Trade Agreement (FTA).

### Agreement on Trade in Goods

Trade in Goods currently makes up the bulk of the overall agreement. It is essentially about duty free trade in goods (duty free access to markets is the basis of the FTA). It outlines what kind of preferential tariff treatment will be expected of the parties. It also outlines principles for customs cooperation and safeguard mechanisms for the protection of local industries and economies. There are currently three appendices to this particular agreement: Rules of Origin, Technical Barriers to Trade and the Agreement on Sanitary and Phyto-Sanitary Measures.

### Agreement on Trade in Services

This agreement establishes a framework for the liberalisation of trade in services. Trade in services is one of the most significant emerging areas of trade collaboration and this agreement sets up the definitions, scope and conditions which should govern liberalisation.

It pays special attention to removing unnecessary barriers to trade. The relevant appendices and attachments are still to be negotiated.

## Agreement on Reciprocal Promotion and Protection of Investments

This is the final section of the FTA and it outlines the rules which should govern investment, the transfer of profits, compensation for losses and dispute settlement. Measures to facilitate the movement of capital and personnel are also included.

## What are the Main Themes?

There are several key themes which run through this FTA. You may think of them as guiding principles which can help you to understand some of the finer details. Here are some of the main themes:

### Liberalisation

The basic premise of the FTA is that barriers to trade between the parties should and will be removed. In some instances, the agreement makes provisions for immediate removal. In other instances, the removal is gradual. Parties are expected to identify and make known their existing barriers (tariffs, duties, regulations, etc.) and to refrain from imposing any new ones without sufficient justification. They are also expected to disclose their plans for the removal of these barriers.

### Reciprocity

This is a key element of the FTA and essentially means that the parties will be obligated to offer to each other duty free access and other trade facilitating options. This will apply to goods, services and investments. Reciprocity means that the parties will operate as partners, removing barriers to trade and offering mutual benefits. This is the basis of trade liberalisation.

### Special Treatment for CARICOM LDCs

The Less Developed Countries (LDCs) of CARICOM receive preferential treatment under this agreement. Given the fact that these countries are considered to be entering the agreement on an unequal economic footing,

their obligation to grant reciprocity has been delayed for a specific period after which the regulations will be reviewed.

### Most Favoured Nation (MFN) Treatment

Most Favoured Nation (MFN) treatment is often mentioned in this agreement.

Essentially, MFN treatment means that a country will not discriminate in the level of tariffs which it applies to other countries. In other words, all other countries will be subject to the same level of duties or tariffs - no one country will receive preferential treatment. In terms of the agreement, this means that each party will be subject to duties and tariffs which are no less favourable than those which apply to other countries (which are not part of the agreement). This system is already in place with CARICOM's Common External Tariff (CET) which applies the same duties and tariffs to all countries outside of CARICOM. In the case of the Dominican Republic, there is an external tariff which applies in the same manner. There are a few exceptions (e.g. in the case of a customs or monetary union) where MFN treatment will not apply and countries which are a part of these special unions will receive preferential treatment.

### National Interest

Under this agreement, parties are entitled (under certain circumstances), to adopt or refuse measures in order to protect their financial or security interests, the public good and national heritage (culture, art, archaeology). There are also special provisions for the protection of human, plant and animal life and health and the environment.

### Other Guidelines

The agreement also relies quite heavily on international conventions and guidelines. In most cases, the parties are already signatories to these conventions and the agreement merely reiterates the parties' intentions to abide by them.

## What Does the Agreement do?

The Free Trade Agreement establishes the parameters for trade liberalisation in goods, services and investment. It seeks to identify current and potential barriers to this process of liberalisation and put mechanisms in place for

*This is key!!*

*Protection*

their removal. It establishes measures for dealing with conflicts which might arise between the parties and between individual firms and parties. It provides a framework for developing rules and regulations to facilitate free trade.

*Joint Ventures*

## The Agreement Establishing the Free Trade Area Between the Caribbean Community and the Dominican Republic

This is the first section of the overall agreement and it lays the groundwork for the rest of the document. It names the parties (CARICOM and the Dominican Republic) and specifies the territories and subjects to be covered by the agreement. It essentially tells the reader what the Free Trade Area is.

The CARICOM countries covered by the agreement are: Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago. The Bahamas, because they are not members of the Caribbean Common Market, are not a part of the agreement.

*Note!*

CARICOM has identified among its membership the More Developed Countries (MDCs) and the Less Developed Countries (LDCs). The MDCs are: Barbados, Guyana, Jamaica, Suriname and Trinidad and Tobago. All others are classified as LDCs (with the exception of the Bahamas which is not a part of this classification scheme.)

The fundamental objective of the agreement is to strengthen the commercial and economic relations between the parties. The Agreement proposes to do the following:

- Promote and expand the sale of goods originating in the territories through free market access, the elimination of non-tariff barriers to trade and the establishment of a system of Rules of

Origin, Customs Co-operation and the Harmonisation of Technical, Sanitary and Phyto-Sanitary Procedures

- Progressively liberalise trade in services, the movement of capital and the promotion and protection of investments
- Promote the active participation of private economic agents (and promote and establish joint ventures)
- Promote and develop cooperative activities in agriculture, mining, industry, construction, tourism, transportation, telecommunications, banking, insurance, capital markets, professional services and science and technology
- Discourage anti-competitive business practices between and within the parties

Other areas of the agreement concern specific trade facilitation initiatives and monitoring of the agreement.

### i Trade Facilitation Initiatives

These initiatives provide greater opportunities for businesses to access markets and benefit financially from their export efforts. Intellectual property, an area of increasing importance in the region, is also addressed and should allow individuals and businesses increased protection as they seek to expand their trade in services and other non-traditional exports.

### Business Forum

The parties have agreed to establish a CARICOM/Dominican Republic Business Forum to analyse trade and investment opportunities, exchange business information, organise business encounters and deal with other business-related matters.

### Trade Financing, Economic Cooperation and Double Taxation Agreements

The parties have agreed to review trade financing arrangements between CARICOM Member States and the Dominican Republic. They have also agreed to work towards preventing double taxation and to develop a broad cooperation programme in the areas outlined in the objectives.

### Government Procurement

Although the agreement does not guarantee government procurement, the parties have

agreed to work towards the adoption of an agreement which will facilitate greater participation in this area.

## Intellectual Property Rights

The parties have agreed to abide by the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) which forms part of the agreement establishing the World Trade Organization (WTO) and any other relevant international agreements to which both parties are signatories. They have also agreed to develop and adopt their own agreement on intellectual property rights.

## ii. Monitoring of the Agreement

There are several mechanisms in place for monitoring and implementing the agreement. These are safeguards which will protect businesses and the parties.

## The Joint Council

The agreement establishes a Joint Council which is a representative body set up to monitor the implementation and administration of the agreement. This is the body which will review and evaluate the agreement periodically and settle disputes. The Council will also supervise the work of any *ad hoc* or standing committees. The Council will be made up of representatives of both parties and will meet at least once a year.

## Committees

The agreement establishes eight committees to monitor the implementation of the agreement in the following areas: Trade in Goods; Technical Barriers to Trade; Sanitary and Phyto-Sanitary Measures; Rules of Origin and Customs Cooperation; Trade in Services; Investment; Intellectual Property Rights; and Anti-Competitive Business Practices.

## Settlement of Disputes

The agreement establishes rules for settling disputes. The general rules cover all disputes except those involving investments. The first step is an attempt to arrive at a mutually satisfactory solution through informal consultations. If this is not achieved, the Joint Council may be requested to intervene. The Council may then engage expert advisors and seek other means of resolving the dispute. There are very specific timeframes set up for this process and special considerations are given in cases which involve perishable goods.

## Amendments and Termination of the Agreement

The agreement, annexes and appendices can be amended by the parties with proper submission and notification. This is done through the Joint Council and diplomatic channels. Parties may also withdraw from the agreement (on a phased basis) with proper notice.

## Agreement On Trade In Goods

This agreement is the key to trade liberalisation within the Free Trade Area. Essentially, it deals with reciprocity in the removal of tariffs and the granting of MFN treatment. It also sets up a framework for greater customs cooperation and establishes safeguard measures for Parties to protect them from threats to their domestic industries and external financial position.

The agreement establishes two negative lists: Products Which will be Subject to Phased Reduction of Duty and Products Which will be Subject to MFN Treatment. All goods except those which appear on the lists will be subject to immediate tariff reduction. Goods on the first list - which includes pasta, sausages, jams and biscuits - will be eligible for phased reduction of MFN duty to zero percent by 1 January 2004 in the Dominican Republic and the MDCs of CARICOM. Goods on the second list - which includes meats of bovine animals, fish and milk - will be subject to MFN rates of duty in the Dominican Republic and CARICOM (LDCs and MDCs). A list of agricultural products which will be subject to special trade arrangements has also been drafted. The LDCs are not required to grant any treatment other than the MFN rate of duty to goods originating in the Dominican Republic until the year 2005. (This will be reviewed in 2004).

(The Rules of Origin, Technical Barriers to Trade and the agreement on Sanitary and Phyto-Sanitary Measures provide the bulk of the information on how this agreement will actually work. You will find highlights of these in the appendix at the end of this document.)

The key elements of this agreement are trade facilitation initiatives, safeguard measures and procedures for customs cooperation.

Negative Lists

Excellent!!!

### i. Trade Facilitation Initiatives

There is a special clause in this agreement which permits CARICOM entrepreneurs to act as economic agents in the Dominican Republic. If you intend to promote or manage products of CARICOM origin you may do so on the same basis as nationals of the Dominican Republic. This should significantly improve market access for CARICOM goods and facilitate a better understanding of the trade and economic systems in both parties.

In addition, the parties have agreed to establish trade promotion programmes, organise fairs and expositions, facilitate trade missions and promote the use of market studies and other mechanisms for maximising trade opportunities.

Need to monitor

### ii. Bilateral Safeguard Measures, Unfair Trade Practices and Anti-Competitive Business Practices

Many trade agreements have a built-in mechanism to protect their signatories from injury and unfair practices. The safeguards established by this agreement are referred to as bilateral safeguard measures – between two parties. (The parties also have recourse to multilateral mechanisms such as those offered by the WTO.)

There are two circumstances which call for bilateral safeguard measures:

- 1) If imports from one party are large enough in quantity to cause or threaten serious injury to a local industry which produces similar or directly competitive products.
- 2) If balance of payment deficits must be redressed or if the external financial position of the importing country must be protected.

Once safeguard measures are applied, tariff preferences are suspended and the MFN duties of the product in question are reinstated. These measures are temporary and may apply initially for one year. If the reasons for applying the safeguard measures persist, the measures may be renewed for a further year. However, the importing country must request a meeting of the Joint Council to consider this renewal.

CARICOM and the Dominican Republic have also agreed to work to discourage anti-competitive business practices within the Free Trade Area and to establish mechanisms to facilitate competition policy. *The General Agreement on Tariffs and Trade (GATT)* will be used as a guide in dealing with unfair trade practices such as dumping and export subsidies.

### iii. Customs Cooperation

This section of the agreement deals with issues of information sharing, the harmonisation of systems, the simplification of documents and the speedy passage of goods through customs. It will be important for members of the business community to monitor the implementation of these measures since they will directly affect the export and import of goods.

No new customs measures are established in the agreement but there is consensus that information and experiences on the following are to be shared:

- Classification and customs valuation
- Rules of origin
- Documents and requirements for the import and export of goods
- General or specific statistics of imports and exports
- Goods subject to non-tariff measures
- Customs regimes and procedures
- Current domestic legislation relating to import taxes, customs and port charges, and any subsequent amendments
- New technologies for preventing and detecting customs fraud
- New trends in customs infractions

The parties have also agreed to notify each other's customs authorities of any intention to implement new customs regulations.

Circumstances

## Agreement On Trade In Services

Services is one of the most rapidly expanding export sectors regionally and internationally. It is likely to be a key element of the upcoming Free Trade Area of the Americas (FTAA) and countries in the region must be adequately prepared for negotiations in this area. The services sector has not been a traditional area of focus in the region and policy development in the sector has only recently begun.

The objective of this agreement is to establish a framework for the liberalisation of trade in services which is consistent with the *General Agreement on Trade in Services (GATS)* of the WTO. The agreement outlines the scope of activities to be covered and the circumstances under which parties may be exempted from complying.

## i. Scope

The agreement applies to measures affecting trade in services including:

- Promotion, distribution, marketing, sale and delivery of a service
- Purchase and use of a service
- Access to services offered to the public generally (and use of those services) as this affects supply
- Presence of a service supplier (including a commercial presence) in the territory of the other party
- Provision of a bond or other form of financial security as a condition for the provision of a service

There is a sort of negative list to which liberalisation will not apply:

- Promotion and support measures provided by governments or state enterprises (including loans, guarantees and insurance)
- Services which are supplied in the exercise of governmental authority
- Air services and their related supporting services other than aircraft repair and maintenance (when an aircraft is withdrawn from service)
- Specialty air service and computerised reservation systems
- Services or government functions such as social welfare, health and child care and insurance

Professional services, telecommunications and tourism and entertainment are some of the areas which will receive special attention in future negotiations.

The agreement requires that parties take “reasonable measures” to ensure that regional and local governments and authorities, as well as non-governmental agencies, adhere to the arrangement. However, it is important to note that a party is not obligated to give any rights to nationals of the other party who may be seeking employment or who are already employed on a permanent basis in their territory.

## ii. Trade Facilitation Initiatives

### Market Access

Parties have agreed that service suppliers will not be required to establish or maintain a representative office or any form of enterprise or be resident in the other territory as a condition for providing a service.

In addition, where countries share “contiguous frontier zones” the agreement does not prevent arrangements which will facilitate the exchange of local services. Negotiation on services is scheduled to begin in 2001.

### Removal of Restrictions

Each party is required immediately to grant MFN treatment to services and service suppliers of the other party. However, parties are allowed to adopt measures inconsistent with the agreement if those measures will avoid double taxation and ensure the equitable collection of direct taxes with regard to services or service suppliers.

Parties have agreed to identify any quantitative measures which are non-discriminatory and to work towards their liberalisation or removal. They have also agreed not to increase the level of any non-conforming measures with regard to MFN and national treatment and the local presence requirement (the LDCs have been granted one year to identify their non-conforming measures).

### Monopolies

The agreement does not prevent the existence of monopolies but the provisions on MFN treatment, local presence and national treatment apply. Parties have agreed to ensure that monopoly suppliers competing in the supply of services which are not normally in their scope of operations do not abuse their monopoly rights. The Committee on Trade in Services can be requested to provide information on suppliers thought to be acting contrary to the agreement. This agreement also applies to exclusive service suppliers. National and international competition policy will guide decisions on anti-competitive business practices which are not related to monopolies or exclusive supplier arrangements.

Good



Employment

*Origin of services*

### iii. Restrictions on Application

#### Denial of Benefits

The agreement seeks to ensure that only nationals of the parties concerned derive benefits from the arrangement. The origin of services is not as easily identified as the origin of goods. If it is determined that a service is actually provided by an enterprise owned by persons of a third party who conduct no substantial business in the second party, then benefits may eventually be denied. The Committee on Trade in Services must be notified and consultations will be held. If there is no mutually acceptable agreement then the benefits may be provisionally denied and the affected party can seek resolution through internal dispute settlement mechanisms.

#### Balance of Payments

The agreement makes special provisions for protecting and facilitating the economic development of the parties - particularly in the case of serious balance of payment or external financial difficulties. Parties may adopt temporary restrictions in order to deal with these situations. They may give priority to the supply of services which are more essential to their economic development but the restrictions should not be protectionist. The restrictions must be phased out progressively as the situation improves. The measures should follow International Monetary Fund (IMF) guidelines and avoid any unnecessary damage to commercial, economic and financial interests of the other party.

*Note*

## Agreement On Reciprocal Promotion And Protection Of Investments

*Note this!*

This agreement covers several categories of assets – particularly investments in property; stocks and shares; money; intellectual and industrial property rights; and business concessions. Parties are committed to promoting investments in their territories by investors of the other party as far as possible. Any laws of either party or obligations under international law which give more favourable

treatment than that provided for in the agreement shall take precedence over this agreement.

Foreign investment, like services, is a relatively new area of negotiation in the region. The agreement provides trade facilitation initiatives and extensive dispute settlement mechanisms.

### i. Trade Facilitation Initiatives

#### Movement of Personnel

In principle, the parties have agreed to allow licensing agreements for manufacturing and for technical, commercial, financial and administrative assistance and to grant the permits necessary for professional staff and consultants hired by the investors of the other party. Investors may also enter and remain in the territory of the other party in order to establish, develop, administer or advise on their investments.

#### Investments and Returns

Investments and returns shall enjoy full protection and security. Investments will not be expropriated or nationalised directly or indirectly except for reasons of public interest. In such cases, the process shall be non-discriminatory and shall take place only after payment of prompt, adequate and effective compensation. Compensation must be made in freely convertible currency and in accordance with due process of law.

Each party shall grant unrestricted transfer of the following:

- Returns
- Proceeds from full or partial liquidation of an investment (unless there are serious balance of payment difficulties in which case the transfers can be phased in over three years)
- Repayment of loans incurred for the investment
- Net earnings of the nationals of one party working in the other party in connection with an investment
- Payments arising as compensation for losses and expropriation

Parties may, however, prevent transfers through equitable application of laws relating to bankruptcy, securities, criminal or penal offences, reports of transfers of currency or other monetary instruments or adjudicatory proceedings. Parties are also entitled to take

measures which will protect their financial systems and those who have invested in financial services.

## ii. Dispute Settlement

In the case of unsettled disputes involving an investor and a contracting party, the matter will be submitted to the courts or to national or international arbitration three months after written notification of a claim. In the case of investment disputes between parties, diplomatic channels will be the first recourse. Failing a settlement, a request may be made for submission to an Arbitral Tribunal made up of one representative of each party and a third person who shall be a non-national. The decision of the Tribunal will be binding on both parties.

## What do we do Next?

The Agreement Establishing the Free Trade Area Between the Caribbean Community and the Dominican Republic was agreed to in principle and signed in 1998.

Through your private sector institutions, Trade Promotion Organisations (TPOs) and government departments, you can get more information on the status of the agreement. You can arrange public discussions on the FTA and seek to have discussions with your government as an organised body with clear objectives and concerns. It may also be useful for you to contact similar organisations in the other parties which are a part of the agreement. Since this agreement is meant to facilitate economic integration and cooperation, including nationals of the various territories would be a step in the right direction.

Remember, it's about goods and services. For goods, you should ensure that you are aware of what the proposed negative lists contain. If you have an export interest, prepare your company by doing research in the market. Caribbean Export can help. We can facilitate:

- Market visits
- Market research
- General trade and economic information

You may also be interested in forming a joint venture or strategic linkages with a firm in your territory or the territory of the other party. Thorough marketing preparation would also be useful in this regard.

If you are a service provider, you may be interested in exploring the market of the other party as an outlet for your services. You should begin to learn about the potential market for your services in the other party. Since negotiations on the services sector have not yet begun this information could also help you in proposing a negotiating position to your government.

Finally, it will be up to you to ensure that the private sector monitors the implementation of the agreement and brings forward any observations for public discussion.

## APPENDIX I

### Main Themes in Rules of Origin, Technical Barriers to Trade and Sanitary and Phyto-Sanitary Measures

The annexes and appendices to the main agreement contain detailed information on the way in which the agreement will actually work. There are several themes which run throughout these sections.

#### Information Sharing

The sharing of information is key to several areas of the FTA. Each party must be made aware of existing laws and regulations affecting the operation of the agreement and of any modifications, additions or withdrawals. The agreement makes provision for the establishment of a number of Enquiry Points. These will be the official contact agencies for information requests.

#### Competent Authorities

The agreement also refers to "Competent Authorities" which must be officially designated. These authorities will be responsible for such tasks as verification and certification. It is therefore important that they be officially sanctioned.

#### Notification & Speedy Process

The agreement sets timeframes for certain key processes such as dispute settlement and notification of intention to verify the process and materials of production. Proper and timely notification is key to the administration of several areas of the FTA.

## Confidentiality



Another key area in this FTA is the issue of confidentiality. Information on enterprises, products and records may be required by authorities in the process of determining qualifying conditions for benefits or preferential treatment. This information is not to be used for purposes other than those for which it was intended.

## APPENDIX II Rules of Origin



This is one of the most complex sections of the agreement and one which is of direct relevance to potential exporters since it sets up the procedures for determining which goods will qualify for preferential treatment. This involves a mechanism called the Harmonised Commodity Description and Coding System (HCDCS) by which goods are classified under headings and sub-headings.

Goods are considered to be “originating” in the territory of one of the parties if they meet either of two criteria:

- 1) They must be wholly produced in one of the parties; or
- 2) If they are not wholly produced in the country (i.e. if they contain material imported from countries which are not a part of the FTA), they must satisfy a criterion of “substantial transformation”. This means that they must have undergone a production process which now places them in a different category or heading under the HCDCS. The “new” good must fall under a different sub-heading from the sub-heading of the imported material which was used in its manufacture. Alternatively, this transformation may meet other criteria negotiated in an attachment to the agreement.

There are five categories of goods which can be said to be “wholly produced”:

- Mineral, plant or animal products which come from the territories of the parties or their territorial waters or exclusive economic zones
- Products of the sea extracted beyond the territorial waters of the parties and their exclusive economic zones by ships which are wholly or partially owned by nationals of the parties or which are leased, etc. by

enterprises established in the territories of the parties

- Products of factory ships wholly or partially owned as above which are made from goods or products of the sea extracted by ships listed above
- Slag, ashes, residues, waste or scrap from manufacturing and processing operation which are carried out in the territories of the parties and which are only for the recovery of raw materials (provided they do not constitute toxic or hazardous substances)
- Goods produced in the territories of the parties which are made solely from originating goods

Materials and equipment such as fuel, catalysts, tools and protective gear which are not physically incorporated into goods but used in their production, verification or inspection are considered as originating. Incorporated materials or goods are considered to be originating in the territory in which final production takes place.

The process of production is also important in determining origin. The process must be substantial enough to suggest that “production” has taken place. There are a number of operating processes which do not qualify. These include:

- Preservation processes such as refrigeration, freezing and the addition of actual preservatives
- Dust removal, cleaning, peeling, sorting, drying, grading, crushing, diluting (in water) and filtering
- Formation of sets of goods
- Packing, placing in containers or repackaging
- Assembly or dividing of packages
- Affixing of labels or brands
- Mixing of materials if the characteristics of the product obtained are not essentially distinct from the characteristics of the materials mixed
- Slaughtering of animals

## Regional Value Content

The Agreement makes provisions for calculating the Regional Value Content (RVC)

*Criteria!!*

*Note*

of goods using the Transaction Value (TV) method. If the value of all non-originating materials used in the production of goods which do not undergo a change in tariff heading is not more than 7% of the TV, they are considered originating. In the case of sets, if all component parts are originating, the set is considered originating. If there is a combination of originating and non-originating components, the set will be considered originating if the value of non-originating components does not exceed 7% of the FOB price of the set. Assembly of goods will be defined on a case-by-case basis in the attachment which is still under negotiation.

## Accessories and Normal Packaging

Accessories, spare parts and tools sent with a piece of equipment, machine, apparatus or vehicle which are a normal part of the equipment are not considered in determining the originating status of the goods if they are not billed separately. If they do not meet these conditions their origin will be determined separately using the Rules of Origin.

If packing is presented with merchandise and classified with the goods contained, and if it is used on a normal basis, it will not be considered in determining the origin of the goods. If not, goods and packing may be considered separately. No part of packing required for transport or storage will be considered in determining the origin of goods.

## Transport

Goods must be transported on direct consignment from the exporting country to the importing country in order to receive preferential treatment. Direct consignment means goods transported without going through third countries. If the goods are transported through a third country they may still qualify if they meet the following criteria:

- They are transported through the third country for geographical reasons or because of transport requirements
- They are not intended for trade or use in the transit country
- They do not undergo any operation other than loading or unloading or operations for conservation

Provision is made for official documentation of transshipment through the parties.

## Certification of Origin

All goods for export will have a Certificate of Origin. If you're an exporter your certificate will include:

- Your declaration or the declaration of the final producer that the origin requirements have been met
- A certificate from the authorised body of your territory (exporting country) stating that the declaration made above is accurate
- The signature of an official designated by the authorised body of your territory

Here are some other things you should know:

- If the exporter is not the final producer, then the exporter will be the one to present the declaration of origin to the authorised body
- The Certificate of Origin will always be prepared by an exporter in the country of final production
- The Competent Authority in the exporting country should carry out the necessary controls to permit certification and confirm the data set out in the Certificate
- The Certificate must not be dated before the commercial invoice
- The exporter or final producer who completes and signs the Certificate must keep all records and documents regarding the origin of the goods for a minimum of three years from its date and may be required to produce them later
- The Certificate will be valid for 180 days from the date of issue
- The Certificate will satisfy the requirement of the Consular Invoice

The bodies which are authorised by the parties to carry out certification will verify the declarations presented to them by the exporters or final producers and provide the other party with the kind of administrative cooperation which is needed for the control of documentary proof of origin. These bodies will submit approved lists of bodies authorised to issue certificates, lists of signatories with copies of their signatories and official stamps. They will do this within 30 days after the agreement enters into force. Any changes to

*Details  
for  
certification*

the lists will enter into force 30 days after notification has been received.

## Origin Verification

This allows parties to verify whether imported goods meet the criteria of “originating goods”. There are only three ways in which one party can carry out verification procedures on the goods of another party.

- They must submit a request to the competent authority in the exporting party for information from the exporter or producer in that territory
- They may visit the premises of an exporter or producer in the territory of another party to review records and observe the production process
- They may use other procedures once these have been agreed upon by both parties

The competent authority of the exporting country can ask the exporter or producer to make accounting records and other types of documentation available (if requested by the importing country) and to allow inspection of material, production facilities and processes.

Sufficient notice must be given. Within 5 days of receiving official notice, the competent authority in the exporting country must notify the exporter or producer of the verification request. The authority must also obtain the written consent of the exporter or producer whose premises will be visited. If the exporter or producer does not provide written consent or provide the information requested within 30 days after notification has been sent, the country which has requested the verification can deny preferential tariff treatment to the goods in question.

The competent authority of the importing country (the one which wants to make the verification) can grant an extension of not more than 10 days to the corresponding authority in the exporting country to deliver the requested documents. In addition, within seven days of receiving notification, the competent authority of the exporting country can postpone the verification visit (for no more than 15 days from the time of receiving notification - or a longer period if both parties agree).

Notification of verification visits must include certain kinds of information:

- Who is issuing the notification (official entity)
- The name of the exporter or producer whose premises are to be visited
- The date and place of the proposed visit
- The object and scope of the verification (and specific reference must be made to the goods which are to be examined)
- The names and designations of the officials who will carry out the visit
- The legal basis for the visit

If there is any change in information after notification has been given, this must be communicated in writing to the competent authority of the exporting party which will then notify the exporter or producer. This must be communicated no later than 15 days after the first notification.

An exporter or producer whose goods are going to be verified will be entitled to designate two observers who will be present during the visit. If the exporter or producer does not designate any observers this will not postpone the visit.

Within 21 days after the procedure has been completed, the party which conducted the verification must submit written determination of whether or not the goods qualify as originating goods. This determination, which goes to the exporter or producer, must include the findings and the legal basis for the determination.

Customs authorities are not permitted to interrupt an import procedure once products are covered by a Certificate of Origin. However, the competent authorities may take action which they feel is necessary to protect their fiscal interests. The authorities may also take appropriate action regarding any financial security based on the outcome of the verification process. Each country will set up procedures for reviewing the decisions of origin verification procedures.

In its legislation, each country shall make provisions for breaches of these rules. These provisions will be similar to those which apply when its own laws and regulations are breached in similar circumstances.

*Extremely important!!!*

*Note this*

*Strict procedures*

# APPENDIX III

## Technical Barriers to Trade

This section deals with standards and measures – the non-tariff barriers to trade. The basic guidelines for terms and definitions are found in the *ISO/IEC Guide 2 – Standardization and Related Activities – General Vocabulary* (Seventh Edition, 1996). Other international guides and agreements are also used as benchmarks.

Three main considerations guide this agreement:

- Health
- Environment
- Protection of the consumer

In addition, countries are careful to prevent these measures from becoming unnecessary barriers to trade. They are also committed to standardisation and encouraging technical cooperation and assistance among themselves and with third countries.

### Risk Assessment

Countries can carry out what is known as risk assessment to determine the protection levels which are necessary. These determinations will guide the levels of restriction on trade. All assessments must make full use of available scientific evidence and technology and the end use of the products to be imported must also be considered. Once the protection level has been established and the risk assessment has been conducted, countries should avoid making any arbitrary distinctions between similar goods and services.

### Conformity Assessment, Compatibility and Equivalence

Parties will accept each other's technical regulations as being equivalent to their own once it has been demonstrated that they fulfil the same objectives. If one party does not accept a particular regulation, they must communicate their reasons in writing. The parties will review, revise and update their standards and regulations as necessary to facilitate harmonisation.

Each party will also recognise the conformity assessment bodies of the other party. These

bodies are responsible for determining whether a product satisfies the necessary requirements of standards and technical regulation. Parties can consult to determine the technical competence of these bodies and their compliance with international standards.

### Notification

Each party will notify the other of any change in standards-related measures. Each party is required to notify the other in writing (annually or as agreed) of its standardisation work programme.

If a party refuses a shipment or service due to non-compliance with a measure it must notify the owner of the shipment or the service provider promptly, in writing, giving the technical justification. A copy of the justification shall go immediately to the Enquiry Points of the other party. Enquiry Points will serve as a clearing house, providing relevant documents on standards-related and metrological measures. These documents will be available to the other party and interested individuals at the same cost - if any – at which they will (except for delivery charges) at which they will be available to nationals.

### Hazardous Waste and the Environment

The agreement contains a clause which deals with the handling of hazardous substances and waste. Basically, each party will regulate the introduction, acceptance, deposit, transport and transit through its territory of any such substances whether they originate in their own territory or elsewhere. United Nations Conventions, the Basle Convention and other international agreements will apply in addition to national legislation. Protection and preservation of the environment will follow guidelines set by the United Nations Environmental Programme (UNEP). No specific agreements with regard to hazardous waste or the environment have been established by the FTA.

Yes!

Enquiry points

Environment

# APPENDIX IV

## Sanitary and Phyto-Sanitary Measures

The basis of this agreement is the protection of human, animal or plant life or health. It is important to note that parties have the right to establish measures for this protection which are more stringent than relevant regional and international standards, guidelines or recommendations. Scientific justification and appropriate risk assessment are very important in determining and adopting these measures.

The spread of pest or disease is a major concern. The Codex Alimentarius, the International Plant Protection Convention (IPPC), the Food and Agricultural Organization (FAO) and the International Office of Epizootics (IOE) are among the documents and agencies which will offer guidelines.

Sanitary and phyto-sanitary measures are measures set up to do the following:

- Protect animal or plant life or health within the territory of a party from risks which arise from the entry, establishment or spread of pest, diseases, disease-carrying organisms or disease-causing organisms
- Protect human and animal life or health from risks which might arise from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs
- Protect human life or health from risks arising from diseases carried by animals, plants or their products or from the entry, establishment or spread of pests
- Prevent or limit any other damage caused by the entry, establishment or spread of pests

These measures include laws, regulations and procedures such as testing, quarantines, inspection, certification and approval. The parties have agreed, however, to ensure that these measures do not constitute unnecessary barriers to trade.

## Inspection

Inspection may be carried out by designated agencies of the parties only and these agencies shall determine the inspection periods, the time limits for informing the other party and for signing protocols and specific bilateral agreements. If a request is made for an inspection, the competent notifying authority must conduct the inspection and report findings and action taken to the other party within 30 days. If the inspection is carried out at a specific export point in the territory of the party, then the Certificate of Inspection will be valid for one year (with some exceptions that may be agreed upon). The cost of inspection will be borne by the exporting country.

## Accreditation

Parties have agreed to standardise their accreditation procedures. Private sector institutions and professionals shall be appropriately certified. Government institutions will be recognised as accredited and should select qualified and/or experienced personnel.

## Useful References

*Agreement Establishing the Free Trade Area Between the Caribbean Community and the Dominican Republic.*

Caribbean Export Development Agency (2000). *Negotiating Free Trade in CARIFORUM.*



**TRADEWINS** is a publication of the Caribbean Export Development Agency (Caribbean Export). It is an important part of the agency's advocacy programme - making trade information accessible to those who need it most.

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The Caribbean Export Development Agency serves the Caribbean Forum of ACP States (CARIFORUM). CARIFORUM comprises CARICOM states (Caribbean Community and Common Market), Haiti and the Dominican Republic. The CARIFORUM Secretariat is located in Georgetown, Guyana.

(Member States of CARICOM are: Antigua & Barbuda, the Bahamas, Barbados, Belize, the Commonwealth of Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts & Nevis, Saint Lucia, St. Vincent & the Grenadines, Suriname and Trinidad & Tobago.) (Haiti has been provisionally accepted into the Community and will attain full status once its accession has been completed. The Bahamas is a member of the Caribbean Community but not of the Common Market.)

C A R I B B E A N  
**EXPORT**

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