SURINAME

Decision of 15. 07.2008 *OJ L 289/I/1 of 30.10.2008*
Agreement: Art. 30 (2) *OJ L 289/I/15 of 30.10.2008*
Protocol: *OJ L 289/II/1934 of 30.10.2008*

COUNCIL DECISION
of 15 July 2008
on the signature and provisional application of the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part (2008/805/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 57(2), 71, 80(2), 133(1), 133 (5) and (6) and 181 in conjunction with the first sentence of the first subparagraph of Article 300(2) thereof, Having regard to the proposal from the Commission, Whereas:

(1) On 12 June 2002 the Council authorised the Commission to open negotiations on Economic Partnership Agreements with ACP countries.

(2) These negotiations have been concluded and the Economic Partnership Agreement between the CARIFORUM States (comprising Antigua and Barbuda, the Commonwealth of the Bahamas, Barbados, Belize, the Commonwealth of Dominica, the Dominican Republic, Grenada, the Republic of Guyana, the Republic of Haiti, Jamaica, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, the Republic of Suriname and the Republic of
Trinidad and Tobago), of the one Part, and the European Community and its Member States, of the other Part (hereinafter referred to as the Agreement), was initialled on 16 December 2007.

(3) Pursuant to Article 243(4) of the Agreement, certain elements of the Agreement have been applied on the basis of Council Regulation (EC) No 1528/2007 of 20 December 2007 applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements

(4) Article 243(3) of the Agreement provides for its provisional application pending its entry into force.

(5) The Agreement should be signed on behalf of the Community and applied, as concerns elements falling within the competence of the Community, on a provisional basis subject to its conclusion at a later date.

(6) The Agreement should not seek to affect the rights of investors of the Member States of the European Union to benefit from any more favourable treatment

provided for in any agreement relating to investment to which a Member State and a CARIFORUM State are Parties. Member States may maintain and conclude such agreements in so far as they comply with Community law,

HAS DECIDED AS FOLLOWS:

Article 1

The signing of the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part, is hereby approved on behalf of the Community, subject to the conclusion of the said Agreement.

The text of the Agreement is attached to this Decision.

Article 2

1. The position to be taken by the Community within the Joint CARIFORUM-EC Council and the CARIFORUM-EC Trade and Development Committee shall be determined by the Council on the basis of a proposal by the Commission in accordance with the corresponding provisions of the Treaty.

2. For the purposes of Article 228(4) of the Agreement, the President of the Council and a Member of the Commission shall together hold the rotating chairmanship of the Joint CARIFORUM - EC Council and present the position of the Community in accordance with the Treaty. For the purposes of Article 230(2) of the Agreement, a representative of the Commission shall hold the rotating chairmanship of the CARIFORUM-EC Trade and Development Committee and present the position of the Community.

Article 3

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the European Community subject to its conclusion.

Article 4

As concerns elements falling within the competence of the Community, the Agreement shall be applied on a provisional basis as provided for in Article 243(3) of the Agreement, pending completion of the procedures for conclusion. The Commission shall publish a notice providing information on the date of provisional application.

Done at Brussels, 15 July 2008.

For the Council

The President

M. BARNIER

ECONOMIC PARTNERSHIP AGREEMENT between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part

ANTIGUA AND BARBUDA,

THE COMMONWEALTH OF THE BAHAMAS,

BARBADOS,

BELIZE,

THE COMMONWEALTH OF DOMINICA,

THE DOMINICAN REPUBLIC, GRENADA,

THE REPUBLIC OF GUYANA,

THE REPUBLIC OF HAITI,

JAMAICA,

SAINT CHRISTOPHER AND NEVIS,

SAINT LUCIA,

SAINT VINCENT AND THE GRENADINES,

THE REPUBLIC OF SURINAME,

THE REPUBLIC OF TRINIDAD AND TOBAGO,

hereinafter referred to as the 'CARIFORUM States', of the one part, and

(…), and

THE EUROPEAN COMMUNITY

(…)

of the other part,

HAVING REGARD to the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy, the Treaty of Basseterre establishing the Organisation of Eastern Caribbean States and the Agreement establishing a Free Trade Area between the Caribbean Community and the Dominican Republic, on the one part, and the Treaty establishing the European Community, on the other part;

HAVING REGARD TO the Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States and the European Community and its Member States signed in Cotonou on 23 June 2000 and revised on 25 June 2005, hereinafter referred to as the 'Cotonou Agreement';

REAFFIRMING their commitment to the respect for human rights, democratic principles and the rule of law, which constitute the essential elements of the Cotonou Agreement, and to good governance, which constitutes the fundamental element of the Cotonou Agreement;

CONSIDERING the need to promote and expedite the economic, cultural and social development of the CARIFORUM States, with a view to contributing to peace and security and to promoting a stable and democratic political environment;

CONSIDERING the importance that they attach to the internationally agreed development objectives and to the United Nations Millennium Development Goals;

CONSIDERING the need to promote economic and social progress for their people in a manner consistent with sustainable development by respecting basic labour rights in line with the commitments they have undertaken within the International Labour Organisation and by protecting the environment in line with the 2002 Johannesburg Declaration;

REAFFIRMING their commitment to work together towards the achievement of the objectives of the Cotonou Agreement, including poverty eradication, sustainable development and the gradual integration of the African, Caribbean and Pacific (ACP) States into the world economy;

DESIROUS of facilitating the implementation of the CARICOM Development Vision;

CONSIDERING their commitment to the principles and rules which govern international trade, in particular those contained in the Agreement establishing the World Trade Organisation (WTO);

CONSIDERING the difference in levels of economic and social development existing between the CARIFORUM States and the European Community and its Member States;

CONSIDERING the importance of the existing traditional links, and notably the close historical, political and economic ties between them;

CONSIDERING that they wish to strengthen those links and to establish lasting relations based on partnership and mutual rights and obligations, supported by a regular dialogue with a view of improving mutual knowledge and understanding;

DESIROUS of strengthening the framework for economic and trade relations between them through the establishment of an Economic Partnership Agreement which can serve as an instrument for the development of the CARIFORUM States;
DESIROUS of enhancing their economic relationship and, in particular, trade and

investment flows, building on and improving the current level of preferential market access into the European Community for the CARIFORUM States;

REAFFIRMING their commitment to support the regional integration process among CARIFORUM States, and in particular to foster regional economic integration as a key instrument to facilitate their integration into the world economy and help them to face the challenges of globalisation and achieve the economic growth and social progress compatible with sustainable development to which they aim;

AWARE that building capacities and addressing supply constraints in CARIFORUM States is required to take full advantage of increased trading opportunities and maximise the benefits of trade reforms and

REAFFIRMING the essential role that development assistance, including traderelated assistance, can play in

supporting CARIFORUM States to implement and take advantage of this Agreement;

RECALLING that the European Union (EU) is committed to scaling up development aid, including aid for trade

and to ensuring that a substantial share of the European Community's and EU Member States' commitments is devoted to ACP countries;

DETERMINED to ensure that the European Community's development cooperation for regional economic cooperation and integration, as provided for in the Cotonou Agreement, is carried out so as to maximise the expected benefits of this Agreement;

COMMITTED to cooperate, in accordance with the Paris Declaration on aid effectiveness, the EU consensus on

development and the EU Caribbean Partnership for Growth, Stability and Development, in order to facilitate

EU Member States' contribution and other donors' participation in support of the efforts of the CARIFORUM States to achieve the objectives of this Agreement;

CONVINCED that the Economic Partnership Agreement will create a new and more favourable climate for their relations in the areas of trade and investments and create new dynamic opportunities for growth and development,

HAVE AGREED AS FOLLOWS:

Article 30

Customs and administrative cooperation

1. In order to ensure compliance with the provisions of this Title, and to respond effectively to the objectives laid down in Article 29, the EC Party and the Signatory CARIFORUM States shall:

(a) exchange information concerning customs legislation and procedures;

(b) develop joint initiatives in mutually agreed areas;

(c) establish wherever possible, common positions in international organisations in the field of customs such as the WTO and the World Customs Organisation (WCO);

(d) promote coordination among related agencies.

2. The Parties shall provide mutual administrative assistance in customs matters in accordance with the provisions of Protocol II.

PROTOCOL II

On mutual administrative assistance in customs matters

Article 1

Definitions

For the purposes of this Protocol:

(a) 'customs legislation' means any legal or regulatory provisions applicable in the territories of the Parties, governing the import, export and transit of goods and their placing under any other customs regime or procedure, including measures of prohibition, restriction and control;

(b) 'Customs authority' means the customs administrations of the EC Party and CARIFORUM States responsible for applying the customs legislation and any other authorities empowered under national law to apply certain customs legislation.

(c) 'applicant authority' means a customs authority which has been designated by a Signatory CARIFORUM State or the EC Party for this purpose and which makes a request for assistance on the basis of this Protocol;

(d) 'requested authority' means a customs authority which has been designated by a Party or a Signatory CARIFORUM State for this purpose and which receives a request for assistance on the basis of this Protocol;

(e) 'personal data' mean any information relating to an identified or identifiable individual;

(f) 'operation in breach of customs legislation' means any violation or attempted violation of customs legislation.

Article 2

Scope

1. The Parties and the Signatory CARIFORUM States shall assist each other, in the areas within their competence, in the manner and under the conditions laid down in this Protocol, to ensure the correct application of the customs legislation, in particular by preventing, investigating and combating operations in breach of that legislation.
2. Assistance in customs matters, as provided for in this Protocol, shall apply to customs authorities of the Parties and the Signatory CARIFORUM States which are competent for the application of this Protocol. It shall not prejudice the rules governing mutual assistance in criminal matters nor shall it cover information obtained under powers exercised at the request of a judicial authority, except where communication of such information is authorised by that authority.

3. Assistance to recover duties, taxes or fines is not covered by this Protocol.

Article 3

Assistance on request

1. At the request of the applicant authority, the requested authority shall provide it with all relevant information which may enable it to ensure that customs legislation is correctly applied, including information regarding activities noted or planned which are or could be operations in breach of customs legislation.

2. At the request of the applicant authority, the requested authority shall inform it:

(a) whether goods exported from the territory of the CARIFORUM States or the EC Party have been properly imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods;

(b) whether goods imported into the territory of the CARIFORUM States or the EC Party have been properly exported from the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods.

3. At the request of the applicant authority, the requested authority shall, within the framework of its legal or regulatory provisions, take the necessary steps to ensure special surveillance of:

(a) natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation;

(b) places where stocks of goods have been or may be assembled in such a way that there are reasonable grounds for believing that these goods are intended to be used in operations in breach of customs legislation;

(c) goods that are or may be transported in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation; and

(d) means of transport that are or may be used in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation.

Article 4

Spontaneous assistance

The Parties and the Signatory CARIFORUM States shall assist each other, at their own initiative and in accordance with their legal or regulatory provisions, if they consider that to be necessary for the correct application of customs legislation, particularly by providing information obtained pertaining to:

(a) activities which are or appear to be operations in breach of customs legislation and which may be of interest to the other Party or a Signatory CARIFORUM State,

(b) new means or methods employed in carrying out operations in breach of customs legislation,

(c) goods known to be subject to operations in breach of customs legislation,

(d) natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation, and

(e) means of transport in respect of which there are reasonable grounds for believing that they have been, are, or may be used in operations in breach of customs legislation.

Article 5

Delivery and notification

At the request of the applicant authority, the requested authority shall, in accordance with legal or regulatory provisions applicable to the latter, take all necessary measures in order:

(a) to deliver any documents, or

(b) to notify any decisions, emanating from the applicant authority and falling within the scope of this Protocol, to an addressee residing or established in the territory of the requested authority.

Requests for delivery of documents or notification of decisions shall be made in writing in an official language of the requested authority or in a language acceptable to that authority.

Article 6

Form and substance of requests for assistance

1. Requests for assistance pursuant to this Protocol shall be made in writing. They shall be accompanied by the documents necessary to enable compliance with the request. When required because of the urgency of the situation, oral requests may be accepted, but must be confirmed in writing immediately.

2. Requests pursuant to paragraph 1 shall include the following information:

(a) the name of the applicant authority;

(b) the measure requested;

(c) the object of and the reason for the request;

(d) the legal or regulatory provisions and other legal elements involved;

(e) indications as exact and comprehensive as possible on the natural or legal persons who are the target of the investigations; and

(f) a summary of the relevant facts and of the enquiries already carried out.

3. Requests for assistance shall be submitted in an official language of the requested authority or in a language acceptable to that authority. This requirement shall not apply to any documents that accompany the request under paragraph 1.

4. If a request does not meet the formal requirements set out above, its correction or completion may be requested; in the meantime precautionary measures may be applied.

Article 7

Execution of requests for assistance

1. In order to comply with a request for assistance, the requested authority shall proceed, within the limits of its competence and available resources, as though it were acting on its own account or at the request of other authorities of that same Party or Signatory CARIFORUM State, by supplying information already in its possession, by carrying out appropriate enquiries or by arranging for them to be carried out. This provision shall also apply to any other authority to which the request has been addressed by the requested authority when the latter cannot act on its own.

2. Requests for assistance shall be executed in accordance with the legal or regulatory provisions of the requested Party or Signatory CARIFORUM State.

3. Duly authorised officials of a Party or Signatory CARIFORUM State may, with the agreement of the other Party involved and subject to the conditions laid down by the latter, be present to obtain in the offices of the requested authority or any other concerned authority in accordance with paragraph 1, information relating to activities that are or may be operations in breach of customs legislation which the applicant authority needs for the purposes of this Protocol.

4. Duly authorised officials of a Party or Signatory CARIFORUM State involved may, with the agreement of the other Party or Signatory CARIFORUM State involved and subject to the conditions laid down by the latter, be present at enquiries carried out in the latter's territory.

Article 8

Form in which information is to be communicated

1. The requested authority shall communicate results of enquiries to the applicant authority in writing together with relevant documents, certified copies or other items.

2. This information may be in computerised form.

3. Original documents shall be transmitted only upon request in cases where certified copies would be insufficient. These originals shall be returned at the earliest opportunity.

Article 9

Exceptions to the obligation to provide assistance

1. Assistance may be refused or may be subject to the satisfaction of certain conditions or requirements, in cases where a Signatory CARIFORUM State or the EC Party is of the opinion that assistance under this Protocol would:

(a) be likely to prejudice the sovereignty of a Signatory CARIFORUM State or that of a Member State of the European Union which has been requested to provide assistance under this Protocol; or

(b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to under Article 10(2); or

(c) violate an industrial, commercial or professional secret.

2. Assistance may be postponed by the requested authority on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case, the requested authority shall consult with the applicant authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.

3. Where the applicant authority seeks assistance which it would itself be unable to provide if so requested, it shall draw attention to that fact in its request. It shall then be for the requested authority to decide how to respond to such a request.

4. For the cases referred to in paragraphs 1 and 2, the decision of the requested authority and the reasons therefore must be communicated to the applicant authority without delay.

Article 10

Information exchange and confidentiality

1. Any information communicated in whatsoever form pursuant to this Protocol shall be of a confidential or restricted nature, depending on the rules applicable in

each of the Parties or the Signatory CARIFORUM States. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant laws of the Party or the Signatory CARIFORUM State that received it and the corresponding provisions applying to the European Community authorities.

2. Personal data may be exchanged only where the Party or the Signatory CARIFORUM State which may receive them undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the Party or the Signatory CARIFORUM State that may supply them. To that end, parties shall communicate to each other information on their applicable rules, including, where appropriate, legal provisions in force in the Member States of the European Union.

3. The use, in judicial or administrative proceedings instituted in respect of operations in breach of customs legislation, of information obtained under this Protocol, is considered to be for the purposes of this Protocol. Therefore, the Parties or the Signatory CARIFORUM States may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with the provisions of this Protocol. The competent authority which supplied that information or gave access to those documents shall be notified of such use.

4. Information obtained shall be used solely for the purposes of this Protocol. Where one of the Parties or Signatory CARIFORUM State wishes to use such information for other purposes, it shall obtain the prior written consent of the authority which provided the information. Such use shall then be subject to any restrictions laid down by that authority.

Article 11

Experts and witnesses

An official of a requested authority may be authorised to appear, within the limitations of the authorisation granted, as an expert or witness in judicial or administrative proceedings regarding the matters covered by this Protocol, and produce such objects, documents or certified copies thereof, as may be needed for the proceedings. The request for appearance must indicate specifically before which judicial or administrative authority the official will have to appear, on what matters and by virtue of what title or qualification the official will be questioned.

Article 12

Assistance expenses

The Parties or Signatory CARIFORUM States shall waive all claims on each other for the reimbursement of expenses incurred pursuant to this Protocol, except, as

appropriate, for expenses to experts and witnesses, and those to interpreters and translators who are not public service employees.

Article 13

Implementation

1. The implementation of this Protocol shall be entrusted on the one hand to the customs authorities of the Signatory CARIFORUM States and on the other hand to the competent services of the Commission of the European Communities and the customs authorities of the Member States of the European Union as appropriate. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration the rules in force in particular in the field of data protection. They may recommend to the competent bodies amendments which they consider should be made to this Protocol.

2. The Parties and the Signatory CARIFORUM States shall consult each other and subsequently keep each other informed of the detailed rules of implementation which are adopted in accordance with the provisions of this Protocol.

Article 14

Other agreements

1. Taking into account the respective competences of the European Community and the Member States of the European Union, the provisions of this Protocol shall:

(a) not affect the obligations of the Parties and the Signatory CARIFORUM States under any other international Agreement or Convention,

(b) be deemed complementary to Agreements on mutual assistance which have been or may be concluded between individual Member States of the European Union and Signatory CARIFORUM States.

2. The provisions of this Protocol shall not affect the European Community provisions governing the communication between the competent services of the Commission of the European Communities and the customs authorities of the Member States of the European Union of any information obtained under this Protocol which could be of interest to the European Community.

3. Notwithstanding the provisions of paragraph 1, the provisions of this Protocol shall take precedence over the provisions of any bilateral Agreement on mutual assistance which has been or may be concluded between individual Member States of the European Union and any Signatory CARIFORUM State insofar as the provisions of the latter are incompatible with those of this Protocol.

4. In respect of questions relating to the applicability of this Protocol, the Parties shall consult each other to resolve the matter in the framework of the Special

Committee on Customs Cooperation and Trade Facilitation set up under Article 36 of the CARIFORUM-EC Economic Partnership Agreement.