

PART III

DISPUTE AVOIDANCE AND SETTLEMENT*Article 202***Objective**

The objective of this Part is to avoid and settle any dispute between the Parties with a view to arriving at a mutually agreed solution.

*Article 203***Scope**

1. This Part shall apply to any dispute concerning the interpretation and application of this Agreement.
2. Notwithstanding paragraph 1, the procedure set out in Article 98 of the Cotonou Agreement shall be applicable in the event of a dispute concerning development finance cooperation as provided for by the Cotonou Agreement.

CHAPTER 1

Consultations and mediation*Article 204***Consultations**

1. The Parties shall endeavour to resolve any dispute referred to in Article 203 by entering into consultations in good faith with the aim of reaching an agreed solution.

2. A Party shall seek consultations by means of a written request to the other Party, copied to the CARIFORUM-EC Trade and Development Committee, identifying the measure at issue and the provisions of the Agreement that it considers the measure not to be in conformity with.

3. Consultations shall be held within 40 days of the date of the submission of the request. The consultations shall be deemed concluded within 60 days of the date of the submission of the request, unless both Parties agree to continue consultations. All information disclosed during the consultations shall remain confidential.

4. Consultations on matters of urgency, including those regarding perishable or seasonal goods shall be held within 15 days of the date of the submission of the request, and shall be deemed concluded within 30 days of the date of the submission of the request.

5. If consultations are not held within the timeframes laid down in paragraph 3 or in paragraph 4 respectively, or if consultations have been concluded and no agreement has been reached on a mutually agreed solution, the complaining Party may request the establishment of an arbitration panel in accordance with Article 206.

6. A Party shall not bring a dispute under this Part concerning the interpretation and application of Chapters 4 and 5 of Title IV unless the procedures of Article 189(3), (4) and (5) and Article 195(3), (4) and (5), respectively have been invoked and the matter has not been satisfactorily resolved within 9 months of the initiation of the consultations. Consultations pursuant to

those provisions shall replace those which would have been required under this Article.

*Article 205***Mediation**

1. If consultations fail to produce a mutually agreed solution, the Parties may, by agreement, seek recourse to a mediator. Unless the Parties agree otherwise, the terms of reference for the mediation shall be the matter referred to in the request for consultations.

2. Unless the Parties agree on a mediator within 15 days of the date of the agreement to request mediation, the Chairperson of the CARIFORUM-EC Trade and Development Committee, or his or her delegate, shall select by lot a mediator from the pool of individuals who are on the list referred to in Article 221 and are not nationals of either Party. The selection shall be made within 25 days of the date of the submission of agreement to request mediation and in the presence of a representative of each Party. The mediator will convene a meeting with the Parties no later than 30 days after being selected. The mediator shall receive the submissions of each Party no later than 15 days before the meeting and notify an opinion no later than 45 days after having been selected.

3. The mediator's opinion may include a recommendation on how to resolve the dispute consistent with the provisions of this Agreement. The mediator's opinion is non-binding.

4. The Parties may agree to amend the time limits referred to in paragraph 2. The mediator may also decide to amend these time limits upon request of any of the Parties or on his own initiative, given the particular difficulties experienced by the Party concerned or the complexities of the case.

5. The proceedings involving mediation, in particular all information disclosed and positions taken by the Parties during these proceedings shall remain confidential.

CHAPTER 2

Dispute settlement Procedures

Section 1

Arbitration procedure

Article 206

Initiation of the arbitration procedure

1. Where the Parties have failed to resolve the dispute by recourse to consultations as provided for in Article 204, or by recourse to mediation as provided for in Article 205, the complaining Party may request the establishment of an arbitration panel.

2. The request for the establishment of an arbitration panel shall be made in writing to the Party complained against and the CARIFORUM-EC Trade and Development Committee. The complaining Party shall identify in its request the specific measures at issue, and it shall explain how such measures constitute a breach of the provisions of this Agreement.

Article 207

Establishment of the arbitration panel

1. An arbitration panel shall be composed of three arbitrators.

2. Within 10 days of the date of the submission of the request for the establishment of an arbitration panel to the CARIFORUM-EC Trade and Development Committee, the Parties shall consult in order to reach an agreement on the composition of the arbitration panel.

3. In the event that the Parties are unable to agree on its composition within the time frame laid down in paragraph 2, either Party may request the Chairperson of the CARIFORUM-EC Trade and Development Committee, or her or his delegate, to select all three members by lot from the list established under Article 221, one among the individuals proposed by the complaining Party, one among the individuals proposed by the Party complained against and one among the individuals selected by the Parties to act as Chairperson. Where the Parties agree on one or more of the members of the arbitration panel, any remaining members shall be selected by the same procedure.

4. In the event of a dispute concerning the interpretation and application of Chapters 4 and 5 of Title IV the panel shall comprise at least two members with specific expertise on the matters covered by that Chapter drawn from a list of 15 persons established by the CARIFORUM-EC Trade and Development Committee as provided for under Article 221.

5. The Chairperson of the CARIFORUM-EC Trade and Development Committee, or her or his delegate, shall select the arbitrators within five days of the request referred to in paragraph 3 by either Party and in the presence of a representative of each Party.

6. The date of establishment of the arbitration panel shall be the date on which the three arbitrators are selected.

Article 208

Interim panel report

The arbitration panel shall notify to the Parties an interim report containing both the descriptive section and its findings and conclusions, as a general rule not later than 120 days from the date of establishment of the arbitration panel. Any Party may submit written comments to the arbitration panel on precise aspects of its interim report within 15 days of the notification of the report.

Article 209

Arbitration panel ruling

1. The arbitration panel shall notify its ruling to the Parties and to the CARIFORUM-EC Trade and Development Committee within 150 days from the date of the establishment of the arbitration panel. Where it considers that this deadline cannot be met, the Chairperson of the arbitration panel must notify the Parties and the CARIFORUM-EC Trade and Development Committee in writing, stating the reasons for the delay and the date on which the panel plans to conclude its work. Under no circumstances should the ruling be notified later than 180 days from the date of the establishment of the arbitration panel.

2. In cases of urgency, including those involving perishable and seasonal goods, the arbitration panel shall make every effort to notify its ruling within 75 days from the date of its establishment. Under no circumstance should it take longer than 90 days from its establishment. The arbitration panel may give a preliminary ruling within 10 days of its establishment on whether it deems the case to be urgent.

3. Either party may request the arbitration panel to provide a recommendation as to how the Party complained against could bring itself into compliance. In the event of a dispute concerning the interpretation and application of Chapters 4 or 5 of Title IV the arbitration panel shall include a recommendation on how to ensure compliance with the relevant provisions of these Chapters.

Section 2

Compliance

Article 210

Compliance with the arbitration panel ruling

Each Party shall take any measure necessary to comply with the arbitration panel ruling, and the Parties will endeavour to agree on the period of time to comply with the ruling.

*Article 211***The reasonable period of time for compliance**

1. No later than 30 days after the notification of the arbitration panel ruling to the Parties, the Party complained against shall notify the complaining Party and the CARIFORUM-EC Trade and Development Committee of the time it will require for compliance (reasonable period of time).

2. If there is disagreement between the Parties on the reasonable period of time to comply with the arbitration panel ruling, the complaining Party shall, within 20 days of the notification made under paragraph 1, request in writing the arbitration panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the other Party and to the CARIFORUM-EC Trade and Development Committee. The arbitration panel shall notify its ruling to the Parties and to the CARIFORUM-EC Trade and Development Committee within 30 days from the date of the submission of the request.

3. The arbitration panel shall, in determining the length of the reasonable period of time, take into consideration the length of time that it will normally take the Party complained against to adopt comparable legislative or administrative measures to those identified by such Party as being necessary to ensure compliance. The arbitration panel shall also take into consideration demonstrable capacity constraints which may affect the adoption of the necessary measures by the Party complained against.

4. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures set out in Article 207 shall apply. The time limit for notifying the ruling shall be 45 days from the date of the submission of the request referred to in paragraph 2.

5. The reasonable period of time may be extended by agreement of the Parties.

*Article 212***Review of any measure taken to comply with the arbitration panel ruling**

1. The Party complained against shall notify the other Party and the CARIFORUM-EC Trade and Development Committee before the end of the reasonable period of time of any measure that it has taken to comply with the arbitration panel ruling.

2. In the event that there is disagreement between the Parties concerning the compatibility of any measure notified under paragraph 1, with the provisions of this Agreement, the complaining Party may request in writing the arbitration panel to rule on the matter. Such request shall identify the specific measure at issue and it shall explain how such measure is incompatible with the provisions of this Agreement. The arbitration panel shall notify its ruling within 90 days of the date of the submission of the request. In cases of urgency, including those involving perishable and seasonal goods, the arbitration panel shall notify its ruling within 45 days of the date of the submission of the request.

3. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures set out in Article 207 shall apply. The time limit for notifying the ruling shall be 105 days from the date of the submission of the request referred to in paragraph 2.

*Article 213***Temporary remedies in case of non-compliance**

1. If the Party concerned fails to notify any measure taken to comply with the arbitration panel ruling before the expiry of the reasonable period of time, or if the arbitration panel rules that the measure notified under Article 212(1) is not compatible with that Party's obligations under the provisions of this Agreement, the Party complained against shall, if so requested by the complaining Party, present an offer for compensation. Nothing in the Agreement shall require the Party complained against to offer financial compensation.

2. If no agreement on compensation is reached within 30 days of the end of the reasonable period of time or of the arbitration panel's ruling under Article 212 that a measure taken to comply is not compatible with the provisions of this Agreement, the complaining Party shall be entitled, upon notification to the other Party, to adopt appropriate measures. In adopting such measures the complaining Party shall endeavour to select measures that least affect the attainment of the objectives of this Agreement and shall take into consideration their impact on the economy of the Party complained against and on the individual CARIFORUM States. In addition, where the EC Party has obtained the right to adopt such measures, it shall select measures which are specifically aimed at bringing into compliance the CARIFORUM State or States whose measures were found to be in breach of this Agreement. The other CARIFORUM States shall facilitate the adoption of measures to comply with the arbitration panel ruling by the CARIFORUM State or States found to be in breach. In cases involving a dispute under Chapter 4 and 5 of Title IV, appropriate measures shall not include the suspension of trade concessions under this Agreement. The complaining Party may adopt the appropriate measures 10 days after the date of the notification.

3. The EC Party shall exercise due restraint in asking for compensation or adopting appropriate measures pursuant to paragraphs 1 or 2.

4. Compensation or appropriate measures shall be temporary and shall be applied only until any measure found to violate the provisions of this Agreement has been withdrawn or amended so as to bring it into conformity with those provisions or until the Parties have agreed to settle the dispute.

*Article 214***Review of any measure taken to comply after the adoption of appropriate measures**

1. The Party complained against shall notify the other Party and the CARIFORUM-EC Trade and Development Committee of

any measure it has taken to comply with the ruling of the arbitration panel and of its request for an end to application of appropriate measures by the complaining Party.

2. If the Parties do not reach an agreement on the compatibility of the notified measure with the provisions of this Agreement within 30 days of the date of the submission of the notification, the complaining Party shall request in writing the arbitration panel to rule on the matter. Such request shall be notified to the other Party and to the CARIFORUM-EC Trade and Development Committee. The arbitration panel ruling shall be notified to the Parties and to the CARIFORUM-EC Trade and Development Committee within 45 days of the date of the submission of the request. If the arbitration panel rules that any measure taken to comply is not in conformity with the provisions of this Agreement, the arbitration panel will determine whether the complaining Party can continue to apply appropriate measures. If the arbitration panel rules that any measure taken to comply is in conformity with the provisions of this Agreement, the appropriate measures shall be terminated.

3. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures laid down in Article 207 shall apply. The period for notifying the ruling shall be 60 days from the date of the submission of the request referred to in paragraph 2.

Section 3

Common provisions

Article 215

Mutually agreed solution

The Parties may reach an agreed solution to a dispute under this Part at any time. They shall notify the CARIFORUM-EC Trade and Development Committee of any such solution. Upon adoption of the mutually agreed solution, the procedure shall be terminated.

Article 216

Rules of procedure

1. Dispute settlement procedures under Chapter 2 of this Part shall be governed by the Rules of Procedure which shall be adopted by the Joint CARIFORUM-EC Council within three months of the provisional application of this Agreement.

2. Any meeting of the arbitration panel shall be open to the public in accordance with the Rules of Procedure, unless the arbitration panel decides otherwise on its own motion or at the request of the Parties.

Article 217

Information and technical advice

At the request of a Party, or upon its own initiative, the arbitration panel may obtain information from any source,

including the Parties involved in the dispute, it deems appropriate for the arbitration panel proceeding. The arbitration panel shall also have the right to seek the relevant opinion of experts as it deems appropriate. Interested parties are authorised to submit *amicus curiae* briefs to the arbitration panel in accordance with the Rules of Procedure. Any information obtained in this manner must be disclosed to each of the Parties and submitted for their comments.

Article 218

Languages of the submissions

1. The written and oral submissions of the Parties shall be made in any official languages of the Parties.

2. The Parties shall endeavour to agree on a common working language for any specific proceedings under this Part. If the Parties are unable to agree on a common working language, each Party shall arrange for and bear the costs of the translation of its written submissions and interpretation at the hearings into the language chosen by the Party complained against, unless such language is an official language of that Party ⁽¹⁾.

Article 219

Rules of interpretation

Arbitration panels shall interpret the provisions of this Agreement in accordance with customary rules of interpretation of public international law, including those set out in the Vienna Convention on the Law of Treaties. The rulings of the arbitration panel cannot add to or diminish the rights and obligations provided in the provisions of this Agreement.

Article 220

Arbitration panel rulings

1. The arbitration panel shall make every effort to take any decision by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote. However, in no case dissenting opinions of arbitrators shall be published.

2. The ruling shall set out the findings of fact, the applicability of the relevant provisions of this Agreement and the reasoning behind any findings and conclusions that it makes. The CARIFORUM-EC Trade and Development Committee shall make the arbitration panel rulings publicly available unless it decides not to do so.

Article 221

List of arbitrators

1. The CARIFORUM-EC Trade and Development Committee shall, no later than three months after the provisional application of this Agreement, establish a list of 15 individuals who are willing and able to serve as arbitrators. Each of the Parties shall select five individuals to serve as arbitrators. The two Parties shall

⁽¹⁾ For the purpose of this Article the official languages of the CARIFORUM States are Dutch, English, French and Spanish and the official languages of the EC Party are those indicated in Article 249.

also agree on five individuals that are not nationals of either Party and who shall act as Chairperson to the arbitration panel. The CARIFORUM-EC Trade and Development Committee will ensure that the list is always maintained at this level.

2. Arbitrators shall have specialised knowledge of or experience in law and international trade. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government, or be affiliated with the government of any of the Parties, and shall comply with the Code of Conduct annexed to the Rules of Procedures.

3. The CARIFORUM-EC Trade and Development Committee may establish an additional list of 15 individuals having a sectoral expertise in specific matters covered by this Agreement. When recourse is made to the selection procedure of Article 207, the Chairperson of the CARIFORUM-EC Trade and Development Committee may use such a sectoral list upon agreement of both Parties. The CARIFORUM-EC Trade and Development Committee shall establish an additional list of 15 individuals having an expertise in the specific matters covered by Chapters 4 and 5 of Title IV.

Article 222

Relation with WTO obligations

1. Arbitration bodies set up under this Agreement shall not adjudicate disputes on each Party or Signatory CARIFORUM States' rights and obligations under the Agreement establishing the WTO.

2. Recourse to the dispute settlement provisions of this Agreement shall be without prejudice to any action in the WTO framework, including dispute settlement action. However, where a Party or Signatory CARIFORUM State has, with regard to a particular measure, instituted a dispute settlement proceeding, either under Article 206(1) of this Part or under the WTO Agreement, it may not institute a dispute settlement proceeding regarding the same measure in the other forum until the first proceeding has ended. For purposes of this paragraph, dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party or Signatory CARIFORUM State's request for the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO.

3. Nothing in this Agreement shall preclude a Party or Signatory CARIFORUM State from implementing the suspension of obligations authorised by the Dispute Settlement Body of the WTO. Nothing in the WTO Agreement shall preclude Parties from suspending benefits under this Agreement.

Article 223

Time limits

1. All time limits laid down in this Part, including the limits for the arbitration panels to notify their rulings, shall be counted in calendar days from the day following the act or fact to which they refer.

2. Any time limit referred to in this Part may be extended by mutual agreement of the Parties.

PART IV

GENERAL EXCEPTIONS

Article 224

General exception clause

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade in goods, services or establishment, nothing in this Agreement shall be construed to prevent the adoption or enforcement by the EC Party, the CARIFORUM States or a Signatory CARIFORUM State of measures which:

(a) are necessary to protect public security and public morals ⁽¹⁾ or to maintain public order;

⁽¹⁾ The Parties agree that, in accordance with Chapter 5 of Title IV, measures necessary to combat child labour shall be deemed to be included within the meaning of measures necessary to protect public morals or measures necessary for the protection of health.

(b) are necessary to protect human, animal or plant life or health;

(c) are necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

(iii) safety;