Maryland Journal of International Law

Volume 4 | Issue 1 Article 19

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Carl W. Dundas

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Recommended Citation
Carl W. Dundas, *Legal, Practical and Customs Problems Facing Trade Between the United States and the Caribbean Community*, 4 Md. J. Int'l L. 85 (1978).
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PART III. SELECTED LEGAL PROBLEMS

LEGAL, PRACTICAL AND CUSTOMS PROBLEMS FACING TRADE BETWEEN THE UNITED STATES AND THE CARIBBEAN COMMUNITY

*Carl W. Dundas**

NATURE AND OBJECTIVES OF THE CARIBBEAN COMMUNITY

The treaty establishing the Caribbean Community and Common Market was signed on July 4, 1973 by Barbados, Guyana, Jamaica and Trinidad and Tobago. It entered into force on August 1st of the same year in respect of those four states.[1] Eight other countries[2] of the Caribbean Commonwealth became members of both the Community and Common Market within a year of the entry into force of the treaty.

The treaty has three broad aims — namely, to foster the coordination of foreign policy of the parties thereto, to develop areas of functional cooperation and, through the Common Market which is set up by the Annex to the treaty, to bring about economic integration.

The areaś of functional coordination cover several important sectors. These include transportation, health, education, culture, broadcasting and information, harmonization of laws, labour administration and industrial relations. The Common Market was established to satisfy the third aspect of the Community Treaty, *i.e.,* economic integration. It seeks to accomplish this goal by regulating the economic and trade relations among the member states as well as between these and third countries, and also ensuring the continued integration of the economic activities of the member states.

CARICOM (the Caribbean Community including the Common Market) is a multi-dimensional process which claims to have no ultimate form of political integration as its goal. It is likely, therefore, to remain an

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* Legal Counsel and Head of the Legal Division of the Caribbean Community Secretariat Views expressed herein do not necessarily reflect the opinion of the Secretariat.

1. These states are called MDCs (More Developed Countries).

2. Antigua, Bahamas, Belize, Dominica, Grenada, Montserrat, St. Kitts-Nevis-Anguilla, St. Lucia and St. Vincent, called the LDCs (Less Developed Countries).

organization whose primary objective is to chart the course within which economic integration will develop and flourish.

Within the framework of the Common Market, accommodation[3] is made for the continued development of a sub-regional Common Market, the Eastern Caribbean Common Market which is comprised of seven[4] of the member states. The development of the sub-regional Common Market is not, however, permitted to grow unbridled since its growth is limited to the extent that the objectives of that organization are not achieved by those of the Annex and also to the extent that such development does not conflict with the obligation that the states thereof assumed under the Annex. Similarly, in the case of Belize, the Annex permits that member state to enter into arrangements for closer relations with other regional economic groupings so long as treatment no less favorable than that accorded to states within such groupings is accorded member states of the Common Market.[5]

In the light of the relatively well-pronounced disparity in economic development between some of the member states, they have been conveniently grouped in two categories — the More Developed Countries (MDCs) and the Less Developed Countries (LDCs).[6] A regime of special measures to assist the LDCs has been built into the Annex. It focuses on the relaxation of certain provisions of the trade liberalization and the common protective regimes as well as making special provisions for accelerating industrial and financial assistance to those states.

The scheme of the Common Market has been designed to enable the process of "denationalization" in favor of "regionalization" to proceed by way of incremental development. Evidence of such "denationalization" can be seen in the regimes of trade liberalization and common protective policy (particularly the common external tariff).

TRADE DEVICES OF THE COMMON MARKET

The Common Market embodies various devices aimed at the promotion and development of intraregional trade as well as trade with third states. Some of those devices are concerned exclusively with

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3. Treaty Establishing the Caribbean Community, July 4, 1973, Annex, art. 67, *reprinted in* 12 INT'L LEGAL MATS. 1033, 1071 (1973), [hereinafter cited as Caribbean Community Treaty].

4. Antigua, Dominica, Grenada, Montserrat, St. Kitts-Nevis-Anguilla, St. Lucia and St. Vincent.

5. Caribbean Community Treaty, *supra* note 3, Annex, Schedule XI, para. 6 (not reprinted).

6. *Id.* art. 3 at 1036.

intraregional trade while others affect both intraregional trade and trade with third states. Among these devices are trade liberalization, common protective policy, harmonization of fiscal incentives to industry, double taxation arrangements, a marketing of agricultural produce scheme and a guaranteed market scheme.

Trade Liberalization

The trade liberalization regime allows for the trading of goods within the Common Market free from import duties and quantitative restrictions, provided such goods conform to certain conditions. These conditions require goods to be consigned from one state to another and satisfy either of two criteria — namely, a) they have been wholly produced within the Common Market; or b) they have been produced within the Common Market and the value of any materials imported from outside the Common Market or of undetermined origin which have been used at any stage of the production of the goods does not exceed the following: a) in a less developed member country, sixty percent of the export price of the goods; and b) in any other member state, fifty percent of the export price of the goods. A system of rules governing the operation of the origin provisions is set out in Schedule II to the Common Market Annex. The appendix thereto contains the Basic Materials List. The materials listed therein, when used in the state described in that list in a process of production within the Common Market, are deemed to contain no element from outside the Common Market.

Circumstances may exist in a member state from time to time which will not permit goods meeting the aforementioned requirements to enter the market of that state. Among such circumstances are the existence of balance-of-payments difficulties[7] and/or serious difficulties in any industry or particular sector of any industry[8] due to competition from another member state. In these cases, the state affected may impose quantitative restrictions in accordance with the provisions of the Annex to the treaty. Invariably, an imposition of quantitative restrictions under these circumstances would have implications not only for intraregional trade, but also, consistent with any international obligation, trade with third countries.

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7. Member states experiencing balance-of-payments difficulties may invoke the provisions of the article and impose quantitative restrictions on goods which meet Common Market origin requirements. *Id.* Annex, art. 28 at 1059.

8. Where a member state suffers serious difficulties in any industry or particular sector of an industry due to competition from another member state, it may limit imports by way of quantitative restrictions to the level of the previous year. *Id.*, Annex, art. 29 at 1059.

Common Protective Policy

The common protective policy of the Common Market revolves around the common external tariff regime and a common policy regarding quantitative restrictions in respect of goods imported into the Common Market from third countries. These two schemes will largely determine the level of integration achieved at a given point in time. Common Market provisions require the establishment of a common external tariff by 1985. Until then several stages of development are recognized. All member states, except Montserrat, are expected to complete the phasing period by 1981. Montserrat will do so by 1985.

Currently the four MDCs have an arrangement between them whereby an agreed upon schedule of rates forms their common external tariff. The ad valorem rates in this tariff range from zero to seventy percent. Those member states of the Common Market which are also members of the Eastern Caribbean Common Market, with the exception of Montserrat,[9] have a common tariff which is recognized under the Annex as meeting their initial obligations. There is approximately thirty-five percent commonality between the rates applied in the Eastern Caribbean Common Market and those in the CET (Common External Tariff) applied by the MDCs. There is approximately ninety percent commonality between the rates applied in the Customs Tariff of Belize[10] and those in the CET applied by the MDCs.

Despite the rates prescribed in the rate schedule of the CET operated by the MDCs, through the device of a Conditional Duty Exemptions List, zero rates (or, at the discretion of the member states, concessional rates below the level of the CET) can be applied on machinery, equipment and materials when imported for certain approved uses, usually industrial or agricultural (including fishing). Similar concessional treatment is provided for under the tariffs applied by the Eastern Caribbean Common Market states, Belize and Montserrat. Attempts to eliminate or reduce the list have not been successful. In addition to the concessions in the list, member states may, at their discretion admit, free of duty, imported goods for purposes such as education, culture, social and military activities.

Since its establishment in 1973, the CET has been restructured from a two-column to a single-column tariff. This change in structure discontinued the grant of tariff preferences to goods of Commonwealth origin.

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9. The level of rates applied by Montserrat is different from that applied by the other members of the sub-regional group and is recognized by the Annex as meeting that country's initial obligation thereunder. *Id.*, Annex at 1044.

10. This tariff is recognized by the Annex as fulfilling Belize's initial obligation in respect to its level of rates.

This action was influenced by the provisions in the EEC-ACP (Lomé) Convention, forbidding tariff discrimination by African, Caribbean and Pacific states as between EEC members, as well as the terms of the U.S. Trade Act whereby countries would not have been included as beneficiaries under the U.S. GSP if they granted preferences to other developed countries which were likely to harm U.S. trade.[11]

The Common Market presently has no regime for the regulation of quantitative restrictions in respect of imports from third countries. It does, however, provide for the member states, individually or otherwise, to pursue policies regarding quantitative restrictions on imports from third countries as would facilitate the implementation of a common protective policy by 1981. The worsening balance-of-payments situation in the region generally has led to impositions by several of the member states of quantitative restrictions on imports from outside of the Common Market and in some cases, even in respect of imports from within the Common Market. There are, in fact, a large number of national quantitative restrictions on third country imports.

Fiscal Incentives and Double Taxation Arrangements

An Agreement on the Harmonization of Fiscal Incentives to Industry signed at Georgetown in 1973 has resulted in a scheme of harmonized fiscal incentives to industry throughout the Common Market. The scheme applies to approved products of approved enterprises located in any member state. The main benefits which may be granted to an enterprise[12] under the scheme are exemption from income tax and relief from customs duty over a stated number of years. The number of years for which benefits may be granted vary according to the value of the enterprise's contribution to the national or regional economy measured in terms of local value-added.

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11. Trade Act of 1974 §502(b)(3), 19 U.S.C. §2462(b)(3) (Supp. 1978).

12. For the purpose of the conferment of benefits, enterprises are classified in three groups. The first group deals with enterprises whose local value-added in respect of the approved product amounts to 50% or more of the value of the sales, ex factory, of the product. The second group comprises enterprises whose local value-added in respect of the approved products amounts to 25% or more but less than 50% of the receipts from the sales ex factory. The third group is composed of enterprises whose local value-added in respect of the approved product amounts to 10% or more but less than 25% of the receipts from sales ex factory. A fourth group — the Enclave Industries, whose entire production is sold to countries outside the Common Market region — does not require any value-added criterion in order to attract tax holidays or other fiscal incentives.

An enterprise which engages in a capital investment undertaking of not less than EC$25 million (Eastern Caribbean) in any LDC or EC$50 million in any MDC may be granted tax holidays to the maximum extent permissible under the scheme without reference to the local value-added criterion.

An approved enterprise may enjoy freedom from income tax on profits of the approved product and, likewise, the exemption of dividends from such product paid to shareholders of such enterprises from tax in cases where the shareholders are resident in a member state. Where the shareholder is not resident in a member state, exemption of dividends will be given only to the extent of the amount of tax in excess of what he would normally have paid on such dividends in the state where he resides.

The scheme permits depreciation allowance to be taken into account in computing the profits of an approved enterprise for the purposes of a relief from income tax. Similarly, an approved enterprise, at the expiration of its tax holiday, may be granted an approved product depreciation deduction, known as an initial allowance, not exceeding twenty percent of any capital expenditure incurred on plants, equipment and machinery. The scheme also enables an enterprise which incurs a net loss in the production of an approved product during the full tax holiday period to carry forward such losses for a period of up to five years after the expiration of the tax holiday, setting off against such losses profits made on the approved products. The net loss over the tax holiday period is calculated by adding all losses made and taking away all the profits made, both to be taken over the entire approved tax holiday period.

Enterprises which earn profits from exports to third countries become eligible for partial relief from income tax chargeable on such profits. The relief given here may be conferred only after the enterprises' tax holiday period has expired. The relief given is done by way of tax credit in accordance with the following table:

Percentage Share of Export Profits in Total Profits	*Maximum Percentage of Income Tax Relief of the Tax Chargeable*
10% or more but less than 21%	25%
21% or more but less than 41%	35%
41% or more but less than 61%	45%
61% or more	50%

Agricultural Arrangements

Certain agricultural products[13] are marketed under special arrangements set out in a schedule[14] to the Annex. The schedule requires those member states which have a surplus of production and those having a deficit to notify such to the Community Secretariat before September 30th each year. An allocation is then agreed upon between the producer and consumer states. The f.o.b. price for the export of each commodity from a member state to another is fixed annually by a conference which supervises the operation of the scheme. A member state is not permitted to import or allow the importation of any commodity included in the scheme except in conformity with the terms of the schedule. This provision does not apply, however, to the importation of planting material for any crop or breeding stock for livestock of which any commodity is a product. Any state which has taken up its allocation under the scheme may import that commodity from outside the Common Market to make good any unfilled part of its declared deficit. The scheme does not form an integral part of the trade liberalization regime since it is subject to the imposition of quantitative restrictions.

In order to foster the development of agriculture in the LDCs, certain products[15] are offered guaranteed markets in the MDCs. These products enjoy preference in such markets at all times even if there is a surplus in those commodities in the MDCs.

TRENDS IN CARICOM'S TRADE

CARICOM's export trade with third countries is characterized by a heavy reliance on agricultural commodities.[16] It is therefore subject to the fluctuations of world demand and prices. It is also strongly influenced by the uncertainties of weather conditions. Like most developing countries or groups of countries, the CARICOM states suffer from persistent underproduction in the area of traditional agricultural products as well as in the development of new ones. Efforts to retain traditional preferential markets and to establish new ones have been less than spectacular.

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13. Carrots, peanuts, tomatoes, red kidney beans, black pepper, sweet pepper, garlic, onions, potatoes, sweet potatoes, string beans, cinnamon, cloves, cabbage, plantain, pork and pork products, poultry meat, eggs, okra, fresh oranges, pineapples and pigeon peas.

14. Caribbean Community Treaty, *supra* note 3, Annex, Schedule VIII (not reprinted).

15. Products include carrots, corn, onions, oranges, peanuts, plantains, red kidney beans and spices.

16. Sugar, bananas, spices, coffee, rice, timber and fish.

The mining sector, though somewhat more stable in receipts of foreign exchange earned, is, apart from petroleum (Trinidad and Tobago), currently experiencing a slow period owing to reduced demands for bauxite and alumina (Jamaica and Guyana) and, to a lesser extent, gypsum (Jamaica).

The main trading partners of CARICOM countries are the United States, the EEC, Japan and Canada but there is evidence of growing trade relations with countries with centrally planned economies. Specifically, the US-CARICOM trade has continued to grow. During 1976, the last full year for which information is available, CARICOM imports from the United States were about twenty-five percent of total imports, while exports to the U.S. were over fifty percent of the total. In 1965, slightly more than a decade ago, the corresponding figures were twenty-two percent and thirty-one percent. Thus, while the relative importance of trade with the United States has remained substantially unchanged on the import side, the period has witnessed an appreciable increase in exports.

The money value of imports from the U.S. increased from approximately EC$390 million in 1965 to an estimated EC$2,400 million in 1976. The money value of exports increased from approximately EC$400 million in 1965 to an estimated EC$4,750 million in 1976.[17] This rise in money values reflects inflation in prices as well as volume increases in trade. While no overall estimate of relative increases in average import or export prices in US-CARICOM trade is available, the inflation factor should be taken into account in observing that the balance of trade moved in CARICOM's favor over the period from a surplus EC$10 million in 1965 to EC$2,350 million in 1976.

The increased import bill from 1965 to 1976 reflects general world price inflation, particularly during the past four years, as evidenced by the rise from EC$975 million in 1973 to EC$2,400 million in 1976. The increase in export values reflects the sharp escalation of export values of petroleum products since 1973 (of the figures for all exports rising from EC$1,150 million in 1973 to EC$4,750 million in 1976 with the figure for petroleum exports over the same period from EC$675 million to EC$3,650 million). There were, in addition, temporary escalations in export receipts from bauxite and alumina (1974 and 1975) and sugar (1974) but these favorable trends have since disappeared.

The foregoing figures show that the benefits derived from the surplus position of CARICOM are not evenly distributed but are largely enjoyed by Trinidad and Tobago with a surplus balance of trade with the United

17. Source: CARICOM Secretariat.

States in 1976 of some EC$2,750 million while the rest of the member states suffered a deficit balance of trade of some EC$400 million.[18]

SOME SPECIAL FEATURES OF ACCESS OF CARICOM'S GOODS TO U.S. MARKETS

Generalized System of Preferences

The U.S. market has been an important one for a number of the member states of the Caribbean Community and this interest was demonstrated by the regional response to the invitation of the U.S. Trade Negotiator in 1974 that they submit to the U.S. government lists of those products which they would wish to be accorded preferential treatment when the GSP scheme was implemented. A joint CARICOM list drawn up by the member states was submitted to the United States through the U.S. Embassy in Georgetown, Guyana, in December, 1974.

The United States had at first suggested that the Caribbean countries and (and presumably other GSP-beneficiary hopefuls) should indicate their wish to be designated as beneficiaries under its GSP scheme but this suggestion was not insisted upon on the understanding that CARICOM member states would not publicly denounce the listing of their countries as beneficiaries. Thus, when the Executive Order was issued implementing the U.S. scheme all twelve CARICOM states were individually designated as GSP beneficiary countries.

The provisions of the 1974 Trade Act dealing with the GSP came under almost immediate attack on a number of grounds. Criticism was directed particularly at the following features of Title V of the Act:

1. The designation of beneficiary developing country;
2. The designation of eligible articles;
3. The rules of origin;
4. The competitive need limitations; and
5. The power to withdraw products from the list of eligible articles.

1. Beneficiary Country Designation. With respect to country-designation, the CARICOM states have gone on record as condemning the OPEC exclusionary provision of the Trade Act since it has meant a bar to Ecuador and Venezuela. Guyana and Jamaica, as members of the International Bauxite Association (IBA) were also concerned that the provisions could be invoked as a means of influencing IBA policies.

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18. Source: CARICOM Secretariat.

2. Eligible Articles. The procedure established under the Trade Act for the naming of products which are to enjoy GSP treatment requires the President first to consult with the U.S. International Trade Commission, though not necessarily to accept the Commission's advice. Thus, prior to the declaration of the list of eligible articles, the U.S. Administration had issued in March 1975 a list of articles being considered for designation as eligible articles. This advance notification of the possible eligible product list gave U.S. interests an opportunity to make known to the U.S. Administration how they felt GSP eligible status for any product would affect them. It also alerted the prospective beneficiary countries to likely omissions from the product submissions which they had made. When the final list of eligible articles was published in the Executive Order introducing the scheme, several of the products proposed for GSP treatment by the Latin American and Caribbean countries were not designated GSP-eligible. The U.S. government has been critical of long lists of products put forward by the developing countries describing them as "shopping lists." They have suggested that the most effective submissions are those that do not encompass hundreds of products since their procedure is not established for detailed attention to that many products in the period of time allocated. A more recent approach adopted by the United States in inviting proposals with regard to export products of interest to the developing countries for addition to the eligible list is to request the developing beneficiary country to support the submission with information on the impact upon the economy if the products are granted eligibility.

3. Competitive Need. The U.S. position on the $25 million/fifty percent competitive need limitation[19] is that its purpose is to ensure that no one country so dominates the U.S. market as to deny GSP access to a weaker and less competitively able beneficiary exporter of that product. When the export limits on any particular item from a beneficiary country in any one year have been reached, the grant of GSP treatment is withdrawn for the succeeding year. The U.S. Trade Act does not provide for automatic restoration of the item, even if the level of exports in any succeeding year does not exceed the limits set by the competitive need formula. The U.S. authorities have not established mechanisms for restoration in these instances.

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19. *See* Dr. B. Smith, *The Generalized System of Preference of the United States as it Affects the Caribbean Basin, infra* at 146. It may be noted that the fifty percent limitation does not apply where a like or directly competitive article was not produced in the U.S. on or before January 3, 1975.

As a consequence of the competitive need formula, when the GSP scheme was introduced, Jamaica and Trinidad and Tobago found themselves barred from GSP beneficiary status in respect of products of TSUS (Tariff Schedules of the United States) Items 147.33 (certain citrus fruits) and 168.15 (bitters not fit for use as a beverage). Guyana and Jamaica were also listed as ineligible in respect of sugar (TSUS Item 155.20) though sugar was not included in the joint CARICOM request list. (The same is true of bitters not fit for use as a beverage.)

The exclusion of Guyana and Jamaica as eligible beneficiary exporters of the product caused a great deal of concern in the region. The denial of beneficiary status was based on the level of exports to the United States during 1974. The Common Market Council took up the matter arguing that the automatic application of the competitive need criteria under the Trade Act on the basis of the 1974 sugar exports of the Caribbean countries to the United States reflected a lack of appreciation of the special circumstances of the case; the export level was a direct response to the position taken earlier by the U.S. government that sugar quotas, which had been suspended in 1973, would only be restored on *demonstration of satisfactory performance*. The United States responded that the competitive need formula is a mandatory limitation embedded in section 504(c) of the Trade Act of 1974 and the President did not have legislative authority to waive this limitation in the case of Jamaica or Guyana. The 1975 figures which became available later meant continued ineligibility in 1976. Sugar from these two states continues to be ineligible for GSP treatment.

The operation of the fifty percent export limitation has also had the effect of denying GSP beneficiary status for products which registered small export volumes as well as in cases where the exporting countries concerned were the sole suppliers to the U.S. market. Ugli fruit exported by Jamaica is one case and Angostura bitters from Trinidad and Tobago another.

4. Rules of Origin. In drawing up the GSP, developed and developing countries had met under UNCTAD auspices in an effort to reach agreement on a common set of rules for the determination of the origin of products of the developing countries which would be eligible for GSP treatment. However, not only have the origin rules of the preference given developed countries been based on different criteria but even within each broad criterion, significantly different methods of origin identification have been prescribed. The origin rules of the U.S. scheme are based on the percentage value-added criterion but contain a variety of specific conditions of eligibility different from other rules employing the percentage value-added requirement.

The basic provision under section 503(b) of the U.S. Trade Act of 1974 is that duty-free treatment will apply to an eligible article from a beneficiary developing country if the sum of the cost or value of the materials produced in the beneficiary developing country plus the direct costs of processing operations performed in that country is not less than thirty-five percent of the appraised value (usually ex factory price) of such article at the time of its entry into the customs territory of the United States. The regulations explaining the application of this basic provision exclude from the computation profits and general expenses which, though related to the conduct of the business, are either not allocable to the product in question or do not arise in connection with the growth, production, manufacture or assembly of the article.

There has been a good deal of criticism of the origin rules on the grounds of their stringency, the uncertainty of their operational provisions, particularly in the determination of "materials produced in a beneficiary country," the appraised value of the final product, the identification of "direct costs of processing operations" and the punitive nature of the cumulative provision applying to groupings of countries. In the case of the CARICOM countries specifically, there has been a marked absence of documented cases where products of industries in those countries have been kept out of the United States G.S.P. market on account of failure to satisfy the origin requirements.

5. The Power to Withdraw Products from the List of Eligible Articles. The United States has established procedures not only related to the designation of additional articles but also for reviewing designations originally made. Since the establishment of the scheme there have been several reviews resulting in the withdrawal of GSP status for certain products and the grant of such status for others. Certain countries have complained that action within the U.S. government to withdraw products from the eligible list has been too frequent, creating a feeling of uncertainty. They have urged that reviews leading to possible exclusion should occur no more frequently than once a year and that adequate notice should be given where action to exclude a product is being considered.

6. Indicators for Future Development. The Latin American countries, including CARICOM states, have shown the greatest interest and have contributed a major input into the dialogue with the U.S. government over its scheme. This US-Latin American dialogue has taken place mainly within the OAS forum. The U.S. position since its scheme was introduced has been to explain the economic and political considerations upon which its GSP offer has been based, arguing that the scheme represented the farthest the government could go at the time. Representations

about mandatory and other product exclusions have been answered by referring to the position of the American economy and its ability to bear the competition resulting from GSP access to the U.S. market and the opportunities which GSP treatment offers for the products of over 2,000 TSUS items. The Administration has also agreed to participate in and to lend its active support and assistance to the sales promotion of Latin American products in the U.S. market and to ensure and increase understanding and awareness about the U.S. scheme.

Under OAS auspices, a program has been developed to assist developing beneficiary countries belonging to the OAS group in taking greater advantage of the U.S. scheme, and the Latin American countries have urged that in addition to products now included in that CECON (Special Committee for Consultation and Negotiation)/CIPE (Inter-American Export Promotion Center) program, other eligible products for which possibilities exist in the United States should be the subject of new market studies and the results of these studies passed on to the countries concerned.

U.S. Markets for CARICOM's Nontraditional Products

Pursuant to treaty provisions,[20] CARICOM has been trying to develop markets for its nontraditional products (industrial and agricultural) in North America and Western Europe. In this connection, a marketing study tour with the aim of observing market conditions in the United States (and Canada) for essential oils and spices as well as fresh and processed fruits and vegetables was sponsored by CARICOM in 1975 (hereinafter called "the Mission"). It included marketing and export promotion officers, private sector exporters and representatives of the sub-regional Eastern Caribbean Common Market and CARICOM Secretariats.

1. Essential Oils and Spices. In its Report,[21] the Mission noted that the U.S. (and Canadian) markets for essential oils[22] and spices[23] had been expanding at an average annual rate of five to six percent. The Report further noted that CARICOM exports in these products enjoyed a high reputation among overseas importers and that there was a strong and positive interest in obtaining supplies. The Mission found that the

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20. Caribbean Community Treaty, *supra* note 3, Annex, arts. 46 and 49 at 1066.
21. CARICOM Secretariat Doc. REP. 75/82 TIS (1975).
22. These included nutmeg oil, bay oil, pimento leaf and berry oil and lime oil.
23. Included were ginger, cinnamon and cloves.

demand for essential oils and spices in the United States would be affected by the development of synthetic substitutes. Essential oils used in the fragrance industry, it was pointed out, were more apt to be affected in that way than essential oils used in the flavor industry. This Mission also highlighted competition as a constraint to rapid development of CARICOM's trade in these areas.[24]

The Mission further observed that entry conditions for the U.S. markets were rigid. An extensive list of standard specifications for essential oils had been established for such commodities which were imported into the United States. Spices imported into the U.S. were inspected to ensure that they conformed to the requirements; if they failed to conform they were cleaned and repacked or reconditioned at the shippers' expense. Spices are shipped into the United States under two categories — "guaranteed to pass" and "not guaranteed to pass." The former category commands a higher price. Spices from CARICOM countries are usually shipped as "guaranteed to pass." Spices to be used for further processing need not conform to the required specifications for entry. The processor is required, however, to give a guarantee that the spices would in fact be used for processing. Since 1975 a certificate has to accompany all shipments of essential oils into the United States verifying that the oil was 100 percent pure.

2. Fresh and Processed Fruits and Vegetables.[25] In the case of these products, it was noted that many of them attracted relatively high duties while only a few were designated as eligible articles under the GSP scheme.

Measures in the United States

Nontariff measures have operated in one form or another from time to time in respect of CARICOM nontraditional products mentioned on

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24. The major sources of competition were identified as Indonesia in the case of nutmeg and nutmeg oil and Mexico in the case of pimento. Australia and, lately, China were offering increasing competition in the market for ginger. It was further noted that large contracts had been entered into between U.S. importers and the Chinese for the supply of ginger and dried pepper. There was little competition with West Indian bay oil which was mainly from Puerto Rico.

25. *Fresh*: Mangoes, avocados, grapefruit, papaws, pineapples, aubergines (eggplants), capsicums (sweet peppers), okra, pumpkins, sweet potatoes, fresh hot peppers, lemons and limes, breadfruit and yams. *Processed*: Instant yam, lime juice and lime cordial, passion fruit juice, rossel (sorrel) products (dried, powdered, juice and concentrate), guava products (canned, juice, jelly and nectar), W. I. cherry products (jam and syrup), tamarind products (jam, juice and nectar), soursop nectar and nutmeg jelly.

page 97. A study undertaken by the CARICOM Secretariat in mid-1975 indicated that the following nontariff measures operated in respect of those products:

1. Marking and labelling of goods;
2. Quantitative restrictions;
3. Quarantine regulations; and
4. Standards.

1. Marking and Labelling. It was observed that every article of foreign origin or its immediate container which is imported into the United States must be conspicuously marked in as legible and indelible a manner as to indicate to the ultimate purchaser in the United States the English name of the article's origin. Where paper sticker or pressure sensitive labels are used, they must be affixed in a conspicuous place securely enough to remain on the article until it reaches the ultimate purchaser. Failure to comply with these regulations attracted measures such as detention of the goods, marking or labelling under supervision and penalties.

2. Quantitative Restrictions. In cases where the importation of any of these items is likely to adversely affect the market for any domestic agricultural commodity or product thereof, the President of the United States may impose fees not exceeding fifty percent or quantitative limitations on such imports.

3. Quarantine Regulations. The importation of fruits and vegetables and of plants and portions of plants into the United States is subject to conditions laid down by the Plant Protection and Quarantine Program. All importation of fruits and vegetables into the U.S. is required to be free from plants or portions of plants. Such fruits and vegetables are also subject to inspection or disinfection or both on arrival and may be reinspected at destination. If a shipment is found to be so infected with fruit flies or other dangerous pests that it cannot be cleaned by disinfection or other treatment or is found to contain portions of plants, the entire shipment may be refused entry.

4. Standards. The Agricultural Marketing Agreement Act of 1937[26] empowers the Secretary of Agriculture to issue orders from time to time

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26. Agricultural Marketing Agreement Act of 1937, 7 U.S.C. § 601 et. seq. (1964 & Supp. 1978).

regulating the grade, size, quality or maturity of fruits and vegetables produced in the United States. This requirement also extends to the imports of such commodities. These, and other, measures often act as deterrents to US-CARICOM trade.

Marketing Conditions for New Nontraditional Exports

In 1977 CARICOM mounted a second Mission to study marketing conditions in the United States for garments[27] and handicraft straw items.[28] In its findings, the Mission noted that the U.S. market for garments and handicraft was extremely competitive since there were already available large quantities of good quality products at low prices from diverse sources. It was noted that the CARICOM exporters would have to reduce prices considerably in order to meaningfully penetrate the U.S. market. Another point was that the U.S. market has been the most important foreign market for CARICOM exports in garments with an increase from about EC$9 million in 1967 to EC$24.6 million in 1975.

The Mission found that an assortment of products was traded under the name of handicraft. The markets investigated were supplied with a wide range of good quality handicraft articles from a number of sources. Major competitors of the Caribbean were India, the Phillipines, Taiwan, the Republic of Korea, Thailand, Mexico, Yugoslavia and China. In order for CARICOM to make a favorable penetration of the U.S. market, special attention had to be focused on the need to reduce export prices with an improvement in the quality of the products.

SOME CONSTRAINTS TO US-CARICOM TRADE

CARICOM Markets

The abovementioned Common Market devices for development of trade both internally and with third countries do not presently offer any serious constraints to trade. The rates of import duty prescribed in the tariffs of the CARICOM member states are not regarded as high rates and thus should not present much difficulty to U.S. products entering CARICOM markets.

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27. Men's clothing included: dress shirts, afro shirts, shirt jacs, carib suits, denim jeans and slacks, trousers, pajamas and briefs. Women's items included: gowns, dresses, blouses, skirts, tee shirts, night wear, dusters and underwear.

28. Items include: table mats — also of dried banana leaves — grass mats, glass holders on tray, sandwich plates, hats, handbags — also of jute and embroidered cloth. Also exhibited were other cloth items, wooden products, coconut shell items and jewelry.

The Common Market does not presently operate any Regional Quantitative Restrictions System (QRS) although it is envisaged that towards the end of the transitional period (1981) there may be such a system in existence. In the light of the prevailing balance-of-payments difficulties attending most of the member states, national systems with varying degrees of intensity are known to be affecting both intraregional trade as well as trade with third countries (including the U.S.). In this respect, the importation of several consumer articles has been drastically reduced and in some cases even capital goods have been affected. This trend is unlikely to improve dramatically in the next couple of years.

The harmonization of fiscal incentives scheme, while facing criticism in respect of the period granted for incentives, cannot be said to be a significant constraint to investment or attendant trade development since it establishes a uniform procedure for investment throughout the Common Market.

The scheme for marketing agricultural produce has in the past incurred the disfavor of the United States, particularly through its representative on the GATT Working Parties which examined the Caribbean Free Trade Association Agreement[29] and, more recently, the CARICOM Treaty. Indeed, it is interesting to note that the U.S. representative on the GATT Working Party focused attention on three aspects of the CARICOM trading devices — namely the common external tariff, common protective policy and the agricultural marketing schedule (Schedule VIII to the Annex). The two first areas were quickly explained to the satisfaction of the U.S. representative. The third was questioned, however, in some depth. The U.S. position was opposed to the scheme set out in Schedule VIII of the Annex on the grounds that it was inconsistent with Article XXIV, section 5(a) of the GATT Agreement. The U.S. representative was firm in his attempt to pursuade the Working Party that it should have CARICOM member states comply with their obligations under the GATT. In reply to the U.S. arguments, CARICOM member states submitted that trade in agricultural products under Schedule VIII of the Annex was an infinitesimal portion of total intraregional trade (roughly 1.2%) and could not affect the requirement of substantial liberalization. It was further explained that the licensing arrangements were more of an administrative mechanism to ensure orderly disposal of the small supplies available within the region. This was particularly important since most of the commodities traded were highly perishable and the CARICOM countries had not been able to provide the specialized storage and shipping facilities necessary where

29. The predecessor of the CARICOM and Common Market treaties.

there were delays in reaching the consumer. The arrangements were declared as not restrictive of the trade of third countries. Indeed the trade statistics in respect of these products for the years 1971 to 1975 indicated that the trade of CARICOM countries grew from EC$1.1 million to EC$4.2 million, while imports from the rest of the world on these items grew from EC$27 million to EC$56 million. In 1971 U.S. exports of these products to the region constituted 42.1% of total trade while in 1975 it rose to 51.8%. These explanations were apparently accepted by the U.S. representative and the GATT Working Party. The Working Party concluded that the scheme did not in effect constitute a barrier to trade with third countries.

U.S. Markets

The constraints on CARICOM trade in U.S. markets are several but perhaps not of a very severe nature. The limitations on the U.S. GSP scheme have been identified, and it is a fact that CARICOM trade has been affected particularly by the competitive need criteria as mentioned above. The general uncertainty surrounding the procedure for removing items from the GSP scheme and the absence of clear procedures for restoration of GSP status have created concern among CARICOM exporters. In addition the increased level of value-added to be attained (fifty percent as opposed to thirty-five percent) and the application of the competitive need formula against Common Market exports taken as a whole, as well as the element of political content involved in the exclusion of hemispheric OPEC members, have influenced CARICOM's attitude to the election for cumulative treatment.

CARICOM's trade with the United States has also been affected by the unpredictable nature of the exercise of discretion in imposing levies and/or duties on foreign products for protection purposes from time to time. Sugar has been an example in which the Ford and Carter Administrations have imposed considerable increases in the levy on foreign sugar as an effort to protect U.S. producers.

With respect to the marketing of nontraditional products, the main constraints identified have been competition, inadequate knowledge of the behavior of the market, rigid standards (particularly in the case of fresh fruits and vegetables, *e.g.,* fumigation is said to be a rather expensive process for small exporters), and the growing trend of utilizing substitutes, particularly for essential oils and spices.

FUTURE PROSPECTS

Although the legal, practical and customs problems of US-CARICOM trade reveal some problems, considerable growth was recorded during the

last four years. The removal or reduction of the impact of such problems would clearly serve to increase trade in both directions. The current world economic crisis has had a significant influence on US-CARICOM trade (as is the case with world trade generally). Any improvement in the world economic situation, particularly that of CARICOM, is likely to result in a reduction of the application of quantitative restrictions to goods from third countries. The world economic crisis apart, there is little evidence that the problems are of such a fundamental nature that they could not be meaningfully dealt with in order that their inhibitive influence might be reduced considerably.