

- (e) within ten days of the receipt of a request under sub-paragraphs (c) and (d), the Secretary-General shall make the necessary appointments from the List referred to in Article 196 in consultation with the parties to the dispute;
- (f) any vacancy on a conciliation commission shall be filled in the manner prescribed for the initial appointment;
- (g) two or more Member States parties to the dispute which determine by agreement that they are of the same interest shall appoint one conciliator jointly;
- (h) in disputes involving more than two parties having separate interests, or where there is disagreement as to whether they are of the same interest, the parties shall apply sub-paragraphs (a) to (f) in so far as may be possible.

Article 198

Amicable Settlement

A conciliation commission may draw to the attention of the Member States parties to the dispute any measures which might facilitate an amicable settlement of the dispute.

Article 199

Functions Of Conciliation Commission

A conciliation commission shall hear the Member States parties to the dispute, examine their claims and objections, and make proposals to the parties with a view to reaching an amicable settlement.

Article 200

Procedure

1. A conciliation commission shall, unless the Member States parties to the dispute otherwise agree, determine its own procedure. A conciliation commission may, with the consent of the parties to the dispute, invite any Member State to submit its views to the commission, orally or in writing. The report and recommendations and decisions of the commission regarding procedural matters shall be made by a majority vote of its members.

2. The Member States parties to the dispute may, by agreement applicable solely to that dispute, modify the procedure referred to in paragraph 1.

Article 201

Report

1. A conciliation commission shall report within three months of its constitution. Its report shall record any agreements reached and, failing agreement, its conclusions on all questions of fact or law relevant to the matter in dispute and such recommendations as a conciliation commission may deem appropriate for an amicable settlement.

2. The conclusions or recommendations of a conciliation commission shall not be binding upon the parties.

Article 202

Termination

The conciliation proceedings shall be deemed to be terminated when a settlement has been reached, when the parties have accepted or one party has rejected the recommendations of the report by notification addressed to the Secretary-General, or when a period of one month has expired from the date of transmission of the report to the parties.

Article 203

Fees And Expenses

The fees and expenses of a conciliation commission shall be borne by the Member States parties to the dispute.

Article 204

Arbitration

A Member State party to a dispute may, with the consent of the other party, refer the matter to an arbitral tribunal constituted in accordance with the provisions of this Chapter.

Article 205

Constitution Of The List Of Arbitrators

1. For the purposes of constituting the arbitral tribunal referred to in Article 206, the Secretary-General shall establish and maintain a List of Arbitrators comprising persons chosen strictly on the basis of impartiality, reliability and sound judgment and who shall:

- (a) have expertise or experience in law, international trade, other matters covered by this Treaty, or the settlement of disputes arising under international trade agreements;
- (b) be independent of and not be affiliated with or take instructions from any Member State; and
- (c) comply with the Code of Judicial Conduct governing the behaviour of judges of the Court.

2. The term of an arbitrator, including that of any arbitrator nominated to fill a vacancy, shall be five years and may be renewed.

Article 206

Constitution Of Arbitral Tribunal

1. Each of the Member States parties to a dispute shall be entitled to appoint one arbitrator from the List of Arbitrators. The two arbitrators chosen by the parties shall be appointed within fifteen days following the decision to refer the matter to arbitration. The two arbitrators shall, within fifteen days following the date of their appointments, appoint a third arbitrator from the List who shall be the Chairman. As far as practicable, the arbitrators shall not be nationals of any of the parties to the dispute.

2. Where either party to the dispute fails to appoint its arbitrator under paragraph 1, the Secretary-General shall appoint the arbitrator within ten days. Where the arbitrators fail to appoint a Chairman within the time prescribed, the Secretary-General shall appoint a Chairman within ten days.
3. Where more than two Member States are parties to a dispute, the parties concerned shall agree among themselves on the two arbitrators to be appointed from the List of Arbitrators within fifteen days following the decision to refer the matter to arbitration and the two arbitrators shall within fifteen days of their appointment appoint a third arbitrator from the List who shall be the Chairman.
4. Where no agreement is reached under paragraph three, the Secretary-General shall make the appointment within ten days and where the arbitrators fail to appoint a Chairman within the time prescribed the Secretary-General shall make the appointment within ten days.
5. Notwithstanding paragraphs 1, 2, 3 and 4, Member States parties to a dispute may refer the matter to arbitration and consent to the Secretary-General appointing a sole arbitrator from the list who shall not be a national of a Party to the dispute.

Article 207

Rules Of Procedure Of Arbitral Tribunal

1. Subject to the relevant provisions of this Chapter, the arbitral tribunal shall establish its own rules of procedure.
2. The procedures shall assure a right to at least one hearing before the arbitral tribunal as well as the opportunity to provide initial and rebuttal written submissions.
3. The arbitral tribunal's hearings, deliberations and initial report, and all written submissions to and communications with the arbitral tribunal, shall be confidential.
4. The arbitral tribunal may invite any Member State to submit views orally or in writing.
5. The award of the arbitral tribunal shall be confined to the subject matter of the dispute and shall state the reasons on which it is based.
6. Where the parties cannot agree on the interpretation or implementation of the award, either party may apply to the arbitral tribunal for a ruling within thirty days of the award. The term of the arbitral tribunal shall come to an end unless an application for a ruling has been received, in which case it shall continue for such reasonable time, not exceeding thirty days, as may be required to make the ruling.
7. Decisions of the arbitral tribunal shall be taken by a majority vote of its members and shall be final and binding on the Member States parties to the dispute.

Article 208

Third Party Intervention

A Member State which is not a party to a dispute, on delivery of a notification to the parties to a dispute and to the Secretary-General, shall be entitled to attend all hearings and to receive written

submissions of the parties to a dispute and may be permitted to make oral or written submissions to the arbitral tribunal.

Article 209

Additional Information From Experts

Where proceedings have commenced, the arbitral tribunal may, on its own initiative or on the request of a party to the dispute, seek information and technical advice from any expert or body that it considers appropriate, provided that the parties to the dispute so agree and subject to such terms and conditions as the parties may agree.

Article 210

Expenses Of Arbitral Tribunal

1. The expenses of the arbitral tribunal, including the fees and subsistence allowances of arbitrators and experts engaged for the purposes of a dispute, shall be borne equally by the Member States parties to the dispute unless the arbitral tribunal, taking into account the circumstances of the case, otherwise determines.
2. Where a third party intervenes in the proceedings, the party shall bear the costs associated with the intervention.

Article 211

Jurisdiction Of The Court In Contentious Proceedings

1. Subject to this Treaty, the Court shall have compulsory and exclusive jurisdiction to hear and determine disputes concerning the interpretation and application of the Treaty, including:
 - (a) disputes between the Member States parties to the Agreement;
 - (b) disputes between the Member States to the parties to the Agreement and the Community;
 - (c) referrals from national courts of the Member States parties to the Agreement;
 - (d) applications by persons in accordance with Article 222,

concerning the interpretation and application of this Treaty.

2. For the purpose of this Chapter, "national courts" includes the Eastern Caribbean Supreme Court.

Article 212

Advisory Opinions Of The Court

1. The Court shall have exclusive jurisdiction to deliver advisory opinions concerning the interpretation and application of the Treaty.

2. Advisory opinions shall be delivered only at the request of the Member States parties to a dispute or the Community.

Article 213

Institution Of Proceedings

Any party to a dispute may institute proceedings in accordance with the Rules of Court governing Original Jurisdiction.

Article 214

Referral To The Court

Where a national court or tribunal of a Member State is seized of an issue whose resolution involves a question concerning the interpretation or application of this Treaty, the court or tribunal concerned shall, if it considers that a decision on the question is necessary to enable it to deliver judgment, refer the question to the Court for determination before delivering judgment.

Article 215

Compliance With Judgments Of The Court

The Member States, Organs, Bodies of the Community, entities or persons to whom a judgment of the Court applies, shall comply with that judgment promptly.

Article 216

Compulsory Jurisdiction Of The Court

1. The Member States agree that they recognise as compulsory, *ipso facto* and without special agreement, the original jurisdiction of the Court referred to in Article 211.
2. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be determined by decision of the Court.

Article 217

Law To Be Applied By The Court In The Exercise Of Its Original Jurisdiction

1. The Court, in exercising its original jurisdiction under Article 211, shall apply such rules of international law as may be applicable.
2. The Court may not bring in a finding of *non liquet* on the ground of silence or obscurity of the law.
3. The provisions of paragraphs 1 and 2 shall not prejudice the power of the Court to decide a dispute *ex aequo et bono* if the parties so agree.

Article 218

Application For Interim Measures

The Court shall have the power to prescribe, if it considers the circumstances so require, any interim measures that ought to be taken to preserve the rights of either party.

Article 219

Revision Of Judgments Of The Court In The Exercise Of Its Original Jurisdiction

1. The Court shall, in the exercise of its Original Jurisdiction, be competent to revise its judgment on an application made in that behalf.
2. An application for the revision of a judgment of the Court in the exercise of its original jurisdiction may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor; which fact was, when the judgment was given, unknown to the Court and to the party claiming revision: provided always the ignorance of that fact was not due to negligence on the part of the applicant.
3. Proceedings for a revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognising that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.
4. The Court may require previous compliance with the terms of the judgment before it admits proceedings for a revision.
5. The application for a revision shall be made within six months of the discovery of the new fact.
6. No application for a revision may be made after the lapse of five years from the date of the judgment.

Article 220

Rules Of Court Governing Original Jurisdiction

The Rules of Court established by the President of the Court in accordance with Article XXI of the Agreement shall apply in the exercise of the original jurisdiction of the Court.

Article 221

Judgment Of The Court To Constitute Stare Decisis

Judgments of the Court shall constitute legally binding precedents for parties in proceedings before the Court unless such judgments have been revised in accordance with Article 219.

Article 222

Locus Standi Of Private Entities

Persons, natural or juridical, of a Contracting Party may, with the special leave of the Court, be allowed to appear as parties in proceedings before the Court where:

- (a) the Court has determined in any particular case that this Treaty intended that a right or benefit conferred by or under this Treaty on a Contracting Party shall enure to the benefit of such persons directly; and

- (b) the persons concerned have established that such persons have been prejudiced in respect of the enjoyment of the right or benefit mentioned in paragraph (a) of this Article; and
- (c) the Contracting Party entitled to espouse the claim in proceedings before the Court has:
 - (i) omitted or declined to espouse the claim, or
 - (ii) expressly agreed that the persons concerned may espouse the claim instead of the Contracting Party so entitled; and
- (d) the Court has found that the interest of justice requires that the persons be allowed to espouse the claim.

Article 223

Alternative Disputes Settlement

1. The Member States shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other modes of alternative disputes settlement for the settlement of private commercial disputes among Community nationals as well as among Community nationals and nationals of third States.
2. Each Member State shall provide appropriate procedures in its legislation to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes.
3. A Member State which has implemented the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the Arbitration Rules of the United Nations Commission on International Trade Law shall be deemed to be in compliance with the provisions of paragraph 2 of this Article.

Article 224

General Undertaking

Each Member State undertakes to employ its best endeavours to complete the constitutional and legislative procedures required for its participation in the regime establishing the Court as soon as possible.

CHAPTER TEN: GENERAL AND FINAL PROVISIONS

Article 225

Security Exceptions

Nothing in this Treaty shall be construed:

- (a) as requiring any Member State to furnish information, the disclosure of which it considers contrary to its essential security interests;
- (b) as preventing any Member State from taking any action which it considers necessary for the protection of its essential security interests:

- (i) relating to the supply of services carried out directly or indirectly for the purpose of provisioning a military establishment;
- (ii) in time of war or other emergency in international relations; or
- (c) as preventing any Member State from taking any action in pursuance of its obligations for the maintenance of international peace and security.

Article 226

General Exceptions

1. Nothing in this Chapter shall be construed as preventing the adoption or enforcement by any Member State of measures:

- (a) to protect public morals or to maintain public order and safety;
- (b) to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations relating to customs enforcement, or to the classification, grading or marketing of goods, or to the operation of monopolies by means of state enterprises or enterprises given exclusive or special privileges;
- (d) necessary to protect intellectual property or to prevent deceptive practices;
- (e) relating to gold or silver;
- (f) relating to the products of prison labour;
- (g) relating to child labour;
- (h) imposed for the protection of national treasures of artistic, historic or archaeological value;
- (i) necessary to prevent or relieve critical food shortages in any exporting Member State;
- (j) relating to the conservation of natural resources or the preservation of the environment;
- (k) to secure compliance with laws or regulations which are not inconsistent with the provisions of this Treaty including those relating to:
 - (i) the prevention of deceptive and fraudulent practices, and the effects of a default on contracts;
 - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; and
- (l) to give effect to international obligations including treaties on the avoidance of double taxation,

but only if such measures do not constitute arbitrary or unjustifiable discrimination between Member States where like conditions prevail, or a disguised restriction on trade within the Community.

2. Measures taken by the Member States pursuant to paragraph 1 shall be notified to COTED.
3. The Community Council shall take appropriate measures to co-ordinate applicable legislation, regulations and administrative practices established in accordance with Article 44.

Article 227

Notification

Where in this Treaty provision is made for notification to an Organ of the Community, such notification shall be effected through the Secretariat.

Article 228

Legal Capacity Of The Community

1. The Community shall have full juridical personality.
2. Every Member State shall in its territory accord to the Community the most extensive legal capacity accorded to legal persons under its laws including the capacity to acquire and dispose of movable and immovable property and to sue and be sued in its own name. In any legal proceedings, the Community shall be represented by the Secretariat.
3. The Community may also conclude agreements with States and International Organisations.
4. The Member States agree to take such action as is necessary to give effect in their territories to the provisions of this Article and shall promptly inform the Secretariat of such action.

Article 229

Privileges And Immunities Of The Community

1. The Headquarters Agreement concluded between the Caribbean Community and Common Market and the Government of Guyana on 23 January 1976 shall continue to govern relations between the Community and the host country.
2. The Protocol on Privileges and Immunities concluded by the Member States in connection with the Caribbean Community and Common Market shall govern relations between the Community and such Member States.

Article 230

Negotiation And Conclusion Of Agreements

1. Conference may designate any Organ or Body of the Community to negotiate agreements for the achievement of the objectives of the Community.
2. Conference may delegate to the Secretary-General the conclusion of agreements, particularly technical assistance agreements, on behalf of the Community.

Article 231

Associate Membership

Conference may admit any Caribbean State or Territory to associate membership of the Community on such terms and conditions as Conference thinks fit.

Article 232

Signature

This Treaty shall be open for signature on the 5th day of July 2001 by the States mentioned in paragraph 1 of Article 3.

Article 233

Ratification

This Treaty and any amendments thereto shall be subject to ratification by signatory States in accordance with their respective constitutional procedures. Instruments of ratification shall be deposited with the Secretariat which shall transmit certified copies to the signatory States.

Article 234

Entry Into Force

This Treaty shall enter into force on the deposit of the last instrument of ratification by the States mentioned in paragraph 1 of Article 3.

Article 235

Registration

This Treaty and any amendments thereto shall be registered with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations.

Article 236

Amendments

1. This Treaty may be amended by the unanimous decision of the Parties.
2. An amendment shall enter into force one month after the date on which the last instrument of ratification is deposited with the Secretariat.

Article 237

Reservations

Reservations may be entered to this Treaty with the consent of the signatory States.

Article 238

Accession

1. After the entry into force of this Treaty a State or Territory of the Caribbean may, if Conference so determines, accede to this Treaty.
2. Accession shall be on such terms and conditions as Conference decides and shall take effect one month following the deposit of the instrument of accession with the Secretariat.

Article 239

Undertaking

The Member States undertake to elaborate a Protocol relating, *inter alia*. to:

- (a) electronic commerce;
- (b) government procurement;
- (c) treatment of goods produced in free zones and similar jurisdictions;
- (d) free circulation of goods in the CSME, and
- (e) rights contingent on establishment, provision of services and movement of capital in the Community.

Article 240

Saving

1. Decisions of competent Organs taken under this Treaty shall be subject to the relevant constitutional procedures of the Member States before creating legally binding rights and obligations for nationals of such States.
2. The Member States undertake to act expeditiously to give effect to decisions of competent Organs and Bodies in their municipal law.
3. COTED shall monitor and keep under review the implementation of the provisions of this Article and shall convene a review conference of Member States within five years from the entry into force of this Treaty.

IN WITNESS WHEREOF, the undersigned Heads of Government have appended their signatures to this Treaty.

DONE at _____ this _____ day of _____ 2001 in a single copy which shall be deposited with the Secretary-General of the Community by whom certified copies will be communicated to all the signatories.
