

(vi) The development of CARIFORUM innovation systems, including the development of technological capacity;

(vii) Support for the development of infrastructure in CARIFORUM States necessary for the conduct of trade.

2. The Development cooperation priorities as broadly articulated in paragraph 1 and further specified in the individual Chapters of this Agreement shall be implemented according to the modalities provided for in Article 7.

3. The Parties agree on the benefits of a regional development fund representative of the interests of all CARIFORUM States to mobilise and channel Economic Partnership Agreement related development resources from the EDF and other potential donors. The CARIFORUM States shall in this regard endeavour to establish such a fund within two years of the date of signature of this Agreement.

PART II

TRADE AND TRADE-RELATED MATTERS

TITLE I

TRADE IN GOODS

CHAPTER 1

Customs duties

Article 9

Scope

The provisions of this Chapter shall apply to all goods originating in the EC Party and in any CARIFORUM State ⁽¹⁾.

connection with the importation or exportation of goods, but shall not include any:

(a) internal taxes or other internal charges imposed in accordance with Article 27;

(b) antidumping, countervailing or safeguard measures applied in accordance with Chapter 2 of this Title;

(c) fees or other charges imposed in accordance with Article 13.

Article 10

Rules of origin

For the purposes of this Chapter, 'originating' means qualifying under the rules of origin set out in Protocol I. Within the first five years of the entry into force of this Agreement the Parties shall review the provisions of Protocol I, with a view to further simplifying the concepts and methods used for the purpose of determining origin in the light of the development needs of the CARIFORUM States. In such review, the Parties shall take into account the development of technologies, production processes and all other factors which may require modifications to the provisions of Protocol I. Any such modifications shall be effected by a decision of the Joint CARIFORUM-EC Council.

Article 11

Customs duty

A customs duty shall include any duty or charge of any kind, including any form of surtax or surcharge, imposed in

Article 12

Classification of goods

The classification of goods covered by this Agreement shall be that set out in the Harmonised Commodity Description and Coding System (HS) in accordance with the rules of classification applicable thereto. The Special Committee on Customs Cooperation and Trade Facilitation as provided for under Article 36 shall address any issue related to the classification of goods which arises in the operation of this Agreement.

Article 13

Fees and other charges

Fees and other charges as referred to in Article 11 shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection for domestic products or a

⁽¹⁾ Except where expressly provided, the terms 'goods' and 'product' shall have the same meaning.

taxation of imports or exports for fiscal purposes. They shall not exceed the real value of the service rendered. Fees and charges shall not be imposed for consular services.

Article 14

Elimination of customs duties on originating exports

1. Customs duties on exports shall not be applicable to goods originating in the CARIFORUM States and imported into the EC Party and vice versa.

2. Notwithstanding paragraph 1, the Signatory CARIFORUM States included in Annex I shall eliminate the customs duties on exports set down in that Annex within three years of signature of this Agreement.

Article 15

Customs duties on imports of products originating in the CARIFORUM States

Products originating in the CARIFORUM States shall be imported into the EC Party free of customs duties except for the products indicated, and under the conditions defined, in Annex II.

Article 16

Customs duties on imports of products originating in the EC Party

1. Products originating in the EC Party shall not, on their importation into the CARIFORUM States, be subject to customs duties higher than those indicated in Annex III.

2. Products originating in the EC Party shall, on their importation into the CARIFORUM States, be exempt from all customs duties within the meaning of Article 11 other than those listed in Annex III.

3. For a period of 10 years after the signature of this Agreement, the CARIFORUM States may continue to apply any such customs duties within the meaning of Article 11 other than those listed in Annex III to any imported product originating in the EC Party, provided that these duties were applicable to this product on the date of signature of this Agreement, and that the same duties are imposed on the like product imported from all other countries.

4. The Signatory CARIFORUM States shall not be required to begin a phased elimination of the customs duties other than those listed in Annex III and referred to in paragraph 2 in the seven years subsequent to the signature of this Agreement. This process shall be accompanied by the support of the necessary fiscal reforms as provided for under Article 22.

5. With a view to ensuring transparency, such duties shall be notified to the CARIFORUM-EC Trade and Development Committee within six months of the date of signature of this Agreement. Their elimination shall also be notified promptly to the CARIFORUM-EC Trade and Development Committee.

6. In the event of serious difficulties in respect of imports of a given product, the schedule of customs duty reductions and

eliminations may be reviewed by the CARIFORUM-EC Trade and Development Committee by common accord with a view to possibly modifying the time schedule for reduction or elimination. Any such modification shall not lead to the time periods in the schedule for which the review has been requested being extended in respect of the product concerned beyond the maximum transitional period for duty reduction or elimination for that product as provided for in Annex III. If the CARIFORUM-EC Trade and Development Committee has not taken a decision within 30 days of an application to review the timetable, the CARIFORUM States may suspend the timetable provisionally for a period that may not exceed one year.

Article 17

Modification of tariff commitments

In the light of the special development needs of Antigua and Barbuda, Belize, the Commonwealth of Dominica, Grenada, the Republic of Guyana, the Republic of Haiti, Saint Christopher and Nevis, Saint Lucia, and Saint Vincent and the Grenadines, the Parties may decide in the CARIFORUM-EC Trade and Development Committee to modify the level of customs duties stipulated in Annex III, which may be applied to a product originating in the EC Party upon its importation into the CARIFORUM States. The Parties shall ensure that any such modification does not result in an incompatibility of this Agreement with the requirements of Article XXIV of the GATT 1994. The Parties may also decide simultaneously to adjust the customs duty commitments stipulated in Annex III and relating to other products imported from the EC Party, as appropriate.

Article 18

Movement of goods

The Parties recognise the goal of having customs duties levied only once on originating goods imported into the EC Party or into the Signatory CARIFORUM States. Pending the establishment of the necessary arrangements for achieving this goal, the Signatory CARIFORUM States shall exercise their best endeavours in this regard. The EC Party shall provide the technical assistance necessary for the achievement of this goal.

Article 19

More favourable treatment resulting from free trade agreements

1. With respect to matters covered by this Chapter, the EC Party shall accord to the CARIFORUM States any more favourable treatment applicable as a result of the EC Party becoming party to a free trade agreement with third parties after the signature of this Agreement.

2. With respect to matters covered by this Chapter, the CARIFORUM States or any Signatory CARIFORUM State shall accord to the EC Party any more favourable treatment applicable as a result of the CARIFORUM States or any Signatory CARIFORUM State becoming party to a free trade agreement with any major trading economy after the signature of this Agreement.

3. The provisions of this Chapter shall not be so construed as to oblige the EC Party or any Signatory CARIFORUM State to extend reciprocally any preferential treatment applicable as a result of the EC Party or any Signatory CARIFORUM State being party to a free trade agreement with third parties on the date of signature of this Agreement.

4. For the purposes of this Article, 'major trading economy' means any developed country, or any country or territory accounting for a share of world merchandise exports above 1 % in the year before the entry into force of the free trade agreement referred to in paragraph 2, or any group of countries acting individually, collectively or through an free trade agreement accounting collectively for a share of world merchandise exports above one and a half 1,5 % in the year before the entry into force of the free trade agreement referred to in paragraph 2. ⁽¹⁾

5. Where any Signatory CARIFORUM State becomes party to a free trade agreement with a third party referred to in paragraph 2 and such a free trade agreement provides for more favourable treatment to such third party than that granted by the Signatory CARIFORUM State to the EC Party pursuant to this Agreement, the Parties shall enter into consultations. The Parties may decide whether the concerned Signatory CARIFORUM State may deny the more favourable treatment contained in the free trade agreement to the EC Party. The Joint CARIFORUM-EC Council may adopt any necessary measures to adjust the provisions of this Agreement.

Article 20

Special provisions on administrative cooperation

1. The Parties agree that administrative cooperation is essential for the implementation and the control of the preferential treatment granted under this Title and underline their commitment to combat irregularities and fraud in customs and related matters.

2. Where a Party or a Signatory CARIFORUM State has made a finding, on the basis of objective information, of a failure to provide administrative cooperation and/or of irregularities or fraud, the Party or Signatory CARIFORUM State concerned may temporarily suspend the relevant preferential treatment of the product(s) concerned in accordance with this Article.

3. For the purpose of this Article a failure to provide administrative cooperation shall mean, *inter alia*:

- (a) a repeated failure to respect the obligations to verify the originating status of the product(s) concerned;
- (b) a repeated refusal or undue delay in carrying out and/or communicating the results of subsequent verification of the proof of origin;
- (c) a repeated refusal or undue delay in obtaining authorisation to conduct administrative cooperation missions to verify the authenticity of documents or accuracy of information

relevant to the granting of the preferential treatment in question.

For the purpose of this Article a finding of irregularities or fraud may be made, *inter alia*, where there is a rapid increase, without satisfactory explanation, in imports of goods exceeding the usual level of production and export capacity of the other Party, that is linked to objective information concerning irregularities or fraud.

4. The application of a temporary suspension shall be subject to the following conditions:

- (a) The Party or Signatory CARIFORUM State which has made a finding, on the basis of objective information, of a failure to provide administrative cooperation and/or of irregularities or fraud shall without undue delay notify the CARIFORUM-EC Trade and Development Committee of its finding together with the objective information and enter into consultations within the CARIFORUM-EC Trade and Development Committee, on the basis of all relevant information and objective findings, with a view to reaching a solution acceptable to both Parties.
- (b) Where the Parties have entered into consultations within the CARIFORUM-EC Trade and Development Committee as above and have failed to agree on an acceptable solution within three months following the notification, the Party or Signatory CARIFORUM State concerned may temporarily suspend the relevant preferential treatment of the product(s) concerned. A temporary suspension shall be notified to the CARIFORUM-EC Trade and Development Committee without undue delay.
- (c) Temporary suspensions under this Article shall be limited to that necessary to protect the financial interests of the Party or Signatory CARIFORUM State concerned. They shall not exceed a period of six months, which may be renewed. Temporary suspensions shall be notified immediately after their adoption to the CARIFORUM-EC Trade and Development Committee. They shall be subject to periodic consultations within the CARIFORUM-EC Trade and Development Committee in particular with a view to their termination as soon as the conditions for their application no longer exist.

5. At the same time as the notification to the CARIFORUM-EC Trade and Development Committee under paragraph 4(a), the Party or Signatory CARIFORUM State concerned should publish a notice to importers in its official journal. The notice to importers should indicate for the product concerned that there is a finding, on the basis of objective information, of a failure to provide administrative cooperation and/or of irregularities or fraud.

Article 20 bis

In furtherance of the efforts of the Parties to find an acceptable solution to the matters referred to in Article 20(2), the Party or

⁽¹⁾ For this calculation official data by the WTO on leading exporters in world merchandise trade (excluding intra-EU trade) shall be used.

Signatory CARIFORUM State against which a finding has been notified to the CARIFORUM-EC Trade and Development Committee may also seek recourse to a Mediator, in accordance with the provisions of Article 205(2)-205(5). The Mediator's opinion shall be notified within the period of three months referred to in Article 20(4)(b).

Article 21

Treatment of administrative errors

In case of error by the competent authorities in the proper management of the preferential system of export, and in particular in the application of the provisions of Protocol I, where this error leads to consequences in terms of import duties, the Party facing such consequences may request the CARIFORUM-EC Trade and Development Committee to examine the possibilities of adopting all appropriate measures with a view to resolving the situation.

CHAPTER 2

Trade defence instruments

Article 23

Anti-dumping and countervailing measures

1. Subject to the provisions of this Article, nothing in this Agreement shall prevent the EC Party or Signatory CARIFORUM States, whether individually or collectively, from adopting anti-dumping or countervailing measures in accordance with the relevant WTO agreements. For the purpose of this Article, origin shall be determined in accordance with the non-preferential rules of origin of the Parties or Signatory CARIFORUM States.

2. Before imposing definitive anti-dumping or countervailing duties in respect of products imported from CARIFORUM States, the EC Party shall consider the possibility of constructive remedies as provided for in the relevant WTO agreements.

3. Where an anti-dumping or countervailing measure has been imposed on behalf of two or more Signatory CARIFORUM States by a regional or sub-regional authority, there shall be one single forum of judicial review, including the stage of appeals.

4. A Signatory CARIFORUM State shall not apply an anti-dumping or countervailing measure on a product where it falls within the scope of a regional or sub-regional measure imposed on the same product. Similarly, the CARIFORUM States shall ensure that a regional or sub-regional measure imposed on a product does not apply to any Signatory CARIFORUM State which is applying such a measure on the same product.

5. The EC Party shall notify the exporting Signatory CARIFORUM States of the receipt of a properly documented complaint before initiating any investigation.

6. The provisions of this Article shall be applicable in all investigations initiated after this Agreement enters into force.

Article 22

Cooperation

1. The Parties recognise the importance of cooperation in order to strengthen tax administration and improve the collection of tax revenues.

2. Subject to the provisions of Article 7, the Parties agree to cooperate, including by facilitating support, in the following areas:

- (a) technical assistance in the area of fiscal reform with a view to shifting dependence from tariff and other duties and charges to other forms of indirect taxation; and
- (b) capacity and institution building in regard to the measures outlined in subparagraph (a).

7. The provisions of this Article shall not be subject to the Dispute Settlement provisions of this Agreement.

Article 24

Multilateral safeguards

1. Subject to the provisions of this Article, nothing in this Agreement shall prevent the Signatory CARIFORUM States and the EC Party from adopting measures in accordance with Article XIX of the General Agreement on Tariffs and Trade 1994, the Agreement on Safeguards, and Article 5 of the Agreement on Agriculture annexed to the Marrakech Agreement Establishing the World Trade Organization. For the purpose of this Article, origin shall be determined in accordance with the non-preferential rules of origin of the Parties or Signatory CARIFORUM States.

2. Notwithstanding paragraph 1, in the light of the overall development objectives of this Agreement and the small size of the economies of the CARIFORUM States, the EC Party shall exclude imports from any CARIFORUM State from any measures taken pursuant to Article XIX of the GATT 1994, the WTO Agreement on Safeguards and Article 5 of the Agreement on Agriculture.

3. The provisions of paragraph 2 shall apply for a period of five years, beginning with the date of entry into force of the Agreement. Not later than 120 days before the end of this period, the Joint CARIFORUM-EC Council shall review the operation of those provisions in the light of the development needs of the CARIFORUM States, with a view to determining whether to extend their application for a further period.

4. The provisions of paragraph 1 shall not be subject to the Dispute Settlement provisions of this Agreement.

Article 25

Safeguard clause

1. Notwithstanding Article 24, after having examined alternative solutions, a Party may apply safeguard measures of limited duration which derogate from the provisions of Article 15 or 16 as the case may be, under the conditions and in accordance with the procedures laid down in this Article.

2. Safeguard measures referred to in paragraph 1 may be taken where a product originating in one Party is being imported into the territory of the other Party in such increased quantities and under such conditions as to cause or threaten to cause:

- (a) serious injury to the domestic industry producing like or directly competitive products in the territory of the importing Party; or
- (b) disturbances in a sector of the economy, particularly where these disturbances produce major social problems, or difficulties which could bring about serious deterioration in the economic situation of the importing Party, or
- (c) disturbances in the markets of like or directly competitive agricultural products ⁽¹⁾ or in the mechanisms regulating those markets.

3. Safeguard measures referred to in this Article shall not exceed what is necessary to remedy or prevent the serious injury or disturbances, as defined in paragraph 2. Those safeguard measures of the importing Party may only consist of one or more of the following:

- (a) suspension of the further reduction of the rate of import duty for the product concerned, as provided for under this Agreement,
- (b) increase in the customs duty on the product concerned up to a level which does not exceed the customs duty applied to other WTO Members, and
- (c) introduction of tariff quotas on the product concerned.

4. Without prejudice to paragraphs 1 to 3, where any product originating in one or more Signatory CARIFORUM State(s) is being imported in such increased quantities and under such conditions as to cause or threaten to cause one of the situations referred to under paragraphs 2(a), (b) and (c) to one or several of the EC Party's outermost regions, the EC Party may take surveillance or safeguard measures limited to the region or regions concerned in accordance with the procedures laid down in paragraphs 6 to 9.

5. (a) Without prejudice to paragraphs 1 to 3, where any product originating in the EC Party is being imported in

such increased quantities and under such conditions as to cause or threaten to cause one of the situations referred to under paragraphs 2(a), (b) and (c) to a Signatory CARIFORUM State, the Signatory CARIFORUM State concerned may take surveillance or safeguard measures limited to its territory in accordance with the procedures laid down in paragraphs 6 to 9.

(b) A Signatory CARIFORUM State may take safeguard measures where a product originating in the EC Party is being imported into its territory in such increased quantities and under such conditions as to cause or threaten to cause disturbances to an infant industry producing like or directly competitive products. Such provision is only applicable for a period of 10 years from the date of entry into force of this Agreement. Measures must be taken in accordance with the procedures laid down in paragraphs 6 to 9.

6. (a) Safeguard measures referred to in this Article shall only be maintained for such a time as may be necessary to prevent or remedy serious injury or disturbances as defined in paragraphs 2, 4 and 5.

(b) Safeguard measures referred to in this Article shall not be applied for a period exceeding two years. Where the circumstances warranting imposition of safeguard measures continue to exist, such measures may be extended for a further period of no more than two years. Where the CARIFORUM States or a Signatory CARIFORUM State apply a safeguard measure, or where the EC Party apply a measure limited to the territory of one or more of its outermost regions, such measures may however be applied for a period not exceeding four years and, where the circumstances warranting imposition of safeguard measures continue to exist, extended for a further period of four years.

(c) Safeguard measures referred to in this Article that exceed one year shall contain clear elements progressively leading to their elimination at the end of the set period, at the latest.

(d) No safeguard measure referred to in this Article shall be applied to the import of a product that has previously been subject to such a measure, for a period of at least one year since the expiry of the measure.

7. For the implementation of paragraphs 1-6, the following provisions shall apply:

(a) Where a party takes the view that one of the circumstances set out in paragraphs 2, 4 and/or 5 exists, it shall immediately refer the matter to the CARIFORUM-EC Trade and Development Committee for examination.

⁽¹⁾ For the purpose of this Article agricultural products are those covered by Annex I of the WTO Agreement on Agriculture.

- (b) The CARIFORUM-EC Trade and Development Committee may make any recommendation needed to remedy the circumstances which have arisen. If no recommendation has been made by the CARIFORUM-EC Trade and Development Committee aimed at remedying the circumstances, or no other satisfactory solution has been reached within 30 days of the matter being referred to the CARIFORUM-EC Trade and Development Committee, the importing party may adopt the appropriate measures to remedy the circumstances in accordance with this Article.
- (c) Before taking any measure provided for in this Article or, in the cases to which paragraph 8 applies, as soon as possible, the Party or the signatory CARIFORUM State concerned shall supply the CARIFORUM-EC Trade and Development Committee with all relevant information required for a thorough examination of the situation, with a view to seeking a solution acceptable to the parties concerned.
- (d) In the selection of safeguard measures pursuant to this Article, priority must be given to those which least disturb the operation of this Agreement.
- (e) Any safeguard measure taken pursuant to this Article shall be notified immediately to the CARIFORUM-EC Trade and Development Committee and shall be the subject of periodic consultations within that body, particularly with a view to establishing a timetable for their abolition as soon as circumstances permit.
8. Where exceptional circumstances require immediate action, the importing party concerned, whether the EC Party, the CARIFORUM States or a Signatory CARIFORUM State as the case may be, may take the measures provided for in paragraphs 3, 4 and/or 5 on a provisional basis without complying with the requirements of paragraph 7. Such action may be taken for a maximum period of 180 days where measures are taken by the EC Party and 200 days where measures are taken by the CARIFORUM States or a Signatory CARIFORUM State, or where measures taken by the EC Party are limited to the territory of one or more of its outermost regions. The duration of any such provisional measure shall be counted as a part of the initial period and any extension referred to in paragraph 6. In the taking of such provisional measures, the interest of all parties involved shall be taken into account. The importing party concerned shall inform the other party concerned and it shall immediately refer the matter to the CARIFORUM-EC Trade and Development Committee for examination.
9. If an importing party subjects imports of a product to an administrative procedure having as its purpose the rapid provision of information on the trend of trade flows liable to give rise to the problems referred to in this Article, it shall inform the CARIFORUM-EC Trade and Development Committee without delay.
10. Safeguard measures adopted under the provisions of this Article shall not be subject to WTO Dispute Settlement provisions.

CHAPTER 3

Non-tariff measures

Article 26

Prohibition of quantitative restrictions

No import or export prohibitions or import or export restrictions on originating imports or exports, other than customs duties and taxes, and fees and other charges provided for under Article 13, whether made effective through quotas, import or export licenses or other measures, shall be maintained as of the entry into force of this Agreement. No new such measures shall be introduced. The provisions of this Article shall be without prejudice to the provisions of Articles 23 and 24.

Article 27

National treatment on internal taxation and regulation

1. Originating imports shall not be subject, either directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, the Parties and the Signatory CARIFORUM States shall not otherwise apply internal taxes or other internal charges so as to afford protection to like domestic products.

2. Originating imports shall be accorded treatment no less favourable than that accorded to like domestic products in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.

3. No Party or Signatory CARIFORUM State shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources. Moreover, no Party or Signatory CARIFORUM State shall otherwise apply internal quantitative regulations so as to afford protection to domestic production.

4. The provisions of this Article shall not prevent the payment of subsidies exclusively to national producers, including payments to national producers derived from the proceeds of

internal taxes or charges applied consistently with the provisions of this Article and subsidies effected through governmental purchases of domestic products.

5. The provisions of this Article shall not apply to laws, regulations, procedures or practices governing public procurement, which shall be subject exclusively to the provisions of Chapter 3 of Title IV.

6. The provisions of this Article shall be without prejudice to the provisions of Article 23.

Article 28

Agricultural export subsidies

1. No Party or Signatory CARIFORUM State may introduce any new subsidy programme which is contingent upon export or

increase any existing subsidy of this nature on agricultural products destined for the territory of the other Party ⁽¹⁾.

2. With regard to any product as defined in paragraph 3 for which the CARIFORUM States have committed to the elimination of customs duties the EC Party undertakes to phase out all existing subsidies granted upon the exportation of that product to the territory of the CARIFORUM States. The modalities of such phasing out shall be decided by the CARIFORUM-EC Trade and Development Committee.

3. This Article applies to products as covered by Annex I of the WTO Agreement on Agriculture.

4. This Article is without prejudice to the application of Article 9.4 of the WTO Agreement on Agriculture and Article 27 of the WTO Agreement on Subsidies and Countervailing Measures by the CARIFORUM States.

CHAPTER 4

Customs and trade facilitation

Article 29

Objectives

1. The Parties recognise the importance of customs and trade facilitation in the evolving global trading environment and in the development of intra-CARIFORUM trade and trade between the Parties.

2. The Parties agree to reinforce cooperation in this area with a view to ensuring that the relevant legislation and procedures, as well as the administrative capacity of the relevant administrations, fulfil the objectives of effective control and the promotion of trade facilitation, and help promote the development and regional integration of the CARIFORUM States.

3. The Parties recognise that, in implementing this Chapter, legitimate public policy objectives, including those in relation to security and the prevention of fraud, shall not be compromised in any way.

(c) establish wherever possible, common positions in international organisations in the field of customs such as the WTO and the World Customs Organisation (WCO);

(d) promote coordination among related agencies.

2. The Parties shall provide mutual administrative assistance in customs matters in accordance with the provisions of Protocol II.

Article 31

Customs legislation and procedures

1. The EC Party and the Signatory CARIFORUM States agree that their respective trade and customs legislation, provisions and procedures shall draw upon international instruments and standards applicable in the field of customs and trade, including the substantive elements of the revised Kyoto Convention on the simplification and harmonisation of customs procedures, the WCO Framework of Standards to Secure and Facilitate Global Trade, the WCO data set and the HS Convention.

2. The EC Party and the Signatory CARIFORUM States agree that their respective trade and customs legislation, provisions and procedures shall be based upon:

(a) the need to protect and facilitate trade through enforcement of and compliance with legislative requirements and the need to provide for additional facilitation for traders with a high level of compliance;

⁽¹⁾ For the purpose of paragraph 1 any modification of subsidy payments under existing subsidy programmes due to variations in the market conditions shall not be deemed to be either a new subsidy programme or an increase in subsidy.

Article 30

Customs and administrative cooperation

1. In order to ensure compliance with the provisions of this Title, and to respond effectively to the objectives laid down in Article 29, the EC Party and the Signatory CARIFORUM States shall:

(a) exchange information concerning customs legislation and procedures;

(b) develop joint initiatives in mutually agreed areas;

- (b) the need to ensure that requirements for economic operators are reasonable, non-discriminatory, safeguard against fraud and do not lead to the application of excessive penalties for minor breaches of customs regulations or procedural requirements;
- (c) the need to apply a single administrative document or electronic equivalent in the EC Party and in the CARIFORUM, respectively. CARIFORUM States shall continue efforts to this end, with a view to implementation at an early stage after the entry into force of this Agreement. A joint review of the situation shall be carried out three years after the entry into force of the Agreement;
- (d) the need to apply modern customs techniques, including risk assessment, simplified procedures at import and export, post release controls and objective procedures for authorised traders. Procedures should be transparent, efficient and simplified, in order to reduce costs and increase predictability for economic operators;
- (e) the need for non-discrimination in terms of requirements and procedures applicable to import, export and goods in transit, though it is accepted that consignments might be treated differently according to objective risk assessment criteria;
- (f) the need for transparency. To this end, the Parties and the Signatory CARIFORUM States agree to put in place a system of binding rulings on customs matters, notably on tariff classification and rules of origin, in accordance with rules laid down in their respective legislation;
- (g) the need for the progressive development of systems, including those based upon Information Technology, to facilitate the electronic exchange of data among traders, customs administrations and related agencies;
- (h) the need to facilitate transit movements;
- (i) transparent and non-discriminatory rules in respect of the licensing of customs brokers, as well as on the non-requirement for the mandatory use of independent customs brokers;
- (j) the need to avoid the mandatory use of pre-shipment inspections or their equivalent, without prejudice to their rights and obligations pursuant to the WTO Agreement on Pre-shipment Inspections. The Parties shall discuss the matter within the CARIFORUM-EC Trade and Development Committee and may subsequently agree to renounce the possibility of using mandatory pre-shipment inspections or their equivalent.

3. In order to improve working methods, as well as to ensure non-discrimination, transparency, efficiency, integrity and

accountability of operations, the EC Party and the Signatory CARIFORUM States shall:

- (a) take further steps towards the reduction, simplification and standardisation of data and documentation;
- (b) simplify requirements and formalities wherever possible, in respect of the rapid release and clearance of goods;
- (c) provide effective, prompt, non-discriminatory and easily accessible procedures enabling the right of appeal against customs administrative actions, rulings and decisions affecting imports, exports or goods in transit. Any charges shall be commensurate with the cost of the appeal procedures; and
- (d) ensure that the highest standards of integrity be maintained, through the application of measures reflecting the principles of the relevant international conventions and instruments in this field.

Article 32

Relations with the business community

The EC Party and the Signatory CARIFORUM States agree:

- (a) to ensure that all legislation, procedures and fees and charges, as well as whenever possible the relevant explanations are made publicly available, as far as possible through electronic means;
- (b) on the need for timely and regular dialogue with economic operators on legislative proposals related to customs and trade procedures;
- (c) that, wherever possible, when new or amended legislation and procedures are introduced, information is made available to the economic operators in advance. The Parties and the Signatory CARIFORUM States shall make publicly available relevant notices of an administrative nature, including agency requirements and entry procedures, hours of operation and operating procedures for customs offices at ports and border crossing points, and points of contact for information enquiries, in order to facilitate business compliance with customs obligations and the timely movement of goods;
- (d) to foster cooperation between operators and relevant administrations, and promote fair competition within the trading community, via the use of non-arbitrary and publicly accessible procedures, such as Memoranda of Understanding, making appropriate use of those promulgated by the WCO;
- (e) that this cooperation should also be aimed at fighting against illicit practices and protecting the security and safety of the citizen, as well as the collection of public revenues;

- (f) to ensure that their respective customs and related requirements and procedures follow best practices, and remain as least trade-restrictive as possible.

Article 33

Customs valuation

1. The Agreement on the Implementation of Article VII of the GATT (1994) shall govern customs valuation rules applied to trade between the Parties.

2. The Parties shall cooperate with a view to reaching a common approach to issues relating to customs valuation.

Article 34

Regional integration

1. The Parties shall promote to the fullest extent possible regional integration in the field of customs and shall work on the development of regional customs legislation, procedures and requirements, in line with the relevant international standards.

2. The Special Committee on Customs Cooperation and Trade Facilitation provided for in Article 36 shall carry out an ongoing monitoring of the implementation of the provisions of this Article.

Article 35

Cooperation

1. The Parties recognise the importance of cooperation as regards customs and trade facilitation measures in order to achieve the objectives of this Agreement.

2. Subject to the provisions of Article 7, the Parties agree to cooperate, including by facilitating support, notably in the following areas:

- (a) the application of modern customs techniques, including risk assessment, advance binding rulings, simplified

procedures for entry and release of goods, post release controls and company audit methods;

- (b) introduction of procedures and practices which reflect as far as practicable, international instruments and standards applicable in the field of customs and trade, including WTO rules and WCO instruments and standards, *inter alia*, the revised Kyoto Convention on the simplification and harmonisation of customs procedures and the WCO Framework of Standard to Secure and Facilitate Global Trade; and

- (c) the automation of customs and other trade procedures.

Article 36

Special Committee on Customs Cooperation and Trade Facilitation

1. The Parties agree to establish a Special Committee on Customs Cooperation and Trade Facilitation which shall be made up of representatives of the Parties. This Committee shall meet on a date and with an agenda agreed in advance by the Parties. The office of Chairperson of this Committee shall rotate annually between the Parties. The Committee shall report to the CARIFORUM-EC Trade and Development Committee.

2. The functions of the Committee shall include:

- (a) monitoring the implementation and administration of the provisions of this Chapter;
- (b) carrying out the tasks and functions set down in Protocol I;
- (c) providing a forum for consultation between the Parties with regard to the obligations provided under Protocol II;
- (d) enhancing cooperation and dialogue between the Parties on tariff matters, customs legislation and procedures, mutual administrative assistance in customs matters, rules of origin and administrative cooperation; and
- (e) discussing issues relating to technical assistance activities.

CHAPTER 5

Agriculture and fisheries

Article 37

Objectives

1. The Parties agree that the fundamental objective of this Agreement is the sustainable development and the eradication of poverty in CARIFORUM States, and the smooth and gradual integration of these economies into the global economy. In the agricultural and fisheries sectors, this Agreement should

contribute to increasing the competitiveness of production, processing and trade in agricultural and fishery products in both traditional and non-traditional sectors, between the Parties, consistent with the sustainable management of natural resources.

2. The Parties acknowledge the economic and social importance of activities relating to fisheries and the utilisation of the living marine resources of CARIFORUM States, and the need to

maximise those benefits in relation to such factors as food security, employment, poverty alleviation, foreign exchange earnings and social stability of fishing communities.

3. The Parties recognise that the fisheries and marine ecosystems of the CARIFORUM States are complex, biologically diverse and fragile and that exploitation should take into account these factors through effective conservation and management of fisheries resources and related ecosystems based on sound scientific advice and on the precautionary principle as defined by the FAO Code of Conduct on Responsible Fisheries.

4. The Parties recognise that ensuring food security and enhancing livelihoods of rural and fishing communities are critical elements of the eradication of poverty, and the pursuit of sustainable development. They consequently recognise the need to avoid major disruption of markets for agricultural, food and fish products in CARIFORUM States.

5. The Parties agree to take full account of the diversity of the economic, social and environmental characteristics and needs and development strategies of the CARIFORUM States.

Article 38

Regional integration

The Parties recognise that the integration of the agricultural, food and fisheries sectors across CARIFORUM States, through the progressive removal of remaining barriers and the provision of an appropriate regulatory framework, will contribute to the deepening of the regional integration process and the realisation of the objectives of this Chapter.

Article 39

Enabling policies

The CARIFORUM States commit themselves to adopting and implementing policies and institutional reforms to enable and facilitate the achievement of the objectives of this Chapter.

Article 40

Food security

1. The Parties acknowledge that the removal of barriers to trade between the Parties, as envisaged in this Agreement, may pose significant challenges to CARIFORUM producers in the agricultural, food and fisheries sectors and to consumers and agree to consult with each other on these issues.

2. Where compliance with the provisions of this Agreement leads to problems with the availability of, or access to, foodstuffs or other products essential to ensure food security of a Signatory CARIFORUM State and where this situation gives rise or is likely to give rise to major difficulties for such a State, that Signatory

CARIFORUM State may take appropriate measures in accordance with the procedures laid down in paragraphs 7(b) to ((d), 8 and 9 of Article 25.

Article 41

Exchange of information and consultation

1. The Parties agree to exchange experiences, information and best practices and to consult on all issues related to the pursuit of the objectives of this Chapter and relevant to trade between the Parties.

2. The Parties agree that dialogue would be particularly useful in the following areas:

- (a) Exchange of information on agriculture production, consumption and trade and on the respective market developments for agricultural and fisheries products;
- (b) Promotion of investment in CARIFORUM agricultural, food and fisheries sectors, including small-scale activities;
- (c) Exchange of information on agriculture, rural development and fisheries policies, laws and regulations;
- (d) Discussion of policy and institutional changes needed to underpin the transformation of the agricultural and fisheries sectors as well as the formulation and implementation of regional policies on agriculture, food, rural development and fisheries in pursuit of regional integration;
- (e) Exchange of views on new technologies as well as policies and measures related to quality.

Article 42

Traditional agricultural products

1. The Parties commit to undertake prior consultations on trade policy developments that may impact on the competitive positions of traditional agricultural products, including bananas, rum, rice and sugar, in the market of the EC Party.

2. The EC Party shall endeavour to maintain significant preferential access within the multilateral trading system for these products originating in the CARIFORUM States for as long as is feasible and to ensure that any unavoidable reduction in preference is phased in over as long a period as possible.

Article 43

Cooperation

1. The Parties acknowledge the importance of the agricultural, food and fisheries sectors to the economies of CARIFORUM States and of cooperating to promote the transformation of these

sectors, with the aim of increasing their competitiveness, developing their capacity to access high quality markets and in view of their potential contribution to the sustainable development of the CARIFORUM States. They recognise the need to facilitate the adjustment of the agricultural, food and fisheries sectors and the rural economy, to the progressive changes brought about by this Agreement, while paying particular attention to small scale operations.

2. Subject to the provisions of Article 7, the Parties agree to cooperate, including by facilitating support, in the following areas:

- (a) Improvement in the competitiveness of potentially viable production, including downstream processing, through innovation, training, promotion of linkages and other support activities, in agricultural and fisheries products, including both traditional and non traditional export sectors;
- (b) Development of export marketing capabilities, including market research, both for trade between CARIFORUM States and between the Parties, as well as the identification of options for the improvement of marketing infrastructure

and transportation, and the identification of financing and cooperation options for producers and traders;

- (c) Compliance with and adoption of quality standards relating to food production and marketing, including standards relating to environmentally and socially sound agricultural practices and organic and non-genetically modified foods;
- (d) Promotion of private investment and public-private partnerships in potentially viable production;
- (e) Improvement in the ability of CARIFORUM operators to comply with national, regional and international technical, health and quality standards for fish and fish products;
- (f) Building or strengthening the scientific and technical human and institutional capability at regional level for sustainable trade in fisheries products, including aquaculture; and
- (g) The process of dialogue referred to in Article 41.

CHAPTER 6

Technical barriers to trade

Article 44

Multilateral obligations

The Parties affirm their commitment to the rights and obligations provided for in the WTO Agreement on Technical Barriers to Trade (hereinafter referred to as the WTO TBT Agreement).

Article 45

Objectives

The objectives of this Chapter are to:

- (a) facilitate trade in goods between the Parties while maintaining and increasing the capacity of the Parties to protect health, safety, consumers and the environment;
- (b) improve the capacity of the Parties to identify, prevent and eliminate unnecessary obstacles to trade between the Parties as a result of technical regulations, standards and conformity assessment procedures applied by either Party;
- (c) increase the capacity of the Parties to ensure compliance with international standards and with each other's technical regulations and standards.

Article 46

Scope and definitions

1. The provisions of this Chapter shall apply to technical regulations, standards and conformity assessment procedures as defined in the WTO TBT Agreement in so far as they affect trade between the Parties.

2. For the purposes of this Chapter the definitions used by the WTO TBT Agreement shall apply.

Article 47

Regional collaboration and integration

The Parties agree that collaboration between national and regional authorities dealing with standardisation, accreditation and other technical barriers to trade matters is important to facilitate both intra-regional trade and trade between the Parties, as well as the overall process of CARIFORUM regional integration and undertake to cooperate to this end.

Article 48

Transparency

The Parties confirm their commitment to implementing the transparency provisions set out in the WTO TBT Agreement. In

addition, the Parties shall endeavour to inform each other at an early stage of proposals to modify or introduce technical regulations and standards that are especially relevant to trade between the Parties.

Article 49

Exchange of information and consultation

1. The Parties agree, upon the provisional application of this Agreement, to designate contact points for the purposes of exchange of information as specified under this Chapter. The Parties agree to channel their exchanges of information through regional contact points to the maximum extent possible.

2. The Parties agree to enhance their communication and exchange of information on issues within the scope of this Chapter and in particular on ways to facilitate compliance with each other's technical regulations, standards and conformity assessment procedures and to eliminate unnecessary obstacles to trade in goods between them.

3. When a particular problem related to a technical regulations, standards or conformity assessment procedures that may affect trade between the Parties arises, the Parties shall inform and consult each other as early as possible, with a view to reaching a mutually agreed solution.

4. The Parties agree to inform each other in writing of measures taken or to be taken to preclude the importation of any good to address a problem relating to health, safety and the environment as soon as is reasonably possible after the decision is taken.

5. The Parties agree to identify products for which the Parties shall exchange information with a view to collaborating so that these products meet technical regulations and standards required to access each other's markets. Such information may include identification of capacity needs and proposals for meeting these needs.

Article 50

Cooperation in international bodies

The Parties agree to cooperate in international standard setting bodies, including by facilitating the participation of representatives of the CARIFORUM States in the meetings and the work of these bodies.

Article 51

Cooperation

1. The Parties recognise the importance of cooperating in the areas of technical regulations, standards and conformity assessment in order to achieve the objectives of this Agreement.

2. Subject to the provisions of Article 7, the Parties agree to cooperate, including by facilitating support, in the following areas:

- (a) Establishment of the appropriate arrangements for the sharing of expertise, including appropriate training intended to ensure adequate and enduring technical competence of the relevant standard setting, metrology, accreditation, market surveillance and conformity assessment bodies, in particular those in the CARIFORUM region.
- (b) Development of centres of expertise within CARIFORUM for the assessment of goods for the purpose of such goods access into the EC market.
- (c) Development of the capacity of enterprises, in particular CARIFORUM enterprises to meet regulatory and market requirements.
- (d) Developing and adopting harmonised technical regulations, standards and conformity assessment procedures based on relevant international standards.

CHAPTER 7

Sanitary and phytosanitary measures

Article 52

Multilateral obligations

The Parties affirm their commitment to the rights and obligations provided for in the WTO Agreement on Sanitary and Phytosanitary Measures (hereinafter referred to as the WTO SPS Agreement). The Parties also reaffirm their rights and obligations under the International Plant Protection Convention (IPPC), the CODEX Alimentarius and the World Organisation for Animal Health (OIE).

Article 53

Objectives

The objectives of this Chapter are to:

- (a) facilitate trade between the Parties while maintaining and increasing the capacity of the Parties to protect plant, animal and public health;

- (b) improve the capacity of the Parties to identify, prevent and minimise unintended disruptions or barriers to trade between the Parties as the result of measures necessary to protect plant, animal and public health within the Parties;
- (c) assist CARIFORUM States in establishing harmonised intra-regional sanitary and phytosanitary (hereinafter SPS) measures also with a view to facilitating the recognition of equivalence of such measures with those existing in the EC Party;
- (d) assist CARIFORUM States in ensuring compliance with SPS measures of the EC Party.

Article 54

Scope and definitions

1. The provisions of this Chapter shall apply to SPS measures as defined in the WTO SPS Agreement in so far as they affect trade between the Parties.
2. For the purposes of this Chapter definitions used by the WTO SPS Agreement shall apply.

Article 55

Competent Authorities

1. The Parties agree, upon the provisional application of this Agreement, to designate Competent Authorities for the implementation of the measures referred to in this Chapter. The Parties shall inform each other in a timely manner of any significant changes in the structure, nature and organisation and division of competency of their Competent Authorities.
2. The Parties agree to channel their exchanges of information regarding the implementation of the measures referred to in this Chapter through a regional body representing the Competent Authorities to the maximum extent possible.

Article 56

Regional collaboration and integration

1. The Parties agree that collaboration between national and regional authorities dealing with SPS matters, including the Competent Authorities, is important to facilitate both intra-regional trade and trade between the Parties, as well as the overall process of CARIFORUM regional integration.
2. In this regard, the Parties agree on the importance of establishing harmonised SPS measures both in the EC Party and between CARIFORUM States and undertake to cooperate to this end. The Parties also agree to consult with the aim of achieving

bilateral arrangements on recognition of the equivalence of specified SPS measures.

3. In the absence of harmonised SPS measures or the recognition of equivalence, the Parties agree to consult on ways to facilitate trade and reduce unnecessary administrative requirements.

Article 57

Transparency

The Parties confirm their commitment to implementing the transparency provisions set out in Annex B of the WTO SPS Agreement. In addition, the Parties shall endeavour to inform each other at an early stage of proposals to modify or introduce SPS regulations or measures that are especially relevant to trade between the Parties.

Article 58

Exchange of information and consultation

1. The Parties agree to enhance their communication and exchange of information on issues within the scope of this Chapter that may affect trade between the Parties.
2. When a particular SPS problem that may affect trade between the Parties arises, the Competent Authorities of the Parties shall inform and consult each other as early as possible with a view to finding a mutually agreed solution.

Article 59

Cooperation

1. The Parties recognise the importance of cooperation as regards sanitary and phytosanitary measures in order to achieve the objectives of this Agreement.
2. Subject to the provisions of Article 7, the Parties agree to cooperate, including by facilitating support, in the following areas:
 - (a) reinforcement of regional integration and the improvement of monitoring, implementation and enforcement of SPS measures consistent with Article 56 including training and information events for regulatory personnel. Public and private sector partnerships may be supported for the achievement of these objectives.
 - (b) establishment of the appropriate arrangements for the sharing of expertise, to address issues of plant, animal and public health, as well as training and information events for regulatory personnel.

- (c) development of the capacity of enterprises, in particular CARIFORUM enterprises, to meet regulatory and market requirements.
- (d) cooperation in the international bodies referred to in Article 52, including the facilitation of participation of representatives of CARIFORUM States in the meeting of these bodies.

TITLE II

INVESTMENT, TRADE IN SERVICES AND E-COMMERCE

CHAPTER 1

General provisions*Article 60***Objective, scope and coverage**

1. The Parties and the Signatory CARIFORUM States, reaffirming their commitments under the WTO Agreement and with a view to facilitating the regional integration and sustainable development of the Signatory CARIFORUM States and their smooth and gradual integration in the world economy, hereby lay down the necessary arrangements for the progressive, reciprocal and asymmetric liberalisation of investment and trade in services and for cooperation on e-commerce.

2. Nothing in this Title shall be construed to require the privatisation of public undertakings or to impose any obligation with respect to government procurement.

3. The provisions of this Title shall not apply to subsidies granted by the Parties or the Signatory CARIFORUM States.

4. Consistent with the provisions of this Title, the Parties and the Signatory CARIFORUM States retain the right to regulate and to introduce new regulations to meet legitimate policy objectives.

5. This Title shall not apply to measures affecting natural persons seeking access to the employment market of the EC Party or of the Signatory CARIFORUM States, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

Nothing in this Title shall prevent the Parties or the Signatory CARIFORUM States from applying measures to regulate the entry of natural persons into, or their temporary stay in, their territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across their borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific commitment.

*Article 61***Definitions**

For the purposes of this Title:

- (a) 'measure' means any measure by the Parties or by the Signatory CARIFORUM States, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (b) 'measures adopted or maintained by the Parties or by the Signatory CARIFORUM States' means measures taken by:
 - (i) central, regional or local governments and authorities; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- (c) 'natural person of the EC Party' or 'natural person of the Signatory CARIFORUM States' means a national of one of the Member States of the European Union or of the Signatory CARIFORUM States according to their respective legislation;
- (d) 'juridical person' means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (e) 'juridical person of a Party' means a juridical person of the EC Party or a Signatory CARIFORUM State set up in accordance with the laws of a Member State of the European Union or of a Signatory CARIFORUM State respectively, and having its registered office, its central administration, or its principal place of business in the territory to which the Treaty establishing the European Community applies or in the territory of a Signatory CARIFORUM State, respectively;

Should the juridical person have only its registered office or central administration in the territory to which the Treaty establishing the European Community applies or in the territory of the Signatory CARIFORUM States respectively, it shall not be considered as a juridical person of the EC Party or of a Signatory CARIFORUM State respectively, unless it engages in substantive business operations⁽¹⁾ in the territory to which the Treaty establishing the European Community applies or of a Signatory CARIFORUM State, respectively;

Notwithstanding the preceding paragraph, shipping companies established outside the EC Party or the CARIFORUM States and controlled by nationals of a Member State of the European Union or of a Signatory CARIFORUM State, respectively, shall also be beneficiaries of the provisions of this Agreement, if their vessels are registered in accordance with their respective legislation, in that Member State of the European Union or in a Signatory CARIFORUM State and carry the flag of a Member State of the European Union or of a Signatory CARIFORUM State;

- (f) an 'economic integration agreement' shall mean an agreement substantially liberalising trade in services and investment pursuant to WTO rules.

Article 62

Future liberalisation

In pursuance of the objectives of this Title, the Parties shall enter into further negotiations on investment and trade in services no later than five years from the date of entry into force of this Agreement with the aim of enhancing the overall commitments undertaken under this Title.

Article 63

Application to the Commonwealth of the Bahamas and the Republic of Haiti

With a view to incorporating in Annexe IV the commitments of the Commonwealth of the Bahamas and the Republic of Haiti, which shall be compatible with the relevant requirements under the General Agreement on Trade in Services (hereinafter the GATS), the Parties and the Signatory CARIFORUM States shall make changes to this Annexe by decision of the CARIFORUM-EC Trade and Development Committee no later than six months after the signature of this Agreement. Pending the adoption of such decision, the preferential treatment granted by the EC Party under this Title shall not be applicable to the Commonwealth of the Bahamas and the Republic of Haiti.

Article 64

Regional CARIFORUM integration

1. The Parties recognise that economic integration among CARIFORUM States, through the progressive removal of remaining barriers and the provision of appropriate regulatory frameworks for trade in services and investment will contribute to the deepening of their regional integration process and the realisation of the objectives of this Agreement.

2. The Parties further recognise that the principles set in Chapter 5 of this Title to support the progressive liberalisation of investment and trade in services between the Parties provide a useful framework for the further liberalisation of investment and trade in services between CARIFORUM States in the context of their regional integration.

CHAPTER 2

Commercial presence

Article 65

Definitions

For purposes of this Chapter:

- (a) 'commercial presence' means any type of business or professional establishment through:

- (i) the constitution, acquisition or maintenance of a juridical person⁽²⁾, or

⁽¹⁾ In line with its notification of the EC Treaty to the WTO (WT/REG39/1), the EC Party understands that the concept of 'effective and continuous link' with the economy of a Member State enshrined in Article 48 of the EC Treaty is equivalent to the concept of 'substantive business operations' provided in Article V, paragraph 6, of the GATS, and in this Agreement.

⁽²⁾ The terms 'constitution' and 'acquisition' of a juridical person shall be understood as including capital participation in a juridical person with a view to establishing or maintaining lasting economic links. When the juridical person has the status of a company limited by shares, there is a lasting economic link where the block of shares held enables the shareholder, either pursuant to the provisions of national laws relating to companies limited by shares or otherwise, to participate effectively in the management of the company or in its control. Long-term loans of a participating nature are loans for a period of more than five years which are made for the purpose of establishing or maintaining lasting economic links; the main examples being loans granted by a company to its subsidiaries or to companies in which it has a share and loans linked with a profit-sharing arrangement.

- (ii) the creation or maintenance of a branch or representative office within the territory of the EC Party or of the Signatory CARIFORUM States for the purpose of performing an economic activity;
- (b) 'investor' means any natural or juridical person that performs an economic activity through setting up a commercial presence;
- (c) 'investor of a Party' means a natural or juridical person of the EC Party or a natural or juridical person of a Signatory CARIFORUM State that performs an economic activity through setting up a commercial presence;
- (d) 'economic activity' does not include activities carried out in the exercise of governmental authority, i.e. activities carried out neither on a commercial basis nor in competition with one or more economic operators;
- (e) 'subsidiary' of a juridical person means a juridical person which is effectively controlled by another juridical person ⁽¹⁾;
- (f) 'branch' of a juridical person means a place of business not having legal personality which has the appearance of permanency, such as the extension of a parent body, has a management and is materially equipped to negotiate business with third parties so that such third parties, although knowing that there will if necessary be a legal link with the parent body, the head office of which is abroad, do not have to deal directly with such parent body but may transact business at the place of business constituting the extension.

Article 66

Coverage

This Chapter applies to measures by the Parties or by the Signatory CARIFORUM States affecting commercial presence ⁽²⁾ in all economic activities with the exception of:

- (a) mining, manufacturing and processing of nuclear materials;
- (b) production of or trade in arms, munitions and war material;
- (c) audio-visual services;

⁽¹⁾ A juridical person is controlled by another juridical person if the latter has the power to name a majority of its directors or otherwise to legally direct its actions.

⁽²⁾ Measures relating to expropriation and investor-to-State dispute settlement such as those covered in bilateral investment treaties are not deemed to affect commercial presence.

- (d) national maritime cabotage ⁽³⁾; and
- (e) national and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
 - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
 - (ii) the selling and marketing of air transport services;
 - (iii) computer reservation system (CRS) services;
 - (iv) other ancillary services that facilitate the operation of air carriers, such as ground handling services, rental services of aircraft with crew, and airport management services.

Article 67

Market access

1. With respect to market access through commercial presence, the EC Party and the Signatory CARIFORUM States shall accord to commercial presences and investors of the other Party a treatment no less favourable than that provided for in the specific commitments contained in Annex IV.

2. In sectors where market access commitments are undertaken, the measures which the EC Party and the Signatory CARIFORUM States shall not maintain or adopt either on the basis of a regional subdivision or on the basis of their entire territory, unless otherwise specified in Annex IV, are defined as:

- (a) limitations on the number of commercial presences whether in the form of numerical quotas, monopolies, exclusive rights or other commercial presence requirements such as economic needs tests;
- (b) limitations on the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of operations or on the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test ⁽⁴⁾;

⁽³⁾ National maritime cabotage covers transport services within a Signatory CARIFORUM State or within a Member State of the European Union for the carriage of passengers or goods originating and terminating in that Signatory Cariforum State or in that Member State of the European Union.

⁽⁴⁾ Subparagraphs 2(a), 2(b) and 2(c) do not cover measures taken in order to limit the production of an agricultural product.

- (d) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment; and
- (e) measures which restrict or require specific types of commercial presence (subsidiary, branch, representative office) ⁽¹⁾ or joint ventures through which an investor of the other Party may perform an economic activity.

Article 68

National treatment

1. In the sectors where market access commitments are inscribed in Annex IV and subject to any conditions and qualifications set out therein, with respect to all measures affecting commercial presence, the EC Party and the Signatory CARIFORUM States shall grant to commercial presences and investors of the other Party treatment no less favourable than that they accord to their own like commercial presences and investors.

2. The EC Party and the Signatory CARIFORUM States may meet the requirement of paragraph 1 by according to commercial presences and investors of the other Party, either formally identical treatment or formally different treatment to that they accord to their own like commercial presences and investors.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of commercial presences and investors of the EC Party or of the Signatory CARIFORUM States compared to like commercial presences and investors of the other Party.

4. Specific commitments assumed under this Article shall not be construed to require the EC Party or the Signatory CARIFORUM States to compensate for inherent competitive disadvantages which result from the foreign character of the relevant commercial presences and investors.

Article 69

Lists of commitments

The sectors liberalised by the EC Party and by the Signatory CARIFORUM States pursuant to this Chapter and, by means of

⁽¹⁾ Each Party or Signatory CARIFORUM State may require that in the case of incorporation under its own law, investors must adopt a specific legal form. To the extent that such requirement is applied in a non-discriminatory manner, it does not need to be specified in a Party's list of commitments in order to be maintained or adopted by that Party.

reservations, the market access and national treatment limitations applicable to commercial presences and investors of the other Party in those sectors are set out in lists of commitments included in Annex IV.

Article 70

Most-favoured-nation treatment

1. With respect to any measures affecting commercial presence covered by this Chapter:

- (a) the EC Party shall accord to commercial presences and investors of the Signatory CARIFORUM States a treatment no less favourable than the most favourable treatment applicable to like commercial presences and investors of any third country with whom it concludes an economic integration agreement after the signature of this Agreement;
- (b) the Signatory CARIFORUM States shall accord to the commercial presences and investors of the EC Party a treatment no less favourable than the most favourable treatment applicable to like commercial presences and investors of any major trading economy with whom they conclude an economic integration agreement after the signature of this Agreement.

2. When a Party or a Signatory CARIFORUM State concludes a regional economic integration agreement creating an internal market or requiring the parties thereto to significantly approximate their legislation with a view to removing non-discriminatory obstacles to commercial presence and to trade in services, the treatment that such Party or Signatory CARIFORUM State grants to commercial presences and investors of third countries in sectors subject to the internal market or to the significant approximation of legislation is not covered by the provision of paragraph 1 ⁽²⁾.

3. The obligations set out in paragraph 1 shall not apply to treatment granted:

- (a) under measures providing for recognition of qualifications, licences or prudential measures in accordance with Article VII of the GATS or its Annex on Financial Services,
- (b) under any international agreement or arrangement relating wholly or mainly to taxation, or

⁽²⁾ At the time of signature of this Agreement, the European Economic Area, pre-accession agreements to the European Union, the CARICOM Single Market and Economy, and the CARICOM-Dominican Republic Free Trade Agreement are deemed to fall in their entirety under this exception.

- (c) under measures benefiting from the coverage of an MFN exemption listed in accordance with Article II.2 of the GATS.

4. For the purpose of this provision, a 'major trading economy' means any developed country, or any country accounting for a share of world merchandise exports above 1 % in the year before the entry into force of the economic integration agreement referred to in paragraph 1, or any group of countries acting individually, collectively or through an economic integration agreement accounting collectively for a share of world merchandise exports above 1,5 % in the year before the entry into force of the economic integration agreement referred to in paragraph 1. ⁽¹⁾

5. Where any Signatory CARIFORUM State becomes party to an economic integration agreement with a third party referred to in paragraph 1(b) and that agreement provides for more favourable treatment to such third party than that granted by the Signatory CARIFORUM State to the EC Party pursuant to this Agreement, the Parties shall enter into consultations. The Parties may decide whether the concerned Signatory CARIFORUM State may deny the more favourable treatment contained in the economic integration agreement to the EC Party. The Joint CARIFORUM-EC Council may adopt any necessary measures to adjust the provisions of this Agreement.

Article 71

Other agreements

Nothing in this Title shall be taken to limit the rights of investors of the Parties to benefit from any more favourable treatment provided for in any existing or future international agreement relating to investment to which a Member State of the European Union and a Signatory CARIFORUM State are parties.

Article 72

Behaviour of investors

The EC Party and the Signatory CARIFORUM States shall cooperate and take, within their own respective territories, such measures as may be necessary, *inter alia*, through domestic legislation, to ensure that:

- (a) Investors be forbidden from, and held liable for, offering, promising or giving any undue pecuniary or other

⁽¹⁾ For this calculation official data by the WTO on leading exporters in world merchandise trade (excluding intra-EU trade) shall be used.

advantage, whether directly or through intermediaries, to any public official or member of his or her family or business associates or other person in close proximity to the official, for that person or for a third party, in order that the official or third party act or refrain from acting in relation to the performance of official duties, or in order to achieve any favour in relation to a proposed investment or any licences, permits, contracts or other rights in relation to an investment.

- (b) Investors act in accordance with core labour standards as required by the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work, 1998, to which the EC Party and the Signatory CARIFORUM States are parties. ⁽²⁾

- (c) Investors do not manage or operate their investments in a manner that circumvents international environmental or labour obligations arising from agreements to which the EC Party and the Signatory CARIFORUM States are parties.

- (d) Investors establish and maintain, where appropriate, local community liaison processes, especially in projects involving extensive natural resource-based activities, in so far that they do not nullify or impair the benefits accruing to the other Party under the terms of a specific commitment.

Article 73

Maintenance of standards

The EC Party and the Signatory CARIFORUM States shall ensure that foreign direct investment is not encouraged by lowering domestic environmental, labour or occupational health and safety legislation and standards or by relaxing core labour standards or laws aimed at protecting and promoting cultural diversity.

Article 74

Review

With a view to the progressive liberalisation of investments, the Parties shall review the investment legal framework, the investment environment, and the flow of investment between them consistent with their commitments in international agreements no later than three years after the entry into force of this Agreement and at regular intervals thereafter.

⁽²⁾ These core labour standards are further elaborated, in accordance with the Declaration, in ILO Conventions concerning freedom of association, the elimination of forced labour, the abolition of child labour and the elimination of discrimination in the work place.

CHAPTER 3

Cross-border supply of services

Article 75

Coverage and definitions

1. This Chapter applies to measures by the Parties or by the Signatory CARIFORUM States affecting the cross-border supply of all services with the exception of:

- (a) audio-visual services;
- (b) national maritime cabotage ⁽¹⁾; and
- (c) national and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
 - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
 - (ii) the selling and marketing of air transport services;
 - (iii) computer reservation system (CRS) services; and
 - (iv) other ancillary services that facilitate the operation of air carriers, such as ground handling services, rental services of aircraft with crew, and airport management services.

2. For the purpose of this Chapter:

- (a) cross-border supply of services is defined as the supply of a service:
 - (i) from the territory of a Party into the territory of the other Party (Mode 1);
 - (ii) in the territory of a Party to the service consumer of the other Party (Mode 2);
- (b) 'services' includes any service in any sector except services supplied in the exercise of governmental authority;
- (c) 'a service supplied in the exercise of governmental authority' means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers;
- (d) 'service supplier' means any natural or juridical person that seeks to supply or supplies a service;

⁽¹⁾ National maritime cabotage covers transport services within a Signatory CARIFORUM State or within a Member State of the European Union for the carriage of passengers or goods originating and terminating in that CARIFORUM State or in that Member State.

- (e) 'service supplier of a Party' means a natural or juridical person of the EC Party or a natural or juridical person of a Signatory CARIFORUM State that seeks to supply or supplies a service;
- (f) 'supply of a service' includes the production, distribution, marketing, sale and delivery of a service.

Article 76

Market access

1. With respect to market access through the cross-border supply of services, the EC Party and the Signatory CARIFORUM States shall accord services and service suppliers of the other Party treatment not less favourable than that provided for in the specific commitments contained in Annex IV.

2. In sectors where market access commitments are undertaken, the measures which the EC Party and the Signatory CARIFORUM States shall not maintain or adopt either on the basis of a regional subdivision or on the basis of their entire territory, unless otherwise specified in Annex IV, are defined as:

- (a) limitations on the number of services suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test.

Article 77

National treatment

1. In the sectors where market access commitments are inscribed in Annex IV, and subject to any conditions and qualifications set out therein, the EC Party and the Signatory CARIFORUM States shall grant to services and service suppliers of the other Party, in respect of all measures affecting the cross-border supply of services, treatment no less favourable than that they accord to their own like services and services suppliers.

2. The EC Party and the Signatory CARIFORUM States may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that they accord to their own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the EC Party or of the Signatory CARIFORUM States compared to like services or service suppliers of the other Party.

4. Specific commitments assumed under this Article shall not be construed to require the EC Party or the Signatory CARIFORUM States to compensate for inherent competitive disadvantages which result from the foreign character of the relevant services or services suppliers

Article 78

Lists of commitments

The sectors liberalised by the EC Party and by the Signatory CARIFORUM States pursuant to this Chapter and, by means of reservations, the market access and national treatment limitations applicable to services and services suppliers of the other Party in those sectors are set out in lists of commitments included in Annex IV.

Article 79

Most-favoured-nation treatment

1. With respect to any measure affecting cross-border supply of services covered by this Chapter,

- (a) the EC Party shall accord to services and services suppliers of the Signatory CARIFORUM States a treatment no less favourable than the most favourable treatment applicable to like services and services suppliers of any third country with whom it concludes an economic integration agreement after the signature of this Agreement;
- (b) the Signatory CARIFORUM States shall accord to the services and services suppliers of the EC Party a treatment no less favourable than the most favourable treatment applicable to like services and services suppliers of any major trading economy with whom they conclude an economic integration agreement after the signature of this Agreement.

2. When a Party or a Signatory CARIFORUM State concludes a regional economic integration agreement creating an internal market or requiring the parties thereto to significantly approximate their legislation with a view to removing non-discriminatory obstacles to trade in services, the treatment that such Party or Signatory CARIFORUM State grants to services and services suppliers of third countries in sectors subject to the internal market or to the significant approximation of legislation is not covered by the provision of paragraph 1 ⁽¹⁾.

3. The obligations set out in paragraph 1 shall not apply to treatment granted:

- (a) under measures providing for recognition of qualifications, licences or prudential measures in accordance with Article VII of the GATS or its Annex on Financial Services;
- (b) under any international agreement or arrangement relating wholly or mainly to taxation; or
- (c) under measures benefiting from the coverage of an MFN exemption listed in accordance with Article II.2 of the GATS.

4. For the purpose of this provision, a 'major trading economy' means any developed country, or any country accounting for a share of world merchandise exports above 1 % in the year before the entry into force of the economic integration agreement referred to in paragraph 1, or any group of countries acting individually, collectively or through an economic integration agreement accounting collectively for a share of world merchandise exports above 1,5 % in the year before the entry into force of the economic integration agreement referred to in paragraph 1. ⁽²⁾

5. Where any Signatory CARIFORUM State becomes party to an economic integration agreement with a third party referred to in paragraph 1(b) and that agreement provides for more favourable treatment to such third party than that granted by the Signatory CARIFORUM State to the EC Party pursuant to this Agreement, the Parties shall enter into consultations. The Parties may decide whether the concerned Signatory CARIFORUM State may deny the more favourable treatment contained in the economic integration agreement to the EC Party. The Joint CARIFORUM-EC Council may adopt any necessary measures to adjust the provisions of this Agreement.

⁽¹⁾ At the time of signature of this Agreement, the European Economic Area, pre-accession agreements to the European Union, the CARICOM Single Market and Economy, and the CARICOM-Dominican Republic Free Trade Agreement are deemed to fall in their entirety under this exception.

⁽²⁾ For this calculation official data by the WTO on leading exporters in world merchandise trade (excluding intra-EU trade) shall be used.

CHAPTER 4

Temporary presence of natural persons for business purpose

Article 80

Coverage and definitions

1. This Chapter applies to measures by the Parties or by the Signatory CARIFORUM States concerning the entry into and temporary stay in their territories of key personnel, graduate trainees, business services sellers, contractual services suppliers, independent professionals and short term visitors for business purposes, in accordance with Article 60(5).

2. For the purposes of this Chapter:

(a) 'key personnel' means natural persons employed within a juridical person of the EC Party or of the Signatory CARIFORUM States other than a non-profit organisation and who are responsible for the setting-up or the proper control, administration and operation of a commercial presence;

'key personnel' comprise 'business visitors' responsible for setting up a commercial presence and 'intra-corporate transfers';

— 'business visitors' mean natural persons working in a senior position who are responsible for setting up a commercial presence. They do not engage in direct transactions with the general public and do not receive remuneration from a source located within the host EC Party or Signatory CARIFORUM State respectively;

— 'intra-corporate transfers' mean natural persons of the EC Party or of the Signatory CARIFORUM States who have been employed by a juridical person or have been partners in it for at least one year and who are temporarily transferred to a commercial presence in the territory of the other Party. The natural person concerned must belong to one of the following categories:

1. Managers:

Persons working in a senior position within a juridical person, who primarily direct the management of the commercial presence, receiving general supervision or direction principally from the board of directors or stockholders of the business or their equivalent, including:

(i) directing the commercial presence or a department or sub-division thereof;

(ii) supervising and controlling the work of other supervisory, professional or managerial employees;

(iii) having the authority personally to recruit and dismiss or recommend recruiting, dismissing or other personnel actions.

2. Specialists:

Persons working within a juridical person who possess uncommon knowledge essential to the commercial presence's production, research equipment, techniques or management. In assessing such knowledge, account will be taken not only of knowledge specific to the commercial presence, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession;

(b) 'graduate trainees' means natural persons of the EC Party or of the Signatory CARIFORUM States who have been employed by a juridical person of that EC Party or Signatory CARIFORUM State for at least one year, possess a university degree and are temporarily transferred to a commercial presence or to the parent company of the juridical person in the territory of the other Party, for career development purposes or to obtain training in business techniques or methods ⁽¹⁾;

(c) 'business services sellers' means natural persons of the EC Party or of the Signatory CARIFORUM States who are representatives of a service supplier of that EC Party or Signatory CARIFORUM State seeking temporary entry into the territory of the other Party for the purpose of negotiating the sale of services or entering into agreements to sell services for that service supplier. They do not engage in making direct sales to the general public and do not receive remuneration from a source located within the host EC Party or Signatory CARIFORUM State respectively;

(d) 'contractual services suppliers' means natural persons of the EC Party or of the Signatory CARIFORUM States employed by a juridical person of that EC Party or Signatory CARIFORUM State which has no commercial presence in

⁽¹⁾ The recipient commercial presence may be required to submit a training programme covering the duration of the stay for prior approval, demonstrating that the purpose of the stay is for training. For Spain, France, Germany, Austria and Hungary, training must be linked to the university degree which has been obtained.

the territory of the other Party and which has concluded a bona fide contract (other than through an agency as defined by CPC 872) to supply services with a final consumer in the latter Party requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to provide services;

- (e) 'independent professionals' means natural persons of the EC Party or of the Signatory CARIFORUM States engaged in the supply of a service and established as self-employed in the territory of that EC Party or Signatory CARIFORUM State who have no commercial presence in the territory of the other Party and who have concluded a *bona fide* contract (other than through an agency as defined by CPC 872) to supply services with a final consumer in the latter Party requiring their presence on a temporary basis in that Party in order to fulfil the contract to provide services ⁽¹⁾;
- (f) 'qualifications' means diplomas, certificates and other evidence (of formal qualification) issued by an authority designated pursuant to legislative, regulatory or administrative provisions and certifying successful completion of professional training.

Article 81

Key personnel and graduate trainees

1. For every sector liberalised in accordance with Chapter 2 of this Title and subject to any reservations listed in Annex IV, the EC Party and the Signatory CARIFORUM States shall allow investors of the other Party to employ in their commercial presences natural persons of that other Party provided that such employees are key personnel or graduate trainees as defined in Article 80. The temporary entry and stay of key personnel and graduate trainees shall be for a period of up to three years for intra-corporate transfers, 90 days in any 12-month period for business visitors, and one year for graduate trainees.

2. For every sector liberalised in accordance with Chapter 2 of this Title, the measures which the EC Party and the Signatory CARIFORUM States shall not maintain or adopt either on the basis of a regional subdivision or on the basis of their entire territory, unless otherwise specified in Annex IV, are defined as limitations on the total number of natural persons that an investor may employ as key personnel and graduate trainees in a specific sector in the form of numerical quotas or a requirement of an economic needs test and as discriminatory limitations.

Article 82

Business services sellers

For every sector liberalised in accordance with Chapters 2 or 3 of this Title and subject to any reservations listed in Annex IV the

EC Party and the Signatory CARIFORUM States shall allow the temporary entry and stay of business services sellers for a period of up to 90 days in any 12-month period.

Article 83

Contractual services suppliers and independent professionals

1. The EC Party and the Signatory CARIFORUM States reaffirm their respective obligations arising from their commitments under the GATS as regards the entry and temporary stay of contractual services suppliers and independent professionals.

2. Without prejudice to paragraph 1, the EC Party shall allow the supply of services into the territory of its Member States by contractual services suppliers of the CARIFORUM States through presence of natural persons, subject to the conditions specified below and in Annex IV, in the following sub-sectors:

1. legal advisory services in respect of international public law and foreign law (i.e. non-EU law);
2. accounting and bookkeeping services;
3. taxation advisory services;
4. architectural services;
5. urban planning and landscape architecture services;
6. engineering services;
7. integrated engineering services;
8. medical and dental services;
9. veterinary services;
10. midwives services;
11. services provided by nurses, physiotherapists and para-medical personnel;
12. computer and related services;
13. research and development services;
14. advertising services;
15. market research and opinion polling;
16. management consulting services;
17. services related to management consulting;
18. technical testing and analysis services;

⁽¹⁾ The service contract referred to under ((d) and ((e) shall comply with the laws, regulations and requirements of the Party or Signatory CARIFORUM States where the contract is executed.

19. related scientific and technical consulting services; of the EC Party or of the Signatory CARIFORUM State applicable where the service is supplied;
20. maintenance and repair of equipment, including transportation equipment, notably in the context of an after-sales or after-lease services contract; (d) the natural person shall not receive remuneration for the provision of services other than the remuneration paid by the contractual service supplier during its stay in the other Party;
21. chef de cuisine services;
22. fashion model services; (e) the temporary entry and stay of natural persons within the Party concerned shall be for a cumulative period of not more than six months or, in the case of Luxembourg, 25 weeks, in any 12-month period or for the duration of the contract, whichever is less;
23. translation and interpretation services;
24. site investigation work;
25. higher education services (only privately-funded services); (f) access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract and does not confer entitlement to exercise the professional title of the Party where the service is provided;
26. environmental services;
27. travel agencies and tour operators' services; (g) the number of persons covered by the service contract shall not be larger than necessary to fulfill the contract, as it may be decided by the laws, regulations and requirements of the Party where the service is supplied;
28. tourist guides services;
29. entertainment services other than audiovisual services. (h) other discriminatory limitations, including on the number of natural persons in the form of economic needs tests, which are specified in Annex IV.

Without prejudice to paragraph 1, the Signatory CARIFORUM States shall allow the supply of services into their territory by EC contractual services suppliers through presence of natural persons, subject to the conditions specified below and in Annex IV.

The commitments undertaken by the EC Party and by the Signatory CARIFORUM States are subject to the following conditions:

- (a) the natural persons must be engaged in the supply of a service on a temporary basis as employees of a juridical person, which has obtained a service contract for a period not exceeding 12 months;
- (b) the natural persons entering the other Party must be offering such services as an employee of the juridical person supplying the services for at least the year immediately preceding the date of submission of an application for entry into the other Party. In addition, the natural persons must possess, at the date of submission of an application for entry into the other Party, at least three years professional experience ⁽¹⁾ in the sector of activity which is the subject of the contract;
- (c) with the exception of fashion model services, chef de cuisine services, and entertainment services other than audiovisual services, the natural persons entering the other Party must possess (i) a university degree or a qualification demonstrating knowledge of an equivalent level ⁽²⁾ and (ii) professional qualifications where this is required to exercise an activity pursuant to the law, regulations or requirements
3. Without prejudice to paragraph 1 the EC Party shall allow the supply of services into the territory of its Member States by independent professionals of the Signatory CARIFORUM States, subject to the conditions specified below and in Annex IV, in the following sub-sectors:
1. legal advisory services in respect of international public law and foreign law (i.e. non-EU law);
 2. architectural services;
 3. urban planning and landscape architecture services;
 4. engineering services;
 5. integrated engineering services;
 6. computer and related services;
 7. research and development services;
 8. market research and opinion polling;
 9. management consulting services;
 10. services related to management consulting;
 11. translation and interpretation services.

⁽¹⁾ Obtained after having reached the age of majority.

⁽²⁾ Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

Without prejudice to paragraph 1, the Signatory CARIFORUM States shall allow the supply of services into their territory by EC independent professionals, subject to the conditions specified below and in Annex IV.

The commitments undertaken by the EC Party and by the Signatory CARIFORUM States are subject to the following conditions:

- (a) the natural persons must be engaged in the supply of a service on a temporary basis as self-employed persons established in the other Party and must have obtained a service contract for a period not exceeding 12 months;
- (b) the natural persons entering the other Party must possess, at the date of submission of an application for entry into the other Party, at least six years professional experience in the sector of activity which is the subject of the contract;
- (c) the natural persons entering the other Party must possess (i) a university degree or a qualification demonstrating knowledge of an equivalent level ⁽¹⁾ and (ii) professional qualifications where this is required to exercise an activity pursuant to the law, regulations or requirements of the EC Party or of the Signatory CARIFORUM State applicable where the service is supplied;
- (d) the temporary entry and stay of natural persons within the Party concerned shall be for a cumulative period of not more than six months or, in the case of Luxembourg, 25 weeks, in any 12-month period or for the duration of the contract, whichever is less;
- (e) access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract and does not confer entitlement to exercise the professional title of the Party where the service is provided;
- (f) other discriminatory limitations, including on the number of natural persons in the form of economic needs tests, which are specified in Annex IV.

Article 84

Short term visitors for business purposes

1. The EC Party and the Signatory CARIFORUM States shall endeavour to facilitate, in conformity with their respective legislation, the entry and temporary stay in their territories of short-term visitors for business purposes from the EC Party or

the Signatory CARIFORUM States as the case may be with a view to carrying out the following activities:

- (a) research and design: technical, scientific and statistical researchers on behalf of a company established in the territory of the other Party;
- (b) marketing research: personnel conducting research or analysis, including market research, on behalf of a company established in the territory of the other Party;
- (c) training seminars: personnel of a company in the EC Party or in the Signatory CARIFORUM States who enter the territory of the other Party to receive training in techniques and work practices employed by companies or organisations in that Party, provided that the training received is confined to observation, familiarisation and classroom instruction only;
- (d) trade fairs and exhibitions: personnel attending a trade fair for the purpose of promoting their company or its products or services;
- (e) sales: sales representatives and agents taking orders or negotiating contracts for goods for a company located in the territory of the other Party, but not delivering goods;
- (f) purchasing: buyers purchasing for a company or management and supervisory personnel engaging in a commercial transaction carried out in the territory of the other Party;
- (g) tourism personnel (hotel representatives, tour and travel agents, tour guides or tour operators) attending or participating in tourism conventions or tourism exhibitions,

provided that they are not engaged in selling their goods or services to the general public or in supplying their goods or services themselves, do not on their own behalf receive any remuneration from a source located within the EC Party or the Signatory CARIFORUM State where they are staying temporarily, and are not engaged in the supply of a service in the framework of a contract concluded between a juridical person who has no commercial presence in the EC Party or in the Signatory CARIFORUM State where the short-term visitors for business purposes are staying temporarily and a consumer in the EC Party or Signatory CARIFORUM State.

2. This entry and temporary stay into their territories, when allowed, shall be for a period of up to 90 days in any 12-month period.

⁽¹⁾ Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

CHAPTER 5

Regulatory framework

Section 1

Provisions of general application

Article 85

Mutual recognition

1. Nothing in this Title shall prevent the EC Party and the Signatory CARIFORUM States from requiring that natural persons must possess the necessary qualifications and/or professional experience specified in the territory where the service is supplied, for the sector of activity concerned.

2. The Parties shall encourage the relevant professional bodies in their respective territories to jointly develop and provide recommendations on mutual recognition to the CARIFORUM-EC Trade and Development Committee, for the purpose of the fulfilment, in whole or in part, by investors and service suppliers of the criteria applied by the EC Party and by the Signatory CARIFORUM States for the authorisation, licensing, operation and certification of investors and service suppliers and, in particular, in the professional services sector.

3. In particular, the Parties shall encourage the relevant professional bodies in their respective territories to start negotiations no later than three years after entry into force of this Agreement in order to jointly develop and provide such recommendations on mutual recognition, among others, in the following disciplines: accounting, architecture, engineering and tourism.

4. On receipt of a recommendation referred to in the preceding paragraph, the CARIFORUM-EC Trade and Development Committee shall, within a reasonable time, review the recommendation with a view to determining whether it is consistent with this Agreement.

5. When, in conformity with the procedure set out in paragraph 2, a recommendation referred to in the same paragraph has been found to be consistent with this Agreement and there is a sufficient level of correspondence between the relevant regulations of the Parties and the Signatory CARIFORUM States, the Parties shall, with a view to implementing that recommendation, negotiate, through their competent authorities, an agreement on mutual recognition of requirements, qualifications, licences and other regulations.

6. Any such agreement shall be in conformity with the relevant provisions of the WTO Agreement and, in particular, Article VII of the GATS.

7. The CARIFORUM-EC Trade and Development Committee shall review progress made in mutual recognition every two years.

Article 86

Transparency

Subject to Article 235(3) the Parties and the Signatory CARIFORUM States shall respond promptly to all requests made by the other Party for specific information on any of their measures of general application or international agreements which pertain to or affect this Agreement. The Parties shall also establish one or more enquiry points to provide, upon request, specific information to investors and services suppliers of the other Party on all such matters. Such enquiry points are listed in Annex V. Enquiry points need not be depositories of laws and regulations.

Article 87

Procedures

1. Where authorisation is required for the supply of a service or commercial presence on which a specific commitment has been made, the competent authorities of the Parties and of the Signatory CARIFORUM States shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Parties or of the Signatory CARIFORUM States as the case may be shall provide, without undue delay, information concerning the status of the application.

2. The Parties and the Signatory CARIFORUM States shall maintain or institute judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected investor or service supplier, for a prompt review of, and where justified, appropriate remedies for, administrative decisions affecting commercial presence, cross border supply of services or temporary presence of natural persons for business purpose. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Parties and the Signatory CARIFORUM States shall ensure that the procedures in fact provide for an objective and impartial review.

Section 2

Computer services

Article 88

Understanding on computer services

1. To the extent that trade in computer services is liberalised in accordance with Chapters 2, 3 and 4 of this Title, the EC Party and the Signatory CARIFORUM States subscribe to the understanding defined in paragraphs 2, 3 and 4.

2. CPC 84, the United Nations code used for describing computer and related services, covers the basic functions used to provide all computer and related services: computer programs defined as the sets of instructions required to make computers work and communicate (including their development and implementation), data processing and storage, and related services, such as consultancy and training services for staff of clients. Technological developments have led to the increased offering of these services as a bundle or package of related services that can include some or all of these basic functions. For example, services such as web or domain hosting, data mining services and grid computing each consist of a combination of basic computer services functions.

3. Computer and related services, regardless of whether they are delivered via a network, including the Internet, include all services that provide:

- (a) consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, support, technical assistance, or management of or for computers or computer systems; or
- (b) computer programs defined as the sets of instructions required to make computers work and communicate (in and of themselves), plus consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, adaptation, maintenance, support, technical assistance, management or use of or for computer programs; or
- (c) data processing, data storage, data hosting or database services; or
- (d) maintenance and repair services for office machinery and equipment, including computers; or
- (e) training services for staff of clients, related to computer programs, computers or computer systems, and not elsewhere classified.

4. Computer and related services enable the provision of other services (e.g. banking) by both electronic and other means. However, there is an important distinction between the enabling service (e.g. web-hosting or application hosting) and the content or core service that is being delivered electronically (e.g. banking). In such cases, the content or core service is not covered by CPC 84.

Section 3

Courier services

Article 89

Scope and definitions

1. This Section sets out the principles of the regulatory framework for all courier services liberalised in accordance with Chapters 2, 3 and 4 of this Title.

2. For the purpose of this Section and of Chapters 2, 3 and 4 of this Title:

- (a) universal service means the permanent provision of a postal service of specified quality at all points in the territory of the EC Party and of the Signatory CARIFORUM States at affordable prices for all users;
- (b) an 'individual licence' means an authorisation, granted to an individual supplier by a regulatory authority, which is required before supplying a given service.

Article 90

Prevention of anti-competitive practices in the courier sector

In accordance with the provisions of Chapter 1 of Title IV, appropriate measures shall be maintained or introduced by the EC Party or the Signatory CARIFORUM States for the purpose of preventing suppliers who, alone or together, have the ability to affect materially the terms of participation (having regard to price and supply) in the relevant market for courier services as a result of use of their position in the market, from engaging in or continuing anti-competitive practices.

Article 91

Universal service

The EC Party or any Signatory CARIFORUM State has the right to define the kind of universal service obligation they wish to maintain. Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service as defined by the EC Party and the Signatory CARIFORUM States.

Article 92

Individual licences

1. An individual licence may only be required for services which are within the scope of the universal service.

2. Where an individual licence is required, the following shall be made publicly available:

- (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence, and
- (b) the terms and conditions of individual licences.

3. The reasons for the denial of an individual licence shall be made known to the applicant upon request and an appeal

procedure through an independent body will be established at the level of the EC Party and of the Signatory CARIFORUM States. Such a procedure will be transparent, non-discriminatory, and based on objective criteria.

Article 93

Independence of the regulatory bodies

The regulatory bodies shall be legally separate from, and not accountable to, any supplier of courier services. The decisions of and the procedures used by the regulatory bodies shall be impartial with respect to all market participants.

Section 4

Telecommunications services

Article 94

Definitions and scope

1. For the purpose of this Title:
 - (a) 'telecommunications services' means all services consisting of the transmission and reception of electro-magnetic signals and do not cover the economic activity consisting of the provision of content which requires telecommunications for its transport;
 - (b) a 'regulatory authority' in the telecommunications sector means the body or bodies charged with the regulation of telecommunications mentioned in this Chapter;
 - (c) 'essential telecommunications facilities' mean facilities of a public telecommunications transport network and service that:
 - (i) are exclusively or predominantly provided by a single or limited number of suppliers; and
 - (ii) cannot feasibly be economically or technically substituted in order to provide a service;
 - (d) a 'major supplier' in the telecommunications sector is a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for telecommunications services as a result of control over essential facilities or the use of its position in the market;
 - (e) 'interconnection' means linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;
 - (f) 'universal service' means the set of services of specified quality that must be made available to all users in the

territory of the EC Party and of the Signatory CARIFORUM States regardless of their geographical location and at an affordable price; its scope and implementation are decided by the EC Party and by the Signatory CARIFORUM States.

2. This Section sets out the principles of the regulatory framework for the following telecommunications services, other than broadcasting, liberalised pursuant to Chapters 2, 3 and 4 of this Title: voice telephone services, packet-switched data transmission services, circuit-switched data transmission services, telex services, telegraph services, facsimile services, private leased circuit services and mobile and personal communications services and systems.

Article 95

Regulatory authority

1. Regulatory authorities for telecommunications services shall be legally distinct and functionally independent from any supplier of telecommunications services.
2. The regulatory authority shall be sufficiently empowered to regulate the sector. The tasks to be undertaken by a regulatory authority shall be made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.
3. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants.
4. A supplier affected by the decision of a regulatory authority shall have a right to appeal against that decision to an appeal body that is independent of the parties involved. Where the appeal body is not judicial in character, written reasons for its decision shall always be given and its decisions shall also be subject to review by an impartial and independent judicial authority. Decisions taken by appeal bodies shall be effectively enforced.

Article 96

Authorisation to provide telecommunications services

1. Provision of services shall, as much as possible, be authorised following mere notification.
2. A licence can be required to address issues of attributions of numbers and frequencies. The terms and conditions for such licences shall be made publicly available.
3. Where a licence is required:
 - (a) all the licensing criteria and a reasonable period of time normally required to reach a decision concerning an application for a licence shall be made publicly available;
 - (b) the reasons for the denial of a licence shall be made known in writing to the applicant upon request;

- (c) the applicant of a licence shall be able to seek recourse before an appeal body in case a licence is unduly denied;
- (d) licence fees required by the EC Party or by the Signatory CARIFORUM States for granting a licence shall not exceed the administrative costs normally incurred in the management, control and enforcement of the applicable licences.

Article 97

Competitive safeguards on major suppliers

In accordance with the provisions of Chapter 1 of Title IV, appropriate measures shall be maintained or introduced by the EC Party or the Signatory CARIFORUM States for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices. These anti-competitive practices shall include in particular:

- (a) engaging in anti-competitive cross-subsidisation;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

Article 98

Interconnection

1. Any supplier authorised to provide telecommunications services shall have the right to negotiate interconnection with other providers of publicly available telecommunications networks and services. Interconnection should in principle be agreed on the basis of commercial negotiation between the companies concerned.

2. Regulatory authorities shall ensure that suppliers that acquire information from another undertaking during the process of negotiating interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.

3. Interconnection with a major supplier shall be ensured at any technically feasible point in the network. Such interconnection shall be provided:

- (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;
- (b) in a timely fashion, on terms, conditions (including technical standards and specifications) and rates ⁽¹⁾ that

⁽¹⁾ Such rates are cost-oriented rates in the EC Party, and cost-based rates in Signatory CARIFORUM States.

are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and

- (c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

4. The procedures applicable for interconnection to a major supplier shall be made publicly available.

5. Major suppliers shall make publicly available either their interconnection agreements or their reference interconnection offers.

6. A service supplier requesting interconnection with a major supplier shall have recourse, either at any time or after a reasonable period of time which has been made publicly known, to an independent domestic body, which may be a regulatory body as referred to in Article 95, to resolve disputes regarding appropriate terms, conditions and rates for interconnection.

Article 99

Scarce resources

Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, shall be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands shall be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

Article 100

Universal service

1. The EC Party or any Signatory CARIFORUM State has the right to define the kind of universal service obligations they wish to maintain.

2. Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, objective and non-discriminatory way. The administration of such obligations shall also be neutral with respect to competition and not more burdensome than necessary for the kind of universal service defined by the EC Party and by the Signatory CARIFORUM States.

3. All suppliers should be eligible to ensure universal service. The designation shall be made through an efficient, transparent and non-discriminatory mechanism. Where necessary, the EC Party and the Signatory CARIFORUM States shall assess whether the provision of universal service represents an unfair burden on

organisations(s) designated to provide universal service. Where justified on the basis of such calculation, and taking into account the market benefit, if any, which accrues to an organisation that offers universal service, national regulatory authorities shall determine whether a mechanism is required to compensate the supplier(s) concerned or to share the net cost of universal service obligations.

4. The EC Party and the Signatory CARIFORUM States shall ensure that:

- (a) directories of all subscribers are available to users in a form approved by the national regulatory authority, whether printed or electronic, or both, and are updated on a regular basis, and at least once a year;
- (b) organisations that provide the services referred to in subparagraph (a) apply the principle of non-discrimination to the treatment of information that has been provided to them by other organisations.

Article 101

Confidentiality of information

The EC Party and the Signatory CARIFORUM States shall ensure the confidentiality of telecommunications and related traffic data by means of a public telecommunication network and publicly available telecommunications services, without restricting trade in services.

Article 102

Disputes between suppliers

1. In the event of a dispute arising between suppliers of telecommunications networks or services in connection with rights and obligations that arise from this Chapter, the national regulatory authority concerned shall, at the request of either party to the dispute, issue a binding decision to resolve the dispute in the shortest possible timeframe.
2. When such a dispute concerns the cross-border provision of services, the national regulatory authorities concerned shall coordinate their efforts in order to bring about a resolution of the dispute.

Section 5

Financial services

Article 103

Scope and definitions

1. This Section sets out the principles of the regulatory framework for all financial services liberalised pursuant to Chapters 2, 3 and 4 of this Title.
2. For the purpose of this Chapter and of Chapters 2, 3 and 4 of this Title:
 - (a) 'financial service' means any service of a financial nature offered by a financial service supplier of the EC Party and of

the Signatory CARIFORUM States. Financial services comprise the following activities:

A. Insurance and insurance-related services

1. direct insurance (including co-insurance):
 - (i) life;
 - (ii) non-life;
2. reinsurance and retrocession;
3. insurance inter-mediation, such as brokerage and agency; and
4. services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

B. Banking and other financial services (excluding insurance):

1. acceptance of deposits and other repayable funds from the public;
2. ending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
3. financial leasing;
4. all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
5. guarantees and commitments;
6. trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (i) money market instruments (including cheques, bills, certificates of deposits);
 - (ii) foreign exchange;
 - (iii) derivative products including, but not limited to, futures and options;
 - (iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (v) transferable securities;
 - (vi) other negotiable instruments and financial assets, including bullion;
7. participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
8. money broking;
9. asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

10. settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

11. provision and transfer of financial information, and financial data processing and related software;

12. advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (1) through (11), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

(b) 'financial service supplier' means any natural or juridical person of the EC Party or of the Signatory CARIFORUM States which seeks to provide or provides financial services. The term 'financial service supplier' does not include a public entity;

(c) 'public entity' means:

1. a government, a central bank or a monetary authority, of the EC Party or of a Signatory CARIFORUM State, or an entity owned or controlled by the EC Party or by a Signatory CARIFORUM State, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

2. a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions;

(d) 'new financial service' means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of the EC Party or of the Signatory CARIFORUM States but which is supplied in the territory of the other Party.

Article 104

Prudential carve-out

1. The EC Party and the Signatory CARIFORUM States may adopt or maintain measures for prudential reasons, such as:

(a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier;

(b) ensuring the integrity and stability of their financial system.

2. Nothing in this Agreement shall be construed to require the EC Party or the Signatory CARIFORUM States to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

Article 105

Effective and transparent regulation

1. The Parties and the Signatory CARIFORUM States shall endeavour to provide in advance to all interested persons any measure of general application that the EC Party or the Signatory CARIFORUM States propose to adopt in order to allow an opportunity for such persons to comment on the measure. Such measure shall be provided:

(a) by means of an official publication; or

(b) in other written or electronic form.

2. The EC Party and the Signatory CARIFORUM States shall make available to interested persons their requirements for completing applications relating to the supply of financial services.

On the request of an applicant, the concerned EC Party or Signatory CARIFORUM State shall inform the applicant of the status of its application. If the concerned EC Party or Signatory CARIFORUM State requires additional information from the applicant, it shall notify the applicant without undue delay.

The EC Party and the Signatory CARIFORUM States shall endeavour to facilitate the implementation and application in their territory of internationally agreed standards for regulation and supervision in the financial services sector.

Article 106

New financial services ⁽¹⁾

The EC Party and the Signatory CARIFORUM States shall permit a financial service supplier of the other Party to provide any new financial service of a type similar to those services that the EC Party and the Signatory CARIFORUM States permit their own

⁽¹⁾ This Article applies only to financial services activities covered by Article 103 and liberalised according to this Title.

financial service suppliers to provide under their domestic law in like circumstances. The EC Party and the Signatory CARIFORUM States may determine the juridical form through which the service may be provided and may require authorisation for the provision of the service. Where such authorisation is required, a decision shall be made within a reasonable time and the authorisation may only be refused for prudential reasons.

Article 107

Data processing

1. The EC Party and the Signatory CARIFORUM States shall permit a financial service supplier of the other Party to transfer information in electronic or other form, into and out of their territory, for data processing where such processing is required in the ordinary course of business of such financial service supplier.

2. The EC Party and the Signatory CARIFORUM States shall adopt adequate safeguards to the protection of privacy and fundamental rights, and freedom of individuals, in particular with regard to the transfer of personal data.

Article 108

Specific exceptions

1. Nothing in this Title shall be construed to prevent the EC Party and the Signatory CARIFORUM States, including their public entities, from exclusively conducting or providing in their territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out, as provided by the domestic regulation of the EC Party or the Signatory CARIFORUM State concerned, by financial service suppliers in competition with public entities or private institutions.

2. Nothing in this Agreement applies to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.

3. Nothing in this Title shall be construed to prevent the EC Party and the Signatory CARIFORUM States, including their public entities, from exclusively conducting or providing in their territory activities or services for the account or with the guarantee or using the financial resources of the EC Party or the Signatory CARIFORUM State, or their public entities.

Section 6

International maritime transport services

Article 109

Scope, definitions and principles

1. This Section sets out the principles regarding the liberalisation of international maritime transport services pursuant to Chapters 2, 3 and 4 of this Title.

2. For the purpose of this Section and Chapters 2, 3 and 4 of this Title:

- (a) 'international maritime transport' includes door to door and multi-modal transport operations, which is the carriage of goods using more than one mode of transport, involving a sea-leg, under a single transport document, and to this effect includes the right to directly contract with providers of other modes of transport;
- (b) 'maritime cargo handling services' means activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:
 - (i) the loading/discharging of cargo to/from a ship;
 - (ii) the lashing/unlashing of cargo;
 - (iii) the reception/delivery and safekeeping of cargoes before shipment or after discharge;
- (c) 'customs clearance services' (alternatively 'customs house brokers' services') means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity;
- (d) 'container station and depot services' means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing/stripping, repairing and making them available for shipments;
- (e) 'maritime agency services' means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:
 - (i) marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;
 - (ii) acting on behalf of the companies organising the call of the ship or taking over cargoes when required;

- (f) 'freight forwarding services' means the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information.

3. In view of the existing levels of liberalisation between the Parties in international maritime transport:

- (a) The EC Party and the Signatory CARIFORUM States shall apply effectively the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis;
- (b) The EC Party and the Signatory CARIFORUM States shall grant to ships flying the flag of the other Party or of any Signatory CARIFORUM State or operated by service suppliers of the other Party treatment no less favourable than that accorded to their own ships with regard to, *inter alia*, access to ports, use of infrastructure and auxiliary maritime services of the ports, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading.

4. In applying these principles, the EC Party and the Signatory CARIFORUM States shall:

- (a) not introduce cargo-sharing arrangements in future bilateral agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and terminate, within a reasonable period of time, such cargo-sharing arrangements in case they exist in previous bilateral agreements; and
- (b) upon the entry into force of this Agreement, abolish and abstain from introducing any unilateral measures and administrative, technical and other obstacles which could constitute a disguised restriction or have discriminatory effects on the free supply of services in international maritime transport.

5. The EC Party and the Signatory CARIFORUM States shall permit international maritime service suppliers of the other Party to have a commercial presence in their territory under conditions of establishment and operation no less favourable than those accorded to their own service suppliers or those of any third country, whichever are the better.

6. The EC Party and the Signatory CARIFORUM States shall make available to international maritime transport suppliers of the other Party on reasonable and non discriminatory terms and conditions the following services at the port: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, shore-based operational services essential to ship

operations, including communications, water and electrical supplies, emergency repair facilities, anchorage, berth and berthing services.

Section 7

Tourism services

Article 110

Scope

This Section sets out the principles of the regulatory framework for all tourism services liberalised in accordance with Chapters 2, 3 and 4 of this Title.

Article 111

Prevention of anticompetitive practices

In accordance with the provisions of Chapter 1 of Title IV, appropriate measures shall be maintained or introduced by the EC Party or the Signatory CARIFORUM States for the purpose of preventing suppliers, in particular in the context of tourism distribution networks ⁽¹⁾, to affect materially the terms of participation in the relevant market for tourism services by engaging in or continuing anti-competitive practices, including, *inter alia*, abuse of dominant position through imposition of unfair prices, exclusivity clauses, refusal to deal, tied sales, quantity restrictions or vertical integration.

Article 112

Access to technology

The EC Party and the Signatory CARIFORUM States shall endeavour to facilitate the transfer of technology on a commercial basis to commercial presences in the Signatory CARIFORUM States.

Article 113

Small- and medium-sized enterprises

The EC Party and the Signatory CARIFORUM States shall endeavour to facilitate the participation of small- and medium-sized enterprises in the tourism services sector.

Article 114

Mutual recognition

The Parties shall cooperate towards the mutual recognition of requirements, qualifications, licenses or other regulations in accordance with Article 85.

⁽¹⁾ For the purpose of this Section, tourism distribution networks means tour operators and other tourism wholesalers (both out-bound and in-bound), computer reservation systems and global distribution systems (whether or not connected to airlines or provided through the Internet), travel agencies and other distributors of tourism services.

*Article 115***Increasing the impact of tourism on sustainable development**

The Parties shall encourage the participation of CARIFORUM services suppliers in international, regional, sub-regional, bilateral and private financing programs to support the sustainable development of tourism.

*Article 116***Environmental and quality standards**

The Parties and the Signatory CARIFORUM States shall encourage compliance with environmental and quality standards applicable to tourism services in a reasonable and objective manner, without constituting unnecessary barriers to trade, and shall endeavour to facilitate the participation of the Signatory CARIFORUM States in relevant international organisations setting environmental and quality standards applicable to tourism services.

*Article 117***Development cooperation and technical assistance**

1. The Parties shall cooperate for the advancement of the tourism sector in the Signatory CARIFORUM States, given the inherent asymmetries in respective levels of development of the Parties.

2. Subject to the provisions of Article 7, the Parties agree to cooperate, including by facilitating support in the following areas:

- (a) The upgrading of national accounting systems with a view to facilitating the introduction of Tourism Satellite Accounts (TSA) at the regional and local level;

- (b) Capacity building for environmental management in tourism areas at the regional and local level;

- (c) The development of Internet marketing strategies for small and medium-sized tourism enterprises in the tourism services sector;

- (d) Mechanisms to ensure the effective participation of Signatory CARIFORUM States in international standard setting bodies focused on sustainable tourism standards development; programmes to achieve and ensure equivalency between national/regional and international standards for sustainable tourism; and programmes aimed at increasing the level of compliance with sustainable tourism standards by regional tourism services suppliers;

- (e) Tourism exchange programs and training, including language training, for tourism services providers.

*Article 118***Exchange of information and consultation**

1. The Parties agree to exchange experiences, information and best practices and to consult on issues covered by this section and relevant to trade between the Parties. The CARIFORUM-EC Trade and Development Committee shall develop modalities for this regular dialogue on the issues covered by this Section.

2. The Parties shall invite private and other relevant stakeholders to this dialogue, where relevant and agreed by them.

3. The Parties agree further that regular dialogue would be useful on the issuance of travel advisories.

*CHAPTER 6****Electronic commerce****Article 119***Objective and principles**

1. The Parties, recognising that electronic commerce increases trade opportunities in many sectors, agree to promote the development of electronic commerce between them, in particular by cooperating on the issues raised by electronic commerce under the provisions of this Title.

2. The Parties agree that the development of electronic commerce must be fully compatible with the highest international standards of data protection, in order to ensure the confidence of users of electronic commerce.

3. The Parties agree that deliveries by electronic means shall be considered as the provision of services, within the meaning of

Chapter 3 of this Title, which cannot be subject to customs duties.

*Article 120***Regulatory aspects of e-commerce**

1. The Parties shall maintain a dialogue on regulatory issues raised by electronic commerce, which will, *inter alia*, address the following issues:

- (a) the recognition of certificates of electronic signatures issued to the public and the facilitation of cross-border certification services;

- (b) the liability of intermediary service providers with respect to the transmission, or storage of information;
 - (c) the treatment of unsolicited electronic commercial communications;
 - (d) the protection of consumers in the ambit of electronic commerce;
 - (e) any other issue relevant for the development of electronic commerce.
2. Such cooperation can take the form of exchange of information on the respective legislation of the Parties and the Signatory CARIFORUM States on these issues as well as on the implementation of such legislation.

CHAPTER 7

Cooperation

Article 121

Cooperation

1. The Parties recognise the importance of technical cooperation and assistance in order to complement the liberalisation of services and investment, support the Signatory CARIFORUM States' efforts to strengthen their capacity in the supply of services, facilitate the implementation of commitments under this Title, and achieve the objectives of this Agreement.

2. Subject to the provisions of Article 7, the Parties agree to cooperate, including by providing support for technical assistance, training and capacity building in, *inter alia*, the following areas:

- (a) Improving the ability of service suppliers of the Signatory CARIFORUM States to gather information on and to meet regulations and standards of the EC Party at European Community, national and sub-national levels;
- (b) Improving the export capacity of service suppliers of the Signatory CARIFORUM States, with particular attention to the marketing of tourism and cultural services, the needs of small and medium-sized enterprises, franchising and the negotiation of mutual recognition agreements;
- (c) Facilitating interaction and dialogue between service suppliers of the EC Party and of the Signatory CARIFORUM States;
- (d) Addressing quality and standards needs in those sectors where the Signatory CARIFORUM States have undertaken commitments under this Agreement and with respect to their domestic and regional markets as well as trade between the Parties, and in order to ensure participation in the development and adoption of sustainable tourism standards;
- (e) Developing and implementing regulatory regimes for specific service sectors at CARIFORUM regional level and in Signatory CARIFORUM States in those sectors where they have undertaken commitments under this Agreement; and
- (f) Establishing mechanisms for promoting investment and joint ventures between service suppliers of the EC Party and of the Signatory CARIFORUM States, and enhancing the capacities of investment promotion agencies in Signatory CARIFORUM States.

TITLE III

CURRENT PAYMENTS AND CAPITAL MOVEMENT

Article 122

Current payments

Subject to the provisions of Article 124, the Signatory CARIFORUM States and the EC Party undertake to impose no restrictions on and to allow all payments for current transactions between residents of the EC Party and of the CARIFORUM States to be made in freely convertible currency.

Article 123

Capital movements

1. With regard to transactions on the capital account of balance of payments, the Signatory CARIFORUM States and the EC Party undertake to impose no restrictions on the free movement of capital relating to direct investments made in accordance with the laws of the host country and investments established in accordance with the provisions of Title II, and the liquidation and repatriation of these capitals and of any profit stemming therefrom.

2. The Parties shall consult each other with a view to facilitating the movement of capital between them in order to promote the objectives of this Agreement.

Article 124

Safeguard measures

1. Where, in exceptional circumstances, payments and capital movements between the Parties cause or threaten to cause serious difficulties for the operation of monetary policy or

exchange rate policy in one or more CARIFORUM States or one or more Member States of the European Union, safeguard measures with regard to capital movements that are strictly necessary may be taken by the EC Party or the concerned Signatory CARIFORUM State or States for a period not exceeding six months.

2. The Joint CARIFORUM-EC Council shall be informed forthwith of the adoption of any safeguard measure and, as soon as possible, of a time schedule for its removal.

TITLE IV

TRADE-RELATED ISSUES

CHAPTER 1

Competition

Article 125

Definitions

For the purposes of this Chapter:

1. 'Competition Authority' means for the EC Party, the 'European Commission'; and for the CARIFORUM States one or more of the following Competition Authorities as appropriate: the CARICOM Competition Commission and the Comisión Nacional de Defensa de la Competencia of the Dominican Republic;
2. 'enforcement proceeding' means a proceeding instituted by the competent Competition Authority of a Party against one or more undertakings with the aim of establishing and remedying anti-competitive behaviour;
3. 'competition laws' includes:

- (a) for the EC Party, Articles 81, 82 and 86 of the Treaty establishing the European Community, and their implementing regulations or amendments;
- (b) for the CARIFORUM States, Chapter 8 of the Revised Treaty of Chaguaramas of 5 July 2001, national competition legislation complying with the Revised Treaty of Chaguaramas and the national competition legislation of The Bahamas and the Dominican Republic. Upon entry into force of this Agreement and thereafter, the enactment of such legislation shall be brought to attention of the EC Party through the CARIFORUM-EC Trade and Development Committee.

Article 126

Principles

The Parties recognise the importance of free and undistorted competition in their trade relations. The Parties acknowledge that anti-competitive business practices have the potential to distort the proper functioning of markets and generally undermine the benefits of trade liberalisation. They therefore agree that the following practices restricting competition are incompatible with the proper functioning of this Agreement, in so far as they may affect trade between the Parties:

- (a) agreements and concerted practices between undertakings, which have the object or effect of preventing or substantially lessening competition in the territory of the EC Party or of the CARIFORUM States as a whole or in a substantial part thereof;
- (b) abuse by one or more undertakings of market power in the territory of the EC Party or of the CARIFORUM States as a whole or in a substantial part thereof.

Article 127

Implementation

1. The Parties and the Signatory CARIFORUM States shall ensure that within five years of the entry into force of this Agreement they have laws in force addressing restrictions on competition within their jurisdiction, and have established the bodies referred to in Article 125(1).

2. Upon entry into force of the laws and the establishment of the bodies referred to in paragraph 1, the Parties shall give effect to the provisions of Article 128. The Parties also agree to review the operation of this Chapter after a confidence-building period between their Competition Authorities of six years following the coming into operation of Article 128.

*Article 128***Exchange of information and enforcement cooperation**

1. Each Competition Authority may inform the other Competition Authorities of its willingness to cooperate with respect to enforcement activity. This cooperation shall not prevent the Parties or the Signatory CARIFORUM States from taking autonomous decisions.

2. With a view to facilitating the effective application of their respective competition laws, the Competition Authorities may exchange non-confidential information. All exchange of information shall be subject to the standards of confidentiality applicable in each Party and the Signatory CARIFORUM States.

3. Any Competition Authority may inform the other Competition Authorities of any information it possesses which indicates that anticompetitive business practices falling within the scope of this Chapter are taking place in the other Party's territory. The Competition Authority of each Party shall decide upon the form of the exchange of information in accordance with its best practices. Each Competition Authority may also inform the other Competition Authorities of any enforcement proceeding being carried out by it in the following instances:

- (i) The activity being investigated takes place wholly or substantially within the jurisdiction of any of the other Competition Authorities;
- (ii) The remedy likely to be imposed would require the prohibition of conduct in the territory of the other Party or Signatory CARIFORUM States;
- (iii) The activity being investigated involves conduct believed to have been required, encouraged or approved by the other Party or Signatory CARIFORUM States.

*Article 129***Public enterprises and enterprises entrusted with special or exclusive rights, including designated monopolies**

1. Nothing in this Agreement prevents a Party or a Signatory CARIFORUM State from designating or maintaining public or private monopolies according to their respective laws.

2. With regard to public enterprises and enterprises to which special or exclusive rights have been granted, the Parties and the Signatory CARIFORUM States shall ensure that, following the date of the entry into force of this Agreement, there is neither enacted nor maintained any measure distorting trade in goods or services between the Parties to an extent contrary to the Parties interest, and that such enterprises shall be subject to the rules of

competition in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

3. By derogation from paragraph 2, the Parties agree that where public enterprises in the Signatory CARIFORUM States are subject to specific sectoral rules as mandated by their respective regulatory frameworks, such public enterprises shall not be bound or governed by the provisions of this Article.

4. The Parties and the Signatory CARIFORUM States shall progressively adjust, without prejudice to their obligations under the WTO Agreement, any State monopolies of a commercial nature or character, so as to ensure that, by the end of the fifth year following the entry into force of this Agreement, no discrimination regarding the conditions under which goods and services are sold or purchased exists between goods and services originating in the EC Party and those originating in the CARIFORUM States or between nationals of the Member States of the European Union and those of the CARIFORUM States, unless such discrimination is inherent in the existence of the monopoly in question.

5. The CARIFORUM-EC Trade and Development Committee shall be informed about the enactment of sectoral rules provided for in paragraph 3 and the measures adopted to implement paragraph 4.

*Article 130***Cooperation**

1. The Parties agree on the importance of technical assistance and capacity-building to facilitate the implementation of the commitments and achieve the objectives of this Chapter and in particular to ensure effective and sound competition policies and rule enforcement, especially during the confidence-building period referred to in Article 127.

2. Subject to the provisions of Article 7 the Parties agree to cooperate, including by facilitating support, in the following areas:

- (a) the efficient functioning of the CARIFORUM Competition Authorities;
- (b) assistance in drafting guidelines, manuals and, where necessary, legislation;
- (c) the provision of independent experts; and
- (d) the provision of training for key personnel involved in the implementation of and enforcement of competition policy.

CHAPTER 2

Innovation and intellectual property

Article 131

Context

1. The Parties agree that fostering innovation and creativity improves competitiveness and is a crucial element in their economic partnership, in achieving sustainable development, promoting trade between them and ensuring the gradual integration of CARIFORUM States into the world economy.

2. They also recognise that the protection and enforcement of intellectual property plays a key role in fostering creativity, innovation and competitiveness, and are determined to ensure increasing levels of protection appropriate to their levels of development.

Article 132

Objectives

The objectives of this Chapter are to:

- (a) promote the process of innovation, including eco-innovation, of enterprises located in the Parties;
- (b) foster competitiveness of enterprises and in particular micro-, small and medium-sized enterprises of the Parties;
- (c) facilitate the production and commercialisation of innovative and creative products between the Parties;
- (d) achieve an adequate and effective level of protection and enforcement of intellectual property rights;
- (e) contribute to the promotion of technological innovation and to the transfer and dissemination of technology and know-how;
- (f) encourage, develop and facilitate cooperative research and development activities in science and technology between the Parties, as well as to develop lasting relations between the Parties' scientific communities;
- (g) encourage, develop and facilitate cooperative production and development activities in the creative industries between the Parties, as well as to develop lasting relationships between the Parties' creative communities;
- (h) promote and strengthen regional cooperative activities involving the outermost regions of the European Community, so as to allow these regions and the CARIFORUM States to mutually benefit from their proximity and neighbourhood situation by developing an innovative and competitive regional area.

Section 1

Innovation

Article 133

Regional integration

The Parties recognise that measures and policies to be taken at the regional level are necessary to fully attain the objectives of this Section. The CARIFORUM States agree to increase action at the regional level with a view to providing enterprises with a regulatory and policy framework conducive to fostering competitiveness through innovation and creativity.

Article 134

Participation in framework programmes

1. The participation of the Parties and the Signatory CARIFORUM States shall be facilitated and promoted in existing and future framework programmes, specific programmes and other activities of the other Party, in so far as it is permitted by each Party's internal rules governing access to the programmes and activities concerned.
2. The CARIFORUM-EC Trade and Development Committee may make recommendations in order to facilitate the participation of CARIFORUM institutions and enterprises in the programmes referred to in paragraph 1 and shall periodically review such participation.

Article 135

Cooperation in the area of competitiveness and innovation

1. The Parties recognise that the promotion of creativity and innovation is essential for the development of entrepreneurship and competitiveness and the achievement of the overall objectives of this Agreement.
2. Subject to the provisions of Article 7 and 134, the Parties agree to cooperate, including by facilitating support, in the following areas:
 - (a) promotion of innovation, diversification, modernisation, development and product and process quality in businesses;
 - (b) promotion of creativity and design, particularly in micro, small and medium enterprises, and exchanges between networks of design centres located in the EC Party and the CARIFORUM States;
 - (c) promotion of dialogue and exchanges of experience and information between networks of economic operators;

- (d) technical assistance, conferences, seminars, exchange visits, prospecting for industrial and technical opportunities, participation in round tables and general and sectoral trade fairs;
- (e) promotion of contacts and industrial cooperation between economic operators, encouraging joint investment and ventures and networks through existing and future programs;
- (f) promotion of partnerships for research and development activities in the CARIFORUM States in order to improve their innovation systems; and
- (g) intensification of activities to promote linkages, innovation and technology transfer between CARIFORUM and European Community partners.

Article 136

Cooperation on science and technology

1. The Parties will foster the participation of their research and technological development bodies in the cooperation activities in compliance with their internal rules. Cooperative activities may take the following forms:

- (a) joint initiatives to raise the awareness of the science and technology capacity building programmes of the European Community, including the international dimension of 7th Framework Programme for Research and Technological Development (FP7) and possible successor programmes, as appropriate;
- (b) joint research networks in areas of common interest;
- (c) exchanges of researchers and experts to promote project preparation and participation in FP7 and in the other research programmes of the European Community;
- (d) joint scientific meetings to foster exchanges of information and interaction and to identify areas for joint research;
- (e) promotion of advanced science and technology studies which contribute to the long term sustainable development of both Parties;
- (f) development of links between the public and private sectors;
- (g) evaluation of joint work and the dissemination of results;
- (h) policy dialogue and exchanges of scientific and technological information and experience at regional level;
- (i) exchange of information at regional level on regional science and technology programmes;

- (j) participation in the Knowledge and Innovation Communities of the European Institute of Innovation and Technology.

2. Special emphasis will be put on human potential building as a long-lasting basis of scientific and technological excellence and the creation of sustainable links between the scientific and technological communities of the Parties, at both national and regional levels.

3. Research centres, higher-education institutions, and other stakeholders, including micro, small and medium enterprises, located in the Parties shall be involved in this cooperation as appropriate.

4. The Parties shall promote the participation of their respective entities in each other's scientific and technological programmes in pursuit of mutually beneficial scientific excellence and in accordance with their respective provisions governing the participation of legal entities from third countries.

Article 137

Cooperation on information society and information and communication technologies

1. The Parties recognise that information and communications technologies (ICT) are key sectors in a modern society and are of vital importance to foster creativity, innovation and competitiveness, as well as the smooth transition to the information society.

2. Subject to the provisions of Article 7 and 134, the Parties agree to cooperate, including by facilitating support, in the following areas:

- (a) dialogue on the various policy aspects regarding the promotion and monitoring of the information society;
- (b) exchange of information on regulatory issues;
- (c) exchange of information on standards and interoperability issues;
- (d) promotion of cooperation in the field of ICT research and development and in the field of ICT-based research infrastructures;
- (e) development of non-commercial content and pilot applications in domains of high societal impact; and
- (f) ICT capacity-building with, in particular, the promotion of networking, exchange and training of specialists, especially in the regulatory domain.

*Article 138***Cooperation on eco-innovation and renewable energy**

1. With a view to achieving sustainable development and in order to help maximise any positive and prevent any negative environmental impacts resulting from this Agreement, the Parties recognise the importance of fostering forms of innovation that benefit the environment in all sectors of their economy. Such forms of eco-innovation include energy efficiency and renewable sources of energy.

2. Subject to the provisions of Article 7 and 134, the Parties agree to cooperate, including by facilitating support, in the following areas:

- (a) projects related to environmentally-friendly products, technologies, production processes, services, management and business methods, including those related to appropriate water-saving and Clean Development Mechanism applications;
- (b) projects related to energy efficiency and renewable energy;
- (c) promotion of eco-innovation networks and clusters, including through public-private partnerships;
- (d) exchanges of information, know-how and experts;
- (e) awareness-raising and training activities;
- (f) preparation of studies and provision of technical assistance;
- (g) collaboration in research and development; and
- (h) pilot and demonstration projects.

*Section 2***Intellectual property***Subsection 1***Principles***Article 139***Nature and scope of obligations**

1. The EC Party and the Signatory CARIFORUM States shall ensure an adequate and effective implementation of the international treaties dealing with intellectual property to which they are parties and of the Agreement on Trade-related Aspects of Intellectual Property, contained in Annex IC to the Agreement establishing the World Trade Organisation (hereinafter referred to as the TRIPS Agreement).

2. The EC Party and the Signatory CARIFORUM States agree that the principles set out in Article 8 of the TRIPS Agreement apply to this Section. The Parties also agree that an adequate and effective enforcement of intellectual property rights should take account of the development needs of the CARIFORUM States, provide a balance of rights and obligations between right holders and users and allow the EC Party and the Signatory CARIFORUM States to protect public health and nutrition. Nothing in this Agreement shall be construed as to impair the capacity of the Parties and the Signatory CARIFORUM States to promote access to medicines.

3. For the purpose of this Agreement, intellectual property rights include copyright (including the copyright in computer programmes, and neighbouring rights); utility models; patents including patents for bio-technological inventions; protection for plant varieties; designs; layout-designs (topographies) of integrated circuits; geographical indications; trade marks for goods or services; protection for data bases; protection against unfair competition as referred to in Article 10bis of the Paris Convention for the Protection of Industrial Property, and protection of undisclosed confidential information on know how.

4. In addition and without prejudice to their existing and future international obligations, the EC Party and the Signatory CARIFORUM States shall give effect to the provisions of this Section and ensure their adequate and effective implementation no later than 1 January 2014 unless the CARIFORUM-EC Trade and Development Committee determines otherwise taking into account the development priorities and levels of development of the Signatory CARIFORUM States. The EC Party and the Signatory CARIFORUM States shall be free to determine the appropriate method of implementing the provisions of this Section within their own legal system and practice.

5. The EC Party and the Signatory CARIFORUM States may, but shall not be obliged to, implement in their law more extensive protection than is required by this Section, provided that such protection does not contravene the provisions of this Section.

*Article 140***Least-developed countries**

Notwithstanding Article 139(1) and (4), Least-Developed Countries party to this Agreement shall be required to apply the following provisions only as established herein:

- (a) the obligations under the TRIPS Agreement on equal pace with what may be required of them with regard to the implementation of the TRIPS Agreement under the relevant decisions of the Council for TRIPS or other applicable decisions by the WTO General Council;

- (b) the obligations under Subsections 2 and 3 of this Section, not later than 1 January 2021, unless the CARIFORUM-EC Trade and Development Committee determines otherwise taking into account the relevant decisions mentioned in subparagraph (a).

Article 141

Regional integration

1. The EC Party and the Signatory CARIFORUM States undertake to continue to consider further steps towards deeper integration in their respective regions in the field of intellectual property rights. This process shall cover further harmonisation of intellectual property laws and regulations, further progress towards regional management and enforcement of national intellectual property rights, as well as the creation and management of regional intellectual property rights, as appropriate.

2. The EC Party and the Signatory CARIFORUM States undertake to move towards a harmonised level of intellectual property protection across their respective regions.

Article 142

Transfer of technology

1. The EC Party and the Signatory CARIFORUM States agree to exchange views and information on their practices and policies affecting transfer of technology, both within their respective regions and with third countries. This shall in particular include measures to facilitate information flows, business partnerships, licensing and subcontracting. Particular attention shall be paid to the conditions necessary to create an adequate enabling environment for technology transfer in the host countries, including issues such as development of human capital and legal framework.

2. The EC Party and the Signatory CARIFORUM States shall take measures, as appropriate, to prevent or control licensing practices or conditions pertaining to intellectual property rights which may adversely affect the international transfer of technology and that constitute an abuse of intellectual property rights by right holders or an abuse of obvious information asymmetries in the negotiation of licences.

3. The EC Party shall facilitate and promote the use of incentives granted to institutions and enterprises in its territory for the transfer of technology to institutions and enterprises of the CARIFORUM States in order to enable the CARIFORUM States to establish a viable technological base. The EC Party shall endeavour to bring any known measures to the attention of the CARIFORUM EC Trade and Development Committee for discussion and review.

Subsection 2

Standards concerning intellectual property rights

Article 143

Copyright and related rights

A. International agreements

1. The EC Party and the Signatory CARIFORUM States shall comply with:

- (a) The World Intellectual Property Organisation (WIPO) Copyright Treaty (Geneva, 1996); and
- (b) The WIPO Performances and Phonograms Treaty (Geneva, 1996).

2. The Signatory CARIFORUM States shall endeavour to accede to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961).

B. Cooperation on collective management of rights

The EC Party and the Signatory CARIFORUM States shall facilitate the establishment of arrangements between their respective collecting societies with the purpose of mutually ensuring easier access to and delivery of licences for the use of content at the regional level throughout the territories of the EC Party and the Signatory CARIFORUM States so that right holders are adequately rewarded for the use of such content.

Article 144

Trade marks

A. Registration procedure

The EC Party and the Signatory CARIFORUM States shall provide for a system for the registration of trade marks in which each final decision taken by the relevant trade mark administration is reasoned and in writing. The applicant will have the opportunity to contest the refusal to register a trade mark and to appeal a final refusal before the Courts. The EC Party and the Signatory CARIFORUM States shall also introduce the possibility to object to the registration of trade marks after the publication of the applications. The EC Party and the Signatory CARIFORUM States shall provide publicly available electronic databases of trade mark applications and trade mark registrations.

B. Well-known trade marks

The EC Party and the Signatory CARIFORUM States recall the obligation under the TRIPS Agreement to apply the concept of well-known marks to service marks. In determining whether a trade mark is well-known, the EC Party and the Signatory CARIFORUM States shall endeavour to apply the Joint

Recommendation adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO, 20 to 29 September 1999.

C. *Internet use*

The EC Party and the Signatory CARIFORUM States accept the need for a clear legal framework for trade mark owners who wish to use their trade marks on the Internet and to participate in the development of electronic commerce which includes provisions addressing whether the use of a sign on the Internet has contributed to the acquisition or infringement of a mark or whether such use constitutes an act of unfair competition, and a determination of the remedies. In this respect, the EC Party and the Signatory CARIFORUM States shall endeavour to apply the Joint Recommendation concerning the protection of marks, and other industrial property rights in signs, on the Internet, as adopted by WIPO at the Thirty-Sixth Series of Meetings of the Assemblies of the Member States of WIPO, 24 September to 3 October 2001.

D. *Trade mark licenses*

The EC Party and the Signatory CARIFORUM States shall endeavour to apply the joint recommendations concerning trade mark licenses adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO at the Thirty-Fifth Series of Meetings of the Assemblies of the Member States of WIPO, 25 September to 3 October 2000.

E. *International agreements*

The EC Party and the Signatory CARIFORUM States shall endeavour to accede to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989) and the revised Trade mark Law Treaty (2006).

F. *Exceptions to the rights conferred by a trade mark*

The EC Party and the Signatory CARIFORUM States shall provide for the fair use of descriptive terms, including geographical indications, as a limited exception to the rights conferred by a trade mark. Such limited exception shall take account of the legitimate interests of the owner of the trade mark and of third parties.

Article 145

Geographical indications

A. *Protection in the country of origin*

1. Nothing in this Agreement shall require the EC Party and the Signatory CARIFORUM States to protect in their territories geographical indications that are not protected in their country of origin.

2. The Signatory CARIFORUM States shall establish a system of protection of geographical indications in their respective territories no later than 1 January 2014. The Parties shall cooperate through the CARIFORUM-EC Trade and Development Committee in accordance with the provisions of Article 164(2)(c) towards the development of geographical indications in the territories of the CARIFORUM States. To this end, and within six months from the entry into force of the Agreement, the CARIFORUM States shall submit to the consideration of the CARIFORUM EC Trade and Development Committee a list of prospective Geographical Indications originating in the CARIFORUM States for its discussion and comments.

3. The Parties shall discuss within the CARIFORUM EC Trade and Development Committee the effective implementation of this Article and exchange information on legislative and policy developments on geographical indications.

B. *Term of protection*

1. Protection afforded in respect of geographical indications in the EC Party and the Signatory CARIFORUM States shall be granted in accordance with the legal system and practice of the EC Party or the relevant Signatory CARIFORUM State as the case may be, and shall be indefinite ⁽¹⁾.

2. Such protection shall ensure that the use of geographical indications of goods protected pursuant to paragraph 1 be exclusively reserved in the EC Party and the Signatory CARIFORUM States to goods originating in the geographical area concerned and that are produced in accordance with the relevant product specifications.

3. In respect of the protection of geographical indications, the EC Party and the Signatory CARIFORUM States shall prohibit and prevent, *ex officio* or at the request of an interested party:

- (a) regardless of the class of product on which it is used, the use in their territory of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place or origin in a manner which misleads the public as to the true geographical origin of the good; or any other use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention;
- (b) any use of the protected names for goods in the same class of product as the geographical indication which do not originate in the geographical area indicated, even where:
 - (i) the true origin of the good is indicated;

⁽¹⁾ For the purposes of this Article the use of an unlimited number of renewable periods of not less than 10 years shall be considered indefinite.

- (ii) the geographical indication in question is used in translation;
- (iii) the name is accompanied by terms such as 'kind', 'type', 'style', 'imitation', 'method' or other expressions of the sort.

4. It shall be possible to cancel the registration of a geographical indication. The procedure to this effect shall allow for the participation of any natural or legal person having a legitimate interest.

C. *Generic terms, plant varieties, animal breeds*

1. The EC Party and the Signatory CARIFORUM States shall not be required to apply the protection of geographical indications referred to in section B with respect to goods for which the relevant indication is identical with the term customary in common language as the common name for such goods in their respective territories.

2. Nothing in this Section shall require the EC Party and the Signatory CARIFORUM States to apply the protection of geographical indications referred to in section B with respect to products of the vine, plants or animals for which the relevant indication is identical with the name of a grape variety, plant variety or animal breed existing in the territory of the EC Party or the Signatory CARIFORUM State concerned as of the date of entry into force of this Agreement.

3. Homonymous geographical indications shall be protected by the EC Party and Signatory CARIFORUM States provided that there is a sufficient distinction in practice between the geographical indication first protected and the homonym subsequently protected, having regard to the need to treat the producers concerned in an equitable manner and not to mislead consumers. A homonymous name that misleads the consumer in to believing that products come from another territory shall not be protected by the EC Party or the Signatory CARIFORUM State concerned.

4. If a geographical indication of the EC Party or Signatory CARIFORUM State is homonymous with a geographical indication for a third country, Article 23(3) of the TRIPS Agreement applies *mutatis mutandis*.

D. *Relationship between geographical indications and trade marks*

1. A geographical indication shall not be registered in the EC Party or the Signatory CARIFORUM States where, in the light of a trade mark's reputation and renown and the length of time it has been used, registration is liable to mislead the consumer as to the true identity of the product.

2. From the date of entry into force of this Agreement, the registration of a trade mark which is identical with, similar to or containing a geographical indication protected respectively in the EC Party or in the Signatory CARIFORUM States pursuant to

section B and relating to the same class of product shall be refused respectively in the EC Party or in the Signatory CARIFORUM States. Furthermore, the registration of a trade mark in such circumstances shall be refused respectively in the EC Party or in the Signatory CARIFORUM States if the application for registration of the trade mark was submitted after the date of application for protection of the geographical indication in the territory concerned and the geographical indication is subsequently protected.

3. Trade marks registered in breach of the preceding paragraph shall be invalidated.

4. The EC Party and the Signatory CARIFORUM States shall ensure that, subject to the provisions of section D(1), (2) and (3), a trade mark, the use of which corresponds to one of the situations referred to in section B(3), and which has been applied for, registered or established by use, if that possibility is provided for by the applicable legislation, in good faith within the territories of the EC Party or of a Signatory CARIFORUM State, before the date of application of the WTO obligations in the EC Party or a Signatory CARIFORUM State, or before the date of application for protection of the geographical indication in the respective territories, may continue to be used notwithstanding the registration of the geographical indication, provided that no grounds for the invalidity or revocation of the trade mark exist as specified by the legislation of the EC Party or of the concerned Signatory CARIFORUM State. In such case, the use of the geographical indication shall be permitted alongside the relevant trade mark.

E. *Future protection agreement*

The EC Party and the Signatory CARIFORUM States shall no later than 1 January 2014 commence negotiations aimed at an agreement on the protection of geographical indications in their respective territories, without prejudice to any individual requests for protection that may have been filed directly.

F. *Internet use*

The EC Party and the Signatory CARIFORUM States accept the need for a clear legal framework for geographical indications owners who wish to use their geographical indications on the Internet and to participate in the development of electronic commerce which includes provisions addressing whether the use of a sign on the Internet has contributed to the usurpation, evocation, acquisition in bad faith or infringement of a geographical indication or whether such use constitutes an act of unfair competition, and a determination of the remedies, including the eventual transfer or cancellation of the domain name. In this respect, the EC Party and the Signatory CARIFORUM States shall endeavour to apply the Joint Recommendation concerning the protection of marks, and other industrial property rights in signs, on the Internet, as adopted by WIPO at the Thirty-Sixth Series of Meetings of the Assemblies of the Member States of WIPO, 24 September to 3 October 2001.

*Article 146***Industrial designs***A. International agreements*

The EC Party and the Signatory CARIFORUM States shall endeavour to accede to the Hague Agreement for the International Registration of Industrial Designs (1999).

B. Requirements for protection

1. The EC Party and the Signatory CARIFORUM States shall provide for the protection of independently created industrial designs that are new or original, and that have individual character.

2. A design shall be considered to be new if no identical design has been made available to the public.

3. A design shall be considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public.

4. This protection shall be provided by registration, and shall confer exclusive rights upon their holders in accordance with the provisions of this Article. Unregistered designs shall confer the same exclusive rights, but only if the contested use results from copying the protected design. Unregistered designs and textile designs may be protected by a design right or copyright.

C. Exceptions

1. The EC Party and the Signatory CARIFORUM States may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

2. Design protection shall not extend to designs dictated essentially by technical or functional considerations.

3. A design right shall not subsist in a design which is contrary to public policy or to accepted principles of morality.

D. Rights conferred

1. The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent

from making, offering, selling, importing, stocking or using articles bearing, or embodying the protected design when such acts are undertaken for commercial purposes, or unduly prejudice the normal exploitation of the design or are not compatible with fair trade practice.

2. For unregistered designs, the contested use shall not be deemed to result from copying the protected design if it results from an independent work of creation from a designer who may be reasonably thought not to be familiar with the design made available to the public by the holder.

E. Term of protection

1. The initial duration of protection available in the EC Party and the Signatory CARIFORUM States following registration shall amount to at least five years. At the request of the right holder, registration shall be renewed for one or more periods of five years each, but not exceeding 25 years from the date of filing, provided that the renewal fee has been paid.

2. The duration of protection available in the EC Party and the Signatory CARIFORUM States for unregistered designs shall amount to at least three years as from the date on which the design was made available to the public in the respective territory.

F. Relationship to copyright

A design protected by a design right registered in one of the Parties or a Signatory CARIFORUM State in accordance with this Article shall also be eligible for protection under the law of copyright of that Party or Signatory CARIFORUM State as from the date on which the design was created or fixed in any form.

*Article 147***Patents***A. International agreements*

1. The EC Party shall comply with:

(a) The Patent Cooperation Treaty (Washington, 1970, last modified in 1984);

(b) The Patent Law Treaty (Geneva, 2000);

(c) The Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure (1977, amended in 1980).

2. The Signatory CARIFORUM States shall accede to:

- (a) The Patent Cooperation Treaty (Washington, 1970, last modified in 1984);
- (b) The Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure (1977, amended in 1980).

3. The Signatory CARIFORUM States shall endeavour to accede to the Patent Law Treaty (Geneva, 2000).

B. *Patents and public health*

The EC Party and the Signatory CARIFORUM States recognise the importance of the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001 by the Ministerial Conference of the WTO and the Decision of the WTO General Council of 30 August 2003 on paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, and agree to take the necessary steps to accept the Protocol amending the TRIPS Agreement, done at Geneva on 6 December 2005.

Article 148

Utility modelsA. *Requirements for protection*

1. The EC Party and the Signatory CARIFORUM States may provide protection for any products or processes in any fields of technology, provided they are new, involve some degree of non-obviousness and are capable of industrial application.

2. The EC Party and the Signatory CARIFORUM States may exclude from protection all those products and processes the prevention within their territory of the commercial exploitation of which is necessary to protect public order or morality, human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.

3. The EC Party and the Signatory CARIFORUM States may also exclude from protection:

- (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
- (b) subject to Article 150, plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes.

4. The provisions of this Article shall be without prejudice to existing legislation in the EC Party or the Signatory CARIFORUM States.

B. *Term of protection*

The term of protection available shall not end before five years, nor exceed 10 years, counted from the filing date, or where priority is claimed, from the priority date.

C. *Relationship to patents*

1. All other conditions and flexibilities provided for patents in Section 5 of the TRIPS Agreement shall apply *mutatis mutandis* to Utility Models, in particular any that might be required to ensure public health.

2. An application for the grant of a patent may be converted into an application for utility model protection provided the request for conversion is made before the patent has been granted.

Article 149

Plant varieties

1. The EC Party and the Signatory CARIFORUM States shall have the right to provide for exceptions to exclusive rights granted to plant breeders to allow farmers to save, use and exchange protected farm-saved seed or propagating material.

2. The EC Party and the Signatory CARIFORUM States shall provide for the protection of plant varieties in accordance with the TRIPS Agreement. In this respect, they shall consider acceding to the International Convention for the Protection of New Varieties of Plants — UPOV (Act of 1991).

Article 150

Genetic resources, traditional knowledge and folklore

1. Subject to their domestic legislation the EC Party and the Signatory CARIFORUM States respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the involvement and approval of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices.

2. The EC Party and the Signatory CARIFORUM States recognise the importance of taking appropriate measures, subject to national legislation, to preserve traditional knowledge and agree to continue working towards the development of internationally agreed *sui generis* models for the legal protection of traditional knowledge.

3. The EC Party and the Signatory CARIFORUM States agree that the patent provisions of this subsection and the Convention on Biological Diversity shall be implemented in a mutually supportive way.

4. The EC Party and the Signatory CARIFORUM States may require as part of the administrative requirements for a patent application concerning an invention which uses biological material as a necessary aspect of the invention, that the applicant identifies the sources of the biological material used by the applicant and described as part of the invention.

5. The EC Party and the Signatory CARIFORUM States agree to regularly exchange views and information on relevant multi-lateral discussions:

- (a) In WIPO, on the issues dealt with in the framework of the Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore; and,
- (b) In the WTO, on the issues related to the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore.

6. Following the conclusion of the relevant multilateral discussions referred to in paragraph 5, the EC Party and the Signatory CARIFORUM States, at the request of the EC Party or a Signatory CARIFORUM State, agree to review this Article within the Joint CARIFORUM-EC Council in the light of the results of such multilateral discussions.

Subsection 3

Enforcement of intellectual property rights

Article 151

General obligations

1. Without prejudice to their rights and obligations under the TRIPS Agreement, and in particular of its Part III, the EC Party and the Signatory CARIFORUM States shall provide for the measures, procedures and remedies necessary to ensure the enforcement of the intellectual property rights covered by this Section. Those measures, procedures and remedies shall be fair and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

2. Those measures and remedies shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

Article 152

Entitled applicants

The EC Party and the Signatory CARIFORUM States shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this Section and in Part III of the TRIPS Agreement:

- (a) the holders of intellectual property rights in accordance with the provisions of the applicable law;

- (b) all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the provisions of the applicable law;

- (c) intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law;

- (d) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law.

Article 153

Evidence

The EC Party and the Signatory CARIFORUM States shall take such measures as are necessary, in the case of an infringement of an intellectual property right committed on a commercial scale, to enable the competent judicial authorities to order, where appropriate and following an application, the communication of banking, financial or commercial documents under the control of the opposing entity, subject to the protection of confidential information.

Article 154

Measures for preserving evidence

The EC Party and the Signatory CARIFORUM States shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by an entity who has presented reasonably available evidence to support his claims that his intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information. Such measures may include the detailed description, with or without the taking of samples, or the physical seizure of the infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto.

Article 155

Right of information

1. The EC Party and the Signatory CARIFORUM States shall ensure that, in the context of proceedings concerning an infringement of an intellectual property right and in response

to a justified and proportionate request of the claimant, the competent judicial authorities may order that information on the origin and distribution networks of the goods or services which infringe an intellectual property right be provided by the infringer and/or any other person who:

- (a) was found in possession of the infringing goods on a commercial scale;
- (b) was found to be using the infringing services on a commercial scale;
- (c) was found to be providing on a commercial scale services used in infringing activities; or
- (d) was indicated by the person referred to in subparagraph (a), (b) or (c) as being involved in the production, manufacture or distribution of the goods or the provision of the services.

2. The information referred to in paragraph 1 shall, as appropriate, comprise:

- (a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers;
- (b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

3. Paragraphs 1 and 2 shall apply without prejudice to other statutory provisions which:

- (a) grant the right holder rights to receive fuller information;
- (b) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;
- (c) govern responsibility for misuse of the right of information;
- (d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit to his own participation or that of his close relatives in an infringement of an intellectual property right; or
- (e) govern the protection of confidentiality of information sources or the processing of personal data.

Article 156

Provisional and precautionary measures

1. The EC Party and the Signatory CARIFORUM States shall ensure that the judicial authorities may, at the request of the applicant issue an interlocutory injunction intended to prevent

any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by national law, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder where an infringement is determined. An interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right.

2. An interlocutory injunction may also be issued to order the seizure or delivery up of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within channels of commerce.

3. In the case of an infringement committed on a commercial scale, the EC Party and the Signatory CARIFORUM States shall ensure that, if the applicant demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

Article 157

Corrective measures

1. The EC Party and the Signatory CARIFORUM States shall ensure that the competent judicial authorities may order, at the request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the recall, definitive removal from channels of commerce or destruction of goods that they have found to be infringing an intellectual property right.

2. The EC Party and the Signatory CARIFORUM States shall ensure that those measures are carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

Article 158

Injunctions

The EC Party and the Signatory CARIFORUM States shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement. Where provided for by national law, non-compliance with an injunction shall, where appropriate, be subject to a recurring penalty payment, with a

view to ensuring compliance. The EC Party and the Signatory CARIFORUM States shall also ensure that right holders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right.

Article 159

Alternative measures

The EC Party and the Signatory CARIFORUM States may provide that, in appropriate cases and at the request of the person liable to be subject to the measures provided for in Part III of the TRIPS Agreement and in this Chapter, the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in Part III of the TRIPS Agreement or in this Chapter if that person acted unintentionally and without negligence, if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

Article 160

Damages

1. The EC Party and the Signatory CARIFORUM States shall ensure that when the judicial authorities set the damages:

- (a) they shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors; or
- (b) as an alternative to (a), they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.

2. Where the infringer did not know, or did not have reasonable grounds to know, that he, she or it was engaging in infringing activity, the EC Party and the Signatory CARIFORUM States may provide that the judicial authorities may order the recovery of profits or the payment of damages which may be pre-established.

Article 161

Legal costs

The EC Party and the Signatory CARIFORUM States shall ensure that their domestic law contains measures for the allocation of

costs which generally require that the unsuccessful party will bear the costs, unless equity requires that costs be allocated otherwise.

Article 162

Publication of judicial decisions

The EC Party and the Signatory CARIFORUM States shall ensure that, in legal proceedings instituted for infringement of an intellectual property right, the judicial authorities may order, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part. The EC Party and the Signatory CARIFORUM States may provide for other additional publicity measures which are appropriate to the particular circumstances, including prominent advertising.

Article 163

Border measures

1. The EC Party and the Signatory CARIFORUM States shall, unless otherwise provided for in this Section, adopt procedures ⁽¹⁾ to enable a right holder, who has valid grounds for suspecting that the importation, exportation, re-exportation, entry or exit of the customs territory, placement under a suspensive procedure or placement under a customs free zone or a customs free warehouse of goods infringing an intellectual property right ⁽²⁾ may take place, to lodge an application in writing with competent authorities, administrative or judicial, for

⁽¹⁾ It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder.

⁽²⁾ For the purposes of this section, 'goods infringing an intellectual property right' means:

(a) 'counterfeit goods', namely:

(i) goods, including packaging, bearing without authorisation a trade mark identical to the trade mark duly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trade mark, and which thereby infringes the trade mark holder's rights;

(ii) any trade mark symbol (logo, label, sticker, brochure, instructions for use or guarantee document), even if presented separately, on the same conditions as the goods referred to in subparagraph (i);

(iii) packaging materials bearing the trade marks of counterfeit goods, presented separately, on the same conditions as the goods referred to in subparagraph (i);

(b) 'pirated goods', namely goods which are or contain copies made without the consent of the holder, or of a person duly authorised by the holder in the country of production, of a copyright or related right or design right, regardless of whether it is registered in national law;

(c) goods which, according to the law of the EC Party or Signatory CARIFORUM State in which the application for customs action is made, infringe:

(i) a design;

(ii) a geographical indication.

The EC Party and the Signatory CARIFORUM States agree to collaborate to expand the scope of this definition to cover goods infringing all intellectual property rights.

the suspension by the customs authorities of the release into free circulation or the retention of such goods.

2. The provisions of Articles 52 to 60 of the TRIPS Agreement shall be applicable. Any rights or duties established under such provisions concerning the importer shall be also applicable to the exporter or to the holder of the goods.

Subsection 4

Cooperation

Article 164

Cooperation

1. Cooperation shall be directed at supporting implementation of the commitments and obligations undertaken under this Section. The Parties agree that cooperation activities will be particularly important in the transition period referred to in Articles 139 and 140.

2. Subject to the provisions of Article 7, the Parties agree to cooperate, including by facilitating support, in the following areas:

(a) Reinforcement of regional initiatives, organisations and offices in the field of intellectual property rights, including the training of personnel and the development of publicly available databases, with a view to improving regional regulatory capacity, regional laws and regulations, as well as

regional implementation, with respect to intellectual property commitments undertaken under this Section, including on enforcement. This shall in particular involve support to countries not party but wishing to adhere to regional initiatives, as well as regional management of copyright and related rights.

(b) Support in the preparation of national laws and regulations for the protection and enforcement of intellectual property rights, in the establishment and reinforcement of domestic offices and other agencies in the field of intellectual property rights, including the training of personnel on enforcement; as well as for the establishment of means of collaboration between such agencies of the Parties and the Signatory CARIFORUM States, also in order to facilitate accession and compliance by the Signatory CARIFORUM States to the Treaties and Conventions referred to in this Section.

(c) Identification of products that could benefit from protection as geographical indications and any other action aimed at achieving protection as geographical indications for these products. In so doing, the EC Party and the Signatory CARIFORUM States shall pay particular attention to promoting and preserving local traditional knowledge and biodiversity through the establishment of geographical indications.

(d) The development by trade or professional associations or organisations of codes of conduct aimed at contributing towards the enforcement of intellectual property rights in consultation with the competent authorities of the Parties and the Signatory CARIFORUM States.

CHAPTER 3

Public procurement

Article 165

General objective

The Parties recognise the importance of transparent competitive tendering for economic development with due regard being given to the special situation of the economies of the CARIFORUM States.

Article 166

Definitions

For the purposes of this Chapter:

1. 'government procurement' means any type of procurement of goods, services or a combination thereof, including works, by procuring entities listed in Annex VI for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods or

the supply of services for commercial sale, unless otherwise specified. It includes procurement by such methods as purchase or lease, or rental or hire purchase, with or without an option to buy;

2. 'procuring entities' means the entities of the Signatory CARIFORUM States and the EC Party listed in Annex VI that procure in accordance with the provisions of this Chapter;

3. 'suppliers' means any natural or legal person or public body or group of such persons or bodies of a Signatory CARIFORUM State or the EC Party which can provide goods, services or the execution of works. The term shall cover equally a supplier of goods, a service provider or a contractor;

4. 'qualified supplier' means a supplier that a procuring entity recognises as having satisfied the conditions for participation;

5. 'eligible supplier' means a supplier who is allowed to participate in the public procurement opportunities of a Party or Signatory CARIFORUM State, in accordance with domestic law and without prejudice to the provisions of this Chapter;
6. 'multi-use list' means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;
7. 'legal person' means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
8. 'legal person of a Party' means any legal entity duly constituted or otherwise organised under the law of the EC Party or of the Signatory CARIFORUM States. Should such a legal person have only its registered office or central administration in the territory of one of the Signatory CARIFORUM States or the EC Party, it may not be considered as a legal person of a Party, unless it is engaged in substantive business operations in any such territory;
9. a 'natural person' means a national of a Member State of the European Union or of a Signatory CARIFORUM State according to their respective legislation;
10. services include construction services unless otherwise specified;
11. 'in writing' or 'written' means any expression of information in words, numbers or other symbols, including electronic means, that can be read, reproduced and stored;
12. 'notice of intended procurement' means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;
13. 'open' tendering procedures are those procedures whereby any interested supplier may submit a tender;
14. 'selective' tendering procedures are those procedures whereby, consistent with the relevant provisions of this Chapter, only those qualified suppliers invited by the procuring entity may submit a tender;
15. 'limited' tendering procedures are those procedures whereby the procuring entities may consult the suppliers of their choice and negotiate the terms of contract with one or more of them;
16. 'technical specifications' means a specification which lays down the characteristics of the products or services to be procured, such as quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labelling, or the processes and methods for their production and requirements relating to conformity assessment procedures prescribed by the procuring entities covered by this Chapter;
17. 'offsets' in government procurement means any conditions or undertakings that encourage local development or improve balance of payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action.

Article 167

Scope

1. The provisions of this Chapter apply only to those procuring entities listed in Annex VI and in respect of procurements above the thresholds set out in that Annex.

2. The Parties and the Signatory CARIFORUM States shall ensure that the procurement of their procuring entities covered by this Chapter takes place in a transparent manner according to the provisions of this Chapter and the Annexes pertaining thereto, treating any eligible supplier of either the Signatory CARIFORUM States or the EC Party equally in accordance with the principle of open and effective competition.

A. Supporting the creation of regional procurement markets

1. The Parties recognise the economic importance of establishing competitive regional procurement markets.

2. (a) With respect to any measure regarding covered procurement, each Signatory CARIFORUM State, including its procuring entities, shall endeavour not to treat a supplier established in any CARIFORUM State less favourably than another locally established supplier.

(b) With respect to any measure regarding covered procurement, the EC Party and the Signatory CARIFORUM States, including their procuring entities:

(i) shall endeavour not to discriminate against a supplier established in either Party on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of either Party;

(ii) shall not treat a locally established supplier less favourably than another locally established supplier

on the basis of degree of foreign affiliation to or ownership by operators or nationals of any Signatory CARIFORUM State or of the EC Party.

3. Subject to paragraph A.4, each Party, including its procuring entities, shall with respect to any measure regarding covered procurement, accord to the goods and services of the other Party and to suppliers of the other Party offering the goods or services of any Party, treatment no less favourable than the treatment the Party, including its procuring entities, accords to domestic goods, services and suppliers.

4. The Parties shall not be required to provide the treatment envisaged in paragraph A.3 unless a decision by the Joint CARIFORUM-EC Council to this effect is taken. That decision may specify to which procurements by each Party the treatment envisaged in paragraph A.3 would apply, and under which conditions.

B. Valuation rules

Procuring entities shall not choose a valuation method, or divide a procurement, with the aim of avoiding the application of this Chapter. Valuation shall take into account all forms of remuneration, including any premiums, fees, commissions, and interest.

C. Exceptions

1. Nothing in this Chapter shall be construed as preventing a Signatory CARIFORUM State or the EC Party from imposing or enforcing measures relating to goods or services of persons with disabilities, philanthropic institutions, or prison labour.

2. This Chapter does not apply to:

- (a) the acquisition or rental of land, existing buildings, or other immovable property or the rights thereon;
- (b) non-contractual agreements or any form of assistance that a Party or Signatory CARIFORUM State provides, including cooperative agreements, grants, loans, equity infusions, guarantees, and fiscal incentives;
- (c) the procurement or acquisition of fiscal agency or depositary services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;
- (d) the acquisition, development, production or co-production of programme material intended for broadcasting by broadcasters and contracts for broadcasting time;
- (e) arbitration and conciliation services;
- (f) public employment contracts;

- (g) research and development services;
- (h) the procurement of agricultural products made in furtherance of agricultural support programmes and human feeding programmes, including food aid;
- (i) intra-governmental procurement;
- (j) procurement conducted:
 - (i) for the direct purpose of providing international assistance, including development aid;
 - (ii) under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation of a project by a Party or Signatory CARIFORUM State with a non-Party;
 - (iii) in support of military forces located outside the territory of the Party or Signatory CARIFORUM State concerned;
 - (iv) under the particular procedure or condition of an international organisation, or funded by international grants, loans, or other assistance where the applicable procedure or condition would be inconsistent with this Chapter.

Article 168

Transparency of government procurement

1. Subject to Article 180(4), each Party or Signatory CARIFORUM State shall promptly publish any law, regulation, judicial decision and administrative ruling of general application, and procedures, regarding procurement covered by this Chapter, as well as individual procurement opportunities, in the appropriate publications referred to in Annex VII including officially designated electronic media. Each Party or Signatory CARIFORUM State shall promptly publish in the same manner all modifications to such measures, and shall within a reasonable time inform the others of any such modifications.

2. The Parties and the Signatory CARIFORUM States shall ensure that their procuring entities provide for effective dissemination of the tendering opportunities generated by the relevant government processes, providing eligible suppliers with all the information required to take part in such procurement. Each Party shall set up and maintain an appropriate on-line facility to further the effective dissemination of tendering opportunities.

- (a) Tender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders.

(b) Where entities do not offer free direct access to the entire tender documents and any supporting documents by electronic means, entities shall make promptly available the tender documentation at the request of any eligible supplier of the Parties.

3. For each procurement covered by this Chapter, procuring entities shall, save as otherwise provided, publish in advance a notice of intended procurement. Each notice shall be accessible during the entire time period established for tendering for the relevant procurement.

4. The information in each notice of intended procurement shall include at least the following:

- (a) name, address, fax number, electronic address (where available) of the procuring entity and, if different, the address where all documents relating to the procurement may be obtained;
- (b) the tendering procedure chosen and the form of the contract;
- (c) a description of the intended procurement, as well as essential contract requirements to be fulfilled;
- (d) any conditions that suppliers must fulfil to participate in the procurement;
- (e) time-limits for submission of tenders and, where applicable, any time limits for the submission of requests for participation in the procurement;
- (f) all criteria to be used for the award of the contract; and
- (g) if possible, terms of payment and other terms.

5. Procuring entities are encouraged to publish as early as possible in each fiscal year a notice regarding their future procurement plans. The notice should include the subject-matter of the procurement and the planned date of the publication of the notice of intended procurement.

6. Procuring entities operating in the utilities may use such a notice regarding their future procurement plans as a notice of intended procurement provided that it includes as much of the information set out in paragraph 4 as available and a statement that suppliers should express their interest in the procurement to the entity.

Article 169

Methods of procurement

1. Without prejudice to the method of government procurement used in respect of any specific procurement, procuring entities shall ensure that such methods are specified in the notice of intended procurement or tender documents.

2. The Parties or the Signatory CARIFORUM States shall ensure that their laws and regulations clearly prescribe the conditions under which procuring entities may utilise limited tendering procedures. Procuring entities shall not utilise such methods for the purpose of restricting participation in the procurement process in a non-transparent manner.

3. When conducting procurement by electronic means, a procuring entity shall:

- (a) ensure that the procurement is conducted using generally available and interoperable information technology products and software, including those related to authentication and encryption of information; and
- (b) maintain mechanisms that ensure the integrity of, and prevent inappropriate access to, requests for participation and tenders.

Article 170

Selective tendering

1. Whenever selective tendering procedures are employed, procuring entities shall:

- (a) Publish a notice of intended procurement;
- (b) In the notice of intended procurement invite eligible suppliers to submit a request for participation;
- (c) Select the suppliers to participate in the selective tendering procedure in a fair manner; and
- (d) Indicate the time limit for submitting requests for participation.

2. Procuring Entities shall recognise as qualified suppliers all suppliers which meet the conditions for participation in a particular procurement, unless the procuring entity states in the notice or, where publicly available, in the tender documentation, any limitation on the number of suppliers that will be permitted to tender and the objective criteria for such limitation.

3. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 1, procuring entities shall ensure that those documents are made available at the same time to all the qualified suppliers selected.

Article 171

Limited tendering

1. When using the limited tendering procedure, a procuring entity may choose not to apply Articles 168, 169(1) and (3), 170, 173 (1), 174, 175, 176 and 178.

2. Procuring entities may award their public contracts by limited tendering procedure, in the following cases:

- (a) when no suitable tenders have been submitted in response to an open or selective tendering procedure, on condition that the requirements of the initial tender are not substantially modified;
- (b) when, for technical or artistic reasons, or for reasons connected with protection of exclusive rights, the contract may be performed only by a particular supplier and no reasonable alternative or substitute exists;
- (c) for reasons of extreme urgency brought about by events unforeseen by the procuring entity, the products or services could not be obtained in time by means of open or selective tendering procedures;
- (d) for additional deliveries of goods or services by the original supplier where a change of supplier would compel the procuring entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services procured under the initial procurement and such separation would cause significant inconvenience or substantial duplication of costs to the procuring entity;
- (e) when a procuring entity procures prototypes or a first product or service which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development;
- (f) when additional services which were not included in the initial contract but which were within the objectives of the original tender documentation have, through unforeseen circumstances, become necessary to complete the services described therein. However, the total value of contracts awarded for the additional services shall not exceed 50 % of the amount of the original contract;
- (g) for new services consisting of the repetition of similar services which conform to a basic project for which an initial contract was awarded following an open or selective procurement method, and for which the procuring entity has indicated in the notice of intended procurement that a limited procurement method might be used in awarding contracts for such new services;
- (h) for products purchased on a commodity market;
- (i) in the case of contracts awarded to the winner of a design contest; in the case of several successful candidates, successful candidates shall be invited to participate in the negotiations as specified in the notice of the intended procurement or the tender documents; and
- (j) for purchases made under exceptionally advantageous conditions which only arise in the very short term in the

case of unusual disposals such as arising from liquidation, receivership or bankruptcy and not for routine purchases from regular suppliers.

Article 172

Rules of origin

The EC Party and the Signatory CARIFORUM States for the purposes of this Chapter shall not apply rules of origin to goods or services imported from or supplied by the EC Party and the Signatory CARIFORUM States as the case may be that are different from the rules of origin applicable at the same time in the normal course of trade to imports or supplies of the same goods or services from the same Signatory CARIFORUM State or the EC Party.

Article 173

Technical specifications

1. Consistent with the objectives of this Chapter, procuring entities shall ensure that technical specifications applied or intended for application to procurement covered by the Chapter are set out in the notices of intended procurement and/or tender documents.

2. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

3. In prescribing technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:

- (a) specify the technical specifications, in terms of performance and functional requirements, rather than design or descriptive standards; and
- (b) base the technical specifications on international standards, where such exist; otherwise, on national technical regulations, recognised national standards or building codes.

4. Where design or descriptive characteristics are used in the technical specifications, a procuring entity shall, where appropriate, include words such as 'or equivalent' in the technical specifications and consider tenders that demonstrably meet the required design or descriptive characteristics and are fit for the purposes intended.

5. A procuring entity shall not prescribe technical specifications that require or refer to a particular trade mark or trade name, patent, copyright, design or type, specific origin, producer or supplier, unless there is no other sufficiently precise or

intelligible way of describing the procurement requirements and provided that, in such cases, words such as 'as equivalent' are included in the tender documentation.

Article 174

Qualification of suppliers

1. For procurement covered by this Chapter, procuring entities shall ensure that any conditions and criteria for participating in a public contract award procedure are made known in advance in the notice of intended procurement or the tender documents. Any such conditions and criteria shall be limited to those which are essential to ensure that the potential supplier has the ability to execute the contract in question.

2. The Signatory CARIFORUM States and the EC Party shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by an entity of that Party or State or that the supplier has prior work experience in the relevant territory. This paragraph does not apply for procurements in respect of social impact surveys and studies.

3. The procuring entity shall base its assessment of the financial, commercial and technical abilities of a supplier on the conditions that it has specified in advance in notices or tender documentation.

4. Nothing in this Article shall preclude the exclusion of any supplier on grounds such as bankruptcy or false declarations or conviction for serious crime.

5. Procuring entities may maintain a multi-use list provided that a notice inviting interested suppliers to apply for inclusion on the list is:

- (a) published annually; and
- (b) where published by electronic means, made available continuously in one of the appropriate media listed in Annex VII.

6. Procuring entities shall ensure that suppliers may apply for qualification at any time through the publication of a notice inviting suppliers to apply for inclusion on the list containing the following information:

- (a) a description of the goods and services, or categories thereof, for which the list may be used;
- (b) the conditions for participation to be satisfied by suppliers and the methods that the procuring entity will use to verify a supplier's satisfaction of the conditions;
- (c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list; and

- (d) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list.

Procuring entities shall include in the list all qualified suppliers within a reasonably short time.

7. Where a non-qualified supplier submits a request for participation, and all required documents relating thereto, within the time-limit, a procuring entity, whether or not it uses a multi-use list, shall examine and accept the supplier's request for participation, unless, due to the complexity of the procurement, the entity is not able to complete the examination of the request. Procuring entities shall also ensure that a supplier having requested to be included in the list shall be informed of the decision in this regard in a timely fashion.

8. Procuring entities operating in the utilities may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement and may exclude requests for participation from suppliers not yet qualified in respect of the procurement on the grounds that the procuring entity has insufficient time to examine the application.

Article 175

Negotiations

1. The Signatory CARIFORUM States and the EC Party may provide for their procuring entities to conduct negotiations:

- (a) in the context of procurements in which they have indicated such intent in the notice of intended procurement; or
- (b) where it appears from the evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notice of intended procurement or tender documentation.

2. A procuring entity shall:

- (a) ensure that any elimination of suppliers in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and
- (b) when negotiations are concluded, provide a common deadline for the remaining suppliers to submit any new or revised tenders.

Article 176

Opening of tenders and awarding of contracts

1. All tenders solicited under open or selective procedures by procuring entities shall be received and opened under procedures

and conditions guaranteeing the fairness and transparency of the process.

2. Unless a procuring entity decides that it is not in the public interest to award the contract, it shall award the contract to the supplier who has been determined, on the basis of the information presented, to be fully capable of undertaking the contract and whose tender is either the lowest tender or the tender which in terms of the specific evaluation criteria set forth in the notice or tender documentation is determined to be the most advantageous. Awards shall be made in accordance with the criteria and essential requirements specified in the notice of intended procurement or in the tender documentation.

Article 177

Information on contract award

1. The Parties and the CARIFORUM Signatory States shall ensure that their procuring entities provide for effective dissemination of the results of government procurement processes.

2. Procuring entities shall promptly inform suppliers of decisions regarding the award of the contract and, on request, in writing. Upon request, procuring entities shall inform any eliminated supplier of the reasons for the rejection of its tender and of the relative advantages of the successful supplier's tender.

3. Procuring entities may decide to withhold certain information on the contract award where release of such information would interfere with law enforcement or be otherwise contrary to the public interest, would prejudice the legitimate commercial interests of suppliers, or might prejudice fair competition between them.

4. Subject to Article 180(4), no later than 72 days after the award of each contract covered by this Chapter, a procuring entity shall publish a notice in the appropriate paper or electronic media listed in Annex VII. Where only an electronic medium is used, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:

- (a) a description of the goods or services procured;
- (b) the name and address of the procuring entity;
- (c) the name and address of the successful supplier;
- (d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;
- (e) the date of the award; and

- (f) the type of procurement method used, and in cases where a limited tendering procedure was used, a description of the circumstances justifying the use of such procedure.

Article 178

Time limits

1. In determining any time limits to be applied to procurement covered by this Chapter, procuring entities shall, consistent with their own reasonable needs, take into account such factors as the complexity of the intended procurement and the normal time for transmitting tenders.

2. The Parties and the Signatory CARIFORUM States shall ensure that their procuring entities shall take due account of publication delays when setting the final date for receipt of tenders or of request for participation or for qualifying for the supplier's list. Such time limits, including any extension, shall be common for all interested or participating suppliers.

3. Procuring entities shall clearly set out the time limits applicable to any specific procurement in the notice of intended procurement and/or the tender documents.

Article 179

Bid challenges

1. The Parties and the Signatory CARIFORUM States shall provide transparent, timely, impartial and effective procedures enabling suppliers to challenge domestic measures implementing this Chapter in the context of procurements in which they have, or have had, a legitimate commercial interest. To this effect, each Party or Signatory CARIFORUM State shall establish, identify or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by a supplier arising in the context of covered procurement.

2. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge as from the time when the basis of the challenge become known or reasonably should have become known to the supplier. This paragraph does not preclude Parties or Signatory CARIFORUM States from requiring complainants to lodge their complaints within a reasonable period of time provided that duration of that period is made known in advance.

3. Procuring entities shall ensure their ability to respond to requests for a review by maintaining a reasonable record of each procurement covered under this Chapter.

4. Challenge procedures shall provide for effective rapid interim measures to correct breaches of the domestic measures implementing this Chapter.

*Article 180***Implementation period**

1. In order for the Signatory CARIFORUM States to bring their measures into conformity with any specific procedural obligation of this Chapter, they shall have an implementation period of two years from the entry into force of this Agreement.
2. Should a review by the CARIFORUM-EC Trade and Development Committee at the end of the implementation period reveal that one or several Signatory CARIFORUM States need one more year to bring their measures into conformity with the obligations of this Chapter, the CARIFORUM-EC Trade and Development Committee may extend the implementation period referred to in paragraph 1 by one more year for the individual Signatory CARIFORUM States concerned.
3. By way of derogation from paragraphs 1 and 2, Antigua and Barbuda, Belize, the Commonwealth of Dominica, Grenada, the Republic of Haiti, Saint Christopher and Nevis, Saint Lucia and Saint Vincent and the Grenadines shall benefit from an implementation period of five years.
4. The requirements stipulated in paragraph 1 and the last sentence of paragraph 2 of Article 168, in Article 170(1)(a) and in Article 177(4) will only come into effect for the Signatory CARIFORUM States once the requisite capacity to implement them has been developed, but not later than five years after the entry into force of this Agreement.

*Article 181***Review clause**

The CARIFORUM-EC Trade and Development Committee will review the operation of this Chapter every three years, including

with regard to any modifications of coverage, and may make appropriate recommendations to the Joint CARIFORUM-EC Council to that effect, as appropriate. In carrying out this task, the CARIFORUM-EC Trade and Development Committee may, without prejudice to Article 182, also make appropriate recommendations regarding the Parties' further cooperation in the procurement field and the implementation of this Chapter.

*Article 182***Cooperation**

1. The Parties recognise the importance of cooperating in order to facilitate implementation of commitments and to achieve the objectives of this Chapter.
2. Subject to the provisions of Article 7, the Parties agree to cooperate, including by facilitating support and establishing appropriate contact points, in the following areas:
 - (a) Exchange of experience and information about best practices and regulatory frameworks;
 - (b) Establishment and maintenance of appropriate systems and mechanisms to facilitate compliance with the obligations of this Chapter; and
 - (c) Creation of an on-line facility at the regional level for the effective dissemination of information on tendering opportunities, so as to facilitate the awareness of all companies about procurement processes.

*CHAPTER 4***Environment***Article 183***Objectives and sustainable development context**

1. The Parties reaffirm that the principles of sustainable management of natural resources and the environment are to be applied and integrated at every level of their partnership, as part of their overriding commitment to sustainable development as set out in Articles 1 and 2 of the Cotonou Agreement.
2. The Parties recall that Article 32 of the Cotonou Agreement includes environment and natural resources as thematic and cross-cutting issues, and that the fundamental principles of ownership, participation, dialogue and differentiation set out in Article 2 of the Cotonou Agreement are therefore particularly relevant.
3. The Parties and the Signatory CARIFORUM States are resolved to conserve, protect and improve the environment,

including through multilateral and regional environmental agreements to which they are parties.

4. The Parties reaffirm their commitment to promoting the development of international trade in such a way as to ensure sustainable and sound management of the environment, in accordance with their undertakings in this area including the international conventions to which they are party and with due regard to their respective level of development.
5. The Parties and the Signatory CARIFORUM States are resolved to make efforts to facilitate trade in goods and services which the Parties consider to be beneficial to the environment. Such products may include environmental technologies, renewable- and energy-efficient goods and services and eco-labelled goods.

*Article 184***Levels of protection and right to regulate**

1. Recognising the right of the Parties and the Signatory CARIFORUM States to regulate in order to achieve their own level of domestic environmental and public health protection and their own sustainable development priorities, and to adopt or modify accordingly their environmental laws and policies, each Party and Signatory CARIFORUM State shall seek to ensure that its own environmental and public health laws and policies provide for and encourage high levels of environmental and public health protection and shall strive to continue to improve those laws and policies.

2. The Parties agree that the special needs and requirements of CARIFORUM States shall be taken into account in the design and implementation of measures aimed at protecting environment and public health that affect trade between the Parties.

3. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade between them, nothing in this Agreement shall be construed to prevent any Party and the Signatory CARIFORUM States from adopting or maintaining measures necessary to protect human, animal or plant life or health, related to the conservation of natural resources or protection of the environment.

*Article 185***Regional integration and use of international environmental standards**

In the light of the environmental challenges facing their respective regions, and in order to promote the development of international trade in such a way as to ensure sustainable and sound management of the environment, the Parties recognise the importance of establishing effective strategies and measures at the regional level. The Parties agree that in the absence of relevant environmental standards in national or regional legislation, they shall seek to adopt and implement the relevant international standards, guidelines or recommendations, where practical and appropriate.

*Article 186***Scientific information**

The Parties recognise the importance, when preparing and implementing measures aimed at protecting the environment and public health that affect trade between the Parties, of taking account of scientific and technical information, the precautionary principle, and relevant international standards, guidelines or recommendations.

*Article 187***Transparency**

The Parties and the Signatory CARIFORUM States commit to developing, introducing and implementing any measures aimed at protecting the environment and public health that affect trade between the Parties in a transparent manner, with due notice and public and mutual consultation and with appropriate and timely communication to and consultation of non-state actors including the private sector. The Parties agree that satisfying the provisions on transparency included in Chapters 6 and 7 of Title I shall be deemed to satisfy the provisions of this Article as well.

*Article 188***Upholding levels of protection**

1. Subject to Article 184(1), the Parties agree not to encourage trade or foreign direct investment to enhance or maintain a competitive advantage by:

- (a) lowering the level of protection provided by domestic environmental and public health legislation;
- (b) derogating from, or failing to apply such legislation.

2. The Parties and the Signatory CARIFORUM States commit to not adopting or applying regional or national trade or investment-related legislation or other related administrative measures as the case may be in a way which has the effect of frustrating measures intended to benefit, protect or conserve the environment or natural resources or to protect public health.

*Article 189***Consultation and monitoring process**

1. The Parties recognise the importance of monitoring and assessing the impact of implementation of the Agreement on sustainable development through their respective participative processes and institutions, as well as those set up under this Agreement.

2. The Parties may consult each other and the CARIFORUM-EC Consultative Committee on environmental issues covered by Articles 183 to 188. Members of the CARIFORUM-EC Consultative Committee may submit oral or written recommendations to the Parties for disseminating and sharing best practice relating to issues covered by this Chapter.

3. On any issue covered by Articles 183 to 188 the Parties may agree to seek advice from the relevant international bodies on best practice, the use of effective policy tools for addressing trade-related environmental challenges, and the identification of

any obstacles that may prevent the effective implementation of environmental standards under relevant Multilateral Environment Agreements.

4. A Party may request consultations with the other Party on matters concerning the interpretation and application of Articles 183 to 188. The consultations shall not exceed three months. In the context of this procedure any Party may independently seek advice from the relevant international bodies. In this case the limit for the period of consultations is extended by a further period of three months.

5. If the matter has not been satisfactorily resolved through consultations between the Parties pursuant to paragraph 3 any Party may request that a Committee of Experts be convened to examine such matter.

6. The Committee of Experts shall comprise three members with specific expertise in the issues covered by this Chapter. The Chairperson shall not be a national of either Party. The Committee of Experts shall present to the Parties a report within three month of its composition. The report shall be made available to the CARIFORUM-EC Consultative Committee.

Article 190

Cooperation

1. The Parties recognise the importance of cooperating on environmental issues in order to achieve the objectives of this Agreement.

2. Subject to the provisions of Article 7, the Parties agree to cooperate, including by facilitating support in the following areas:

- (a) technical assistance to producers in meeting relevant product and other standards applicable in markets of the EC Party;
- (b) promotion and facilitation of private and public voluntary and market-based schemes including relevant labelling and accreditation schemes;
- (c) technical assistance and capacity building, in particular to the public sector, in the implementation and enforcement of multilateral environmental agreements, including with respect to trade-related aspects;
- (d) facilitation of trade between the Parties in natural resources, including timber and wood products, from legal and sustainable sources;
- (e) assistance to producers to develop and/or improve production of goods and services, which the Parties consider to be beneficial to the environment; and
- (f) promotion and facilitation of public awareness and education programmes in respect of environmental goods and services in order to foster trade in such products between the Parties.

CHAPTER 5

Social aspects

Article 191

Objectives and multilateral commitments

1. The Parties reaffirm their commitment to the internationally recognised core labour standards, as defined by the relevant ILO Conventions, and in particular the freedom of association and the right to collective bargaining, the abolition of forced labour, the elimination of the worst forms of child labour and non-discrimination in respect to employment. The Parties also reaffirm their obligations as members of the ILO and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998).

2. The Parties reaffirm their commitment to the 2006 Ministerial declaration by the UN Economic and Social Council on Full Employment and Decent Work, promoting the development of international trade in a way that is conducive to full and productive employment and decent work for all, including men, women and young people.

3. The Parties recognise the beneficial role that core labour standards and decent work can have on economic efficiency,

innovation and productivity, and they highlight the value of greater policy coherence between trade policies, on the one hand, and employment and social policies on the other.

4. The Parties agree that labour standards should not be used for protectionist trade purposes.

5. The Parties recognise the benefits of commerce in fair and ethical trade products and the importance of facilitating such commerce between them.

Article 192

Levels of protection and right to regulate

Recognising the right of the Parties and the Signatory CARIFORUM States to regulate in order to establish their own social regulations and labour standards in line with their own social development priorities, and to adopt or modify accord-

ingly their relevant laws and policies, each Party and Signatory CARIFORUM State shall ensure that its own social and labour regulations and policies provide for and encourage high levels of social and labour standards consistent with the internationally recognised rights set forth in Article 191 and shall strive to continue to improve those laws and policies.

Article 193

Upholding levels of protection

Subject to Article 192, the Parties agree not to encourage trade or foreign direct investment to enhance or maintain a competitive advantage by:

- (a) lowering the level of protection provided by domestic social and labour legislation;
- (b) derogating from, or failing to apply such legislation and standards.

Article 194

Regional integration

In the light of the social challenges facing their respective regions, and in order to promote the sustainable development of international trade, the Parties recognise the importance of establishing social cohesion policies and measures to promote decent work at regional level.

Article 195

Consultation and monitoring process

1. In accordance with Article 191, the Parties recognise the importance of monitoring and assessing the operation of the Agreement on decent work and other areas of sustainable development through their respective participative processes and institutions, as well as those set up under this Agreement.

2. The Parties may consult each other and the CARIFORUM-EC Consultative Committee on social issues covered by Articles 191 to 194. Members of the CARIFORUM-EC Consultative Committee may submit oral or written recommendations to the Parties for disseminating and sharing best practice relating to issues covered by this Chapter.

3. On any issue covered by Articles 191 to 194 the Parties may agree to seek advice from the ILO on best practice, the use of effective policy tools for addressing trade-related social challenges, such as labour market adjustment, and the identification of any obstacles that may prevent the effective implementation of core labour standards.

4. A Party may request consultations with the other Party on matters concerning the interpretation and application of Articles 191 to 194. The consultations shall not exceed three months. In the context of this procedure any Party may independently seek advice from the ILO. In this case the limit for the period of consultations is extended by a further period of three months.

5. If the matter has not been satisfactorily resolved through consultations between the Parties pursuant to paragraph 3 any Party may request that a Committee of Experts be convened to examine such matter.

6. The Committee of Experts shall comprise three members with specific expertise in the issues covered by this Chapter. The Chairperson shall not be a national of either Party. The Committee of Experts shall present to the Parties a report within three month of its composition. The report shall be made available to the CARIFORUM-EC Consultative Committee.

Article 196

Cooperation

1. The Parties recognise the importance of cooperating on social and labour issues in order to achieve the objectives of this Agreement.

2. Subject to the provisions of Article 7, the Parties agree to cooperate, including by facilitating support, in the following areas:

- (a) exchange of information on the respective social and labour legislation and related policies, regulations and other measures;
- (b) the formulation of national social and labour legislation and the strengthening of existing legislation, as well as mechanisms for social dialogue, including measures aimed at promoting the Decent Work Agenda as defined by the ILO;
- (c) educational and awareness-raising programmes, including skills training and policies for labour market adjustment, and raising awareness of health and safety responsibilities, workers' rights and employers' responsibilities; and
- (d) enforcement of adherence to national legislation and work regulation, including training and capacity building initiatives of labour inspectors, and promoting corporate social responsibility through public information and reporting.

CHAPTER 6

Protection of personal data*Article 197***General objective**

1. The Parties and the Signatory CARIFORUM States, recognising:

- (a) their common interest in protecting fundamental rights and freedoms of natural persons, and in particular their right to privacy, with respect to the processing of personal data,
- (b) the importance of maintaining effective data protection regimes as a means of protecting the interests of consumers, stimulating investor confidence and of facilitating transborder flows of personal data;
- (c) that the collection and processing of personal data should be accomplished in a transparent and fair manner, with due respect accorded to the data subject,

agree to establish appropriate legal and regulatory regimes, as well as appropriate administrative capacity to implement them, including independent supervisory authorities, in order to ensure an adequate level of protection of individuals with regard to the processing of personal data, in line with existing high international standards ⁽¹⁾.

2. The Signatory CARIFORUM States shall endeavour to implement the provisions of paragraph 1 as soon as possible and no later than seven years after the entry into force of this Agreement.

*Article 198***Definitions**

For the purposes of this Chapter:

- (a) 'personal data' means any information relating to an identified or identifiable individual (data subject);
- (b) 'processing of personal data' means any operation or set of operations which is performed upon personal data, such as collection, recording, organisation, storage, alteration, retrieval, consultation, use, disclosure, combination, blocking, erasure or destruction, as well as transfers of personal data across national borders;

⁽¹⁾ Such standards are those included in the following international instruments:

- (i) Guidelines for the regulation of computerised personal data files, modified by the General Assembly of the United Nations on 20 November 1990;
- (ii) Recommendation of the Organisation for Economic Cooperation and Development Council concerning guidelines governing the protection of privacy and trans-border flows of personal data of 23 September 1980.

- (c) 'Data Controller' means the natural or legal person, authority or any other body which determines the purposes and means of the processing of personal data.

*Article 199***Principles and general rules**

The Parties agree that the legal and regulatory regimes and administrative capacity to be established shall, at a minimum, include the following content principles and enforcement mechanisms:

- (a) Content principles
 - (i) the purpose limitation principle — data should be processed for a specific purpose and subsequently used or further communicated only in so far as this is not incompatible with the purpose of the transfer. The only exemptions to this rule would be those provided by legislation and necessary in a democratic society for important public interests;
 - (ii) the data quality and proportionality principle — data should be accurate and, where necessary, kept up to date. The data should be adequate, relevant and not excessive in relation to the purposes for which they are transferred or further processed;
 - (iii) the transparency principle — individuals should be provided with information as to the purpose of the processing and the identity of the data controller in the third country, and other information in so far as this is necessary to ensure fairness. The only exemptions permitted should be those provided by legislation and necessary in a democratic society for important public interests;
 - (iv) the security principle — technical and organisational security measures should be taken by the data controller that are appropriate to the risks presented by the processing. Any person acting under the authority of the data controller, including a processor, must not process data except on instructions from the controller;

(v) the rights of access, rectification and opposition — the data subject should have a right to obtain a copy of all data relating to him/her that are processed, and a right to rectification of those data where they are shown to be inaccurate. In certain situations he/she should also be able to object to the processing of the data relating to him/her. The only exemptions to these rights should be those provided by legislation and necessary in a democratic society for important public interests;

(vi) restrictions on onward transfers — as a matter of principle, further transfers of the personal data by the recipient of the original data transfer should be permitted only where the second recipient (i.e. the recipient of the onward transfer) is also subject to rules affording an adequate level of protection;

(vii) sensitive data — where special categories of data are involved, revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership, data concerning health or sex life, and data relating to offences, criminal convictions or security measures, data may not be processed unless domestic law provides additional safeguards.

(b) Enforcement mechanisms

Appropriate mechanisms shall be in place to ensure that the following objectives are achieved:

(i) to ensure a good level of compliance with the rules, including a high degree of awareness among data controllers of their obligations, and among data subjects of their rights and the means of exercising them; the existence of effective and dissuasive sanctions; and systems of direct verification by authorities, auditors, or independent data protection officials;

(ii) to provide support and help to individual data subjects in the exercise of their rights, who must be able to enforce their rights rapidly and effectively, and without prohibitive cost, including through appropriate institutional mechanisms allowing independent investigation of complaints;

(iii) to provide appropriate redress to the injured party where rules are not complied with allowing compensation to be paid and sanctions imposed where

appropriate in accordance with applicable domestic rules.

Article 200

Coherence with international commitments

1. The EC Party and the Signatory CARIFORUM States shall inform each other through the CARIFORUM-EC Trade and Development Committee about international commitments or arrangements with third countries they may undertake, or about any obligation they may be subject to, which may be relevant for the implementation of the present Chapter, and in particular about any arrangement providing for the processing of personal data, such as collection, storage, access by or transfers to third parties of personal data.

2. In this regard at the request of the EC Party or the Signatory CARIFORUM States, the EC Party and the Signatory CARIFORUM States shall enter into consultations to address any concerns which may come to light.

Article 201

Cooperation

1. The Parties acknowledge the importance of cooperation in order to facilitate the development of appropriate legislative, judicial and institutional frameworks as well as an adequate level of protection of personal data consistent with the objectives and principles contained in this Chapter.

2. Subject to the provisions of Article 7, the Parties agree to cooperate, including by facilitating support, in the following areas:

(a) exchange of information and expertise;

(b) assistance in drafting legislation, guidelines and manuals;

(c) provision of training for key personnel;

(d) assistance with the establishment and functioning of relevant institutional frameworks;

(e) assistance with the design and implementation of compliance initiatives aimed at economic operators and consumers in order to stimulate investor and public confidence.