

The Member States agree that in the establishment of any programme for incentives in the Community provided for in Article 52 and Article 69, the special needs of the less developed countries shall be taken into account.

ARTICLE 163
The Common External Tariff

The Member States agree that in the implementation of the Common External Tariff provided for in Article 82, the special needs of the less developed countries shall be taken into account.

ARTICLE 164
Promotion of Industrial Development

1. *Upon application made in that behalf by the less developed countries, COTED may, if necessary, as a temporary measure in order to promote the development of an industry in any of these States, authorise such States to suspend Community origin treatment to any description of imports eligible therefor on grounds of production in one or more less developed countries.*

2. *COTED may, in taking decisions pursuant to paragraph 1 of this Article, establish terms and conditions including a phasing-out period during which Member States and the Community shall provide support measures and the industry implement the necessary programmes for achieving competitiveness.*

3. *The grant of authorisation pursuant to paragraph 1 of this Article shall be by means of a decision supported by the affirmative votes of all the less developed countries and at least two of the more developed countries.*

ARTICLE 165
Public Undertakings

Paragraph 1 of Article 94 shall not apply to the less developed countries.

ARTICLE 166
Use of Technological and Research Facilities

The more developed countries undertake to provide opportunities for the use of their technological and research facilities by the less developed countries.

ARTICLE 167
Special Provisions for Belize

Belize shall be allowed to impose import duties or quantitative restrictions on beer and cigarettes produced in the Community for a period ending 31 December 2000.

CHAPTER EIGHT
COMPETITION POLICY AND
CONSUMER PROTECTION

PART ONE
RULES OF COMPETITION

ARTICLE 168
Scope of Chapter

The rules of competition shall not apply to -

- (a) combinations or activities of employees for their own reasonable protection as employees;*
- (b) arrangements for collective bargaining on behalf of employers or employees for the purpose of fixing terms and conditions of employment;*
- (c) business conduct within the meaning of Article 177 duly notified to COTED in accordance with Article 170;*
- (d) negative clearance rulings within the meaning of Article 180 or exemptions within the meaning of Articles 181 and 183;*
- (e) activities of professional associations designed to develop or enforce professional standards of competence reasonably necessary for the protection of the public and approved by the Commission.*

ARTICLE 169

Objectives of Community Competition Policy

1.. *The goal of the Community Competition Policy shall be to ensure that the benefits expected from the establishment of the CSME are not frustrated by anti-competitive business conduct.*

2. *In fulfilment of the goal set out in paragraph 1 of this Article, the Community shall pursue the following objectives:*

- (a) the promotion and maintenance of competition and enhancement of economic efficiency in production, trade and commerce;*
- (b) subject to this Treaty, the prohibition of anti-competitive business conduct which prevents, restricts or distorts competition or which constitutes the abuse of a dominant position in the market; and*
- (c) the promotion of consumer welfare and protection of consumer interests.*

ARTICLE 170

Implementation of Community Competition Policy

1. *In order to achieve the objectives of the Community Competition Policy,*

- (a) the Community shall:*
 - (i) subject to Articles 164, 177, 178 and 179 of this Treaty, establish appropriate norms and institutional arrangements to prohibit and penalise anti-competitive business conduct; and*
 - (ii) establish and maintain information systems to enable enterprises and consumers to be kept informed about the operation of markets within the CSME;*
- (b) the Member States shall:*
 - (i) take the necessary legislative measures to ensure consistency and*

compliance with the rules of competition and provide penalties for anti-competitive business conduct;

- (ii) provide for the dissemination of relevant information to facilitate consumer choice;*
- (lii) establish and maintain institutional arrangements and administrative procedures to enforce competition laws; and*
- (iv) take effective measures to ensure access by nationals of other Member States to competent enforcement authorities including the courts on an equitable, transparent and non-discriminatory basis.*

2. Every Member State shall establish and maintain a national competition authority for the purpose of facilitating the implementation of the rules of competition.

3. Every Member State shall require its national competition authority to:

- (a) co-operate with the Commission in achieving compliance with the rules of competition;*
- (b) investigate any allegations of anti-competitive business conduct referred to the authority by the Commission or another Member State; .*
- (c) co-operate with other national competition authorities in the detection and prevention of anti-competitive business conduct, and the exchange of information relating to such conduct.*

4. Nothing in this Article shall be construed as requiring a Member State to disclose confidential information, the disclosure of which would be prejudicial to the public interest or to the legitimate commercial interests of enterprises, public or private. Confidential or proprietary information disclosed in the course of an investigation shall be treated on the same basis as that on which it was provided.

5. Within 24 months of the entry into force of this Treaty, the Member States shall notify COTED of existing legislation, agreements and administrative practices inconsistent with the provisions of this Chapter. Within 36 months of entry into force of this Treaty, COTED shall establish a programme providing for the repeal of such legislation, and termination of agreements and administrative practices.

ARTICLE 171

Establishment of the Competition Commission

For the purposes of implementation of the Community Competition Policy, there is hereby established a Competition Commission (hereinafter called "the Commission") having the composition, functions and powers hereinafter set forth.

ARTICLE 172

Composition of the Commission

1. The Commission shall comprise seven members appointed by the Regional Judicial and Legal Services Commission to serve on the Commission. The Regional Judicial and Legal Services Commission shall appoint a Chairman from among the members so appointed.

2. The Commission shall comprise persons, collectively having expertise or experience in commerce, finance, economics, law, competition policy and practice, international trade and such other areas of expertise or experience as may be necessary.

3. A Commissioner shall be appointed for a term of five years and such appointment may be renewed for a further period of not more than five years as determined by the Regional

Judicial and Legal Services Commission.

4. A Commissioner may be removed from office only for inability to perform the functions of his office or for misbehaviour and shall otherwise be subject to the disciplinary procedures of the Regional Judicial and Legal Services Commission.

5. A Commissioner shall be removed only on the vote of the Judicial and Legal Services Commission that represents not less than three-quarters of all the Members of the Commission.

6. A Commissioner may at any time resign the office of Commissioner by writing under his hand addressed to the Chairman of the Judicial and Legal Services Commission.

7. A Commissioner shall not enter upon the duties of the office unless he has taken and subscribed before the Chairman of the Judicial and Legal Services Commission, the Oath of Office set out in the Annex to this Treaty.

8. Notwithstanding the foregoing provisions of this Article, the Conference shall on the recommendation of COTED execute the functions required to be carried out by the Regional Judicial and Legal Services Commission where the Parties to the Agreement Establishing the Caribbean Court of Justice are less than seven.

ARTICLE 173
Functions of the Commission

1. The Commission shall:

- (a) apply the rules of competition in respect of anti-competitive cross-border business conduct;
- (b) promote and protect competition in the Community and co-ordinate the implementation of the Community Competition Policy; and
- (c) perform any other function conferred on it by any competent body of the Community.

2. In discharging the functions set out in paragraph 1, the Commission shall:

- (a) monitor anti-competitive practices of enterprises operating in the CSME, and investigate and arbitrate cross-border disputes;
- (b) keep the Community Competition Policy under review and advise and make recommendations to COTED to enhance its effectiveness;
- (c) promote the establishment of institutions and the development and implementation of harmonised competition laws and practices by the Member States to achieve uniformity in the administration of applicable rules;
- (d) review the progress made by the Member States in the implementation of the legal and institutional framework for enforcement;
- (e) co-operate with competent authorities in the Member States;
- (f) provide support to the Member States in promoting and protecting consumer welfare;
- (g) facilitate the exchange of relevant information and expertise; and
- (h) develop and disseminate information about competition policy, and

consumer protection policy.

3. *The Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its functions to one or more of its members.*

ARTICLE 174 **Powers of the Commission**

1. *Subject to Articles 175 and 176, the Commission may, in respect of cross-border transactions or transactions with cross-border effects, monitor, investigate, detect, make determinations or take action to inhibit and penalise enterprises whose business conduct prejudices trade or prevents, restricts or distorts competition within the CSME.*

2. *The Commission may, in accordance with applicable national laws, in the conduct of its investigations:*

- (a) secure the attendance of any person before it to give evidence;*
- (b) require the discovery or production of any document or part thereof; and*
- (c) take such other action as may be necessary in furtherance of the investigation.*

3. *The Commission may, on the basis of its investigations, make determinations regarding the compatibility of business conduct with the rules of competition and other related provisions of the Treaty.*

4. *The Commission shall, to the extent required to remedy or penalise anti-competitive business conduct referred to in Article 177:*

- (b) order the termination or nullification as the case may require, of agreements, conduct, activities or decisions prohibited by Article 170;*
- (c) direct the enterprise to cease and desist from anti-competitive business conduct and to take such steps as are necessary to overcome the effects of abuse of its dominant position in the market, or any other business conduct inconsistent with the principles of fair competition set out in this Chapter;*
- (i) order payment of compensation to persons affected; and*
- (j) impose fines for breaches of the rules of competition.*

5. *The Commission may enter into such arrangements for the provision of services as may be necessary for the efficient performance of its functions.*

6. *The Member States shall enact legislation to ensure that determinations of the Commission are enforceable in their jurisdictions.*

7. *The Commission may establish its own rules of procedure.*

ARTICLE 175 **Determination of Anti-Competitive Business Conduct:** **Procedure of Commission on Request**

1. *A Member State may request an investigation referred to in paragraph 1 of Article 174 where it has reason to believe that business conduct by an enterprise located in another Member State prejudices trade and prevents, restricts or distorts competition in the territory of the requesting*

Member State.

2. *Where COTED has reason to believe that business conduct by an enterprise in the CSME prejudices trade and prevents, restricts or distorts competition within the CSME and has or is likely to have cross-border effects, COTED may request an investigation referred to in paragraph 1 of Article 174.*

3. *Requests under paragraphs 1 and 2 shall be in writing and shall disclose sufficient information for the Commission to make a preliminary assessment whether it should proceed with the investigation.*

4. *Upon receipt of a request mentioned in paragraph 3, the Commission shall consult with the interested parties and shall determine on the basis of such consultations whether:*

- (a) the investigation is within the jurisdiction of the Commission; and*
- (b) the investigation is justified in all the circumstances of the case.*

5. *The consultations shall be concluded within 30 days of the date of receipt of the request for the investigation, unless the parties agree to continue the consultations for a longer period.*

6. *Where the Commission decides to conduct the investigation, the Commission shall:*

- (a) notify the interested parties and COTED;*
- (b) complete the investigation within 120 days from the date of receipt of the request for the investigation; and*
- (c) where the circumstances so warrant, extend the time period for completion of the investigation and notify the interested parties.*

7. *Where the Commission decides to conduct an enquiry following an investigation, the Commission shall afford any party complained of the opportunity to defend its interest.*

8. *At the conclusion of an enquiry, the Commission shall notify the interested parties of its determination.*

9. *Where the Commission determines that a party has engaged in anti-competitive business conduct, it shall also require the party to take the action necessary to remove the effects of the anti-competitive business conduct.*

10. *Where a specific course of action is required under paragraph 9, the enterprise concerned shall take the appropriate course of action within 30 days of the date of notification. If the concerned enterprise cannot comply, it shall notify the Commission and request an extension.*

11. *If the enterprise cannot comply within the time period specified and fails to inform the Commission, the Commission may apply to the Court for an order.*

12. *A party which is aggrieved by a determination of the Commission under paragraph 4 of Article 174 in any matter may apply to the Court for a review of that determination.*

ARTICLE 176
Determination of Anti-Competitive Business Conduct:
Procedure of Commission Proprio Motu

1. *Where the Commission has reason to believe that business conduct by an enterprise in the CSME prejudices trade and prevents, restricts, or distorts competition within the CSME and*

has cross-border effects, the Commission shall request the national competition authority to undertake a preliminary examination of the business conduct of the enterprise.

2. Where a request is made under paragraph 1, the national competition authority shall examine the matter and report its findings to the Commission within such time as may be determined by the Commission.

3. Where the Commission is not satisfied with the outcome of its request, the Commission may initiate its own preliminary examination into the business conduct of the enterprise referred to in paragraph 1.

4. Where the findings of the preliminary examination under paragraphs 2 and 3 require investigation, the Commission and the Member State concerned shall hold consultations to determine and agree on who should have jurisdiction to investigate.

5. If there is a difference of opinion between the Commission and the Member State regarding the nature and effects of the business conduct or the jurisdiction of the investigating authority, the Commission shall:

- (a) cease any further examination of the matter; and*
- (b) refer the matter to COTED for its decision.*

6. Nothing in this Article shall prejudice the right of the Member State to initiate proceedings before the Court at any time.

7. Where there is a finding that the Commission has jurisdiction to investigate the matter, the Commission shall follow the procedures set out in paragraphs 5, 6, 7 and 8 of Article 175.

ARTICLE 177

Prohibition of Anti-Competitive Business Conduct

1. A Member State shall, within its jurisdiction, prohibit as being anti-competitive business conduct, the following:

- (a) agreements between enterprises, decisions by associations of enterprises, and concerted practices by enterprises which have as their object or effect the prevention, restriction or distortion of competition within the Community;*
- (b) actions by which an enterprise abuses its dominant position within the Community; or*
- (c) any other like conduct by enterprises whose object or effect is to frustrate the benefits expected from the establishment of the CSME.*

2. Anti-competitive business conduct within the meaning of paragraph 1 includes the following:

- (a) the direct or indirect fixing of purchase or selling prices,*
- (b) the limitation or control of production, markets, investment or technical development;*
- (c) the artificial dividing up of markets or restriction of supply sources;*
- (d) the application of unequal conditions to parties undertaking equivalent engagements in commercial transactions thereby causing a competitive disadvantage;*

- (e) *making the conclusion of a contract subject to the acceptance by the other party to the contract of additional obligations which, by their nature or according to commercial practice, have no connection with the subject matter of the contract;*
- (f) *unauthorised denial of access to networks or essential infrastructure;*
- (g) *predatory pricing;*
- (h) *price discrimination;*
- (i) *loyalty discounts or concessions;*
- (j) *exclusionary vertical restrictions; and*
- (k) *bid-rigging.*

3. *Subject to Article 168, a Member State shall ensure that all agreements and decisions within the meaning of paragraph 1 of this Article shall be null and void within its jurisdiction.*

4. *An enterprise shall not be treated as engaging in anti-competitive business conduct if it establishes that the activity complained of:*

- (a) *contributes to:*
 - (i) *the improvement of production or distribution of goods and services; or*
 - (ii) *the promotion of technical or economic progress,**while allowing consumers a fair share of the resulting benefit;*
- (b) *imposes on the enterprises affected only such restrictions as are indispensable to the attainment of the objectives mentioned in subparagraph (a); or*
- (c) *does not afford the enterprise engaged in the activity the possibility of eliminating competition in respect of a substantial part of the market for goods or services concerned.*

ARTICLE 178 **Determination of Dominant Position**

For the purposes of this Chapter:

- (a) *an enterprise holds a dominant position in a market if by itself or together with an interconnected enterprise, it occupies such a position of economic strength as will enable it to operate in the market without effective constraints from its competitors or potential competitors;*
- (b) *any two enterprises shall be treated as interconnected enterprises if one of them is a subsidiary of the other or both of them are subsidiaries of the same parent enterprise.*

ARTICLE 179 **Abuse of a Dominant Position**

1. *Subject to paragraph 2 of this Article, an enterprise abuses its dominant position in a market if it prevents, restricts or distorts competition in the market and, in particular but without*

prejudice to the generality of the foregoing, it:

- (a) restricts the entry of any enterprise into a market;*
- (b) prevents or deters any enterprise from engaging in competition in a market;*
- (c) eliminates or removes any enterprise from a market;*
- (d) directly or indirectly imposes unfair purchase or selling prices or other restrictive practices;*
- (e) limits the production of goods or services for a market to the prejudice of consumers;*
- (f) as a party to an agreement, makes the conclusion of such agreement subject to acceptance by another party of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the agreement;*
- (g) engages in any business conduct that results in the exploitation of its customers or suppliers,*

so as to frustrate the benefits expected from the establishment of the CSME.

2. In determining whether an enterprise has abused its dominant position, consideration shall be given to:

- (a) the relevant market defined in terms of the product and the geographic context;*
- (b) the concentration level before and after the relevant activity of the enterprise measured in terms of annual sales volume, the value of assets and the value of the transaction;*
- (c) the level of competition among the participants in terms of number of competitors, production capacity and product demand;*
- (d) the barriers to entry of competitors; and*
- (e) the history of competition and rivalry between participants in the sector of activity.*

3. An enterprise shall not be treated as abusing its dominant position if it establishes that:

- (a) its behaviour was directed exclusively to increasing efficiency in the production, provision or distribution of goods or services or to promoting technical or economic progress and that consumers were allowed a fair share of the resulting benefit;*
- (b) it reasonably enforces or seeks to enforce a right under or existing by virtue of a copyright, patent, registered trade mark or design; or*
- (c) the effect or likely effect of its behaviour on the market is the result of superior competitive performance of the enterprise concerned.*

ARTICLE 180 **Negative Clearance Rulings**

- 1. In any case where a Member State is uncertain whether business conduct is*

prohibited by paragraph 1 of Article 177, such a Member State may apply to the Commission for a ruling on the matter. If the Commission determines that such conduct is not prohibited by paragraph 1 of Article 177, it shall issue a negative clearance ruling to this effect.

2. *Subject to paragraph 3, a negative clearance ruling shall be conclusive of the matters stated therein in any judicial proceedings in the Community.*

3. *The Court may, on an application of the Commission, review a decision of the Commission where the decision was induced by deceit or improper means.*

ARTICLE 181 **De Minimis Rule**

The Commission may exempt from the provisions of this Part any business conduct referred to it if it considers that the impact of such conduct on competition and trade in the CSME is minimal.

ARTICLE 182 **Powers of the COTED Respecting Community** **Competition Policy and Rules**

Subject to this Treaty, COTED shall develop and establish appropriate policies and rules of competition within the Community including special rules for particular sectors.

ARTICLE 183 **Exemptions**

1. *Where COTED determines, pursuant to Article 182, that special rules shall apply to specific sectors of the Community, it may suspend or exclude the application of Article 177 to such sectors pending adoption of the relevant rules.*

2. *COTED may, on its own initiative or pursuant to an application by a Member State in that behalf, exclude or suspend the application of Article 177 to any sector or any enterprise or group of enterprises in the public interest.*

PART TWO **CONSUMER PROTECTION**

ARTICLE 184 **Promotion of Consumer Interests** **in the Community**

1. *The Member States shall promote the interests of consumers in the Community by appropriate measures that:*

- (a) *provide for the production and supply of goods and the provision of services to ensure the protection of life, health and safety of consumers;*
- (b) *ensure that goods supplied and services provided in the CSME satisfy regulations, standards, codes and licensing requirements established or approved by competent bodies in the Community;*
- (c) *provide, where the regulations, standards, codes and licensing requirements referred to in paragraph (b) do not exist, for their establishment and*

implementation;

- (d) encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;*
- (e) encourage fair and effective competition in order to provide consumers with greater choice among goods and services at lowest cost;*
- (f) promote the provision of adequate information to consumers to enable the making of informed choices;*
- (g) ensure the availability of adequate information and education programmes for consumers and suppliers;*
- (h) protect consumers by prohibiting discrimination against producers and suppliers of goods produced in the Community and against service providers who are nationals of other Member States of the Community;*
- (i) encourage the development of independent consumer organisations;*
- (j) provide adequate and effective redress for consumers.*

2. *For the purpose of this Part,*

“consumer” means any person:

- (a) to whom goods or services are supplied or intended to be supplied in the course of business carried on by a supplier or potential supplier; and*
- (b) who does not receive the goods or services in the course of a business carried on by him.*

ARTICLE 185
Protection of Consumer Interests
in the Community

The Member States shall enact harmonised legislation to provide, inter alia:

- (a) for the fundamental terms of a contract and the implied obligations of parties to a contract for the supply of goods or services;*
- (b) for the prohibition of the inclusion of unconscionable terms in contracts for the sale and supply of goods or services to consumers;*
- (c) for the prohibition of unfair trading practices, particularly such practices relating to misleading or deceptive or fraudulent conduct;*
- (d) for the prohibition of production and supply of harmful and defective goods and for the adoption of measures to prevent the supply or sale of such goods including measures requiring the removal of defective goods from the market;*
- (e) that the provision of services is in compliance with the applicable regulations, standards, codes and licensing requirements;*
- (f) that goods supplied to consumers are labelled in accordance with standards and specifications prescribed by the competent authorities;*

- (g) *that hazardous or other goods whose distribution and consumption are regulated by law are sold or supplied in accordance with applicable regulations;*
- (h) *that goods or materials, the production or use of which is likely to result in potentially harmful environmental effects, are labelled and supplied in accordance with applicable standards and regulations;*
- (i) *that producers and suppliers are liable for defects in goods and for violation of product standards and consumer safety standards which occasion loss or damage to consumers;*
- (j) *that violations of consumer safety standards by producers or suppliers are appropriately sanctioned and relevant civil or criminal defences to such violations are available to defendants.*

ARTICLE 186

Action by the Commission to Provide Support in the Promotion of Consumer Welfare and Protection of Consumer Interests

1. *The Commission shall, for the purpose of providing support to the Member States in the enhancement of consumer education and consumer welfare:*

- (a) *promote in the Community the elaboration, publication and adoption of fair contract terms between suppliers and consumers of goods and services produced or traded in the CSME;*
- (b) *take such measures as it considers necessary to ensure that the Member States discourage and eliminate unfair trading practices, including misleading or deceptive conduct, false advertising, bait advertising, referral selling and pyramid selling;*
- (c) *promote in the Member States product safety standards as part of a programme of consumer education in order to assist the consumer to make informed choices concerning the purchase of consumer goods;*
- (d) *keep under review the carrying on of commercial activities in the Member States which relate to goods supplied to consumers in such States or produced with a view to their being so supplied, or which relate to services supplied for consumers with a view to identifying practices which may adversely affect the interests of consumers;*
- (e) *educate and guide consumers generally in the practical resolution of their problems and in the best use of their income and credit, using such techniques and means of communications as are available;*
- (f) *confer, on request, with consumer organisations of the Member States and offer such advice and information as may be appropriate for the resolution of their consumer problems;*
- (g) *establish the necessary co-ordination with government agencies and departments for the effective education and guidance of consumers having regard to the programmes, activities and resources of each agency or department;*
- (h) *conduct research and collect and collate information in respect of matters affecting the interests of consumers;*

- (i) *compile, evaluate and publicise enactments for the protection of consumers in such States and recommend to COTED the enactment of legislation considered necessary or desirable for the protection of consumers;*
- (j) *promote, after consultation with the competent standardising agency and other public and private agencies or organisations, the establishment of quality standards for consumer products;*
- (k) *promote and monitor, after consultation with relevant agencies and departments of Government, the enforcement of legislation affecting the interests of consumers, including, but not limited to, legislation relating to weights and measures, food and drugs adulteration, the control of standards and price controls;*
- (l) *make recommendations to COTED for the enactment of legislation by the Member States for the effective enforcement of the rights of consumers.*

2. *The Commission shall:*

- (a) *draw to the attention of COTED business conduct by enterprises which impacts adversely on consumer welfare;*
- (b) *collaborate with competent Organs of the Community to promote consumer education and consumer welfare.*

CHAPTER NINE DISPUTES SETTLEMENT

ARTICLE 187 Scope of the Chapter

The provisions of this Chapter shall apply to the settlement of disputes concerning the interpretation and application of the Treaty, including:

- (a) *allegations that an actual or proposed measure of another Member State is, or would be, inconsistent with the objectives of the Community;*
- (b) *allegations of injury, serious prejudice suffered or likely to be suffered, nullification or impairment of benefits expected from the establishment and operation of the CSME;*
- (c) *allegations that an organ or body of the Community has acted ultra vires; or*
- (d) *allegations that the purpose or object of the Treaty is being frustrated or prejudiced.*