

PROTOCOL VII: DISADVANTAGED COUNTRIES, REGIONS AND SECTORS

(PROTOCOL AMENDING THE TREATY ESTABLISHING THE CARIBBEAN COMMUNITY)

PREAMBLE

The Parties to the Treaty Establishing the Caribbean Community (hereinafter called "the Member States"),

Desirous that the deepening of the regional integration process by the establishment of the CARICOM Single Market and Economy should result in an improved standard of living for all nationals of the Caribbean Community (hereinafter called "the Community");

Recognising that some Member States, particularly the Less Developed Countries, are entering the CARICOM Single Market and Economy at a disadvantage by reason of the size, structure and vulnerability of their economies;

Recognising also that the operation of the CARICOM Single Market and Economy will create dislocation in some countries, regions and sectors within the Community;

Aware that persistence of disadvantage, however arising, may impact adversely on economic and social cohesion in the Community;

Bearing in mind that with increased competition, both regionally and internationally, economies and economic enterprises would need to achieve enhanced levels of competitiveness;

Determined to establish effective measures, programmes and mechanisms to assist disadvantaged countries, regions and sectors;

Conscious that disadvantaged countries, regions and sectors will require a transitional period to facilitate adjustment to competition in the CARICOM Single Market and Economy,

Have agreed as follows:

PART ONE: PRELIMINARY

ARTICLE I Use of Terms

1. In this Protocol, unless the context otherwise requires:

"Community" includes the CARICOM Single Market and Economy to be established by the Protocols amending or replacing the Caribbean Common Market Annex to the Treaty;

"Community Council of Ministers" (hereinafter referred to as "the Community Council") means the Organ of the Community so named in Article 6(1)(b) of the Treaty;

"Community treatment" means the access of goods which are of Community origin to the markets of Member States without the application of import duties or quantitative restrictions;

"Conference" means the Conference of Heads of Government of the Community;

"Council for Finance and Planning" means the Organ of the Community so named in Article 6(2)(d) of the Treaty;

"Council for Trade and Economic Development" means the Organ of the Community so named in Article 6(2)(a) of the Treaty;

"disadvantaged countries" means:

(a) the Less Developed Countries within the meaning of Article 3 of the Treaty; or

(b) Member States that may require special support measures of a transitional or temporary nature by reason of:

(i) impairment of resources resulting from natural disasters; or

(ii) the adverse impact of the operation of the CARICOM Single Market and Economy on their economies; or

(iii) temporary low levels of economic development; or

(iv) being a Highly-Indebted Poor Country designated as such by the competent inter-governmental organisation.

"disadvantaged regions" means:

(a) regions within Member States experiencing economic dislocation from the operation of the CARICOM Single Market and Economy; or

(b) regions that may require special support measures of a transitional or temporary nature by reason of:

(i) impairment of resources resulting from natural disasters; or

(ii) temporary low levels of economic development;

"disadvantaged sectors" means:

(a) sectors of the economies of Member States in which economic enterprises experience dislocation from the operation of the CARICOM Single Market and Economy; or

(b) sectors that may require special support measures of a transitional or temporary nature by reason of natural disasters, whereby the loss in the sector causes social and economic disorder;

"economic enterprises" means economic enterprises within the meaning of Article 35a(5)(b) of the Caribbean Common Market Annex to the Treaty, as amended by Protocol II;

"Secretary-General" means the Secretary-General of the Community;

"Treaty" means the Treaty Establishing the Caribbean Community signed at Chaguaramas on the 4th day of July 1973, and includes any amendments thereto which take effect either provisionally or definitively (hereinafter referred to as "the Treaty").

2. In this Protocol a reference to Protocol I is a reference to the Protocol amending the Treaty and signed at Antigua and Barbuda on 19 February, 1997.

3. In this Protocol a reference to Protocol II is a reference to the Protocol Amending the Treaty to provide for the Rights of Establishment, Provision of Services and Movement of Capital.

ARTICLE II Amendment

The provisions of this Protocol shall replace Chapter Seven of the Caribbean Common Market Annex to the Treaty and take effect as hereinafter provided.

ARTICLE III
Replace Article 51 with the following:

Article 51 Scope of Application

1. The provisions of this Protocol shall have effect for the purpose of establishing a regime for disadvantaged countries, regions or sectors within the framework of the Treaty as well as a special regime for the Less Developed Countries in order to enhance their prospects for successful competition within the Community, and redress, to the extent possible, any negative impact of the establishment of the CSME.

2. As soon as practicable after the entry into force or provisional application of this Protocol, as the case may be, the Conference shall, on the recommendation of the Community Council and in accordance with Article 1, designate disadvantaged countries, regions and sectors and may, from time to time, make such further designation or terminate such designation as circumstances warrant.

3. Wherever in this Treaty reference is made to disadvantaged countries, regions and sectors or to the Less Developed Countries, the Organs of the Community shall take the measures required to give effect to the spirit and intent of Protocol VII.

ARTICLE IV
Replace Article 52 with the following:

Article 52 Objective of the Regimes

1. The objective of the regimes mentioned in Article 51 is to assist the disadvantaged countries, regions and sectors towards becoming economically viable and competitive by appropriate interventions of a transitional or temporary nature.

2. The interventions referred to in paragraph 1 of this Article may include:

(a) technical and financial assistance to address economic dislocation arising from the operation of the CARICOM Single Market and Economy;

(b) special measures to attract investment and industries;

(c) transitional or temporary arrangements to ameliorate or arrest adverse economic and social impact arising from the operation of the CARICOM Single Market and Economy;

- (d) special measures to assist industries to become efficient and competitive;
- (e) assistance intended to achieve structural diversification and infrastructural development;
- (f) assistance to economic enterprises disadvantaged by the removal of intraregional barriers;
- (g) the establishment of mechanisms to monitor, and assist in the discharge of, obligations assumed under the Treaty and other international trade agreements.

ARTICLE V

Replace Article 53 with the following:

Article 53 Implementation of Measures

1. Subject to the authority of the Conference, the Council for Trade and Economic Development (COTED) and the Council for Finance and Planning (COFAP), as appropriate, shall establish, administer and monitor the measures identified in Article IV of this Protocol.

ARTICLE VI

Add new Article to read as follows:

Article 54 Review of Measures

1. The Community Council shall review, as appropriate, the effectiveness of measures taken pursuant to this Protocol and take such action as may be necessary to achieve the objective of the Protocol, and shall submit a report thereon to the Conference.
2. The review shall include an examination of relevant programmes and support measures in order to determine their efficacy as a basis for their termination or modification as the case may be.

PART TWO : REGIME FOR DISADVANTAGED COUNTRIES, REGIONS AND SECTORS

ARTICLE VII

Replace Article 54 with the following:

Article 55 Measures to Redress Disadvantage Arising from Economic Dislocation

1. Member States agree that where economic dislocation arising from the operation of the CSME occurs, and notwithstanding any provisions to the contrary in the Treaty, the COTED may, as the case may require on a temporary basis and subject to Article V, adopt effective measures to arrest or mitigate adverse effects on economic activity. Such measures may include the grant of incentives to address the dislocation and shall be without prejudice to any incentives provided for in Articles IV and XIV of Protocol III (Protocol Amending the Treaty: Industrial Policy).
2. Notwithstanding any provisions to the contrary in the Treaty, the measures mentioned in this Article may, where necessary, provide for temporary derogations from rights and obligations set out in the Treaty.

3. The COTED shall periodically examine the impact of the measures mentioned in paragraph 2 with a view to determining their adequacy and establishing a time-frame for their discontinuance.

4. Member States shall co-operate with the Community Organs in implementing the measures mentioned in paragraph 2 of this Article and shall take the action required to secure compliance therewith.

Article 56 Promotion of Investment

The Council for Finance and Planning (COFAP) shall promote investment in disadvantaged countries by, **inter alia**, facilitating:

- (a) the establishment of joint ventures among nationals of disadvantaged countries as well as between nationals of disadvantaged countries and nationals of other Member States;
- (b) the establishment of joint ventures between nationals of disadvantaged countries and nationals of third countries;
- (c) investment for economic diversification including diversification of the agricultural sector;
- (d) research, development and the transfer of technology in the development of disadvantaged countries;
and
- (e) capital flows from other Member States to disadvantaged countries through the conclusion of double taxation agreements and appropriate policy instruments.

ARTICLE IX

Replace Article 57 with the following:

Article 57 Measures Relating to the Services Sector

1. The COTED, in establishing the programme for removal of restrictions by Member States on the provision of services in the Community mentioned in paragraph 2 of Article 36a of Protocol II shall give due consideration to the peculiar economic vulnerability of disadvantaged countries, bearing in mind Article 38c of Protocol II.

2. Without prejudice to the generality of the provisions set out in paragraph 1 of this Article, the COTED shall, in establishing the said programme, determine in respect of disadvantaged countries:

- (a) a list of services in respect of which national treatment may not be applied for a specified period of time;
- (b) the manner in which restrictions on services not mentioned in sub-paragraph (a) of this paragraph shall be removed:

Provided that such disadvantaged countries shall accord Member States rights no more restrictive than those accorded to other parties of the WTO under the General Agreement on Trade in Services (GATS).

ARTICLE X

Replace Article 58 with the following:

Article 58

Measures Relating to the Right of Establishment

1. The COTED shall take appropriate measures to ensure that, in establishing the programme for the removal of restrictions by Member States on the right of establishment in the Community mentioned in paragraph 3 of Article 35c of Protocol II, the peculiar economic vulnerability of disadvantaged countries in the Community is taken into account, bearing in mind Article 38c of Protocol II.

2. Without prejudice to the generality of the provisions of paragraph 1 of this Article, the COTED shall, in establishing the said programme, determine in respect of disadvantaged countries:

(a) a list of economic activities in respect of which national treatment may not be accorded to persons exercising the right of establishment for a specified period of time;

(b) the manner in which restrictions on the right of establishment in respect of economic activities not mentioned in sub-paragraph (a) of this paragraph shall be removed:

Provided that such disadvantaged countries shall accord to Member States rights of establishment no more restrictive than those accorded to third States.

ARTICLE XI

Insert new Article to read as follows:

Article 59

Safeguard Measures

1. Where, in accordance with this Treaty, a Member State establishes an entitlement to limit imports of goods from other Member States because:

(a) an industry or a particular sector of an industry in the first-mentioned Member State experiences serious difficulties due to a substantial decrease in internal demand for a domestic product; and

(b) such decrease in internal demand for the domestic product is due to an increase in imports consigned

from other Member States as a result of the operation of the CARICOM Single Market and Economy,

Then in such a case the first-mentioned Member State, being a disadvantaged country, and notwithstanding any other provisions to the contrary in the Treaty, may limit such imports for a period of up to three (3) years unless the COTED authorises the limitation for a longer period and take such other measures as the COTED may authorise.

2. A disadvantaged country applying restrictions in accordance with paragraph 1 of this Article shall notify them to the COTED, if possible, before they come into force. The COTED may, at any time, consider those restrictions and shall, in the light of such consideration, make recommendations designed to moderate any damaging effect of such restrictions or to assist the disadvantaged country to overcome its difficulties.

3. Nothing in this Treaty shall be construed as entitling any Member State to apply safeguard measures against the products of Community origin of a disadvantaged Member State where such products do not exceed 20 per cent of the market of the importing Member State.

ARTICLE XII

Insert new Article to read as follows:

Article 60 Support for Sensitive Industries

1. The COTED may authorise a Member State having a sensitive industry which can be disadvantaged by the operation of the CARICOM Single Market and Economy to suspend Community treatment to products of other Member States.
2. The suspension authorised in paragraph 1 of this Article shall be granted upon application to the COTED in that behalf where the applicant establishes that the product is from a sensitive industry.
3. For the purpose of this Article, an industry may be considered to be sensitive by reason of its vulnerable nature and:
 - (a) the significance of its contribution to, inter alia:
 - (i) Gross Domestic Product;
 - (ii) employment;
 - (iii) foreign exchange earnings; or
 - (b) its designation as vital within the national industrial policy.
4. Notwithstanding any other provision, a disadvantaged country may, for the period of suspension decided upon by the COTED, suspend Community treatment in respect of imports of like description from the Member State granted the suspension.
5. The COTED, in authorising the suspension mentioned in paragraph 1 of this Article may impose terms and conditions for the grant of the suspension.
6. The COTED shall monitor the progress of the industry concerned and undertake a periodic review.

ARTICLE XIII

Replace Article 59 with the following:

Article 61 Public Undertakings

Notwithstanding any provisions to the contrary in this Treaty, disadvantaged countries may, with the prior approval of the COTED, maintain, in respect of public undertakings, measures, the effect of which is to afford support to domestic production where such measures are in the form of:

- (a) a duty or charge having equivalent effect; or
- (b) quantitative restrictions.

ARTICLE XIV

Insert new Article to read as follows:

Article 62
Use of Technological and Research Facilities in Member States

1. Member States undertake to provide opportunities for access to their technological and research facilities by nationals of disadvantaged countries.
2. The COTED shall encourage close collaboration between research institutions and facilities located in disadvantaged countries with others located in other Member States.

ARTICLE XV
Insert new Article to read as follows:

Article 63
Promotion of Development

1. The COTED shall promote the establishment of infrastructure in the disadvantaged country or region to encourage or stimulate economic activity.
2. The COTED may also adopt measures for the establishment of new industries or for the retooling or expansion of existing industries in a disadvantaged country, region or sector.

ARTICLE XVI

Article 64
Special Provision for Guyana

Notwithstanding any provisions in the Treaty to the contrary, Guyana shall be allowed, as agreed by the Conference, to maintain quantitative restrictions on the importation of wheat flour for as long as it continues to benefit from the special arrangement for wheat imports.

Article 64 (bis)
Application of the Special Regime to Highly-Indebted Poor Countries

The COTED shall to the extent necessary and for a period to be determined, apply the provisions of the Special Regime for the LDCs to Highly-Indebted Poor Countries.

Article XVII
Insert new Articles to read as follows:

Article 65
Technical and Financial Assistance

1. As soon as practicable after the entry into force of this Protocol, the Community Council shall, in collaboration with other competent Organs of the Community, make adequate arrangements to extend to disadvantaged countries, regions and sectors such technical and financial assistance as may be required to allow them to participate effectively in the CARICOM Single Market and Economy and to administer international trade agreements.
2. Pursuant to paragraph 1 of this Article, the COTED shall evaluate the need for technical and financial assistance to disadvantaged countries, regions and sectors, and promote and facilitate appropriate programmes and projects. Such assistance may include:

- (a) grants or access to low-cost financing;
- (b) preparation of project proposals for financing;
- (c) performance guarantees and other guarantees to enterprises;
- (d) accessing technology including information technology;
- (e) product design or quality enhancement;
- (f) factory design and market development.

3. Technical assistance within the meaning of this Article may also include:

- (a) assistance to establish or upgrade national standardising bodies;
- (b) assistance to countries to advance their diversification programmes;
- (g) professional assistance in meeting obligations under trade-related agreements;
- (h) assistance to establish institutions or centres for the training or retraining of employees as the case may require;
- (i) provision of relevant expertise to formulate a legal policy framework conducive to the establishment of fair business and competition practices;
- (j) professional expertise in espousing and defending claims arising in connection with the WTO Agreement and other trade-related agreements;
- (k) professional assistance in preparing for disputes resolution arising in connection with trade-related agreements;
- (l) professional assistance in preparing legislation.

4. The evaluation mentioned in paragraph 2 of this Article may be undertaken by the COTED on its own initiative, or in response to an application for assistance issuing from a Member State.

5. The COTED shall examine the impact of the measures mentioned in paragraph 2 with a view to determining their adequacy and establishing a time-frame for their discontinuance.

ARTICLE XVIII

Replace Article 61 with the following:

Article 66 The Development Fund

1. There is hereby established a Fund to be known as the Development Fund (hereinafter "the Fund") for the purpose of providing financial or technical assistance to disadvantaged countries, regions and sectors.

2. The Fund's resources shall comprise:

- (a) contributions of Member States;
- (b) financing from governmental, non-governmental or private sector entities, whether within or external to the Community, in the form of subventions, grants, investments or loans;
- (c) income earned on assets; and
- (d) resources from any other source approved by the Community Council.

3. Subject to the provisions of the Treaty, the Community Council, on the recommendation of the Council for Finance and Planning (COFAP) shall, on a timely basis:

- (a) determine the manner and the amount in which the Fund shall be capitalized;
- (b) determine the manner and the amount of the contributions of Member States to the Fund;
- (c) establish principles and guidelines for negotiating loans;
- (d) recommend measures for the attraction of investments to disadvantaged countries, regions and sectors within the meaning of Article 52 paragraph 2 (b);
- (e) establish specific criteria for securing resources from the Fund;
- (f) establish the legal and operational procedures of the Fund; and
- (g) take such other measures as may be necessary for ensuring the effective management of the Fund.

4. The Community Council shall periodically review measures taken pursuant to paragraph 3 of this Article in order to determine their efficacy.

5. Member States undertake to enact legislation to give effect to the provisions of this Article respecting the establishment and operation of the Fund as soon as practicable after the structure and operational procedures of the Fund provided for in paragraph 3 of this Article have been determined by the Community Council.

Article 67 Saving

Nothing in this Protocol shall be construed as disentitling a disadvantaged country, region or sector, being the beneficiary of any other technical assistance programme, from simultaneously benefitting from technical assistance pursuant to the provisions herein set forth.

PART THREE: SPECIAL REGIME FOR THE LESS DEVELOPED COUNTRIES

Article XVIII (bis)
Insert the following new Articles:

Article 68 Import Duties

Where a Less Developed Country has suffered or is likely to suffer loss of revenue as a result of the importation of goods eligible for Community treatment, the Council for Trade and Economic Development (COTED) may, on application made in that behalf by the Less Developed Country, authorise the imposition of import duties on such goods for such time and on such terms and conditions as the COTED may decide.

Article 69 Community Origin

Member States agree that in the determination and operation of the criterion of substantial transformation pursuant to Article VIII of Protocol IV, special needs of the Less Developed Countries shall be taken into account.

Article 70 Incentives Regimes

Member States agree that in the establishment of any programme for incentives in the Community provided for in Article XIV of Protocol III and Article VIII of Protocol VII, the special needs of the Less Developed Countries shall be taken into account.

Article 71 The Common External Tariff (CET)

Member States agree that in the implementation of the CET provided for in Article VII of Protocol IV, the special needs of the Less Developed Countries shall be taken into account.

Article 72 Promotion of Industrial Development

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

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

3. The grant of authorisation pursuant to paragraph 1 of this Article shall be by means of a decision supported by the affirmative votes of all the Less Developed Countries and at least two of the More Developed Countries.

Article 73 Public Undertakings

Paragraph 1 of Article XIX of Protocol IV shall not apply to the Less Developed Countries.

Article 74 Use of Technological and Research Facilities

The More Developed Countries undertake to provide opportunities for the use of their technological and research facilities by the Less Developed Countries.

Article 75
Special Provisions for Belize

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

ARTICLE XIX
Signature

This Protocol shall be open for signature by the Member States on the day of July 1999.

ARTICLE XX
Ratification

This Protocol shall be subject to ratification by signatory States in accordance with their respective constitutional procedures. Instruments of ratification shall be deposited with the Secretariat which shall transmit certified copies to the Government of each Member State.

ARTICLE XXI
Accession

Any Member State other than a signatory State may accede to this Protocol. An Instrument of Accession shall take effect on the date on which the Instrument is deposited with the Secretariat of the Community.

ARTICLE XXII
Entry Into Force

This Protocol shall enter into force one month after the date on which the last Instrument of Ratification is deposited with the Secretariat.

ARTICLE XXIII
Provisional Application

1. A Member State may, upon the signing of this Protocol or at any later date before it enters into force, declare its intention to apply it provisionally.
2. Upon such declaration by all Member States, the provisions of this Protocol shall be applied provisionally pending its entry into force in accordance with Article XXIII.

IN WITNESS WHEREOF the undersigned duly authorised in that behalf by their respective Governments have executed this Protocol.

DONE at _____ on the _____ day
of _____ 1999.

Signed by L Bird
for the Government of Antigua and Barbuda on the 13th day of July 1999
at St. John's, Antigua and Barbuda

Signed by Owen Arthur
for the Government of Barbados on the 4th day of July 1999
at Port-of-Spain, Trinidad and Tobago

Signed by Said Musa
for the Government of Belize on the 4th day of July 1999
at Port-of-Spain, Trinidad and Tobago

Signed by Edison James
for the Government of the Commonwealth of Dominica on the
4th day of July 1999 at Port-of-Spain, Trinidad and Tobago

Signed by Keith Mitchell
for the Government of Grenada on the 4th day of July 1999
at Port-of-Spain, Trinidad and Tobago

Signed by Clement Rohee
for the Government of the Co-operative Republic of Guyana on the
4th day of July 1999 at Port-of-Spain, Trinidad and Tobago

Signed by Percival J. Patterson for the Government of Jamaica on the 4th day of July 1999
at Port-of-Spain, Trinidad and Tobago

Signed by David S. Brandt
for the Government of Montserrat on the 14 day of
1999 at

Signed by Denzil Douglas
for the Government of St. Kitts and Nevis on the 4th day of July 1999
at Port-of-Spain, Trinidad and Tobago

Signed by Kenny D. Anthony
for the Government of Saint Lucia on the 4th day of July 1999
at Port-of-Spain, Trinidad and Tobago

Signed by James Mitchell
for the Government of St. Vincent and the Grenadines on the
4th day of July 1999 at Port-of-Spain, Trinidad and Tobago

Signed by Ronald R. Venetiaan
for the Government of The Republic of Suriname on the 27th day of
October 1999 at Chaguaramas, Trinidad and Tobago

Signed by Basdeo Panday
for the Government of The Republic of Trinidad and Tobago on the
4th day of July 1999 at Port-of-Spain, Trinidad and Tobago

DECLARATION

The representatives of the under-mentioned Governments hereby declare their intention to apply provisionally the provisions of Protocol VII:

Signed by L Bird
for the Government of Antigua and Barbuda on the 13th day of July 1999
at St. John's, Antigua and Barbuda

Signed by Owen Arthur
for the Government of Barbados on the 4th day of July 1999
at Port-of-Spain, Trinidad and Tobago

Signed by Said Musa
for the Government of Belize on the 4th day of July 1999
at Port-of-Spain, Trinidad and Tobago

Signed by Edison James
for the Government of the Commonwealth of Dominica on the
4th day of July 1999 at Port-of-Spain, Trinidad and Tobago

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for the Government of Grenada on the 4th day of July 1999
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for the Government of The Republic of Trinidad and Tobago on the
4th day of July 1999 at Port-of-Spain, Trinidad and Tobago