AGREEMENT

ESTABLISHING

THE FREE TRADE AREA

BETWEEN

THE CARIBBEAN COMMUNITY

AND

THE DOMINICAN REPUBLIC

AGREEMENT ESTABLISHING THE FREE TRADE AREA BETWEEN THE CARIBBEAN COMMUNITY AND THE DOMINICAN REPUBLIC

The Caribbean Community (CARICOM), of the one part, and the Dominican Republic, of the other part, (which hereinafter shall be referred to as "the Parties");

CONSIDERING the growing process of economic globalisation and the intensification of the regional and sub-regional economic integration processes in which the Parties are deeply involved, and with the purpose of achieving more adequate integration in these processes and a more significant joint presence at their fora of negotiation;

CONSIDERING the urgent need to broaden the markets of the Parties in order to achieve the economies of scale that will support better levels of efficiency, productivity and competitiveness;

CONSIDERING that the symmetry and complementarity that exist between the economies of the Parties enable them to achieve levels of cooperation and integration that favour the economic development of both Parties;

CONSIDERING the significance accorded by the Parties to the development of closer, more dynamic and balanced trade and investment relations between them, with clear and accurate guidelines that permit full participation of all economic agents;

CONSIDERING the importance that the Parties accord to economic co-operation between them for their economic development;

CONSIDERING that in order to achieve a balance of rights and obligations within the framework of this Agreement, liberalisation should include trade in goods and services, and investment regimes;

CONSIDERING the rights and obligations of Member States of CARICOM and the Dominican Republic as Members of the World Trade Organisation (WTO), and other relevant international agreements as well as those existing among the Member States of CARICOM under the Treaty of Chaguaramas;

The Parties agree to create a Free Trade Area that includes Trade in Goods and Services, Investment and Economic Co-operation.

ARTICLE I

ESTABLISHMENT OF THE FREE TRADE AREA

1. (i) The Free Trade Area between CARICOM, comprising the States listed in 1(ii) and the Dominican Republic, (hereinafter referred to as "the Parties") is hereby established.

(ii) Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago.

2. For the purpose of this Agreement, its Annexes and Appendices, reference to the "territory of the Parties" shall:

(i) for each Member State of CARICOM mean its territory, as well as its maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea, over which that State exercises, in accordance with international law, jurisdiction or sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas;

(ii) for the Dominican Republic mean the land areas, maritime area, air space, subsoil as well as the air space above them in accordance with its national legislation and international law.

3. For the purpose of this Agreement, its Annexes and Appendices, the More Developed Countries of CARICOM (hereinafter referred to as "the MDCs") are:

(i) Barbados
(ii) Guyana
(iii) Jamaica
(iv) Suriname
(v) Trinidad and Tobago

4. For the purpose of this Agreement, its Annexes and Appendices, the Less Developed Countries of CARICOM (hereinafter referred to as "the LDCs") are:

(i) Antigua and Barbuda
(ii) Belize
(iii) Dominica
(iv) Grenada
(v) Montserrat
(vi) St Kitts and Nevis
(vii) Saint Lucia
(viii) St Vincent and the Grenadines

ARTICLE II

OBJECTIVE

The fundamental objective of the Agreement shall be to strengthen the commercial and economic relations between the Parties through:

(i) the establishment of a Free Trade Area between the Parties consistent with the Marrakesh Agreement Establishing the World Trade Organisation (the WTO);

(ii) the promotion and expansion of the sale of goods originating in the territories of the Parties through, **inter alia**, free access to the markets of the Parties, elimination of non-tariff barriers to trade, and the establishment of a system of Rules of Origin, Customs Co-operation and the Harmonisation of Technical, Sanitary and Phyto-Sanitary Procedures;

(iii) the progressive liberalisation of trade in services;

(iv) the liberalisation of the movement of capital between the Parties, and the promotion and protection of investments aimed at taking advantage of the opportunities offered by the markets of the Parties, and the strengthening of their competitiveness;

(v) the promotion of the active participation of private economic agents with a view to deepening and broadening the economic relations between the Parties, including the promotion and establishment of joint ventures;

(vi) the promotion and development of cooperative activities in the following areas: agriculture, mining, industry, construction, tourism, transportation, telecommunications, banking, insurance, capital markets, professional services and science and technology;

(vii) the discouragement of anti-competitive business practices between and within the Parties.

ARTICLE III

THE JOINT COUNCIL

The Parties hereby establish a Joint Council comprising representatives of both Parties.

2. The Joint Council (hereinafter referred to as " the Council") shall:

(i) supervise the implementation and administration of the Agreement, its Annexes and Appendices;

(ii) resolve any dispute which may arise out of the interpretation, execution of, or non-compliance with, or application of this Agreement, its Annexes and Appendices in accordance with its powers under Article XV dealing with Settlement of Disputes;

(iii) establish and delegate responsibilities to **ad hoc** or standing committees, working groups or expert groups;

(iv) supervise the work of all **ad hoc** or standing committees, working groups and expert groups established under this Agreement, its Annexes and Appendices;

(v) consult with governmental, inter-governmental and non-governmental entities, as necessary;

(vi) keep this Agreement, its Annexes and Appendices under periodic review, evaluating the functioning of this Agreement and recommending measures it considers suitable to better achieve its objective;

(vii) carry out any other functions which may be assigned to it by the Parties;

(viii) consider any other matter that may affect the operation of this Agreement, its Annexes and Appendices and take appropriate action.

3. (i) The Council shall establish its rules and procedures.

(ii) All decisions shall be taken by consensus.

(iii) The decisions of the Council shall have the status of recommendations to the Parties.

4. Each Party shall designate a representative to transmit and receive correspondence on its behalf.

ARTICLE IV

MEETINGS OF THE JOINT COUNCIL

The Council shall convene in ordinary session at least once a year and in extraordinary sessions at such other times as may be agreed between the Parties.

2. The meetings of the Council shall be chaired jointly by the Parties.

3. Meetings shall be held alternately in the Dominican Republic and in a Member State of CARICOM or such other place as may be agreed between the Dominican Republic and CARICOM.

4. The Agenda for each ordinary meeting of the Council shall be settled by the Parties at least one month before each proposed meeting.

ARTICLE V

TRADE IN GOODS

The Parties agree to implement a programme to liberalise the trade in goods between them.

2. The conditions under which goods covered by this Agreement will be traded in the Free Trade Area are set out in the Agreement on Trade in Goods that appears as Annex I.

3. The Rules of Origin shall be those set out in Appendix I to Annex I.

ARTICLE VI

TRADE IN SERVICES

The Parties agree to progressively liberalise trade in services between themselves by the establishment of a framework of principles and rules as contained in the Agreement on Trade in Services that appears as Annex II.

ARTICLE VII

INVESTMENTS

The Parties agree to promote and facilitate investments within the Free Trade Area through the provisions contained in the Agreement on Reciprocal Promotion and Protection of Investments that appears as Annex III.

ARTICLE VIII

TRADE FINANCING

The Council shall periodically review trade financing arrangements between the Member States of CARICOM and the Dominican Republic and recommend those mechanisms which may be implemented to facilitate this activity.

2. The Parties, recognising the importance of timely payments for the development of trade, undertake to ensure that neither the Dominican Republic nor any Member State of CARICOM shall impose undue impediments to trade transactions and the corresponding timely payment for goods and services traded within the context of this Agreement.

ARTICLE IX

ECONOMIC COOPERATION

The Parties agree to develop a broad co-operation programme in the following areas: agriculture, mining, industry, construction, tourism, transportation, telecommunications, banking, insurance, capital markets, professional services, and science and technology and such other areas as may be agreed by the Parties.

2. The Parties agree to encourage joint production of goods and collaboration in the provision of services, especially those intended to take advantage of market opportunities in third states.

ARTICLE X

DOUBLE TAXATION AGREEMENTS

The Parties agree to work towards the adoption of agreements to prevent and avoid double taxation between the Member States of CARICOM and the Dominican Republic.

ARTICLE XI

GOVERNMENT PROCUREMENT

The Parties agree to work towards the adoption of an agreement to encourage and facilitate greater participation by their economic entities in business opportunities arising from government procurement activities.

ARTICLE XII

INTELLECTUAL PROPERTY RIGHTS

The Parties agree to develop and adopt an Agreement on Intellectual Property Rights, taking into account the rights and obligations provided for in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), contained in Annex IC of the Agreement establishing the WTO, and other relevant international agreements to which all the Member States of CARICOM and the Dominican Republic are signatories.

2. Pending the adoption of the Agreement referred to in paragraph 1, the provisions of the TRIPS and the other relevant international agreements to which all the CARICOM Member States and the Dominican Republic are signatories will apply to intellectual property rights issues which may arise between them.

ARTICLE XIII

PRIVATE SECTOR ACTIVITIES

The Parties agree to promote active participation of the private sector in the fulfillment of the objective of this Agreement. To this end, the Parties establish a CARICOM/Dominican Republic Business Forum to analyse trade and investment opportunities, exchange business information and organise business encounters, and deal with any other

relevant matter including any matter as may be referred to it by the Council. The Forum shall regulate its own procedures and may make recommendations to the Council on any matter within its competence.

ARTICLE XIV

COMMITTEES

There shall be the following Standing Committees which shall operate under the guidance of the Council:

(i) Committee on Trade in Goods;

(ii) Committee on Technical Barriers to Trade;

(iii) Committee on Sanitary and Phyto-sanitary Measures;

(iv) Committee on Rules of Origin and Customs Cooperation;

(v) Committee on Trade in Services;

(vi) Committee on Investment;

(vii) Committee on Intellectual Property Rights;

(viii) Committee on Anti-Competitive Business Practices;

(ix) Any other Committee which may be established by the Council pursuant to Article III 2(iii).

2. Each Committee shall, ***inter alia***, have the following functions:

(i) monitor the implementation of the provisions of the Agreement, Annex or Appendix within its area of competence;

(ii) consider all matters relating to the subject area within its competence, including such matters as may be referred to it by the Parties;

(iii) consult on issues of mutual concern relating to its subject area which arise in international fora;

(iv) facilitate information exchange among the Parties;

(v) create working groups or convene expert panels on topics of mutual interest relating to its subject area;

(vi) any other function assigned to it by the Council.

3. Each Committee shall meet as may be agreed by its members and shall regulate its own proceedings.

ARTICLE XV

SETTLEMENT OF DISPUTES

The Parties agree to adopt the following Rules for the Settlement of Disputes arising under this Agreement, its Annexes and Appendices.

2. The Rules governing Settlement of Disputes (the Rules) shall apply to all disputes between the Parties relating to interpretation, application, execution of or non-compliance with the provisions of the Agreement, its Annexes and Appendices with the exception of matters covered in Annex III.

3. The Parties shall first seek to resolve any dispute referred to in paragraph 2 above through informal consultations and seek to arrive at a mutually satisfactory solution. In the case of perishables, the Parties shall notify the Council immediately of the dispute and of the action being taken.

4. Where the Parties fail to arrive at a mutual solution within 30 days, or in the case of perishables within 10 days, pursuant to paragraph 3 above, the aggrieved Party may deliver to the other Party a request in writing for the intervention of the Council. The request to the Council shall contain sufficient information to enable examination of the request.

5. The Council shall ordinarily meet within 15 days of receipt of a request and, in the case of perishables, within 5 days of receipt of a request. In special circumstances the timeframe may be adjusted by mutual agreement between the Parties. The Council shall render its decision within a reasonable time.

6. The Council may engage expert advisors in seeking solutions to disputes between the Parties.

7. The Council shall within one (1) year after the entry into force of this Agreement establish mechanisms for the settlement of disputes.

8. Pending the adoption of mechanisms provided for in paragraph 7, the Council may exercise the option of conciliation, mediation and/or arbitration to resolve any dispute which may arise between the Parties.

ARTICLE XVI

AMENDMENTS

This Agreement, its Annexes and Appendices may be amended by the Parties. Proposals made by one Party for amendments shall be submitted to the Council for its consideration.

2. Amendments shall enter into force once the Parties have notified each other through diplomatic channels, that all internal legal procedures have been completed.

ARTICLE XVII

EVALUATION OF THE AGREEMENT

Three (3) years after the entry into force of this Agreement, the Council shall carry out an evaluation of the Agreement, its Annexes and Appendices with respect to the achievement of their objectives and recommend what further measures may be taken to achieve them. The recommendations shall take into account any national, regional and international developments affecting the matters covered by this Agreement, its Annexes and Appendices.

ARTICLE XVIII

TERMINATION

Any Party may at any time withdraw from this Agreement by giving written notice of termination to the other Party. Termination shall take effect six (6) months after such notice is received by the other Party. The rights acquired and the obligations assumed under this Agreement shall cease on the effective date of termination, except as provided in paragraphs 2 and 3 of this Article.

2. Obligations undertaken prior to termination with respect to trade in goods and services shall continue in force for a further period of one year, unless the Parties agree to a longer period.

3. The provisions of the Agreement on the Reciprocal Promotion and Protection of Investments (Annex III) shall continue to apply to investments established or acquired prior to the date of termination, for a period of ten years from the date of termination, except in so far as those provisions extend to the establishment of covered investments.

ARTICLE XIX

ACCESSION BY OTHER STATES

This Agreement shall be open to other States subject to prior negotiations between the Parties and those States which have requested to become Parties to this Agreement.

2. The negotiations shall take into account that this Agreement, its Annexes and its Appendices establish preferential treatment by the Dominican Republic to the Less Developed Member States of CARICOM by reason of their lesser degree of development.

ARTICLE XX

STATUS OF ANNEXES AND APPENDICES

The Annexes and Appendices of this Agreement shall form an integral part thereof.

ARTICLE XXI

DEPOSITARY

This Agreement shall be deposited with the Secretary-General of the Caribbean Community who shall transmit certified copies to the Parties.

ARTICLE XXII

ENTRY INTO FORCE

This Agreement, its Annexes and Appendices shall enter into force on the 1st day of January 1999, or as soon thereafter as the Parties have notified each other through diplomatic channels that all internal legal procedures have been completed.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorised, have affixed their signatures to this Agreement.

DONE AT Santo Domingo in the Dominican Republic in the English and Spanish languages, both being equally authentic, this 22nd day of August 1998

For the Caribbean Community

SIGNED

Dr. the Hon. Kenny Anthony
Chairman of the Conference of
Heads of Government of
the Caribbean Community

For the Government of the Dominican Republic

SIGNED

Dr the Hon. Leonel Fernández Reyna
President of the Dominican Republic

ANNEX I

AGREEMENT ON TRADE IN GOODS

ARTICLE I

COVERAGE

The Parties agree that the conditions under which goods covered by this Agreement will be traded in the Free Trade Area are set out in this Annex.

ARTICLE II

DEFINITIONS

Except as provided herein, words and phrases shall have the meaning ascribed to them in the relevant Agreements of the WTO.

Competent Authority - The authority which, in conformity with the legislation of the Parties, is responsible for the administration of their customs tariff laws and regulations.

Customs Tariff - Any tariff, tax or duty levied on imports and of any type applied to the importation of goods, including any form of surcharge or additional charge on imports, except any equivalent charge or internal tax established in conformity with Article III.2 of the GATT 1994. This definition of a customs tariff does not include taxes or duties of lighterage, wharfage, storage and handling of merchandise, nor any others as may be required for port, custody or transport services; nor does it include exchange rate differences or other measures adopted by any Party.

Duties - Customs duties and any other charges of equivalent effect which are discriminatory in their application, whether fiscal, monetary, or of any kind, which are applied to imports. Rates and analogous charges where they represent the cost of the services rendered are not included in this concept of "duties".

Goods - Any materials or finished articles.

Identical Goods - Goods whose characteristics all coincide with those of the good it is compared.

Indirect Material - A good used in the production, verification or inspection of a good, but which is not physically incorporated into the latter; or a good used in the maintenance of buildings or the operation of equipment related to the production of a good.

ARTICLE III

MARKET ACCESS

The Parties agree to promote a programme of trade liberalisation between them, at the same time taking into account, in particular, the differences in the levels of development between the Dominican Republic and the LDCs of CARICOM.

2. Each Party agrees to grant goods produced in the territory of the other Party access to its market under the following arrangements:

(i) the goods originating in Member States of CARICOM which satisfy the conditions contained in the Rules of Origin that appear as Appendix I to this Annex shall receive the following treatment on entry into the market of the Dominican Republic:

(a) duty-free access for all goods other than those set out in Appendices II and III;

(b) phased reduction of the Most Favoured Nation (MFN) rate of duty on goods as set out in Appendix II;

(c) the application of the MFN rate of duty to those goods as set out in Appendix III;

(ii) the goods originating in the Dominican Republic which satisfy the conditions contained in the Rules of Origin shall receive the following treatment on entry into the markets of CARICOM Member States:

(a) duty-free access for all goods other than those set out in Appendices IV and V on entry into the markets of the MDCs;

(b) phased reduction of the MFN rate of duty on goods as set out in Appendix IV on entry into the markets of the MDCs;

(c) application of the MFN rate of duty on those goods set out in Appendix V on entry into the markets of the MDCs;

(d) application of the MFN rate of duty on all goods on entry into the markets of the LDCs.

3. The Lists of goods will be reciprocal unless the Parties agree otherwise.

4. The LDCs shall not be required to extend the treatment provided for in paragraph 2(ii)(a) and (b) to products originating in the Dominican Republic on entry into their territories up to 2005. A review of the provisions of this paragraph will be undertaken by the Parties in 2004.

5. The Parties agree that they will not apply any quantitative restrictions with respect to the trade under this Agreement, always taking into account the obligations that the CARICOM Member States have under the Treaty Establishing the Caribbean Community. In this context, the Parties agree that any products affected will be placed on the MFN List pending any specific arrangements which might be negotiated.

6. The Council may consider any request by the Parties for the modification of the Lists at Appendices II to V.

7. The Parties agree that CARICOM entrepreneurs, both natural and legal persons, shall, in the Dominican Republic, be allowed to promote or to manage the import, sale, rent or any other form of traffic or sale of merchandise or products of CARICOM origin, either as agents, representatives, commission agents, exclusive distributors, licensees or under any other nomenclature, on the same basis as nationals of the Dominican Republic.

ARTICLE IV

RULES OF ORIGIN

The Rules of Origin to be applied under this Annex shall be those set out in Appendix I.

ARTICLE V

TECHNICAL BARRIERS TO TRADE

The Parties agree to apply the provisions of Appendix VI on Technical Barriers to Trade.

ARTICLE VI

SANITARY AND PHYTO-SANITARY MEASURES

The Parties agree to apply the provisions of Appendix VII on Sanitary and Phyto-Sanitary Measures.

ARTICLE VII

GENERAL EXCEPTIONS

Nothing in this Agreement shall prevent the adoption or enforcement by the Dominican Republic or any Member State of CARICOM of measures:

(i) which are necessary –

(a) to protect public morals;

(b) to prevent crime or the maintenance of public order;

(c) to protect its essential security interests;

(d) to protect human, animal and plant life ;

(e) to secure compliance with laws or regulations which are not consistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII of GATT 1994, the protection of patents, trademarks and copyrights and the prevention of deceptive practices;

(f) and essential to the acquisition or distribution of products in general or local short supply; provided that any such measure shall be consistent with the principle that the Parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Agreement, shall be discontinued as soon as the conditions giving rise to them have ceased to exist;

(ii) which relate to -

(a) gold or silver production or trade;

(b) the products of prison labour;

(c) the preservation of the environment and the conservation of natural resources; and

(iii) which are imposed for the protection of national treasures of artistic, historical, anthropological, paleaontological or archaeological value.

ARTICLE VIII

TRADE PROMOTION

The Parties agree to:

(i) establish trade promotion programmes;

(ii) facilitate the activities of official and private trade missions;

(iii) organise fairs and expositions; and

(iv) promote the continuous exchange of information, market studies and activities leading to the maximum utilisation of opportunities offered by the liberalisation of trade between the Parties.

ARTICLE IX

BILATERAL SAFEGUARD MEASURES

The Dominican Republic and the Member States of CARICOM acknowledge that, as Members of the WTO, they have recourse to the Agreement on Safeguards in the WTO.

2. The Member States of CARICOM and the Dominican Republic may apply bilateral safeguard measures of a temporary nature when:

(i) imports of products from any Member State of CARICOM or the Dominican Republic are made in such quantities that such products cause serious injury or threat of serious injury to the domestic industry producing like or directly competitive products of the importing country;

(ii) it is necessary to redress balance-of-payment deficits or to protect the external financial position of the importing country.

3. Safeguard measures shall consist of the temporary suspension of the tariff preferences and the reinstatement of the MFN duties for the specific product.

4. Safeguard measures shall be applied for an initial period of no longer than one year. This term may be renewed for no more than one year, if the causes that motivated the imposition of the safeguard measure persist.

5. The importing country seeking to impose or renew any safeguard measure shall request a meeting of the Council in order to have consultations on the imposition or renewal of such measures. This imposition or renewal does not require consensus.

ARTICLE X

UNFAIR TRADE PRACTICES

Where there is evidence of injury, material injury, threat of injury or material injury to the domestic industry of a Party due to unfair trade practices such as export subsidies and dumping, that Party may apply corrective measures, provided the application of these measures is in conformity with the Agreement on Subsidies and Countervailing Measures and the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

ARTICLE XI

ANTI-COMPETITIVE BUSINESS PRACTICES

The Parties will seek to discourage anti-competitive business practices in the Free Trade Area and work towards the adoption of common provisions to prevent such practices.

2. The Parties will undertake to establish mechanisms aimed at facilitating and promoting competition policy provisions and ensuring their application among and within the Parties.

ARTICLE XII

CUSTOMS COOPERATION

The Parties, through their Customs authorities, agree to:

(i) strengthen their bonds of cooperation and mutual assistance to resolve any differences in relation to the administration of this Agreement;

(ii) stimulate as much as possible the practices, procedures, terms and conditions of mutual assistance as well as to intensify the relationships between themselves with the aim of sharing experiences that may improve and harmonise the systems and customs procedures applicable, based on the principle of reciprocity; and

(iii) strengthen the cooperation through mechanisms that may speed up the movement of goods and clearance through customs, without prejudice to the application of necessary measures and controls to avoid illegal trade and other practices that cause distortions to international trade.

2. The Parties will facilitate the release of all originating merchandise in conformity with the measures and procedures agreed, after the entry into force of this Agreement.

3. The Parties will give priority to the areas of harmonisation of customs procedures, computer technology and training.

4. The Parties will simplify and make available to the trading community information on procedures for the international transit of goods, the required documentation, the mode of transport, the customs operation schedule, and information on the established sea ports and airports.

5. (i) Each Party, through its customs authorities, shall speedily release the goods originating in the other Party that enter its territory. In order to facilitate the clearance of goods originating in the other Party, automatic controls for time of stay, selective or aleatory criteria for revision, weight control, physical verification of the goods and direct release to importers shall be applied.

(ii) The Parties agree to simplify documents needed for the transit of originating goods in accordance with the national legislation of the importing Party.

(iii) Each Party, in conformity with its legislation, shall inform the other of procedures that will facilitate and speed up the release of goods, including the requirements for importation and entry to the territory of the Party.

6. The Customs authorities of the Parties will exchange, where possible, and subject to domestic legislation and regulations relating to confidentiality, information and experience on:

(i) Classification and Customs Valuation;

(ii) Rules of Origin;

(iii) documents and requirements for the import and export of goods;

(iv) general or specific statistics of imports and exports;

(v) goods subject to non-tariff measures;

(vi) the customs regimes and procedures;

(vii) the current domestic legislation relating to import taxes, customs and port charges, and any subsequent amendments;

(viii) new technologies for preventing and detecting customs fraud;

(ix) new trends in customs infractions.

7. Without prejudice to the provisions of other agreements, upon entry into force of this Agreement, each Party agrees to notify the customs authorities of the other Party of any intention to implement new customs regulations.

APPENDIX I to
ANNEX I

RULES OF ORIGIN

ARTICLE I

DEFINITIONS

For the purposes of this Appendix, the following definitions shall apply:

(i) **Materials**: means raw materials, intermediate goods and parts or components utilised in production;

(ii) **Goods**: means any materials or finished articles;

(iii) **Production**: means planting, extraction, harvesting, fishing, hunting, manufacturing, processing or assembly of goods or products;

(iv) **Originating goods:** means goods or materials which meet the Rules of Origin established in this Appendix.

2. The Transaction Value shall be determined according to the national Legislation of the Parties.

ARTICLE II

SCOPE OF APPLICATION

The scope of application of the Rules of Origin and its amendments is limited to the trade of goods governed by the provisions of this Agreement.

ARTICLE III

CRITERIA FOR DETERMINING ORIGINATING STATUS

Goods shall be considered as originating in the territory of one of the Parties to this Agreement where they comply with either of the following conditions:

(i) they must be wholly produced in one of the Parties; or

(ii) they must be produced in one of the Parties wholly or partly from materials imported from countries other than the Parties by a process which effects a substantial transformation characterised -

(a) by the goods being classified in a six-digit sub-heading of the Harmonised Commodity Description and Coding System different from that in which any of the materials imported from countries other than the Parties are classified, as specified in the Attachment to this Appendix; or,

(b) by other criteria specified in the Attachment to this Appendix.

ARTICLE IV

WHOLLY PRODUCED GOODS

Wholly Produced Goods are:

(i) products from the mineral, plant or animal kingdoms (including those from hunting and fishing), extracted, harvested or gathered, born, bred or captured in the territories of the Parties, or in their territorial waters or in their exclusive economic zones;

(ii) products of the sea extracted beyond the territorial waters of the Parties and their exclusive economic zones by ships, wholly or partially owned by nationals of the Parties, legally chartered, leased or contracted under joint venture arrangements by enterprises established in the territories of the Parties;

(iii) products of factory ships, wholly or partially owned by nationals of the Parties, legally chartered, leased or contracted under joint venture arrangements by enterprises established in the territories of the Parties produced from goods or products of the sea, extracted by ships in accordance with the provisions in (i) and (ii) above;

(iv) the slag, ashes, residues, waste or scrap, gathered or obtained from manufacturing and processing operations performed in the territories of the Parties, fit only for the recovery of raw materials, as long as they do not constitute toxic or hazardous wastes in accordance with national and international law;

(v) goods produced in the territories of the Parties which are made solely from originating goods.

ARTICLE V

INSUFFICIENT WORKING OR PROCESSING

Goods shall not be treated as originating if they are produced by any operation or process which consists only of one or more of the following:

(i) operations to ensure the preservation of goods or products during transportation or storage, such as ventilation, refrigeration, freezing, addition of preservatives or salt, removal of damaged parts and the like;

(ii) operations such as dust removal, washing or cleaning, sifting, peeling, shelling, winnowing, maceration, drying, sorting, classification, grading, selection, crushing, filtering, diluting in water, painting or cutting-up;

(iii) the simple formation of sets of goods;

(iv) the packing, placing in containers or repackaging;

(v) the dividing up or assembly of packages;

(vi) the affixing of brands, labels, or other similar distinctive signs;

(vii) the simple mixture of materials, if the characteristics of the product obtained are not essentially different from the characteristics of the materials which have been mixed;

(viii) the slaughter of animals.

ARTICLE VI

MATERIALS NOT INCORPORATED IN THE GOODS

Any material, input or product which is not physically incorporated in goods used in the production, verification and inspection of the goods, and operation of equipment related with it or for the maintenance of buildings, will be considered originating regardless of the country where it was manufactured or produced.

2. These include:

(i) fuel, electrical energy, catalysts and solvents;

(ii) equipment, apparatus and accessories used for the verification or inspection of goods;

(iii) gloves, protective eyemasks, footwear, apparel, security equipment and accessories;

(iv) tools, dies (for die-cutting) and moulds;

(v) spare parts and materials used in the maintenance of equipment and buildings;

(vi) lubricants, oils, compound products and other products used in the production process, equipment operation or maintenance of buildings; and

(vii) any other material or product which is not incorporated in the goods, but which can be shown to be part of the said production.

ARTICLE VII

CUMULATION

For the purpose of the origin requirements, materials or products originating in the territory of any of the Parties, incorporated in particular goods in the territory of the other Party, shall be considered as goods originating in the Party where final production takes place.

ARTICLE VIII

REGIONAL VALUE CONTENT

The Regional Value Content (RVC) of the goods shall be calculated based on the Transaction Value method, applying the following formula:

RVC = [(TV - NOG) / TV] * 100 where:

RVC = Regional Value Content, expressed as percentage.

TN = Transaction Value of the merchandise, adjusted on an FOB base

NOG = Value of non-originating goods used in the production of the final product.

2. Where the value of the goods is on a basis other than FOB it shall be adjusted to FOB for purposes of this Article.

3. When the origin is determined by the Regional Value Content, the required percentage shall be specified in the Attachment to this Appendix.

4. All costs considered in the calculation of Regional Value Content, shall be registered and kept in accordance with generally accepted accounting principles, applicable in the territory of the Party where the good is produced.

ARTICLE IX

DE MINIMIS

Where the value of all non-originating materials used in the production of goods that do not undergo an applicable change in tariff classification as set out in the Attachment to this Appendix is not more than seven percent (7%) of the transaction value of the goods adjusted to a FOB basis, these materials shall be considered to be originating goods.

ARTICLE X

MANAGEMENT OF INVENTORY

The Parties will ensure that enterprises will apply appropriate systems in the management of this Appendix provided that the systems are based on generally accepted accounting principles.

2. Each Party will inform the other of the systems in use to manage inventories including those of interchangeable goods.

ARTICLE XI

SETS

Sets, as defined in General Rule 3 of the Harmonised System, shall be regarded as originating when all component articles are originating products. Nevertheless, when a set is composed of originating and non-originating articles, the set as a whole shall be regarded as originating provided that the value of the non-originating articles does not exceed seven per cent (7%) of the FOB price of the set.

ARTICLE XII

ASSEMBLY

The rules governing assembly goods shall be defined on a case-by-case basis in the Attachment to the Appendix provided for in Article III.

ARTICLE XIII

ACCESSORIES, SPARE PARTS AND TOOLS

The accessories, spare parts and tools despatched with a piece of equipment, machine, apparatus or vehicle which are part of the normal equipment, will not be considered in determining if all non-originating materials or products used in the production of a piece of equipment, machine, apparatus or vehicle comply with the correspondent change in the classification established in this Appendix and its Attachment, provided that:

(i) the accessories, parts and tools are not separately billed from the piece of equipment, machine, apparatus or vehicle, regardless of any detailed information contained in the invoice; and

(ii) the quantity and the value of these accessories, parts and tools are the normal ones used for related goods.

2. The origin of the accessories, parts and tools that do not fulfill the conditions in the preceding paragraph will be determined by applying the corresponding rule of origin to each one of them separately.

ARTICLE XIV

TREATMENT OF RETAIL PACKING

Packing presented with the merchandise and classified with the goods that they contain, will not be considered for determining the origin of the related goods, as long as they are used on a normal basis.

2. Where the packing is not that used on a normal basis, each Party may treat goods separately from their packing to determine the origin of the goods and the packing.

ARTICLE XV

TREATMENT OF PACKING REQUIRED FOR THE TRANSPORT OR STORAGE OF GOODS

No part of any packing required for the transport or storage of goods will be considered when determining origin of goods as a whole.

ARTICLE XVI

DIRECT TRANSPORT

In order for goods to benefit from the preferential treatment provided for under this Agreement, they must be directly delivered from the exporting country to the importing country.

2. For this purpose, the following shall be considered as direct consignment:

(i) goods transported without going through third countries;

(ii) goods transported in transit through one or more third countries, with or without transhipment or temporary storage under the surveillance of Customs Authorities of such countries, provided that:

(a) the transit is justified by geographical reasons or by considerations related to transport requirements;

(b) they are not designed for trade or use in the transit country; and

(c) they do not undergo during transportation or storage any operation other than loading or unloading or operations to keep them in good condition and ensure their conservation.

ARTICLE XVII

TRANSHIPMENT THROUGH THE PARTIES

Nothing in Article XVI shall preclude the transhipment of goods through the Parties.

2. Where such transhipment takes place, the Certifying Authority in the State through which the goods are transhipped shall affix on the relevant transport documentation the approved stamp and an authorised signature pursuant to Article XIX.

ARTICLE XVIII

DECLARATION AND CERTIFICATION OF ORIGIN

The Certificate of Origin shall include:

(i) a declaration by the exporter or the final producer that the origin requirements prescribed in this Appendix have been met;

(ii) a certificate by the authorised body of the exporting country that the declaration by the exporter or the final producer, as the case may be, is accurate.

2. Where the exporter is not the final producer of the goods or products, the former shall present the declaration of origin to the authorised body.

3. In every case, the Certificate of Origin shall be prepared by an exporter in the country of final production.

4. The competent authority in the exporting country shall carry out such control as is necessary to permit the certification provided for in this Article and shall confirm all the data set out in the Certificate of Origin.

5. The Certificate of Origin shall have affixed the signature of an official notified by the authorised body of the exporting country pursuant to Article XIX.

6. The date of the Certificate of Origin may not precede that of the relevant commercial invoice.

7. The Certificate of Origin shall be valid for a period of 180 days from the date of issue.

8. Where the goods traded under this Agreement are accompanied by a Certificate of Origin, that Certificate shall be deemed to satisfy the requirement of the Consular Invoice.

ARTICLE XIX

THE FUNCTIONS AND OBLIGATIONS OF BODIES AUTHORISED TO CARRY OUT CERTIFICATION

The Bodies authorised by the Parties to carry out Certification will:

(i) verify the accuracy of the declaration presented to them by the final producer or the exporter by way of systems or procedures which ensure the accuracy of the data;

(ii) provide to the other Party the administrative cooperation required for the control of documentary proof or origin.

2. The bodies authorised by the Parties will, no later than thirty (30) days after entry into force of the Agreement, transmit through their respective Foreign Ministries, the approved list of the bodies authorised to issue the certificates mentioned in this Appendix, along with a list of authorised signatories, facsimiles of the authorised signatures and the stamps of the authorised bodies.

3. Any changes to such listings shall enter into force thirty (30) days after receipt of notification.

ARTICLE XX

REQUIREMENT TO MAINTAIN RECORDS AND DOCUMENTS

Each Party shall require the exporter or final producer who completes and signs a Certificate of Origin to keep all the records and documents pertaining to the origin of the goods for a minimum of three years from the date of the Certificate and to produce these records and

documents as requested by the competent authority, in accordance with national legislation.

ARTICLE XXI

NON-REQUIREMENT OF THE CERTIFICATE OF ORIGIN

An invoice, with a duly signed declaration that the goods were produced in a CARICOM Member State or in the Dominican Republic, shall be deemed to satisfy the requirement of the Certificate of Origin, where the value of the goods expressed in national currency, does not exceed the equivalent of One Thousand US Dollars (US$1,000.00).

2. This exception will not apply where the imports are proven to be the result of two or more parts of a consignment.

ARTICLE XXII

CONFIDENTIALITY

Each Party shall maintain, in accordance with its national legislation, the confidentiality of confidential business information collected pursuant to this Agreement and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information.

2. The confidential business information collected pursuant to this Agreement may be disclosed only to those authorities responsible for the administration and enforcement of determinations of origin and of customs and revenue matters.

ARTICLE XXIII

ORIGIN VERIFICATION

For purposes of determining whether goods imported into its territory from the territory of another Party qualify as originating goods, a Party may conduct verification solely by means of:

(i) submitting to the competent authority of the exporting Party request for information from an exporter or a producer, in a territory of another Party;

(ii) visits to the premises of an exporter or producer in the territory of another Party to review records and observe the production of the goods;

(iii) other procedures agreed upon by the Parties whenever necessary.

2. Prior to conducting verification pursuant to Paragraph 1, a Party shall, through its designated entity, notify the competent authority of the exporting Party of its intention to carry out verification. Within five (5) days of dispatch of this notification, the competent authority in the exporting Party shall notify the exporter and/or the producer of the goods.

3. The competent authority of the importing Party shall obtain the written consent of the exporter or producer of the goods whose premises are to be visited.

4. The notification of visits which are provided for in Paragraph 1(ii) shall include:

(i) the identity of the designated entity issuing the notification;

(ii) the name of the exporter or producer whose premises are to be visited;

(iii) the date and place of the proposed verification visit;

(iv) the object and scope of the verification visit, including specific reference to the goods which are the subject of the verification;

(v) the names and designation of the officials who will carry out the visit; and

(vi) the legal basis for the verification visit.

5 The competent authority of the exporting Party may, at the request of the Party wishing to carry out verification pursuant to paragraph 1, call on the producer or the exporter to make available, ***inter alia***, documentation and accounting records and permit inspection of materials, production facilities and processes.

6. Where a verification has been notified, any modification of the information referred to in this Article shall be notified in writing to the competent authority of the exporting Party, who in turn shall immediately notify the modifications to the producer or the exporter. Such modifications shall be notified by the importing Party no later than fifteen (15) days after the initial notification.

7. Where an exporter or a producer does not either give written consent to a proposed verification visit or provide any information requested as provided for in this Article within thirty (30) days of despatch of the notification, the Party which has notified intention to carry out verification may deny preferential tariff treatment to goods which would have been the subject of such verification.

8. The Competent Authority of the importing Party may grant to the competent authority of the exporting Party an extension of not more than ten (10) days for the submission of any documents which may be required to support an application for verification of origin under this Agreement.

9. Each Party shall provide that, where its competent authority receives notification, the competent authority may, within seven (7) days of receipt of the notification, postpone the proposed verification visit for a period not exceeding fifteen (15) days from the date of such receipt or for such longer period as the Parties may agree.

10. The Parties shall permit an exporter or a producer whose goods are the subject of a verification visit to designate two observers to be present during the visit, providing that:

(i) the observers do not participate in a manner other than as observers; and

(ii) the failure of the exporter or producer to designate observers shall not result in the postponement of the visit.

ARTICLE XXIV

FINDINGS OF THE VERIFICATION

The Party conducting a verification shall provide the exporter or producer whose goods are the subject of the verification with a written determination of whether or not the goods qualify as originating goods, including findings of fact and the legal basis for the determination, within twenty-one (21) days of the conclusion of the verification exercise.

ARTICLE XXV

GUARANTEE OF PAYMENT OF REVENUE

In no case shall the customs authorities of the Parties interrupt an import procedure of the products covered by a Certificate of Origin. However, the competent authorities of the importing Party, in addition to requesting the appropriate additional information from the competent authorities of the exporting Party, may adopt any action it deems necessary to safeguard its fiscal interests.

2. The competent authorities of the importing Party shall take appropriate action with respect to any financial security given to protect the fiscal interest based on the determination of the verification.

ARTICLE XXVI

APPEALS

Each Party will establish procedures for the review of decisions by the various authorities regarding the origin verification procedures.

ARTICLE XXVII

PENALTIES

Each Party, in its legislation, shall provide penalties for breaches of the provisions of this Appendix which shall be similar to those applied for breaches of its laws and regulations in similar circumstances.

APPENDIX VI to
ANNEX I

TECHNICAL BARRIERS TO TRADE

ARTICLE I

DEFINITIONS

For the purposes of this Appendix the terms defined in the Seventh Edition (1996) of the ISO/IEC Guide 2 Standardization and related activities - General Vocabulary, shall, when used in this Appendix have the same meaning given in the said Guide. In addition, the following definitions shall apply:

Risk Assessment: The evaluation of the potential of adverse effects to the health and safety of human, animal or plant life, or to the environment resulting from any goods or services traded between the Parties.

Standards-related Measure: A standard, technical regulation or conformity assessment procedure.

Standard: A document approved by a recognised body, that provides for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

International Standard: A standard or other guide or recommendation, adopted by an international standardising body and made available to the public.

Legitimate Objectives: Objectives such as safety, protection of human, animal or plant life or health, the environment or consumers (including matters relating to quality and identifiability of goods or services); or, sustainable development, considering, among other things, where

appropriate, fundamental climatic, geographical, technological or infrastructural factors or scientific justification.

Conformity Assessment Procedure: Any procedure used directly or indirectly, to determine that relevant requirements in technical regulations or standards are satisfied.

Technical Regulation: Document which lays down product characteristics or their related processes and production methods, including applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

Service: Any service within the scope of this Appendix that is subject to standards-related or metrology measures including standardization, metrology and conformity assessment services themselves.

Administrative Rejection: Any action taken by a public administration agency of the importing Party, to restrict the entry to its territory of a shipment or the provision of a service, due to technical reasons.

Dangerous Wastes: Any material generated in the extraction, transformation, production, consumption, utilisation, control or treatment processes, whose properties do not allow for its re-use, and that, due to its corrosive, toxic, poisonous, reactive, radioactive, explosive, flammable, biologically infectious or irritating characteristics, represents a hazard to health or to the environment.

Hazardous Substance: Any substance that is hazardous to health and safety of human, animal or plant life, or to the environment and that is identified as such by national and international agencies.

Make Compatible: To bring different standards-related measures of the same scope approved by different standardising bodies to a level such that they are either identical, equivalent, or have the effect of permitting goods or services to be used in place of one another or fulfill the same purpose.

ARTICLE II

SCOPE OF APPLICATION

This Appendix applies to the standards-related and metrological measures of the Parties, as well as to other related measures that may directly or indirectly affect trade in goods or services between the Parties.

2. The Parties affirm their existing rights and obligations under the Agreement on Technical Barriers to Trade of the World Trade Organisation (WTO) and other international agreements to which the Member States of CARICOM and the Dominican Republic are parties, including agreements relating to health, the environment and the protection of the consumer.

3. This Appendix does not apply to Sanitary and Phyto-Sanitary Measures.

ARTICLE III

NON-DISCRIMINATORY TREATMENT

Each Party shall, in respect of standards-related measures, accord to goods and service-providers of the other Party, treatment no less favourable than that accorded to like goods or service-providers of national origin and to like goods or service-providers originating in any other country.

ARTICLE IV

USE OF INTERNATIONAL STANDARDS

Each Party shall use, as a basis for the development and application of its standardisation measures, current international standards, or international standards whose completion are imminent, except where such standards would be an ineffective or inappropriate means to fulfill its legitimate objectives.

2. When one Party applies procedures for conformity assessment which restrict or restrain the access of goods, that Party shall consider the use of the pertinent international standards as the basis of access until a final decision is taken.

ARTICLE V

RISK ASSESSMENT

Each Party may conduct risk assessment in its territory, provided that such assessment does not have the intention, or effect of creating unnecessary obstacles to trade between them. In so doing, the Parties shall take into consideration the risk assessment methods developed by international agencies.

2. When conducting risk assessment, the Party performing it shall take into consideration all available pertinent scientific evidence, technical information, the intended end use, and the associated technology.

3. Once the protection level that is considered adequate has been established and the risk assessment conducted, each Party shall avoid making arbitrary or unjustifiable distinctions between similar goods and services, if those distinctions:

(i) result in arbitrary or unjustifiable discrimination against goods or services-providers of the other Party;

(ii) constitute a disguised restriction on trade between the Parties; or

(iii) discriminate between similar goods or services for the same use under the same conditions, that hold the same level of risk, and that result in similar benefits.

ARTICLE VI

COMPATIBILITY AND EQUIVALENCE

Without prejudice to the rights of the Parties under this Appendix and taking into account international standardisation activities, the Parties shall, to the extent practicable, make compatible their standards-related measures, without reducing the level of safety or of protection of human, animal or plant life or health, the environment or the consumer.

2. Each Party shall accept a technical regulation adopted or maintained by an exporting Party as equivalent to its own where the exporting Party, in cooperation with the importing Party, demonstrates to the satisfaction of the importing Party that its technical regulation adequately fulfills the importing Party's legitimate objectives.

3. Upon the request of the exporting Party, the importing Party shall communicate in writing its reasons for not accepting any particular technical regulation of the exporting Party as equivalent to its own in accordance with paragraph 2 of this Article.

4. The Parties recognize the need to review, revise and update standards and technical regulations to achieve greater harmonisation.

5. The Parties further affirm the need to review procedures for conformity assessment systems in order to facilitate certification, accreditation and the issuing of marks of conformity.

ARTICLE VII

CONFORMITY ASSESSMENT

If it is of mutual benefit, each Party shall in a reciprocal manner, accredit, approve, licence or otherwise recognize the conformity assessment bodies in the territory of the other Party, on terms no less favourable than those applicable to such bodies in its territory.

2. The Parties may utilise the technical and institutional capability of the conformity assessment bodies established in the territory of the Parties, and recognised in accordance with paragraph 1 of this Article.

3. Whenever it is possible, the Parties shall provide for the carrying out of conformity assessment procedures in production facilities and the issuing of marks of conformity assessments when the product satisfies the requirements of the standard or technical regulation.

4. Each Party shall acknowledge the results of the conformity assessment procedures in the other Party's territory.

5. Prior to acceptance of results of a conformity assessment procedure pursuant to paragraph 4 of this Article and to enhance confidence in the continued reliability of each other's conformity assessment results, the Parties may consult on such matters as the technical competence of the conformity assessment bodies involved, including verified compliance with relevant international standards.

6. The Parties shall ensure the confidentiality of information about products or services originating in the territory of the other Party arising from, or supplied in connection with, conformity assessment procedures in the same way as for domestic products and in such a manner that legitimate commercial interests are protected.

ARTICLE VIII

METROLOGICAL STANDARDS

In fulfilling the requirements of this Appendix, each Party shall, as far as practicable, ensure the traceability of its metrological standards in accordance with the recommendations of the International Bureau of Weights and Measures (IBPM) and the International Organisation of Legal Metrology (OIML).

ARTICLE IX

FILLING, PACKAGING AND LABELLING

The Parties shall develop agreed standards with respect to filling, packaging and labelling and will submit them through such mechanisms created in accordance with Article XI. With respect to this Article, the relevant principles adopted by the International Organisation for Standardization (ISO) shall generally be followed.

2. While the agreed standards are being developed, each Party shall apply, inside its territory, its standards for filling, packaging and labelling.

3. In the case of foods and food-additives, in order to ensure that standards developed do not contradict themselves (either in meaning or in practice) the basis of harmonisation shall preferably be standards and documents issued by Codex Alimentarius.

ARTICLE X

NOTIFICATION

Each Party shall notify the other Party of the initiation of any activity leading to the promulgation of any standards-related measure.

2. Each Party shall notify the other Party when a standards-related measure is withdrawn.

3. A Party which proposes that the adoption or modification of some standards-related or metrological measure may have a significant effect on trade between the Parties, shall:

(i) at least sixty (60) days prior to such adoption or modification publish a notice and notify the other Party in writing, using the same form of notification of the World Trade Organisation (WTO), in such a

manner as to enable interested persons to become acquainted with the proposed measure;

(ii) upon request, provide to the other Party, particulars or copies of the proposed measure, and whenever possible, identify the parts which in substance deviate from relevant international standards;

(iii) allow reasonable time for the other Party to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account;

(iv) provide the other Party, through the Enquiry Point, with a copy of the finalised measure to be implemented;

(v) where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Party, that Party may omit any of the steps enumerated in paragraph (iii) of this Article as it finds necessary, provided that the Party upon adoption of the measure notifies the other Party of the nature of the urgent problem, provides copies of the measure and takes any comments into consideration;

(vi) each Party shall annually, or as later determined, notify in writing the other Party of its standardization work programme;

(vii) when one of the Parties administratively refuses a shipment or a service provision due to non-compliance with a standards-related or metrological measure it shall notify in writing, without delay, the owner(s) of the shipment or the service provider(s) the technical justification for the refusal;

(viii) a copy of the technical justification provided for in paragraph (vii) of this Article shall immediately be notified to the Enquiry Points of the other Party;

(ix) unless otherwise specified, any notification required under this Article shall be issued through the Enquiry Point designated under Article XI.

ARTICLE XI

ENQUIRY POINTS

Each Party shall ensure that an Enquiry Point exists, which is able to respond to all reasonable enquiries from the other Party, and other interested person(s), as well as to provide the relevant documents regarding standards-related and metrological measures adopted or proposed in its territory by Governmental or non-Governmental agencies.

2. The Parties shall inform each other of the institutions which they have designated as Enquiry Points.

3. Each Party shall take reasonable measures to ensure that where copies of documents are requested by the other Party, or by other interested person(s) in accordance with paragraph 1 of this Article, they are supplied at an equitable price (if any) which shall, apart from the actual cost of delivery, be the same for the nationals[1] of the Party concerned.

1

"Nationals" here shall be deemed, in the case of a separate customs territory Party, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.

ARTICLE XII

HANDLING OF HAZARDOUS SUBSTANCES AND WASTE

The Parties shall apply the provisions, guidelines or recommendations of the pertinent United Nations Convention, the Basle Convention and the relevant international agreements and standards to which the Parties adhere in addition to the existing legislation of the Parties for the control and handling of hazardous substances and dangerous waste.

2. Each Party shall regulate in accordance with its legislation the introduction, acceptance, deposit, transport and transit through its territory of hazardous substances or dangerous waste, whether originating inside or outside of its territory.

ARTICLE XIII

PROTECTION OF THE ENVIRONMENT

Each Party undertakes to preserve and protect the environment by applying relevant provisions, guidelines or recommendations of the United Nations Environmental Programme (UNEP) and the pertinent international agreements and standards to which they adhere.

ARTICLE XIV

PROCEDURES FOR REGISTRATION OF GOODS

The goods subject to registration in the territory of any of the Parties, shall be registered by a recognised institution, or accredited by the competent authority of that Party based upon a national system by which such registration is mandatory. Such registration of goods shall be performed as expeditiously as possible and on grounds no less favourable than that extended to registration of like goods of national origin.

ARTICLE XV

TECHNICAL COOPERATION

Each Party shall encourage technical cooperation between its agencies for standardization and metrology, promoting the provision of information and technical assistance, according to available resources and under terms mutually agreed, in order to assist in the attainment of this objective and to enhance the activities, processes, standardization and metrological systems and measures of both Parties.

2. The Parties shall undertake joint efforts for the purpose of securing technical cooperation and assistance from third countries.

APPENDIX VII to
ANNEX I

AGREEMENT ON SANITARY AND PHYTO-SANITARY MEASURES

ARTICLE I

RIGHTS AND OBLIGATIONS

In compliance with the World Trade Organization (WTO) Agreement for Sanitary and Phyto-Sanitary Measures, each Party has the right to establish, adopt, maintain or apply any Sanitary and Phyto-Sanitary Measures necessary to protect human, animal or plant life or health in its territory, more stringent than relevant regional and international standards, guidelines or recommendations.

2. Each Party will ensure that any Sanitary or Phyto-Sanitary Measure adopted, maintained or applied:

(i) is based on scientific principles, taking into account, when necessary, all pertinent facts as well as the different national and regional conditions;

(ii) is only maintained when there is scientific justification;

(iii) is based on a risk assessment that is appropriate to the circumstances;

(iv) does not restrict trade more than is necessary in order to protect human, animal or plant life or health;

(v) does not have as an objective or consequence, a disguised restriction on trade between the Parties; and

(vi) is based on national/regional/ international standards, guidelines or recommendations, or on the imminent adoption of such measures except when these measures do not constitute an adequate and effective means of protecting human, animal or plant life or health in its territory.

3. Notwithstanding any other provision of this Appendix, each Party, in order to protect human, animal or plant life or health in its territory, has the right to establish appropriate levels of protection, taking into account the associated risk from the point of view of consequences for the introduction, establishment or spread of a pest or disease. For this purpose, the methodologies of analysis and risk assessment of relevant international organizations, CODEX ALIMENTARIUS, International Plant Protection Convention (IPPC), and the International Office of Epizootics (IOE), as well as relevant specialized regional organizations to which the Parties are members, shall be taken into account.

4. The risk assessment conducted by the importing Party in order to establish the respective Sanitary and Phyto-Sanitary Measures shall be completed within four months from the date when the analysis is requested of the competent authority. By mutual agreement, an extension of one month will be granted when necessary.

5. Each Party shall inform the Committee for Sanitary and Phyto-Sanitary Measures of its Competent Notifying Authority and shall utilize the designated Enquiry Points as the channel for notifying the other Party.

6. The Parties shall abide by the control, inspection and approval procedures for the application of Sanitary and Phyto-Sanitary Measures contained in Article III.

7. The Parties shall not apply punitive Sanitary and Phyto-Sanitary Measures in the context of their reciprocal trade relations. The application of retaliatory measures will be considered punitive.

ARTICLE II

DEFINITIONS

For the purpose of this Appendix, the following definitions shall apply:

Animal: Any vertebrate or invertebrate, including aquatic and wild fauna.

Appropriate Level of Sanitary or Phyto-Sanitary Protection: The level of protection deemed appropriate by the Party establishing a Sanitary or Phyto-Sanitary Measure to protect human, animal or plant life or health within its territory.

Approval Procedure: Any registration, certification, notification or any other obligatory administrative procedure for approving the use of an additive or to establish a level of tolerance for contaminants for defined purposes or under conditions agreed upon for food, beverage or feedstuffs prior to permitting its use or commercialization whenever any of these contains the additive or contaminant.

Area of Low Pest or Disease Prevalence: An area, whether all of a country, part of a country or all or parts of several countries, as identified by the competent authorities, in which a specific pest or disease occurs at low levels, and which are subject to effective surveillance, control or eradication measures.

Biological Products:

(i) biological reagents for use in the diagnosis of certain diseases;

(ii) sera for use in the prevention or treatment of certain diseases;

(iii) inactivated or modified vaccines for use in the preventive vaccination against certain diseases;

(iv) microbial genetic material.

Contaminant: Any substance not intentionally added to food, which is present in such food as a result of the production (including operations carried out in crop husbandry, animal husbandry and veterinary medicine), manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food or as a result of environmental contamination. The term does not include insect fragments, rodent hairs and other extraneous matter.

Control or Inspection Procedure: Any procedure utilized directly or indirectly to determine compliance with a Sanitary or Phyto-Sanitary Measure. This includes sampling, testing, inspection, verification, monitoring, auditing, conformance evaluation, accreditation and other procedures involving the physical examination of the goods, packaging, equipment and installations directly related to the production, commercialization or utilization of a goods, but not referred to as an approval procedure.

Disease: A clinical or sub-clinical infection cause by one or more aetiological agents as listed in the IOE and IPPC Codes.

Feedstuffs: Balanced daily food allowance for animal use.

Food: Any substance, whether processed, semi-processed or raw, which is intended for human consumption, and includes drink, chewing gum and any substance which has been used in the manufacture, preparation or treatment of "food" but does not include cosmetics or tobacco or substances used only as drugs.

Food Additive: Any substance not normally consumed as a food by itself and not normally used as a typical ingredient of the food, whether or not it has nutritive value, the intentional addition of which to food for a technological (including organoleptic) purpose in the manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food results, or may be reasonably expected to result, (directly or indirectly) in it or its by-products becoming a component of or otherwise affecting the characteristics of such foods. The term does not include "contaminants" or substances added to food for maintaining or improving nutritional qualities.

Food Safety: Quality that ensures that food is free of risk to human health.

Goods: Food, animals, plants, their products and by-products, and biological products.

Harmonization: The establishment, recognition and application of common Sanitary and Phyto-Sanitary Measures by the Parties.

International Standards, Guidelines and Recommendations:

(i) for food safety: the standards, guidelines and recommendations established by the CODEX ALIMENTARIUS COMMISSION relating to food additives, veterinary drug and pesticide residues, contaminants, methods of analysis and sampling, and codes and guidelines of hygienic practice;

(ii) for animal health and zoonoses: the standards, guidelines and recommendations developed under the auspices of the International Office of Epizootics;

(iii) or plant health: the international standards, guidelines and recommendations developed under the auspices of the Secretariat of the International Plant Protection Convention in co-operation with regional organizations operating within the framework of the International Plant Protection Convention; and

(iv) for matters not covered by the above organizations: appropriate standards, guidelines and recommendations promulgated by other relevant international organizations open for membership to the Parties, as identified by the Committee on Sanitary and Phyto-Sanitary Measures.

Pest: Any species, strain or biotype of plant, animal or pathogenic agent, injurious to plants, animals and their products.

Pest or Disease-Free Area: An area, whether all of a country, part of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest or disease does not occur. A pest or disease-free area may surround, be surrounded by or be adjacent to an area - whether within part of a country or in a geographic region which includes parts of or all of several countries - in which a specific pest or disease is known to occur but is subject to regional control measures such as the establishment of protection, surveillance and buffer zones which will confine or eradicate the pest or disease in question.

Pesticide: Any substance intended for preventing, destroying, attracting, repelling, or controlling any pest including unwanted species of plants or animals during the production, storage, transport, distribution and processing of food, agricultural commodities, or animal feeds or which may be administered to animals for the control of ectoparasites. The term includes substances intended for use as a plant-growth regulator, defoliant, desiccant, fruit thinning agent, or sprouting inhibitor and substances applied to crops either before or after harvest to protect the commodity from deterioration during storage and transport. The term normally excludes fertilizers, plant and animal nutrients, food additives, and animal drugs.

Pesticide Residues: Any specified substance in food, agricultural commodities, or animal feed resulting from the use of a pesticide. The term includes any derivatives of a pesticide, such as conversion products, metabolites, reaction products, and impurities considered to be of toxicological significance.

Plants: Live plants and parts thereof, including seeds and germ plasm, forest and wild flora.

Risk Assessment: The evaluation of the likelihood of entry, establishment or spread of a pest or disease within the territory of an importing Party according to the Sanitary or Phyto-Sanitary Measures which might be applied, and of the associated potential biological and economic consequences; or the evaluation of the potential for adverse effects on human or animal health arising from the presence of additives, contaminants, toxins or disease-causing organisms in food, feedstuffs and beverages.

Sanitary or Phyto-Sanitary Measures:

(i) to protect animal or plant life or health within the territory of the Party from risks arising from the entry, establishment or spread or pests, diseases, disease-carrying organisms or disease-causing organisms;

(ii) to protect human or animal life or health within the territory of the Party from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;

(iii) to protect human life or health within the territory of the Party from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or

(iv) to prevent or limit other damage within the territory of the Party from the entry, establishment or spread of pests.

Sanitary or Phyto-Sanitary Measures include all relevant laws, decrees, regulations, requirements and procedures including, ***inter alia***, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labeling requirements directly related to food safety.

Scientific Information: Data or information derived from scientific principles and methods.

Transportation: Means or mode of transport, and the form of packaging used for the movement of goods, as established by a Sanitary or Phyto-Sanitary Measure.

ARTICLE III

CONTROL, INSPECTION AND APPROVAL PROCEDURES IN THE APPLICATION OF SANITARY AND PHYTO-SANITARY MEASURES

In order to expedite the application of Sanitary and Phyto-Sanitary Measures in the territories of the Parties, and to facilitate trade flows, the procedures for control, inspection and approval of Sanitary and Phyto-Sanitary Measures will be governed by the provisions of this Article.

2. Transparency:

In order to ensure adequate transparency in the adoption and application of Sanitary and Phyto-Sanitary Measures, the competent Notifying Authorities and Enquiry Points will utilize formats that are the same as or similar to those designed and utilized by the WTO Committee for Sanitary and Phyto-Sanitary Measures.

3. Harmonization:

The Parties shall use international organizations and other specialized regional fora in the harmonization of their Sanitary and Phyto-Sanitary Measures.

4. Sanitary and Phyto-Sanitary Status:

The Parties shall accept as valid, the Sanitary and Phyto-Sanitary status in accordance with the FAO database (food safety and plant health), the OIE database (animal health) and databases of relevant specialized regional organizations. In case of reasonable query by one Party, reasonable access for inspections, tests and other procedures will be permitted by mutual agreement in order to verify the said status.

5. Equivalence:

In accordance with the provisions of this Appendix, in the process of recognition of equivalence of their Sanitary and Phyto-Sanitary Measures, the Parties, through bilateral consultations, will address issues relating to the effectiveness of measures, their impact on trade, cost effectiveness and the appropriate technology. These will be detailed in bilateral agreements for mutual recognition.

6. Risk Assessment and Determination of Appropriate Level of Protection:

In conducting risk assessment, the Parties shall apply methodologies harmonized by relevant international organizations and where they do not exist, shall utilize those harmonized at the regional level, with the assistance of specialized regional organizations.

7. Inspection Criteria (including Inspection at Origin):

Designated agencies shall be the only channel for inspections between Parties, and shall be authorized to determine inspection periods, time limits for informing the other Party, as well as for the signature of protocols or specific bilateral instruments according to the needs of the Parties.

Upon receipt of a request from one of the Parties, the Competent Notifying Authority shall be required to conduct the inspection, and report the findings and action taken to the other Party within 30 days.

When inspection is performed at a specific export point in the territory of a Party, the Certificate of Inspection will have a one-year validity, save for reasonable exceptions, particularly in the case of plants, by mutual agreement.

Inspection costs will be borne by the exporting country.

8. Pest or Disease Free Areas and Areas of Low Prevalence of Pest or Disease:

In the process towards recognizing pest or disease free areas and areas of low prevalence of pest or disease, the Parties shall first apply the methodologies utilized by relevant international organizations and, where such methodologies do not exist, those harmonized at the regional level with the assistance of specialized regional organizations. The Parties shall also establish specific bilateral protocols for particular cases.

9. Accreditation:

The Parties shall seek to standardize their accreditation procedures. Government institutions shall be recognized as accredited organizations and should select qualified and/or experienced personnel. Private sector institutions and professionals shall be appropriately certified.

AGREEMENT ON TRADE IN SERVICES

ARTICLE I

OBJECTIVE

The objective of this Agreement is to establish a framework for the liberalisation of trade in services among the Parties consistent with the General Agreement on Trade in Services (GATS) of the World Trade Organisation (WTO). Such a framework will promote the interests of the Parties, on the basis of mutual advantages and the achievement of a global balance of rights and obligations among the Parties.

ARTICLE II

DEFINITIONS

For the purposes of the present Agreement:

(i) **commercial presence**: means any type of business or professional establishment, including through the constitution, acquisition or maintenance of a juridical person, or creation or maintenance of a branch or a representative office located in the territory of any of the Parties, for the purpose of supplying a service;

(ii) **juridical person of another Party**: means any juridical person:

(a) constituted or otherwise organised under the law of that other Party, and is engaged in substantive business operations in the territory of that Party or the other Party; or

(b) in the case of the supply of a service through commercial presence owned or controlled by:

(b) in the case of the supply of a service through commercial presence owned or controlled by:

(i) natural persons of that Party; or

(ii) juridical persons of that other Party identified under sub-paragraph (a);

(iii) **natural person of another Party**: means a national of that other Party;

(iv) **service consumer**: means any person that receives or uses a service;

(v) **service of another Party**: means a service provided;

(a) from or in the territory of such Party; or

(b) by a service supplier of that other Party by means of commercial presence or through the presence of natural persons;

(vi) **service supplier**: means any person that supplies a service;

(vii) **services**: includes any service in any sector except services supplied in the exercise of governmental authority;

(viii) **services 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;

(ix) **speciality air services:** means aerial mapping, aerial surveying, aerial photography, forest fire management, fire fighting, aerial advertising, glider towing, parachute jumping, aerial construction, heli-logging, aerial sightseeing, flight training, aerial inspection and surveillance, and aerial spraying services;

(x) **supply of a service**: includes the production, distribution, marketing, sale and delivery of a service;

(xi) **trade in services**: means the supply of a service:

(a) from the territory of one Party into the territory of the other Party;

(b) in the territory of one Party to the service consumer of the other Party;

(c) by a service supplier of any Party, through commercial presence in the territory of the other Party; by a service supplier of one Party, through the presence of natural persons of a Party in the territory of the other Party.

Any other term not defined in paragraph 1 of this Article shall have the meaning agreed to in the GATS and its Annexes.

ARTICLE III

SCOPE

This Agreement applies to measures by the Parties affecting trade in services, including those relating to:

(i) the production, distribution, marketing, sale and delivery of a service;

(ii) the purchase, use or payment of a service;

(iii) access to and use of, in connection with the supply of a service, services which are required to be offered to the public generally;

(iv) the presence, including the commercial presence of a service supplier in the territory of another Party; and

(v) the provision of a bond or other form of financial security, as a condition for the provision of a service.

2. This Agreement will not apply to:

(i) promotion and support measures provided by a Party or a state enterprise, including government-supported loans, guarantees, Insurance, grants and fiscal incentives provided by the Governments of the Parties;

(ii) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:

(a) aircraft repair and maintenance services during which an aircraft is withdrawn from service;

(b) specialty air services; and

(c) computerised reservation systems;

(iii) services or government functions such as, but not limited to, the enforcement of laws, social welfare services, income security or insurance, social security, public education, public training, health, and child care.

3. Nothing in this Agreement shall be construed to:

(i) impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, or to confer any right on that national with respect to that access or employment; or,

(ii) impose any obligation nor confer any right to a Party, with respect to government procurement by the other Party, except for any provisions which may be agreed to on Government Procurement.

4. For the purposes of this Agreement, "measures adopted by the Parties" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form taken by:

(i) central, regional, provincial, municipal or local government and authorities; and

(ii) non-governmental bodies in the exercise of powers delegated by government and authorities mentioned in sub-paragraph (i) above.

5. In fulfilling its obligations and commitments under this Agreement, each Party shall take such reasonable measures as may be available to it to ensure its observance by regional and local governments and authorities mentioned in paragraph 4 (a) above, and non-governmental bodies within its territory.

6. The provisions of this Agreement will not apply to those measures related to professional services, except as may be agreed to by the Parties.

ARTICLE IV

MOST FAVOURED NATION TREATMENT

Each Party shall accord immediately and unconditionally to services and service suppliers of the other Party treatment no less favourable than that which it accords to like services and service suppliers of any third country.

2. The provisions of this Agreement shall not be construed to prevent any Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

ARTICLE V

TRANSPARENCY

Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to/or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services to which a Party is signatory shall also be published.

2. Where publication as referred to in paragraph 1 is not feasible or practicable, the Parties shall make them otherwise publicly available.

3. Each Party shall promptly and at least annually inform the other Party of the introduction of any new or any changes to existing laws, regulations or administrative guidelines which significantly affect trade in services covered by this Agreement.

4. Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1.

5. For the purposes of complying with this Article, the Parties shall utilise the enquiry points established under Article III:4 of the GATS.

ARTICLE VI

DISCLOSURE OF CONFIDENTIAL INFORMATION

Nothing in this Agreement shall require any Party to provide confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

ARTICLE VII

LICENSING AND CERTIFICATION

With a view to ensuring that any measure adopted or maintained by a Party relating to domestic regulation of services sectors within the context of Article VI of the GATS or the licensing or certification of nationals of the other Party does not constitute an unnecessary barrier to trade, each Party shall endeavour to ensure that any such measure:

(i) is based on objective and transparent criteria, such as competence and the ability to supply a service;

(ii) is not more burdensome than necessary to ensure the quality of a service; and

(iii) does not constitute a disguised restriction on the supply of a service.

ARTICLE VIII

GENERAL EXCEPTIONS

Notwithstanding the provisions of this Agreement, the Parties may adopt or enforce measures:

(i) necessary to protect public morals or to maintain public order;

(ii) necessary to protect human life, animal or plant life or health, and to preserve the environment;

(iii) necessary to protect essential security interests;

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

(a) the prevention of deception and fraudulent practices or to deal with the effects of a default on services contracts by natural or juridical persons of any of the Parties;

(b) 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; or

(c) safety;

(v) necessary to protect national artistic, historical or archeological treasures;

(vi) for prudential reasons, such as to:

(a) protect investors, depositors, financial market participants, policy holders, policy claimants or persons to whom a fiduciary duty is owed by a financial institution; and

(b) maintain the safety, soundness, integrity or financial responsibility of financial institutions;

(vii) inconsistent with the provisions of the Attachment mentioned in Article XII, provided that the difference in treatment is aimed at ensuring the equitable or effective imposition or collection of direct taxes in respect of services or service suppliers of the other Party; and

(viii) inconsistent with Article IV, provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

2. Such measures can be applied subject to the requirement that they do not constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services.

ARTICLE IX

RESTRICTIONS TO SAFEGUARD THE BALANCE OF PAYMENTS

In the event of serious balance of payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services with respect to the measures covered by the provisions in Articles IV, X and XIII and paragraph 1 of Article XIV,

including payment or transfers for transactions related to sectors covered by such measures. It is recognised that particular pressures on the balance of payments of a Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, **inter alia**, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition.

2. The restrictions referred to in paragraph 1:

(i) shall not discriminate among the Parties;

(ii) shall be consistent with the Articles of Agreement of the International Monetary Fund (IMF);

(iii) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party;

(iv) shall not exceed those necessary to deal with the circumstances described in paragraph 1; and

(v) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictions, the Parties may give priority to the supply of services which are more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.

4. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the other Party.

5. (i) A Party applying the provisions of this Article shall consult promptly on the restrictions adopted under this Article.

(ii) The Committee on Trade in Services shall establish procedures for periodic consultations with the objective of enabling such recommendations to be made to the other Party as it may deem appropriate.

(iii) Such consultations shall assess the balance-of-payments situation of the Party concerned and the restrictions adopted or maintained under this Article, taking into account, **inter alia,** such factors as:

(a) the nature and extent of the balance-of-payments and the external financial difficulties;

(b) the external economic and trading environment of the consulting Party; and,

(c) alternative corrective measures which may be available.

(iv) The consultations shall address the compliance of any restrictions with paragraph 2, in particular the progressive phase-out of restrictions in accordance with paragraph 2 (v); and,

(v) In such consultations, all statistical findings and other facts presented by the IMF relating to foreign exchange, monetary reserves and balance of payments, shall be accepted and conclusions shall be based on the assessment by the IMF of the balance of payments and the external financial situation of the consulting Party.

ARTICLE X

LOCAL PRESENCE

No Party may require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the provision of a service.

ARTICLE XI

NON-DISCRIMINATORY QUANTITATIVE RESTRICTIONS

No later than six (6) months after the date of entry into force of this Agreement, each Party shall set out in an Appendix to this Agreement, a list of existing non-discriminatory quantitative restrictions.

2. The Parties shall periodically, but in any event at least every two (2) years, endeavour to negotiate the liberalisation or removal of:

(i) existing non-discriminatory quantitative restrictions maintained by each Party, as listed pursuant to paragraph 1; and

(ii) new non-discriminatory quantitative restrictions that the Parties adopted after the entry into force of this Agreement.

3. Each Party shall notify the other Party of any new non-discriminatory quantitative restriction that it adopts after the date of entry into force of this Agreement.

ARTICLE XII

MARKET ACCESS

The terms on which each Party will grant market access to service providers of the other Party shall be set out in an Attachment to this Agreement.

ARTICLE XIII

NATIONAL TREATMENT

With respect to services covered by this Agreement, the Parties will grant each other national treatment subject to the terms and conditions in the Attachment provided for in Article XII.

ARTICLE XIV

NON-CONFORMING MEASURES

After the date of entry into force of this Agreement, no Party shall increase the level of non-conformity of its existing measures with respect to the provisions of Articles IV, X and XIII. Any new measures and reform to existing measures shall not decrease the degree of conformity of the measure with respect to its level immediately before its introduction or reform.

2. Articles IV, X and XIII do not apply to any existing non-conforming measure maintained by a Party as set out in an Appendix to this Agreement no later than six (6) months after the date of entry into force of this Agreement.

3. The LDCs shall list existing non-conforming measures within one (1) year of the entry into force of this Agreement.

ARTICLE XV

DENIAL OF BENEFITS

A Party may deny the benefits of this Agreement to a service provider of the other Party, with prior notification and consultation, where the first Party establishes that the service is being provided by an enterprise that is owned by persons of a third country and that conducts no substantial business activities in the territory of the second Party.

2. Such notification shall also be made to the Committee on Trade in Services. The resulting consultations shall be conducted within the Committee and shall be concluded within fourteen (14) days of the notification.

3. In the event that the consultations do not result in an agreement acceptable to the Parties, the benefits may be denied provisionally and the affected Party may seek to resolve the matter in accordance with the provisions of Article XV of the Agreement establishing the Free Trade Area between the Caribbean Community and the Dominican Republic (Agreement on Free Trade).

ARTICLE XVI

MONOPOLY AND EXCLUSIVE SERVICE SUPPLIERS

Each Party shall ensure that any monopoly supplier of a service in its territory does not in the supply of the monopoly service in the relevant market act in a manner inconsistent with that Party's obligations under Articles IV, X and XIII.

2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is related to those sectors covered under this Agreement, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

3. The Committee on Trade in Services may, at the request of a Party which has a reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with the provisions of paragraphs 1 or 2, request the Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations.

4. The provisions of this Article shall also apply to cases of exclusive service suppliers where a Party formally or in effect:

(i) authorises or establishes a small number of service suppliers; and

(ii) substantially prevents competition among those suppliers in its territory.

ARTICLE XVII

ANTI-COMPETITIVE BUSINESS PRACTICES

The Parties recognise that certain business practices of service suppliers other than those falling under Article XVI, may restrain competition and thereby restrict trade in services.

2. With respect to these business practices, in particular those anti-competitive business practices that may unfavourably affect competition and/or trade between and within Parties, the Parties shall apply the provisions on competition policy that may be in force or enter into force at the national level after the entry into force of this Agreement, as well as provisions that may be established in international agreements on competition policy.

3. Either Party shall, at the request of the other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Party addressed shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available information on the application of domestic law relating to the matter in question.

ARTICLE XVIII

FUTURE LIBERALISATION

The Parties shall deepen the degree of liberalisation reached for trade in services, through future negotiations to be convened by the Council, with a view to eliminating any remaining restrictions set out in the Appendices, pursuant to Article XI and paragraph 2 of Article XIV.

ARTICLE XIX

DISPUTE SETTLEMENT

Any dispute that may arise under this Agreement shall be resolved pursuant to Article XV of the Agreement on Free Trade.

ARTICLE XX

RELATIONSHIP WITH THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

Regarding matters not covered in this Agreement, the Parties agree to apply between themselves the provisions contained in the GATS.

ANNEX III

AGREEMENT ON RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Caribbean Community (CARICOM) and the Dominican Republic, "the Parties":

Interested in promoting greater economic cooperation amongst themselves, above all in the field of investments made by natural and juridical persons of one Party in the territory of the other Party;

Recognising the need to stimulate and protect investments in a manner that will promote economic growth and development of both Parties;

Recognising that the strengthening of economic ties can contribute to the well-being of workers in both Parties and promote respect for workers' rights;

Agreeing that these objectives can be achieved without relaxing health, safety and environmental measures of general application;

Acknowledging the importance of respect for the sovereignty and laws of the Party within whose territory the investment takes place.

Resolved to conclude this Agreement on Reciprocal Promotion and Protection of Investments.

Have decided the following:

ARTICLE I

DEFINITIONS

For the purposes of this Agreement:

(i) **Investments**: means every kind of asset and in particular, though not exclusively, includes:

(a) movable and immovable property and any other property rights such as mortgages, liens or pledges;

(b) shares, stocks and debentures of companies or interests in the property of such companies;

(c) a claim to money or a claim to any performance having financial value;

(d) intellectual and industrial property rights, including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, trade secrets, technical processes and know-how and goodwill;

(e) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract, or exploit natural resources.

(ii) (a) **An investor**: means -

(i) any natural person possessing the citizenship of a Party in accordance with its laws; and

(ii) any corporation, company, association, partnership, or other organization, legally constituted under the laws of a Party, whether or not organized for pecuniary gain, or privately, or governmentally owned or controlled.

(b) **Returns:** means the amount yielded by an investment and, in particular, though not exclusively, includes profits, interests, capital gains, dividends, royalties or fees.

ARTICLE II

ADMISSION AND PROMOTION

Each Party shall in its territory promote, as far as possible, the investment made in its territory by investors of the other Party, and shall admit these investments in accordance with its laws. To that end, they shall, within six months of the entry into force of the Agreement, consult with each other through their designated agencies, with a view to identifying the most effective ways of achieving that purpose.

2. Each Party, shall, subject to its laws, grant the necessary authorisations for these investments, allow licensing agreements for manufacturing and for technical, commercial, financial and administrative assistance, and grant the necessary permits for the activities of the professional staff and consultants hired by the investors of the other Party.

ARTICLE III

GENERAL PRINCIPLES GOVERNING TREATMENT

Each Party shall admit and treat investments in a manner not less favourable than the treatment granted in similar situations to investments of its investors except for investments in areas to be identified in the Appendix to this Annex.

2. Each Party shall admit and treat investments in a manner not less favourable than the treatment granted in similar situations to areas related to Most-Favoured-Nation treatment except for investments in the areas identified in the Appendix to this Annex.

3. The obligation to grant treatment no less favourable than is granted to third States does not apply to:

(i) any treatment or advantage resulting from any existing or future customs union or free trade area or common market or monetary union or similar agreement to which a Party is a party; or

(ii) any international agreement or arrangement relating wholly or mainly to taxation.

ARTICLE IV

FAIR AND EQUITABLE TREATMENT

Each Party shall ensure, at all times, fair and equitable treatment for investments and returns, which shall thus enjoy full protection and security, and shall not receive a treatment less favourable than established under international law.

ARTICLE V

COMPLIANCE WITH OBLIGATIONS

Each Party shall comply with its commitments regarding investment and shall, in no way, impair, through the adoption of arbitrary and discriminatory measures, the management, development, maintenance, utilisation, usufruct, acquisition, expansion or transfer of said investments.

ARTICLE VI

ENTRY AND STAY OF FOREIGNERS

Subject to the laws governing the entry and stay of foreigners and any arrangements which the Parties may negotiate, investors of each Party shall be allowed to enter and remain in the territory of the other Party for the purposes of establishing, developing or administering investments, or to advise on the establishment, development and administration of investments in which they have committed or are about to commit a substantial amount of capital or resources.

ARTICLE VII

PERFORMANCE REQUIREMENTS

No Party shall impose any performance requirements which are contrary to the World Trade Organisation Agreement on Trade Related Investment Measures as a condition for establishing, expanding or maintaining investments.

ARTICLE VIII

Each Party shall provide appropriate means and procedures for asserting claims and enforcing rights regarding investments and investment agreements.

ARTICLE IX

TRANSPARENCY

Each Party shall publish all laws, judgments, administrative practices and procedures regarding investments, or which may affect the same.

ARTICLE X

COMPENSATION FOR LOSSES

Investors of one Party whose investments in the territory of the other Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Party shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Party accords to investors of any third State.

ARTICLE XI

CONDITIONS FOR EXPROPRIATION

Investments shall not be expropriated or nationalised either directly or indirectly through the application of measures equivalent to expropriation, except for reasons of public interest, in non-discriminatory fashion, and after payment of prompt, adequate and effective compensation, in a freely convertible currency and in accordance with due process of law and with the general principles of treatment established in Articles III and IV.

ARTICLE XII

FREE CONVERTIBILITY AND FREE TRANSFER

Each Party in whose territory an investment has been made shall grant in respect of such investment the right to the unrestricted transfer of -

(i) returns;

(ii) the proceeds from the total or partial liquidation of an investment; provided however, that in periods of serious balance of payments difficulties such transfers may be phased over a period of three years;

(iii) amounts for the repayment of loans incurred for the investment;

(iv) the net earnings of nationals of one Party who are employed and allowed to work in connection with an investment in the territory of the other Party;

(v) payments deriving from indemnifications arising from expropriations and compensation for losses provided for in Articles X and XI of this Agreement.

2. Such transfers shall be in freely convertible currency and at the exchange rate applicable at the time of remittance.

3. Notwithstanding the above paragraph, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

(i) bankruptcy, insolvency or the protection of the rights of creditors;

(ii) issuing, trading or dealing in securities;

(iii) criminal or penal offences;

(iv) reports of transfers of currency or other monetary instruments; or

(v) ensuring the satisfaction of judgments in adjudicatory proceedings.

4. Each Party shall allow all transfers regarding investment, remitted to or proceeding from its territory, to be conducted freely and without delay.

ARTICLE XIII

SETTLEMENT OF DISPUTES BETWEEN AN INVESTOR AND A CONTRACTING PARTY

Disputes between an investor of one Party and the other Party concerning an obligation of the latter under this Agreement in relation to an investment of the former which have not been amicably settled shall, after a period of three months from written notification of a claim, be submitted to the courts of that Party or to national or international arbitration.

2. Where the dispute is referred to international arbitration, the investor and the Party concerned in the dispute may agree to refer the dispute to an international arbitrator or ***ad hoc*** arbitration tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law.

3. Neither Party shall give diplomatic protection or bring an international claim, in respect of a dispute which one of its investors has consented to submit to arbitration, unless the other Party which is party to the dispute shall have failed to abide by and comply with the award rendered in such dispute by the arbitral tribunal. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute by the arbitral tribunal.

4. The awards of the arbitrator shall be definitive, compulsory and without appeal for the Contracting Party and the investor.

ARTICLE XIV

SETTLEMENT OF DISPUTES BETWEEN THE PARTIES

Disputes between the Parties concerning the interpretation or application of this Agreement should, if possible, be settled through diplomatic channels.

2. If a dispute between the Parties cannot thus be settled, it shall, upon the request of either Party, be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way. Within three months of the receipt of the request for arbitration, each Party shall appoint one member of the tribunal. Those two members shall select a national of a third State who, on approval by the two Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other members.

4. If within the periods specified in paragraph (3) of this Article, the necessary appointments have not been made, either Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decision by a majority of votes. Such decisions shall be binding on both Parties. Each Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Parties. The

tribunal may, however, in its decision, direct that a higher proportion of costs be borne by one of the two Parties, and this award shall be binding on both Parties. The tribunal shall determine its own procedures.

ARTICLE XV

SUBROGATION

If one Party or its designated Agency ("the first Party") makes a payment under an indemnity against non-commercial risks given in respect of an investment in the territory of the other Party, ("the second Party), the second Party shall recognize:

(i) the assignment to the first Party by law or by legal transaction of all the rights and claims of the party indemnified; and

(ii) that the first Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified.

2. The first Party shall be entitled in all circumstances to the same treatment in respect of:

(i) the rights and claims acquired by it by virtue of the assignment; and

(ii) any payments received in pursuance of those rights and claims, as the Party indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

3. Any payments received in non-convertible currency by the first Party in pursuance of the rights and claims acquired shall be freely available to the first Party for the purpose of meeting any expenditure incurred in the territory of the second Party.

ARTICLE XVI

APPLICATION OF OTHER RULES

If the provisions of law of either Party or obligations under international law existing at present or established hereafter between the Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by investors of the other Party to treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

ARTICLE XVII

GENERAL EXEMPTIONS

Notwithstanding any other provisions of the Agreement, a Party shall not be prevented from taking prudential measures with respect to financial services, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise providing financial services, or to ensure the integrity and stability of its financial system. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under the Agreement.

2. This Agreement shall not preclude the application by either Party of measures necessary for the protection of its own national security interests.

ARTICLE XVIII

FINAL PROVISIONS

As regards its tax norms, each Party shall endeavour to act with justice and equity in the treatment of the investments of investors of the other Party.

PLAN OF ACTION

We, the Heads of Government of the Caribbean Community (CARICOM) and of the Dominican Republic hereby agree on a Plan of Action to advance implementation of the following elements of the Agreement Establishing the Free Trade Area between the Caribbean Community and the Dominican Republic, signed on 22 August 1998.

To this end, we hereby instruct our Ministers responsible for Foreign Trade Negotiations to conclude, within ninety (90) days:

(i) the lists of goods that will:

(a) receive preferential treatment through the phased reduction of the MFN rate of duty;

(b) be excluded from receiving duty-free access or phased reduction of the Most Favoured Nation (MFN) rate of duty as provided for in the Agreement;

taking into consideration the following:

(a) the objective of maximising trade between the Parties and therefore the need to limit to the greatest extent possible the number of goods exempted from immediate duty-free treatment;

(b) the lists should be reciprocal except where the Parties agree otherwise in the interest of balance and fairness;

(c) the need to work on specific arrangements to enhance market access for products which might be affected under Article III:5 of the Annex on Trade in Goods;

(ii) negotiation of the Appendix to the Rules of Origin, containing the detailed list of products and the specific criteria that confer originating status on each product based on the following:

(a) wholly produced or produced from materials wholly produced in CARICOM or the Dominican Republic;

(b) substantial transformation as demonstrated by a change in the Customs Classification Heading for the product from that of the classification of the materials from third countries; and

(c) specific negotiated criteria;

(iii) the definition of the Treatment of Goods and Services produced in Free Trade Zones, within the Free Trade Area, guided by the following objectives:

(a) not to provide the products of the Free Trade Zones with new advantages vis-à-vis products from the customs territories;

(b) not to treat products of Free Trade Zones less favourably than they are currently treated when exported from the Dominican Republic to CARICOM and vice versa;

(c) to establish a strategic basis for future negotiation with respect to products of Free Trade Zones in the Free Trade Area of the Americas;

(iv) exchange of information regarding the treatment that Telecommunications Services receive within the Free Trade Area;

(v) the definition of the Annex on Government Procurement;

(vi) the definition of the terms on which each Party will grant market access and national treatment to service providers;

(vii) negotiation of the Annex on Temporary Entry of Business Persons;

(viii) negotiation of the Appendix to the Annex on Trade in Services relating to Professional Services;

(ix) complete the negotiations of the Appendices to the Annex on Reciprocal Promotion and Protection of Investments;

(x) the definition of the treatment that trade agents will receive in order to facilitate market access within the Free Trade Area;

(xi) the definition of the terms and references to be used in the Certificate of Origin.

DONE AT Santo Domingo in the Dominican Republic in the English and Spanish languages, both being equally authentic, this 22nd day of August 1998.

For the Caribbean Community

Dr. the Hon. Kenny Anthony
Chairman of the Conference of Heads of Government of the Caribbean Community

For the Dominican Republic

Dr. the Hon. Leonel Fernández Reyna
President of the Dominican Republic