

CONFIDENTIAL

**PROTOCOL TO AMEND ARTICLE 83 OF THE REVISED TREATY OF CHAGUARAMAS
ESTABLISHING THE CARIBBEAN COMMUNITY INCLUDING THE CARICOM SINGLE MARKET AND
ECONOMY**

The Honourable House is being requested to take note of the Protocol to Amend Article 83 of the Revised Treaty of Chaguaramas establishing the Caribbean Community including the Caricom Single Market and Economy as presented at Appendix 1. As at July 10, 2015 thirteen CARICOM Member States parties to the Revised Treaty of Chaguaramas establishing the Caribbean Community including the Caricom Single Market and Economy have signed the Protocol to amend Article 83 of the Revised Treaty, and it may now therefore be applied provisionally by all State Parties.

Background

CARICOM Member States can request an adjustment to the Common External Tariff (CET) under the provisions of Article 83 of the Revised Treaty which provided (in relevant parts) that:

1. *Any alteration or suspension of the Common External Tariff on any item shall be decided by the COTED*
2. *Where:*
 - a. *a product is not being produced in the Community*
 - b. *the quantity of the product being produced in the Community does not satisfy the demand of the Community; or*
 - c. *the quality of the product being produced in the Community is below the Community standard or a standard the use of which is authorized by COTED.*

COTED may decide to authorize the reduction or suspension of the Common External Tariff in respect of imports of that product subject to such terms and conditions as it may decide, provided that in no case shall the product imported from third States be accorded more favorable treatment than similar products produced in the Member States.

Requests from Member States for suspension of the Common External Tariff to increase selected CET rates at the meeting of the Caricom Council for Trade and Economic Development (COTED) in May 2011 brought into contention the authority of the COTED under Article 83 of the Revised Treaty to increase the

CET. In November 2011 a legal opinion provided by the Office of the Caricom General Counsel (OGC) concluded that the ordinary meaning of paragraphs 1 and 2 of Article 83, when read in the context of other provisions of the Revised Treaty and in accordance with the object and purposes of the CET as set out by the Caribbean Court of Justice (CCJ) in *TCL v. the Caribbean Community*, restricted the COTED in granting a suspension of the CET. The OGC argued that the COTED's authority to alter or suspend CET rates was limited to the grounds set out in paragraph 2 of Article 83. The opinion noted that since those grounds were exhaustive and the existence of those grounds could only necessitate the lowering of the tariff or zero rating of a rate contained in the CET, it followed that paragraph 2 did not confer the authority to suspend the CET in order to temporarily increase the rate.

After extensive discussion on the issue, and given the differing views expressed on the correct interpretation of the CCJ's ruling in the *TCL v Caribbean Community* case, the COTED, at its Thirty Fourth Meeting in March 2012, agreed that Article 83 should be amended as a matter of urgency to allow Member States the flexibility to adjust tariffs (upwards or downwards) in the context of their international obligations.

The Protocol to Amend Article 83 of the Revised Treaty of Chaguaramas Establishing the Caribbean Community including the CARICOM Single Market and Economy was opened for signature by all State Parties to the Revised Treaty at the Twenty-Fifth Inter-Sessional Meeting of the Conference in March 2014. By way of Decision No. 26/14 dated 14th July 2014 Cabinet approved Jamaica's signature and ratification of the Protocol. The Protocol was signed by Jamaica on September 26, 2014 and ratified on 25th November 2014.

Ratification of the Protocol by all State Parties is necessary for its full entry into force. Despite all State Parties being signature to the Protocol, to date only Guyana and Jamaica have ratified the Protocol. Notwithstanding, the provisions of the amended Article 83 of the Revised Treaty may now be provisionally applied by all State Parties.

Main Amendments to Article 83

Pursuant to the decision of the COTED, the amendment of Article 83 will now allow the COTED to authorise a Member State(s) to suspend the CET on an item and apply a higher or lower (including zero) tariff. Importantly, in addition to the previous considerations which existed under Article 83 (2) (a) the product is not being produced in the Community; (b) the quantity of the product being produced in the

Community does not satisfy the demand of the Community; and (c) the quality of the product being produced in the Community is below the Community standard or a standard the use of which is authorised by COTED, the amendment will now allow the COTED to take into account new considerations for the suspension of the CET. The considerations are as follows:

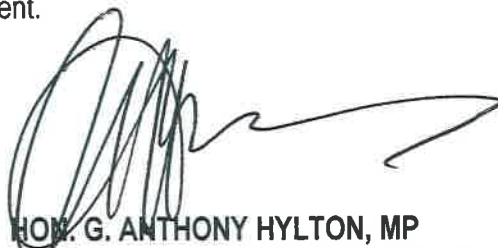
- there is a critical shortfall in government revenue being experienced by that Member State
- there are rising cost of living issues to be urgently addressed by that Member State
- there is need to support an industry in that Member State
- the product is of strategic importance to the economic development of that Member State; and
- the suspension of the Common External Tariff on the item is required for the support of the protection and conservation of the environment.

Competent Authority for the Administration of the CET

In accordance with the amended Article 83 (7) each Member State, for the purposes of administering the Common External Tariff, should appoint a competent authority which shall be notified to the COTED. The Ministry of Industry, Investment and Commerce is the named designated Competent Authority for the purpose of administering the Common External Tariff.

Importance of the Amendment of Article 83

The amendments to Article 83 emphasize the flexible and dynamic nature of the tariff and the need to cater in its application and further development for differences in economic circumstances of individual Member States and the changing conditions in the regional and international economic environment. It addresses the flexibility required by the COTED and the Member States in respect of the administration of the CET and provides Jamaica with greater flexibilities in crafting viable policy options, as we pursue various strategies for growth and development.



**HON. G. ANTHONY HYLTON, MP
MINISTER OF INDUSTRY, INVESTMENT AND COMMERCE
SEPTEMBER 29, 2015**



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OF THE REVISED TREATY
OF CHAGUARAMAS ESTABLISHING THE
CARIBBEAN COMMUNITY INCLUDING
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PROTOCOL TO AMEND ARTICLE 83 OF
THE REVISED TREATY OF CHAGUARAMAS ESTABLISHING THE CARIBBEAN
COMMUNITY INCLUDING THE CARICOM SINGLE MARKET AND ECONOMY

The Parties to the Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy ("the Revised Treaty") which entered into force on 1 January 2006,

RECOGNIZING the need for the Common External Tariff to be able to respond to developments at the Community and International levels;

HAVE AGREED as follows:

ARTICLE I

AMENDMENT OF ARTICLE 83

1. Article 83 is hereby amended and replaced with the following –

"Article 83

Operation of the Common External Tariff

1. Any alteration or suspension of the Common External Tariff on any item shall be decided by COTED.
2. A Member State may apply to COTED for authorisation to suspend the applicable Common External Tariff on an item and, in place thereof, apply a higher or a lower tariff.
3. In its consideration of an application to suspend the Common External Tariff on an item, COTED shall, where applicable, take into account whether:
 - (a) the product is not being produced in the Community;
 - (b) the quantity of the product being produced in the Community does not satisfy the demand of the Community;

- (c) the quality of the product being produced in the Community is below the Community standard or a standard the use of which is authorised by COTED;**
- (d) there is a critical shortfall in government revenue being experienced by that Member State;**
- (e) there are rising cost of living issues to be urgently addressed by that Member State;**
- (f) there is need to support an industry in that Member State;**
- (g) the product is of strategic importance to the economic development of that Member State; and**
- (h) the suspension of the Common External Tariff on the item is required for the support of the protection and conservation of the environment.**
- 4. During any period between the meetings of COTED, the Secretary-General may, on behalf of COTED, authorise a Member State to suspend the applicable Common External Tariff on an item provided that the decision is based on sub-paragraph (a), (b) or (c) of paragraph 3. Any exercise of such authority by the Secretary-General shall be reported to the next meeting of COTED.**
- 5. An application to suspend the applicable Common External Tariff on an item must be supported by information as prescribed by COTED, from time to time.**
- 6. Any authorisation to suspend the application of the Common External Tariff on an item shall be subject to such terms and conditions as COTED, or the Secretary-General acting pursuant to paragraph 4, may decide.**

7. Each Member State shall, for the purpose of administering the Common External Tariff, appoint a competent authority which shall be notified to COTED.

8. COTED shall continuously review the Common External Tariff, in whole or in part, to assess its impact on production and trade, as well as to secure its uniform implementation throughout the Community, in particular, by reducing the need for discretionary application in the day to day administration of the Tariff.

9. For the purposes of this Article:

(a) "suspension" means that a Member State is exempted from applying the agreed Common External Tariff on an item for a period of time and may instead apply a higher or lower tariff as authorised;

(b) "alteration" means a change to the agreed rate of the Common External Tariff on an item by an increase or a decrease in the rate and which changed rate is applicable to all Member States.

ARTICLE II

SIGNATURE AND PROVISIONAL APPLICATION

This Protocol shall be open for signature by the parties to the Revised Treaty and shall be provisionally applied upon signature by all Parties to the Revised Treaty and a decision by COTED concerning the application of paragraph 3.

ARTICLE III


ENTRY INTO FORCE


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Pursuant to paragraph 2 of Article 236, this Protocol shall enter into force one month after the date on which the last instrument of ratification is deposited with the Secretariat by the Parties to the Revised Treaty.

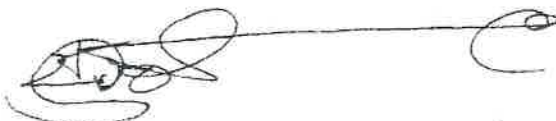
IN WITNESS WHEREOF the undersigned representatives duly authorised in that behalf have executed this Protocol for their respective Governments.

DONE at BUCCAMENT the 11th day of MARCH, 2014
ST. VINCENT & THE GRENADINES

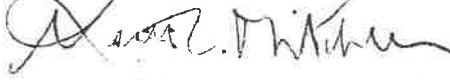
Signed by 
for the Government of Antigua and Barbuda on the 11th day of March 2014
at Buccament, St. Vincent and the Grenadines

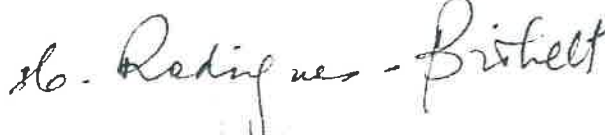
Signed by 
for the Government of Barbados on the 11th day of March 2014
at Buccament, St. Vincent and the Grenadines


Signed by 
for the Government of Belize on the 10th day of June 2015
at Brussels.


Signed by 
for the Government of the Commonwealth of Dominica on the 11th day of March 2014
at Buccament, St. Vincent and the Grenadines

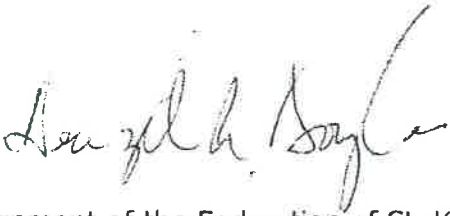
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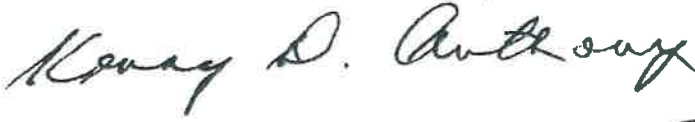
Signed by 
for the Government of Grenada on the 10th day of MARCH 2014
at Buccament, St. Vincent and the Grenadines

Signed by 
for the Government of the Co-operative Republic of Guyana on the 2nd day of
July at 2014 at Dickenson Bay, Antigua and
Barbuda

Signed by 
for the Government of the Republic of Haiti on the 29th April
at Haitian Palace in P.R. day of 2015

Signed by 
for the Government of Jamaica on the 26th day of September 2014
at New York


Signed by 
for the Government of the Federation of St. Kitts and Nevis on the 4th day of
July 2014 at Dickenson's Bay, Antigua, Antigua and
Barbuda.

Signed by 
for the Government of Saint Lucia on the 30th day of July
at Dickenson's Bay, Antigua


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Signed by *Ralph E. Matthews*

for the Government of St. Vincent and the Grenadines on the 11th day of March
2014 at Buccament, St. Vincent and the Grenadines

Signed by 
2013/14

for the Government of the Republic of Suriname on the 20th day of MAY
2014 at LILINDAAL, GUYANA

Signed by 

for the Government of the Republic of Trinidad and Tobago on the 1st day of JANUARY
2015 at LILINDAAL, GUYANA

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	State Parties	Signature	Ratification
1.	Antigua and Barbuda	11 March 2014	Ratification required.
2.	Barbados	11 March 2014	Ratification required.
3.	Belize	10 June 2015	Ratification required.
4.	Dominica	11 March 2014	Ratification required.
5.	Grenada	11 March 2014	Ratification required.
6.	Guyana	2 July 2014	11 August 2014
7.	Haiti	29 April 2015	Ratification required.
8.	Jamaica	26 September 2014	25 November 2014
9.	St Kitts and Nevis	4 July 2014	Ratification required.
10.	Saint Lucia	3 July 2014	Ratification required.
11.	St Vincent and the Grenadines	11 March 2014	Ratification required.
12.	Suriname	20 May 2014	Ratification required.
13.	Trinidad and Tobago	16 January 2015	Ratification required.