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Integrated Database of Trade Disputes for Latin America and the Caribbean

DISPUTE SETTLEMENT AT CARICOM

The Caribbean Community and Common Market (CARICOM) was established by the Treaty of Chaguaramas in 1973. It has two complementary dispute settlement mechanisms: the procedures of the Caribbean Court of Justice and the procedures established in Protocol IX – Disputes Settlement (Protocol Amending the Treaty establishing the Caribbean Community).¹ In 2001, this Protocol was incorporated into the Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy.

Jurisdiction

Under article XXVIII of Protocol IX [article 211 of the Revised Treaty], the Caribbean Court of Justice (CCJ) has compulsory and exclusive jurisdiction to hear and determine disputes relating to the interpretation of the Revised Treaty.

Dispute Settlement Bodies

I- Caribbean Court of Justice (CCJ)

Members: The Judges of the CCJ are selected by a Regional Judicial and Legal Services Commission. The candidates for the Court are selected among candidates from the Commonwealth Region. The Court President is appointed by the Conference of Heads of Government on the basis of a recommendation of the Judicial Services Commission.

II – Other bodies

Community Council of Ministers: article 13 of the Revised Treaty provides that the Council of Ministers shall receive and consider allegations of breaches of obligations arising under the Treaty including disputes between Organs of the Community. However, according to article 27, the recommendations made by these bodies are not legally binding.

Community Competition Commission (CCC): Chapter Five of the Revised Treaty includes special provisions on subsidies and dumping while Chapter Eight deals with competition policy and consumer protection and establishes a Competition Commission.² The Commission has the power to:

- order the termination or nullification of agreements, conduct, activities or decisions prohibited by article 170;
- direct enterprises to cease and desist from anticompetitive business conduct;
- order payment of compensation to persons affected;
- impose fines for breaches of the rules of competition.³

¹ Protocol I - Restructuring of the Organs and Institutions of the Community; Protocol II - Rights of Establishment, Services and Capital; Protocol III - Industrial; Policy; Protocol IV - Trade Policy; Protocol V - Agricultural Policy; Protocol VI - Transportation Policy; Protocol VII - Disadvantaged Countries, Regions, and Sectors; Protocol VIII - Competition Policy, Consumer Protection and Dumping and Subsidies; Protocol IX - Dispute Settlement.

² Article 170.3(a) of the Revised Treaty provides that "Every Member State shall require its national competition authority to cooperate with the Commission in achieving compliance with the rules of competition." Article 173.2 (in subsections (e)–(h)) puts the onus on the Commission to cooperate with the national authorities, provide support to them and to "facilitate the exchange of relevant information and expertise".

³ Article 174.4 of the Revised Treaty of Chaguaramas.



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Voluntary Modes of Dispute Settlement

Without prejudice to the exclusive and compulsory jurisdiction of the Court in the interpretation and application of the Treaty under article XXVIII of the Protocol [article 211 of the Revised Treaty], the parties may use any of the voluntary modes of dispute settlement provided for in article V of Protocol IX [article 188 of the Revised Treaty] in the settlement of a dispute. There are six modes for the settling of disputes:

(1) Good offices: the parties may agree to employ the good offices of a third party to settle the dispute (article VIII of Protocol IX [article 191 of the Revised Treaty]).

(2) Mediation: the parties may agree on a mediator or may request the Secretary-General to appoint a mediator from the List of Conciliators maintained by the Secretary-General. Mediation may begin or be terminated at any time and may continue during the course of arbitration or adjudication (article IX of Protocol IX [article 192 of the Revised Treaty]).

(3) Consultations: bring parties together for direct discussions or with the involvement of a third party, be it a person or a body. The requested Member State shall enter into consultations within 14 days of the receipt of the request or a mutually agreed period. If the consultations fail to settle the dispute within 45 days of the receipt of the request for consultations or the dates mutually agreed, the requesting Member State may resort to any mode of dispute settlement including binding third party settlement (article X of Protocol IX [article 193 of the Revised Treaty]).

(4) Conciliation: a conciliation commission, an independent body agreed on by the disputing parties, examines the claims of the parties and makes recommendations which are not binding with a view to reaching an amicable solution. To facilitate this process, the Secretary-General maintains a List of Conciliators from which a conciliation commission of three can be constituted.⁴ This commission shall determine its own procedure. Basically, this organ hears the Member States parties to the dispute, examines their claims and objections, and makes proposals to the parties with a view to reaching an amicable settlement. The report and recommendations and decisions of the commission regarding procedural matters shall be made by a majority vote of its members.

Deadline: The conciliation commission shall report within three months of its constitution. The conclusions or recommendations of a conciliation commission shall not be binding upon the parties. The conciliation proceedings shall be deemed to be terminated when a settlement has been reached, when the parties have accepted or one party has rejected the recommendations of the report by notification addressed to the Secretary-General, or when a period of one month has expired from the date of transmission of the report to the parties (articles XIII, XVI, XVII, XVIII and XIX of Protocol IX [articles 196, 199, 200, 201 and 202 of the Revised Treaty]).

(5) Arbitration: in arbitration the parties concerned agree to take their dispute to a legal body – an arbitral tribunal. To facilitate this process, the Secretary-General is required to maintain a List of Arbitrators from which an arbitral tribunal of three can be constituted (articles XXI and XXII of Protocol IX [articles 204 and 205 of the Revised Treaty]).⁵ This tribunal shall establish its own rules of procedure.

⁴ According to articles XIII and XIV of Protocol IX [articles 196 and 197 of the Revised Treaty], the term of a conciliator is five (5) years and may be renewed. Every Member State shall be entitled to nominate two conciliators. Unless the parties otherwise agree, the party instituting the proceedings shall appoint one conciliator to be chosen from the List. This conciliator appointed may be a national of the party making the appointment. The other party to the dispute shall appoint a conciliator in the same manner. Within ten days after both conciliators have been appointed, they shall appoint a third conciliator chosen from the List.

⁵ The term of an arbitrator, including that of any arbitrator nominated to fill a vacancy, is five years and may be renewed. Each of the Member States parties to a dispute shall be entitled to appoint one arbitrator from the List. The two arbitrators shall, within fifteen days following the date of their appointments, appoint a third arbitrator from the List who shall be the Chairman. As far as



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Nevertheless, the procedures shall assure a right to at least one hearing as well as the opportunity to provide initial and rebuttal written submissions, which are confidential. Decisions of the arbitral tribunal shall be taken by a majority vote of its members and shall be final and binding on the Member States parties to the dispute (article 24 of Protocol IX [article 207 of the Revised Treaty]).

Deadlines: Where the parties cannot agree on the interpretation or implementation of the award, either party may apply to the arbitral tribunal for a ruling within thirty days of the award. The term of the arbitral tribunal shall come to an end unless an application for a ruling has been received, in which case it shall continue for such reasonable time, not exceeding thirty days, as may be required to make the ruling (article XXIV of Protocol IX [article 207 of the Revised Treaty]).

Third-party intervention: A Member State which is not a party to a dispute, on delivery of a notification to the parties to a dispute and to the Secretary-General, shall be entitled to attend all hearings and to receive written submissions of the parties to a dispute and may be permitted to make oral or written submissions to the arbitral tribunal (article XXV of Protocol IX [article 208 of the Revised Treaty]).

(6) Adjudication: in the adjudication process, the Caribbean Court of Justice has exclusive and compulsory jurisdiction to interpret and apply the provisions of the Treaty (article XXVIII of Protocol IX [article 211 of the Revised Treaty]) (see details below).

Judicial Settlement (in the Caribbean Court of Justice)

Member States shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other modes of alternative dispute settlement for the settlement of private commercial disputes (article XLII of Protocol IX [article 223 of the Revised Treaty]). Their final option is to initiate the Caribbean Court of Justice procedure of Protocol IX.

In accordance with the applicable norms of international law, only Member States would normally enjoy *locus standi* in the proceedings before the Court. Private entities aggrieved by the actions of a Member State must have their claims espoused by their State of nationality.

Summary of procedure⁶

- (1) A Contracting Party shall commence proceedings by filing an origination application that identifies the parties, state the nature of the claim, etc. (rules 10.1 and 10.2);
- (2) A national wishing to commence proceedings must file an application for special leave. The Contracting Party and the defendant shall each be at liberty to file a notice requesting to be heard (rules 10.4(1) and 10.4(4));
- (3) The Court shall hold a case management conference for the purpose of giving directions as to the further conduct of the application (rule 11.4);
- (4) Within 42 days of service of the originating application, the defendant shall file a defense (rule 16.1(1));
- (5) The Court may authorize or direct that there shall be a reply by the claimant and a rejoinder by the defendant (rule 16.3(1)). The Court shall determine the time limits (Rule 16.3(2));
- (6) The conclusions reached by the majority of the Judges after final deliberation shall be the Court decision (rule 3.4(4)).

practicable, the arbitrators shall not be nationals of any of the parties to the dispute (articles XXII and XXIII of Protocol IX [articles 205 and 206 of the Revised Treaty of Chaguaramas]).

⁶ According to the Caribbean Court of Justice Rules (Original Jurisdiction) - 2006.



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Special Aspects of Judicial Settlement

Persons participating in the procedure: In the ordinary course of events, only States would be allowed to espouse a claim in proceedings before the CCJ. Nevertheless, natural or juridical persons of a Contracting Party may, with the special leave of the Court, be allowed to appear as parties in proceedings before the Court in some special situations (article XLI of Protocol IX [article 222 of the Revised Treaty]).

Advisory opinions: The Court shall have exclusive jurisdiction to deliver advisory opinions concerning the interpretation and application of the Revised Treaty (article XXX of Protocol IX [article 212 of the Revised Treaty]).

Referral to the Court: Where a national court or tribunal of a Member State is seized of an issue whose resolution involves a question concerning the interpretation or application of the Revised Treaty, the court or tribunal concerned shall, if it considers that a decision on the question is necessary to enable it to deliver judgment, refer the question to the Court for determination before delivering judgment (article XXXII of Protocol IX [article 214 of the Revised Treaty]).

Revision of judgments based upon new facts: An application for the revision of a judgment of the Court in the exercise of its original jurisdiction may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and to the party claiming revision: provided always that such ignorance was not due to negligence on the part of the applicant (article XXXVIII of Protocol IX [article 219 of the Revised Treaty]).

Stare decisis: *stare decisis* is peculiar to common law jurisdictions, but it has been imported into the Agreement Establishing the CCJ to ensure certainty in the applicable norms. The doctrine of *stare decisis* (judicial precedent) requires the Court to pronounce in the same manner provided the circumstances of the case are similar. Judgments of the Court shall constitute legally binding precedents for parties in proceedings before the Court (article XL of Protocol IX [article 221 of the Revised Treaty]).

Observation:

Competition policy: CARICOM has only one dispute settlement body that specifically deals with competition policy: the Community Competition Commission (CCC). The Revised Treaty of Chaguaramas provides that the CCC shall monitor anti-competitive practices of enterprises operating in the CARICOM Single Market and Economy, and investigate and arbitrate cross-border disputes.⁷

⁷ Article 173.2(a) of the Revised Treaty.