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THE CARIBBEAN FREE TRADE ASSOCIATION

RICHARD L. ABBOTT*

Part I of this article, published in the previous issue of the *Lawyer of the Americas*, pointed out that the primary thrust of CARIFTA is the elimination of all obstacles to the free movement of area products. The barriers to trade are essentially of two types, those affecting trade *directly* (principally tariffs and quantitative restrictions) and those which *indirectly* interfere with free trade (such as restrictive business practices, government aids to producers, regulation of the establishment and operations of enterprises, and trading practices of public undertakings). Articles 4-7, 9, 10, 13-15, Annexes B-E of the Carifta Agreement and the two Protocols on agriculture deal with the direct barriers, and Articles 12, 17-20 and Annex F with the indirect barriers. These latter provisions are generally referred to as the "Rules of Competition."

ELIMINATION OF DIRECT BARRIERS TO TRADE

ELIMINATION OF IMPORT DUTIES — ARTICLE 4 AND ANNEX B

The heart of CARIFTA lies in the concessions and agreements concerning duties on products traded among the members. Article 4 provides that, subject to the provisions of Annex B, the members shall not apply any import duties on goods eligible for area tariff treatment in accordance with the consignment and origin rules prescribed in Article 5. Import duties consist of any customs tax or surtax and any other charge of equivalent effect, whether fiscal, monetary or exchange levied on imports, the primary purpose of which is protection and not revenue raising as set forth in Article 7. Available information indicates the members have taken the necessary steps to implement this obligation of immediate removal of import duties. For example, on July 30 and 31, 1968, the Jamaican Government, when ratifying the Agreement, amended four laws — the Consumption Duty Act, Customs Law, Excise Duty Law, and Tonnage Tax Law..

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In view of the disparate size and levels of economic development of the members, Annex B classifies all members other than Barbados, Guyana, Jamaica and Trinidad and Tobago as "less-developed territories" and grants them the right to reduce gradually, rather than immediately, duties on certain specified products. Import duties on three products—biscuits, coconut fiber products, and certain plastic bristle brushes—may be maintained at the pre-CARIFTA level for five years, and at a level of 50% for an additional five years, with the possibility of extension beyond 10 years upon proper showing to and majority decision by the Council. On fourteen additional products described in Annex A, less-developed members may phase out duties at the same pace. The developed members, however, must gradually reduce their duties on these fourteen products within a five-year period, with a minimum reduction of 20% per year beginning May 1, 1969 (it has been reported that the developed members have not met this May 1, 1969 date and are requesting postponements). This group of fourteen products includes nine additions to the original gradual reduction list set forth in Annex A of the Dickenson Bay Agreement, including tobacco, radio and television sets, storage batteries, and leather footwear. Bagasse board was deleted from the original list. The less-developed members may also agree under Annex B to a more rapid duty reduction schedule among themselves on these specified products than toward the other four members.

Article 39 goes even further than the Annex B privileges accorded less-developed territories, and implements the new objective in Article 2(e) of avoiding polarization by ensuring that "the benefits of free trade are equitably distributed . . ." Upon application by the less-developed members, the Council may, in order to promote the development of local industry, authorize by majority vote the suspension of Area tariff treatment with regard to imports from the developed member territories otherwise entitled to such benefits. The suspension, if deemed necessary, may be imposed as a "temporary measure", but no time limitation is prescribed. If the suspension is authorized, thereby protecting the local production in the less-developed territories, the developed members are entitled to deny free trade access of such protected production to their markets. In essence, Article 39 permits the less-developed members to engage in sub-Area planning, locating and protecting of infant industries from developed member competition until the local industry takes hold. The extent to which this privilege is utilized and what time limitation will be ascribed to even "temporary measures" remain to be seen. The importance, however, of this sub-Area privilege should not be overlooked, as it represents an effort to tackle the polarization problem, the lack

of which in Dickenson Bay was a serious (if not fatal) defect. In addition, it dovetails with the basic objectives of the Eastern Caribbean Common Market Agreement entered into by the less-developed territories in June 1968, one month before those territories adhered to CARIFTA. Little has been reported concerning this sub-Area common market, but there is sufficient latitude under CARIFTA for activity of the type envisioned—closer economic cooperation than under CARIFTA, whether such activity occurs under the aegis of a formal organization or on and *ad hoc* basis.

Two other exclusions from the treaty obligation to eliminate protective tariffs should be mentioned. First is the right of Guyana under Article 38 to impose quantitative restrictions and customs duties on certain petroleum products. Second, under Article 3, rights and obligations of any member under agreements entered into prior to the effective date of the treaty are excluded from its scope. Each member, however, must take the steps at its disposal to reconcile the provisions of any such pre-existing agreement with the purposes of CARIFTA. To this extent, Article 3 is the same as in Dickenson Bay. However, CARIFTA imposes further obligations than did Dickenson Bay. If the existence of such pre-existing rights leads to a situation where a member considers it would enjoy a benefit under the treaty but for such exemption, the member may refer the matter to the Council. By majority decision, it can authorize the injured member to deny to the exempted member the application of such obligations as it feels just and appropriate. The Council is also specifically directed to make an annual review of the progress made by the members in reconciling pre-existing commitments, and is empowered, upon majority vote, to recommend the steps a member should take to effectuate such purpose.

REVENUE DUTIES AND INTERNAL TAXATION — ARTICLE 7 AND ANNEX D

Revenue duties are treated differently from import duties. CARIFTA, like EFTA, is designed to interfere as little as possible with the fiscal policies of the members. Members are not precluded from raising revenue in whatever fashion deemed appropriate, so long as the revenue-raising function is not used as a shield behind which protective trade barriers are imposed. In this context, as briefly indicated above, customs duties are levied primarily either to raise revenue or for protection. Obviously, the latter type also generates revenue and the former has a secondary effect of protection. Which function is primary — revenue

or protection — could be the source of endless debate. Nevertheless, the distinction is made, and is not impossible to live with it on a practical, everyday basis as has been done in EFTA.

Article 7 deals with the subject of “fiscal charges”, defined to include internal taxes and other internal charges, customs duties and other similar charges applied primarily for the purpose of raising revenue. These “fiscal charges” are excluded from the rules of Article 4, discussed above, requiring the immediate elimination of all import duties. The same cleavage exists in EFTA, resulting from EFTA’s inability to follow the simpler route of abolishing all revenue duties and converting them into internal taxes. Many problems underlie this inability, such as the taxation systems of Switzerland and the United Kingdom which could not feasibly undergo such a conversion. Presumably, similar difficulties underlie the drawing of the distinction in CARIFTA.

Under Article 7, subject to the provisions of Annex D, members shall not:

1. Apply directly or indirectly to imported goods any fiscal charges in excess of those applied directly or indirectly to like domestic goods, nor otherwise apply such charges so as to afford effective protection to like domestic goods; or
2. Apply fiscal charges to imported goods of a kind which they do not produce or which they do not produce in substantial quantities, in such a way as to afford effective protection to the domestic production of goods of a different kind which are substitutable for the imported goods, which enter into direct competition with them and which do not bear, directly or indirectly, in the country of importation, fiscal charges of equivalent incidence.

In other words, members are permitted to raise revenue by duties on imported goods or their substitutes so long as those goods are not subjected to a higher charge than the competing local goods. There is no restriction on the number, variety and size of revenue duties and other fiscal charges, but this freedom is subject to stringent conditions designed to prevent the direct or indirect use of these charges as a means of protection to domestic production. To this end, Article 7 calls for the elimination of any fiscal charge entailing an “effective protective element” in favor of local goods. This means the amount by which the incidence of the duty, tax or charge applied to eligible imports exceeds the effective burden of the corresponding fiscal charges levied on domestic production.

Annex D performs the same function for Article 7 that Annex B does for Article 4. Annex D permits reduction of the "effective protective element" in revenue duties. All members are given five years to eliminate the protective element on petroleum products and specified alcoholic beverages. A minimum schedule of annual reduction is prescribed, the first being a reduction by May 1, 1969, to a level not to exceed 40% of the original level. Antigua is reported to be requesting a one year postponement of this date, apparently to protect its faltering oil refinery. For rum, the developed members must follow the same time and annual reduction schedule, but less-developed countries may reduce on a less onerous 10-year basis. Less-developed members are given the further benefits of the possibility of extensions on the reduction period on rum beyond 10 years, and the right to agree among themselves to a more rapid reduction on all Annex D products.

It may be anticipated that the difficulties experienced by EFTA in determining the "effective protective element" will also be experienced in CARIFTA. When no domestic goods or substitutes are produced, the matter is simple, since there is no question of protection. When local competitive or substitute goods are produced, the matter is more complex. To determine the protective element it is necessary to compare the amount of revenue duty on imports with the burden of internal charges on local goods, including revenue duties paid on the imported materials incorporated into the domestic goods. The respective bases for assessment of import taxes and internal charges, however, may differ in such a way so as to prevent exact comparison. In addition, special charges borne by domestic goods and not by imports must be considered. Nevertheless, this complexity should not prevent the making of progress on a practical case-by-case basis.

RULES OF ORIGIN — ARTICLE 5 AND ANNEX C

The benefits of elimination of import duties are not available for all goods imported into one CARIFTA member from another. Article 4 dictates that only those goods "eligible for Area tariff treatment in accordance with Article 5" shall enjoy such benefits. To be eligible, goods must meet the two tests of Article 5, i.e., the Consignment Rule and the Origin Rule.

The Consignment Rule is simple. To be eligible for Area tariff treatment, goods must be consigned from the exporting member to a consignee in the importing member. This rule has the simple purpose of

helping Customs authorities in the control and identification of goods. When goods are traded directly between members, the documentary evidence of origin can easily be compared to other documents, such as invoices and bills of lading thereby relating the goods to benefits claimed under CARIFTA.

Based upon trading patterns in the Caribbean, this should present few current complications, but the difficulties experienced under this same seemingly simple rule in EFTA should be noted. In EFTA, goods are not infrequently exported from an EFTA member to a non-member for warehousing and subsequent sale and export to a buyer in a member country. As a specific example, a British auto manufacturer who stockpiled British parts in an EEC country, in order to serve both the EEC and EFTA markets lost his right to Area tariff treatment on those parts shipped from his continental warehouse into EFTA members. Whether a parallel situation can arise in CARIFTA depends upon the development of supply and distribution systems, which might include stockpiling of certain goods in Puerto Rico for re-export to CARIFTA and non-CARIFTA sources, due to the more diverse transportation facilities offered through Puerto Rico.

If the situation does arise, however, CARIFTA could follow the approach developed by EFTA to ameliorate this harsh result. After a two-year trial basis, the EFTA Council voted in 1967 to relax permanently the Consignment Rule for goods which are exported to non-EFTA territories, provided the goods are there less than one year and are not re-packaged into retail containers. Further, if Customs authorities in the EFTA importing country so require, the exporter must provide a certificate from the non-EFTA Customs authorities, certifying the identity of the goods and continuous Customs supervision in the warehouse. The EEC is even more liberal, requiring only that the identity of goods be assured and no more than six months elapse between export and import in EEC countries.

The CARIFTA Council has been given the authority to amend Article 5 and Annex C on a unanimous basis, thus it has sufficient latitude to adapt to problems as they arise. With new patterns of trade emerging in the increasing overall Caribbean trade, including possible expanded use of free trade zones such as currently exist in Puerto Rico and the Dominican Republic, the Council may well be called upon to meet the task.

In free trade areas such as CARIFTA and EFTA, each member retains control over its own tariffs on imports from countries outside the Area. The levels of these external tariffs often vary considerably. Without origin

rules, goods from non-members would tend to be imported first into members with low external tariffs, then re-exported duty-free to the members with higher external tariffs. The effect of this is to defeat the very purpose of the free trade area and unwittingly extend to non-members the tariff benefits of Area trade. Thus, an origin system is an essential feature of any free trade area.

Article 5 and Annex C set forth the origin rules in detail, drawn almost verbatim from EFTA. The struggle and birth pains in developing EFTA rules are the subject of a comprehensive study worthy of consultation: *The Rules of Origin*, by S. A. Green and K. W. Gabriel, available on request from the Washington, D.C. office of EFTA.

All the necessary provisions for the operation of the origin system are contained in the Agreement. Article 5 sets forth the basic principles, and Annex C prescribes the many provisions necessary for the effective administration and application of those principles. Annex C is supplemented by a Schedule, the Basic Materials List, and the "Agreement Pursuant to Rule 8" of Annex C, prescribing the actual forms to be used in CARIFTA trade. Article 5 provides that goods are of Area origin if they meet any one of the three following criteria:

1. Wholly produced within the Area.
2. Produced within the Area and the value of any materials, imported from outside the Area or of undetermined origin which have been used at any stage of production, does not exceed 50% of the export price of the goods (the "percentage criterion").
3. They fall within a description of goods listed in a Process List to be established by unanimous vote of the Council and have been produced within the Area by the appropriate qualifying process described therein (the "process criterion").

The Basic Materials List supplements these three criteria, delineating numerous raw materials and semi-manufactures either unavailable or insufficiently produced within CARIFTA. Any material on this list, when imported from outside the Area and used in a process of production within CARIFTA, is regarded as being of CARIFTA origin for the purposes of the percentage and process criteria. This list represents an important liberalization of the origin system, enabling manufacturers to obtain Area tariff treatment for goods containing more than 50% value in outside materials and giving non-Area traditional raw material suppliers continued access to the Area market.

Generally, traders are free to choose the criterion under which their claim to Area tariff treatment shall be based. The simplest of the three, of course, is the "wholly produced" criterion. It will rarely apply to manufactured goods, since these invariably contain some non-Area component. However, Rule 2 of Annex C enumerates nine classes of products deemed to be wholly produced, thereby avoiding the loss of Area ability due to minor non-Area value inputs. These products include mineral products mined in the Area, vegetables harvested and live animals born and raised in the Area (and products from such animals) and marine products taken either within the Area or by a member flag vessel without the Area.

Under the percentage criterion, the cost of non-CARIFTA materials, excluding any Basic Materials List items, cannot exceed 50% of the FOB export price of the goods. The value of CARIFTA materials, labor costs, duty on non-CARIFTA material, other local costs and the CARIFTA manufacturer and/or trader's profit margin all contribute to the CARIFTA content in the goods. This, of course, puts a premium on good controls and accounting systems, to the extent they may become a nightmare. When the percentage is near the 50% borderline, the manufacturer may have to verify whether there is non-CARIFTA content in components he purchases from other CARIFTA producers who themselves use non-CARIFTA materials, although under the process criterion, such components might have qualified for Area origin and been deemed to contain no non-CARIFTA element. If the question is close, the alternative process criterion may be a simpler and more conclusive method of ascertaining origin. Similarly, there are many manufacturing operations unable to meet the 50% test—the "screwdriver industries" such as Trinidad's expanding automobile assembly industry—yet perhaps able to meet the process criterion to be laid down by the Council.

To meet the process criterion, goods must be manufactured in the Area by means of an "appropriate qualifying process." The Agreement provided that the Council was to establish (unanimously) the necessary Process List, but it has not done so to date.

EFTA contains a Process List, hence provides a useful basis for comparison and conjecture. Drawn up with regard to the existing patterns of trade, the qualifying processes are of three different types:

1. Manufacture within the Area by a specified operation, such as "alloying" or "manufacture by chemical transformation." This type of process applies to most organic chemicals.

2. Manufacture within the Area from specified materials which can be imported from outside the Area without disqualifying the final product. This is common for chemicals, plastics, rubber goods, and textiles.
3. Manufacture within the Area from materials falling or not falling in certain tariff classifications. This process is the most widely prescribed and is often the most liberal one since it simply requires a process of manufacture which transfers goods from one tariff heading to another (under Brussels Nomenclature), sometimes permitting more than 50% non-EFTA components in value.

A good example of (3) above is electric motors (Brussels Nomenclature heading 85.01). Electric motors qualify for Area origin when manufactured "from materials not falling in 85.01", such as copper wire, iron or steel sheets, plastic or rubber materials, nuts, bolts, etc.—whether or not of EFTA origin—but would not qualify if merely assembled in the Area or if any non-EFTA specialized parts are used. Also, in many cases there will be a choice of several processes in the same manufacturing operation. In any event, the advantage to the producer in using the qualifying process criterion is that he generally need not be concerned as to the source of components nor continually check the cost buildup leading to the FOB export value of his product under the percentage criterion. Further, the process lists are under constant review by the EFTA Council, which creates an atmosphere facilitating realistic adaptation of the process list to changing manufacturing and trading patterns.

Enforcement is covered in Rule 10, "Sanctions," of Annex C, by which the members agree to enact legislation imposing penalties for false declarations regarding origin made within their respective jurisdictions. The penalties must be similar to those applicable to false declarations in regard to payment of duty on imports.

DEFLECTIONS OF TRADE — ARTICLE 6

To a certain extent, the free trade area basis of CARIFTA represents the acceptance of a calculated risk. The members recognize that with the elimination of duties and liberal origin rules, deflections of trade may occur, whereby non-Area goods enter the Area through the member with the lowest tariffs, undergo minor processing, then are exported to other members, thereby evading the higher duties in the importing member.

The origin rules in Article 5 and Annex C are the principal means of preventing such deflections, restricting CARIFTA eligibility only to goods which have undergone a substantial degree of processing within the Area. However, Article 6 provides a second line of defense against deflections of trade which:

1. Cause an increase in imports of a particular product from one member to another;
2. Result from the elimination of import duties between members and significantly lower external duties in the exporting member on the raw materials or intermediate products used in the production of the products in question; and
3. Are causing or threatening to cause injury to production on the importing member.

The Council is directed to keep deflections under review, and shall take such measures as are necessary to correct problems, including amending both Article 6 and the rules of origin. If a situation of deflection is particularly urgent, the Council may impose interim measures up to two months, subject to a further two months extension in exceptional cases.

To assist the Council in its responsibility of surveillance over deflections, members considering the reduction of the effective level of duties or charges on non-Area goods must, as far as is practicable, give the Council thirty days' notice of the date of the intended reduction. Other members may present their position on the reduction, and if a solution cannot be reached, the parties may resort to the complaint procedure of Article 26. In EFTA, the parallel provisions have worked smoothly; CARIFTA should be able to match such performance.

EXPORT DRAWBACK — ARTICLE 8

Another cause of deflections of trade is drawback, defined as:

any arrangement for the refund or remission, wholly or in part, of import duties applicable to imported materials, provided that the arrangement, expressly or in effect, allows refund or remission if certain goods or materials are exported, but not if they are retained for home use.

Any member may refuse to accept as eligible for Area tariff treatment any goods benefiting from export drawback allowed by the exporting member in which the goods have undergone the production processes upon which Area origin is claimed. This provision ensures that competing

home industries will not be at a competitive disadvantage in having to pay duties on imported non-Area materials while competing Area suppliers would be relieved of this duty burden.

ELIMINATION OF EXPORT DUTIES —

ARTICLE 9 AND ANNEX E

Whereas several provisions of the Agreement are devoted to eliminating import duties, only one short provision deals with export duties. Export duties are used primarily to discourage the export of local materials in order to protect domestic industries against the risk of losing their home sources of supply to the profit of foreign competitors.

Under Article 9, the members agree not to apply export duties or charges of like effect upon or in connection with exports from one member to another. Annex E, however, permits any member to apply export duties on any of the ten products listed therein, including bauxite, sugar, and certain other agricultural goods and spices. The duties must not exceed those in effect immediately prior to the Agreement, and the member must notify the Council of its intent. The Council is directed to keep the export duties issue under review, and may by majority vote, make recommendations designed to moderate any damaging effects.

COOPERATION IN CUSTOMS ADMINISTRATION —

ARTICLE 10

Under Article 10, the members agree to take appropriate measures, including arrangements for administrative cooperation, to ensure that the provisions of Articles 4 through 8 and Annexes B, C and D are effectively and harmoniously applied. The members are to focus on reducing the "red tape" in trade and achieving mutually satisfactory solutions as difficulties arise.

In EFTA, a Customs Committee was established as the main instrument in carrying out the parallel mandate. This Committee has labored over the detailed implementation of EFTA's tariff provisions, and it is possible it, or other EFTA customs experts, will give technical assistance to their CARIFTA counterparts.

QUANTITATIVE IMPORT AND EXPORT RESTRICTIONS —

ARTICLES 13 AND 14 AND PROTOCOLS ON AGRICULTURE

Quantitative restrictions on imports and exports represent another effective trade barrier to be abolished in a free trade area. Article 13

prohibits members from applying any quantitative restrictions on imports, and Article 14 contains the same prohibition concerning exports. Quantitative restrictions include any prohibition or restriction on Area imports or exports, whether made effective through quotas, import or export licenses or other measures with equivalent effect.

Paragraph 1 of both Articles 13 and 14 exclude from their scope any agricultural marketing arrangements entered into pursuant to paragraph 6 of Annex A. The members have entered into two such Protocols prescribing marketing arrangements for agricultural goods. Under the "Protocol Laying Down Marketing Arrangements for Sugar," any member may impose any quantitative restriction, within the meaning of Article 13 on Area sugar imports, subject only to applicable international obligations.

The "Protocol Laying Down Agricultural Marketing Arrangements" is far more comprehensive, designating and granting authority to the General Secretariat to administer a market allocation system, geared to the surpluses and deficits of the members. The Protocol covers twenty-one products, presumably the major portion of agricultural trade, including vegetables, potatoes, pork, poultry, eggs and various fruits. Noticeably absent are rice, beef, and seafood products. For rice, beef, seafoods and any other commodities not listed, trade is governed by other provisions of the Agreement, including elimination of duties. In accordance with Article 4, duties have also been eliminated on Protocol commodities, but the controls imposed by the Agricultural Protocol are of far greater impact, making the duty aspect secondary at best. All listed commodities may be imported or exported only in accordance with the Protocol, which contains detailed, self-explanatory provisions concerning the Secretariat's granting quotas to each member, a ban on imports from outside the Area unless sanctioned by the Secretariat when deficits exist, and the administration of the agricultural program. It thus appears that agricultural trade within CARIFTA shall be carried out for the most part under stringent controls—probably the only realistic means of implementing the objectives for agriculture set forth in paragraph 6 of Annex A.

At their July 1969 meeting in Guyana, the Council of Ministers passed a resolution intended to make the Agricultural Marketing Protocol work. Under the Resolution, the members will buy more products from CARIFTA sources and at the same time make it easier for such products to enter the members. Recognizing that local restrictions on the movement of plant and animal products have been frustrating the working of the Protocol, the Resolution calls for seeking the assistance of the FAO or other similar agency to examine existing impediments to the Protocol

operation arising from such local restrictions and to formulate appropriate proposals for establishing proper plant and animal protection services and procedures where they either do not exist or are inadequate. The Resolution also dictates that the Regional Secretariat assume responsibility for improving local machinery and assisting agencies involved in administering the Protocol.

GENERAL EXCEPTIONS — ARTICLE 15

As in EFTA, Article 15 of the Agreement lists a variety of grounds upon which members may adopt or enforce measures otherwise prohibited by CARIFTA. Grounds such as protection of public morals and order, protection of human, animal or plant life or health, protection of industrial property or copyrights, and prevention of deceptive practices are included. However, the measures adopted cannot be used as a "means of arbitrary or unjustifiable discrimination between Member Territories, or as a disguised restriction on the inter-territorial trade of the Area."

ELIMINATION OF INDIRECT BARRIERS TO TRADE

To attain CARIFTA's objectives, it is insufficient to abolish only the direct barriers to trade, such as tariffs and quotas. The more subtle indirect barriers must be attacked. The rules to this effect are found in Articles 12, 17—20 and Annex F, covering five types of impediments to free trade: government aid; the purchasing and trading activities of public enterprises; restrictive business practices; the right of establishment; and dumping. Collectively, these provisions may be called the "rules of competition," as are the provisions in EFTA from which they were drawn. Like EFTA, these rules are the means by which the objective in Article 2(b) of trade under fair competition is to be realized. The rules prohibit certain measures outright, and prohibit others if tending to "frustrate the benefits expected from (the) removal or absence of duties and quantitative restrictions" required by the Agreement. This "frustration" clause, found in Articles 17-20, establishes a framework for ensuring that the creation of the free trade area should not be frustrated or nullified by other equally effective barriers.

The parallel provisions in EFTA reflect the EFTA objective of abolishing distortion of competition brought about by protective measures. However, the EFTA Agreement does not aim at harmonizing the conditions under which production takes place within its Area. Accordingly, the principle of non-discrimination is the cornerstone of EFTA competition. The rules of competition in CARIFTA are the same, but there

is a key divergence from EFTA: CARIFTA, in accordance with Annex A discussed above, does have an overall objective of harmonizing conditions within the Area. Coupling this CARIFTA objective with the broad powers of the Council, these rules of competition ensure fair competition in an EFTA-type free trade area and the attainment of a higher level of economic integration.

GOVERNMENT AIDS — ARTICLE 17 AND ANNEX F

Paragraph 1(a) of Article 17 prohibits the maintenance or introduction of any of the specific forms of government aids to exporters in Annex F. These aids include currency retention schemes or other export bonuses, direct subsidies, remission of direct taxes or social welfare charges if goods are exported, purchasing of non-Area materials by governmental agencies below world market prices, insufficient premiums for export credit guarantees, and preferential rates by government controlled institutions for export financing.

Paragraph 1(b) of Article 17 also prohibits members from adopting any other form of aid, the effect of which is to frustrate the intended benefits of Area trade. This leaves members free to continue applying or adopt aid schemes, not absolutely prohibited by paragraph 1(a), the main purpose of which is not to frustrate Area benefits. Needless to say, a member applying such a scheme will always feel any frustration is purely a secondary effect, whereas the injured party will be inclined to classify frustration as the primary purpose. In the event such opposite views arise, the parties are given recourse to the Complaint procedure of Article 26, and the Council may, by majority decision, authorize any member to deny the culpable member the benefits of any treaty provision the Council finds appropriate. The Council is also empowered to amend, by unanimous decision, both Article 17 and Annex F.

Until such time as the members agree upon a regional policy on industrial incentives, as contemplated by paragraph 5 of Annex A, the prohibitions of 1(b) against aid schemes which frustrate Area benefits do not apply.

PUBLIC UNDERTAKINGS — ARTICLE 18

To understand the impact of this provision, some background on the parallel provision in EFTA is necessary. Within EFTA, state monopolies and central and local government purchasing agencies account for a significant part of trade among members. Such agencies have traditionally

tended to prefer, or in some cases been obliged, to "buy national." Thus, it was important to have EFTA rules ensuring that the concept of free trade be applied effectively in the public sector of the member economies. Essentially, the rules provide that public undertakings must give equal treatment to domestic goods and Area imports, and award contracts only on the basis of commercial considerations.

Within CARIFTA, the extent of such government involvement in trade is much less, especially as regards state ownership of industries, a common EFTA pattern. Although this lessens its significance, Article 18 nevertheless will have some impact.

Article 18 obliges members to ensure that public undertakings in their procurement and trading practices do not give protection to domestic production against suppliers or purchases in other members. Public undertakings include central, regional, or local government authorities, public enterprises and any other organization by means of which a member, by law or in practice, controls or appreciably influences imports from or exports to any other part of the Area. In the rather closely-knit societies of the Caribbean, this aspect of control or appreciable influence over procurement or exports could become sensitive, such as in the purchasing practices of the powerful agricultural cooperatives.

The Council is given the mandate of continuous review of the provisions of Article 18, and is empowered to amend it by unanimous vote. Thus, there is latitude to adapt Article 18 to the CARIFTA environment. Further, Article 18 does not apply until a regional industrial incentives policy is adopted, as in the case with Government Aids.

RESTRICTIVE BUSINESS PRACTICES — ARTICLE 19

The members recognize that anti-competitive practices are "incompatible with" and may "frustrate the benefits" sought by the Agreement. Under Article 19, these practices are divided into two classes. First are "(a)greements between enterprises and concerted practices between enterprises which have as their object or result the prevention, restriction or distortion of competition within the Area", and second are "actions by which one or more enterprises take unfair advantage of a dominant position within the Area or a substantial part of it." Public undertakings, as well as private enterprises, are affected by the provisions of Article 19 since Article 18(2) specifies Article 19 "shall apply to them in the same way it applies to other enterprises."

Enforcement of the condemnatory provisions of Article 19 is to be

through the Complaint Procedure under Article 26. Upon proper review of a complaint, the Council may, by majority vote, either make such recommendations to the member(s) in question or suspend to the culpable member(s) such treaty benefits as considered appropriate. The latter power puts some teeth behind the purpose of Article 19.

The Council is also given a broader, more general responsibility to discharge. By April 30, 1970, the Council shall determine if further or different provisions are necessary to deal with these problems, and if so, it may by unanimous vote adopt the provisions found necessary, including methods of securing information about restrictive business practices or dominant enterprises, procedures for investigations, and whether the right to initiate inquiries should be conferred on the Council.

The counterpart provision in EFTA has given rise to some relevant experience. At least four actual disputes have arisen, and in each case, the immediate cause of the dispute has been eliminated by bilateral governmental discussions. This has occurred at an early enough stage so as to avoid any recourse to EFTA complaint procedures and a formal pronouncement of the legality of the practice in question. Further, even though direct Council experience in restrictive practices was lacking, EFTA established a working party of experts to undertake an overall review such as called for in Article 17 of CARIFTA. The working party made a general assessment of the legal and administrative means available to members to implement their obligations, and made a number of proposals to improve cooperation between members, designed to curb restrictive practices in EFTA. Their report confirmed the expected facts that there are restrictive practices engaged in by enterprises, but that notice of such practices does not come readily to those governments which have the primary obligation of enforcement. Their report, nevertheless, formed the basis of a public statement by the EFTA Ministers at the October, 1965 meeting at Copenhagen. That statement was the first agreed interpretation of one of the EFTA rules of competition to be issued, and is the basis for EFTA cooperation today regarding restrictive practices.

The EFTA market is so large as to preclude many enterprises from being considered dominant, as a consequence of which the restrictive practices rules would not apply to them. In contrast, the total market within CARIFTA is small enough so that any one or two enterprises in a particular sector are probably dominant by definition. If some CARIFTA member attracts an investment in an industry new to the Area as a whole, that infant industry will be in a dominant position from its inception. Under such circumstances, how far may it go in its pricing prac-

tices, for example, without being accused of taking "unfair advantage"? Whether such concern is realistic remains to be seen. In any event, the CARIFTA machinery, including the Complaints Procedure, should be adequate to prevent any crises.

ESTABLISHMENT — ARTICLE 20

Article 20, concerned with the establishment and operation of economic enterprises, prescribes the basic rule that restrictions on establishment should not be applied to CARIFTA "persons" in such a way as to deprive them of the benefits intended by the treaty. Equal national treatment is not required. Article 20 condemns the application of pre-Agreement restrictions and prohibits the introduction of new restrictions in connection with the establishment and operation of enterprises to produce or trade in CARIFTA origin goods so as to frustrate the benefits intended by the treaty. "Persons" entitled to this protection include natural citizens, certain aliens, and

any company or other legal person constituted in the member Territory in conformity with the law thereof and which that Territory regards as belonging to it, provided that such company or other legal person has been formed for gainful purposes and has its registered office and central administration, and carries on substantial activity, within the Area.

The economic enterprises which these persons can establish and operate are defined as

any type of economic enterprises for production of or commerce in goods which are of Area origin, whether conducted by individuals or through agencies, branches or companies or other legal persons.

The same language appears in EFTA and has caused sufficient concern to necessitate the 1966 Ministerial interpretation of the EFTA provision. Any problems, however, may be illusory, since the CARIFTA members can avoid them by unilateral action. In fact, the EFTA experience has been that of no complaints. Further, the CARIFTA Council, in the same fashion as under Article 19, is given the mandate of reviewing Article 20 and amending its provisions where deemed necessary by April 20, 1970. Perhaps the CARIFTA Council will be more successful than its EFTA counterpart which failed to deal with three important facets of non-discriminatory treatment: investment in existing domestic enterprises; ownership of natural resources; and conditions of access to local

capital markets. Interestingly, the lattermost point goes to the heart of the controversy surrounding the Caribbean Development Bank.

DUMPED AND SUBSIDIZED IMPORTS — ARTICLE 12

The fifth rule of competition, Article 12, differs in form and in scope from the others because it contains no new obligations for members. However, it implies that an obligation exists by pointing out the incompatibility of dumping and subsidization with the proper functioning of a free trade area. Article 12 provides that nothing in the Agreement should prevent any member from taking action against dumped or subsidized imports in accordance with any international obligations to which it is subject. The primary purpose in drafting the same provision in EFTA was to permit enforcement of members' rights under GATT, which allows the levying of anti-dumping and countervailing duties. Without Article 12, CARIFTA members would be prohibited from applying such duties by virtue of Article 4.

In addition to a member's right to take direct action against subsidized or dumped imports into its territory, a member has a mild degree of protection against dumped or subsidized imports into another member, which cause distortion in the first member. If as a result of the import of dumped or subsidized products into another member any industry in a member is suffering or is threatened with material injury, e.g., the importation of low cost products incorporating the dumped or subsidized products, the member importing such dumped or subsidized products may be requested to examine the possibility of taking action to remedy the injury or prevent the threat of injury. Article 12 contains no direct means of enforcement of this right. However, if a member invoked this right and did not receive satisfactory treatment by the culpable member, the member would be free to refer the matter to the Council under the General Consultation and Complaint Procedure of Article 26. As is corroborated by the EFTA experience of only one invocation of the same right, formal Council proceedings over such matters should not be necessary. The prohibitions in Article 17 against any form of subsidies, the "Government Aids," should also be remembered, since they would reinforce an injured member's position. It has been reported that the members are in the process of negotiating anti-dumping mechanisms, a hopeful sign.

SAFEGUARD AND ESCAPE CLAUSES

The provisions in CARIFTA relating to the elimination of direct

and indirect barriers to trade are drawn from the parallel articles in EFTA which were carefully drafted to ensure maximum efficiency coupled with the widest possible freedom of action for each member. To minimize the negative effects of restructuring the trading patterns and economies of the members, EFTA prescribed the various safety valves already discussed. However, learning from the earlier EEC experience, the EFTA founders felt the necessity for additional clauses to cover special situations. Thus, the EFTA Agreement contains three articles entitled "Security Exceptions," "Balance of Payments" and "Difficulties in Particular Sectors," copied into the CARIFTA Agreement as Articles 16, 21 and 22 respectively.

SECURITY EXCEPTIONS — ARTICLE 16

Under Article 16, the members are generally exempt from their obligations under the Agreement so as to take any action considered necessary for national security and defense. In addition, there is a general exception enabling the members to take action to perform any obligations to which they are subject for the purpose of maintaining international peace and security. No case has ever been brought under the parallel EFTA provision, but with the specter of Cuba, it is not inconceivable that it may someday be invoked by a CARIFTA member.

BALANCE OF PAYMENTS DIFFICULTIES — ARTICLE 21

By Article 21, any member may (consistent with international obligations) introduce quantitative restrictions on imports to safeguard its balance of payments. The Council must be notified of this unilateral act, preferably before entering into force. The Council shall review the situation and, at any time may, by majority vote, make recommendations designed to ameliorate the damaging effects of such restrictions, or to assist the member to overcome its difficulties. If the balance of payments difficulties persist for more than 18 months, and the measures applied seriously disturb the operation of CARIFTA, the Council shall examine the situation, and may, by majority decision, take the measures necessary to attenuate or compensate for the effect of the balance of payments restrictions.

DIFFICULTIES IN PARTICULAR SECTORS — ARTICLE 22

During the transitional period after the Agreement entered into force, any member might suffer unduly harsh effects in a particular sector of the local economy as a consequence of eliminating tariffs and

quantitative restrictions. In such a case, it better serves the overall goals of CARIFTA to permit a member to take temporary measures in order to adapt to the new conditions, rather than be driven by local pressure to the more drastic remedy of withdrawal.

Three main considerations underly Article 22. First, a member should be able to invoke it without undue difficulty in cases of real and urgent need. Second, it should not be so easily invoked or so loosely constructed so as to enable a member to evade its basic CARIFTA obligations. Third, any action taken by a member should be applied on a non-discriminatory basis *vis-a-vis* other members. Thus, Article 22 provides members may unilaterally impose quantitative import restrictions if an appreciable rise in unemployment in a particular sector of industry is caused by substantial decrease in demand for a domestic product and the decrease in demand is due to an increase in imports consigned from another member as a result of the operation of treaty benefits. A member, however, shall give like treatment to imports consigned from all members, and the restrictions shall neither be in effect for more than eighteen months nor prohibit imports at a rate less than the rate of such imports during any twelve-month period ending within twelve months prior to the effective date of the restriction. In essence, the rate of imports may only be frozen, not appreciably reduced. The Council may, by majority vote, extend the period of restriction beyond eighteen months or authorize the member to take other measures to cure the problem.

The Council shall be advised of any restriction imposed unilaterally, and may, by majority vote, make recommendations designed to moderate any damaging effect or to assist a member to overcome its difficulties. Article 22 is effective until April 30, 1973, unless the Council decides that similar provisions are necessary for any period after that date. In that case, the Council may adopt such provisions and amend Article 22 by unanimous vote.

PROGRESS AND THE REMAINING WORK

CARIFTA is well into its second year of existence. Progress has been made, trade patterns are changing, and dislocations have occurred. In balance, CARIFTA is a success, and its members seem to be striving for its betterment, attested to by the enthusiasm shown at Expo '69, the two month long Caribbean trade fair in Grenada earlier this year. As indicated earlier, the membership base and scope of CARIFTA is anything but static. Great Britain is currently seeking entry into the Euro-

pean Common Market, a move which would significantly affect each member of CARIFTA by virtue of association with Great Britain in the Commonwealth. In addition to the possible entry of the Bahamas, British Honduras, and the Dominican Republic into CARIFTA, there has been mention in the Jamaican press of Venezuela's interest in acceding to the Treaty, as well as similar interest on the part of Guadeloupe and Martinique. Looking outward, Trinidad and Tobago has inclinations toward entering the Andean Bloc within LAFTA, and there has been some consideration given to establishing a free trade area between CARIFTA members and Canada. Needless to say, new memberships and new alliances by one or more CARIFTA members and other countries or trading blocks will create both new opportunities and complications, thus should be followed closely by those with interests in the Caribbean.

The internal machinery of CARIFTA is now well established. The Commonwealth Caribbean Regional Secretariat, headquartered in Guyana, has been staffed, with functions divided into two broad divisions. Division 1 has been given the responsibility for trade and integration matters, while responsibility for General Secretariat Administration and other regional problems has been delegated to Division 2, including provision for legal, information and library services. Having already passed its first anniversary, the Secretariat has gained momentum and has added responsibilities, looking forward to an ambitious program of building the regional systems necessary for effective integration. For example, during the first year of its existence, the Secretariat kicked off and serviced conferences throughout the CARIFTA region, including those of the Technical Advisory Group, the Working Party on Establishment of a Regional Air Carrier, the Comptrollers of Customs and officials concerned with the Agricultural Marketing Protocol, standards in industrial research, animal and plant quarantine protective restrictions, and the establishment of the Caribbean Development Bank.

In addition, the international agencies are becoming well involved in the development of CARIFTA. The UN Economic Commission for Latin America has established a Caribbean Regional Office in Port-of-Spain, Trinidad, and in connection with its overall involvement in Latin American economic integration, is lending its expertise to CARIFTA, such as in the carrying out of various studies delegated to it by the CARIFTA Regional Secretariat. Also, an eight-man commission under the auspices of the United Nations Development Program has just completed a draft of the proposed charter for the Regional Development Bank, discussed below. With the current emphasis on tourism and agriculture—two of the three areas of economic hope for CARIFTA members—the World

Bank and its affiliates are channeling efforts toward the Caribbean, such as recent involvement in improving Jamaican agriculture.

However, the work of CARIFTA is just beginning. A re-reading of Annex A indicates paragraphs 1, 2, 6, and 11 have been implemented for the most part, accomplishing the free trade area objective of CARIFTA. Of course, much work and struggle remain under that part of the CARIFTA scheme, but that remaining effort nowhere approaches what must be done to bring to fruition the aspirations reflected in paragraphs 3-5 and 7-10, and Articles 23, 24 and 25—"Approximation of Incentive Legislation," "Economic and Financial Policies," and "Invisibles" respectively—which have taken on far greater significance than under EFTA. Nothing of consequence has been developed under the counterpart EFTA provisions.

A review of these remaining paragraphs of Annex A reveals no purposeful organization or structure, with certain concepts or objectives intertwined. It is better to consider them from the point of view of the common threads of thought.

First is the problem of transportation, encompassed by paragraphs 8 and 9. Paragraph 8 expresses the need and hope of improvement of regional carriers, both air and water, in order to facilitate the movement of goods and services. Under paragraph 9, the members seek to eliminate any competitive disadvantages suffered due to better freight rates on non-Area goods. No concrete progress has been made to date in these directions, although there have been several meetings and much discussion as to what airline will become the regional carrier. BWIA, a Trinidad airline and the prime contender, is not without opposition. The establishment of a container and refrigerated steamship service has been reported as imminent, an improvement which would bring significant benefits to CARIFTA members.

The next common thread is the desire for a common external tariff, expressly cited in paragraphs 3 and 4 and implicit in paragraphs 5, 7 and 10 and Articles 23 and 24. This issue is getting proper attention, as an ECLA advisor has been designated to assist a CARIFTA working group in developing a common external protective policy. Their studies are supposed to be completed in early 1970, but how quickly the members can move in this direction is difficult to assess. However, once the members are truly willing, it could occur speedily, as witnessed by the relatively short time during which the Andean Bloc took shape within LAFTA.

Another general problem area is the harmonization of industrial incentives throughout the region, expressly cited in paragraphs 4, 5 and 10 and Article 23, and implicit in paragraph 7 and Article 24. In accordance with paragraph 10, the assistance of ECLA has been obtained. ECLA sponsored a September, 1969, conference on fiscal incentives in Port-of-Spain, focusing on an in-depth review of means and recommendations on harmonization. Assisting in this conference and subsequent studies are the UN Division of Public Finances and Financial Institutions, the Permanent Secretary of the Central American Treaty of Economic Integration (SIECA), the UN Office of Technical Cooperation and the University of West Indies. As this area is critical to higher economic integration, the efforts of these groups should be closely followed.

Two additional threads are difficult to distinguish from the problem of harmonization of industrial incentives, much less from each other. Paragraph 7 calls for feasibility studies toward indentifying industries which could be located in the less-developed members, whereas paragraph 10 calls for feasibility studies on the establishment of regional industries. The emphasis on less-developed member investment, the counter to polarization, is also found in paragraphs 4, 5 and 10; the same paragraphs emphasize regional industries, which might not necessarily confer as much benefit on the smaller members. Any progress in these two areas will probably grow out of the harmonization studies, since it should be difficult in practice to separate the ideas.

While it deals primarily with harmonization, paragraph 5 veils the issue of the regional Caribbean Development Bank, by mentioning the problem of soft loans to less-developed members. Fortunately, the current climate toward the CDB is favorable. Jamaica has retreated from its original negative posture, and although the site is still in question, significant efforts are now underway to bring it into existence. As mentioned above, the UNDP, in cooperation with technical representatives from each CARIFTA member, ECLA, the UN Development Finance Service, IBRD, and U.W.I., has prepared the draft charter now under review by members. It is likely that by the end of 1969, the remaining issues will be resolved and the Bank come into existence. Overcoming this obstacle will give further impetus to CARIFTA's evolution.

CONCLUSION

Regardless of its shortcomings, CARIFTA must be considered a success to date. It is apparent that its future direction and shape is unclear, but there is no reason to believe CARIFTA cannot continue to

progress toward a higher level of integration. In little more than a year, momentum has been gained; the record speaks for itself. If the Regional Development Bank is formed, further momentum will be gained. Thus, it behooves any person interested in the Caribbean, particularly in the context of Latin American economic integration, to follow CARIFTA's progress closely. As the members work together toward a common end, and enjoy successes in the process, a regional psychology should emerge. With every net gain or step forward, the retreat will be that much more difficult and unlikely.

NOTE: In addition to the various sources of information cited in this study, the reader's attention is directed to a concise, well-written, 44-page report, "CARIFTA and the Caribbean Economic Community," prepared by and available from the ministry of West Indian Affairs, Government of Trinidad and Tobago. Also, additional material on CARIFTA, including duty-free lists of Jamaica and Trinidad and Tobago, is available upon request from the American Republics Division, OIRE, Bureau of International Commerce, U.S. Department of Commerce, Washington, D.C. 20230.