

# **CARIBBEAN MUSLIM FORUM 2005**

## **“THE CARICOM SINGLE MARKET AND ECONOMY”**

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### **A. INTRODUCTION**

The global economic landscape is undergoing fundamental change. Trinidad and Tobago and our sister states in the region are confronted with the same dilemma - how to pursue our economic development goals and at the same time tackle the invasive forces of globalization and trade liberalisation. The CARICOM Single Market and Economy represents a major force of regional integration and coordinated policy, which is designed to guide the participating Member States both at the Government level, in international developments, as well as to promote investment by and offer opportunities for CARICOM Nationals in the region and globally.

### **B. THE CARIBBEAN COMMUNITY**

The Caribbean Community<sup>1</sup> currently consists of fifteen (15) Member States<sup>2</sup> whose economies are small, which refers not only to geographic size but moreso to the size of the labour force, the consuming population and the existing natural resources. At the same time, these economies are vulnerable to economic and other shocks such as natural disasters, as were recently experienced in Tobago, Grenada, Jamaica and the Bahamas. These two factors collectively are responsible for the limited opportunities available to the region for economic growth.

The efforts at regional integration, starting among the Commonwealth Caribbean countries, can be traced as far back as the pre-independence British West Indies Federation in 1958. The end of the Federation in 1962, however, did not signal an end to Caribbean integration, but rather heralded a new approach centred around trade relations, which has led to the CSME of today. The establishment of the Caribbean Free Trade Association (CARIFTA) in 1968<sup>3</sup> was quickly followed by the Treaty of Chaguaramas in 1973, which established the Caribbean Community (CARICOM) and Common Market.

With the onset of globalization in the late 1980s, the Treaty of Chaguaramas and the Common Market system and its focus on trade in goods, proved to be an inadequate response to a new world economy of larger markets, intense competition, and the free movement of capital. Furthermore, the emergence of trading blocs in different parts of the world and the establishment of the World Trade Organisation (WTO), which extended the thrust of global trade liberalisation beyond goods into areas such as services and intellectual property, necessitated the urge for

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<sup>1</sup> As created by the Treaty of Chaguaramas 1973.

<sup>2</sup> Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago.

<sup>3</sup> Agreement establishing the Caribbean Free Trade Association, 1968

greater economic integration; specifically for the development of a single market and single economy in the region.

As such in 1989, the Conference of the Caribbean Heads of Government at its Tenth (10<sup>th</sup>) Meeting in Grand Anse in Grenada decided on the creation of the CARICOM Single Market and Economy (CSME).<sup>4</sup> The CSME was established by the signing, in 2001, of nine (9) new Protocols to the original Treaty of Chaguaramas, which are now incorporated as the Revised Treaty of Chaguaramas.

## **C. THE CARICOM SINGLE MARKET AND ECONOMY**

### **1. Definition**

The CSME, as established by the Revised Treaty of Chaguaramas, is an arrangement among the CARICOM States for the creation of a single enlarged economic space through the removal of restrictions resulting in the free movement of goods, services, persons, capital and technology. It also confers the right on CARICOM Nationals to establish business in any CARICOM Member State under the same conditions as a National of that State. As stated earlier, CARICOM consists of fifteen (15) Member States, thirteen (13) of which participate in the CSME, with a combined population of approximately 6 million people. Montserrat is awaiting entrustments<sup>5</sup> from the Government of the United Kingdom of Great Britain, after which they will sign the Revised Treaty. However, in the interim, Montserrat is taking steps to implement CSME obligations under the Revised Treaty. Haiti is still to ratify the Revised Treaty while the Bahamas is yet to sign.

It should be noted that there are two main components of the CSME, the Single Market and the Single Economy. The Single Market is expected to be fully implemented in all participating Member States by January 1, 2006, and the Single Economy by 2008.

### **2. CSME Global Positioning**

The CSME forms the nucleus of the Caribbean region's trade thrust, representing the deepest level of integration. The members of the CSME are also members of the World Trade Organization (WTO), which is the overarching body governing international trade. The CSME therefore, like all regional integration and trading schemes, seeks to be a WTO-compliant Regional Trade Agreement, which would permit participating Member States to give preferential treatment to each other within the CSME, without extending the same level of trade liberalisation to other WTO Members. Developments such as globalization, the hemispheric and regional trends in the area of trade reform, the deepening of regional integration arrangements, such as the Free Trade Area of the Americas (FTAA), have all emphasised the need to coordinate a regional approach to international negotiations.

As part of this thrust, CARICOM established a Regional Negotiation Machinery (RNM) in 1997 to address these global trade issues by strengthening its negotiating base. The RNM was

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<sup>4</sup> "Grand Anse Declaration" emanating from the Tenth Meeting of the Conference of Heads of Government in Grenada.

<sup>5</sup> Legal document granting permission to sign on to international agreements.

established to coordinate the Community's external negotiations with priority areas of focus on the FTAA, Post Lome IV, ACP-EU Relations, non-economic initiatives of the Miami Summit including the Second Summit, and the WTO.

### **3. Implementation of the CSME - Key Elements:**

In order for the CSME to be implemented in the Member States, the following elements must be taken into account. These elements are:

- (1) Treaty Revision;
- (2) Establishment of National and Regional Administrative Structures;
- (3) Enforcement, Regulation and Supporting Institutions;
- (4) Free Movement of Persons;
- (5) Right of Establishment;
- (6) Free Movement of Services;
- (7) Free Movement of Capital;
- (8) Common External Policy;
- (9) Public Education Programme; and
- (10) Harmonization of Laws.

**(1) Treaty Revision:** The Revised Treaty of Chaguaramas is the legal framework upon which the CSME is established. **The Caribbean Community Act, 2005<sup>6</sup>** which enacted the Revised Treaty of Chaguaramas into domestic law was passed in both Houses of Parliament, and assented to by the President of the Republic and is currently awaiting Proclamation to come into force.

**(2) Establishment of National and Regional Administrative Structures:** In all Member States, the Ministry responsible for CARICOM Affairs has the mandate for the implementation of the CSME. In Trinidad and Tobago this responsibility lies with the Ministry of Foreign Affairs, which has further established a CSME Unit to coordinate this implementation process.

**(3) Enforcement, Regulation and Supporting Institutions:** These pertain to Agreements and Institutions which will monitor and enforce the obligations and rights under the Revised Treaty of Chaguaramas. This element specifically speaks to the areas of standards and quality, justice and fair trading. In the area of standards and quality, Trinidad and Tobago already has a National Bureau of Standards and a Bill to enact the Agreement on the CARICOM Regional Organization for Standards and Quality (CROSQ) into domestic law has been passed in the Lower House and is awaiting debate in the Senate.

The Caribbean Court of Justice (CCJ)<sup>7</sup> represents two important elements for the Caribbean Community. Under its “original jurisdiction”, the CCJ has exclusive and compulsory jurisdiction in all matters relating to the interpretation and application of the Revised Treaty of Chaguaramas. In its “appellate jurisdiction”, the CCJ will be the final court of appeal from decisions of national courts, thereby replacing the Privy Council in those Member States for

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<sup>6</sup> Act No. 3 of 2005

<sup>7</sup> Agreement establishing the CCJ, 1999

which it is the final court of appeal. Trinidad and Tobago has to date enacted the Agreement establishing the Caribbean Court of Justice (CCJ) into domestic law, giving effect to the “original jurisdiction” only.<sup>8</sup> This original jurisdiction is, however, essential to the functioning of the CSME as it provides an institutionalised mechanism for dispute settlement and definitive treaty interpretation, where judgments of the court will be binding precedent for later disputes. The alternative would be ad hoc, bilateral dispute resolution mechanisms between Member States, which would not provide legal certainty and predictability for other Member States or private investors in the Community.

The only outstanding area is the establishment of a National Competition Authority. Legislation to give effect to an appropriate Competition Policy and to establish such an authority is currently being considered by the Cabinet of Trinidad and Tobago.

**(4) Free Movement of Persons:** Article 45 of the Revised Treaty expresses the commitment of the Member States to the long-term goal of free movement of their nationals within the community. For the moment, the free movement of persons in the Community is specifically linked to economic activity and includes:

- (a) Movement of skilled persons, persons establishing businesses under the right of establishment (investors and producers), service providers, managerial, technical and supervisory personnel connected to businesses established under the right of establishment and their spouses and dependents
- (b) Hassle-Free Travel, and
- (c) Movement of other persons as agreed by the Conference of Heads of Government.

**(a) Skilled Persons and Service Providers**

The Revised Treaty provides for the movement of Skilled Nationals in Article 46, which lists five categories of persons (University Graduates, Artistes, Musicians, Media Persons and Sports Persons) who have the right to seek employment in any Member State.

With respect to the free movement of skilled persons, since June 2003 Trinidad and Tobago has in place all the necessary legislative and administrative structures for the free movement of University Graduates, Media Persons, Sports Persons, Artistes and Musicians.<sup>9</sup> These persons are able to move freely by virtue of a Skills Certificate issued to them by the relevant authorizing agency in each Member State. In the case of Trinidad and Tobago, the authorizing agency is the Ministry of Foreign Affairs. It should be noted that an important element to the free movement of skills is the appointment of a National and Regional Accreditation Council. At the national level, this Council is expected to establish a quality assurance framework for the Registration and Accreditation of Tertiary Level Institutions. To this end, the Accreditation Council of Trinidad and Tobago was recently established by the passage of Act No.16 of 2004.

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<sup>8</sup> The Caribbean Court of Justice Act, 2005 (Act No. 8 of 2005).

<sup>9</sup> The Immigration (CARICOM Skilled Nationals) Act, 1996 as amended in 2001, by Act No. 6 of 2001, Act No. 18 of 2003 and Act No. 2 of 2005.

In the case of the free movement of service providers, the Immigration Act, Chapter 18: 01 has been amended to remove the work permit requirement for all service providers subject to the Movement of Factors Act.<sup>10</sup> Given the fact that this Act is still being worked on at the regional level, Trinidad and Tobago will be utilizing the Ministerial discretion, by way of Order, which still exists in the Immigration Regulations to remove the work permit requirement for such CARICOM Nationals. Such Order will be effective upon signature and publication in the official Gazette.

Trinidad and Tobago remains mindful of the fact that the free movement of service providers requires some type of monitoring system that would ensure that bona fide service providers are granted access. As such, at the recently concluded eighteenth (18<sup>th</sup>) Meeting of the Council for Trade and Economic Development (COTED), a proposal was put forth by the Trinidad and Tobago delegation for the introduction of a register of service providers. A detailed proposal will be submitted by Trinidad and Tobago to the CARICOM Working Group on Services for review and consideration. Such a register is intended to facilitate the free movement of service providers as well as collect essential data on the movement of services.

(b) Hassle-free travel

It should be noted that the free movement of persons can only be fully realized if all CARICOM Nationals have easy access to and out of Member States. Accordingly, the following measures have been deemed critical to the concept of Hassle-free travel:

- (i) Establishment of CARICOM National/Non-CARICOM National Lines at all ports of entry. As of January 1, 2004 Trinidad and Tobago joined all CARICOM Member States in implementing lines labeled CARICOM Nationals / Non CARICOM Nationals at all ports of entry.
- (ii) Development and Use of a Common E/D Form. CARICOM Member States have agreed to the use of certain common core data on their E/D Form. At the same time, this agreement allows for variations depending on the needs of individual Member States. The need for a common format/design has been recognized and proposals are being reviewed by Member States.
- (iii) CARICOM Passport: Suriname is the first of all CARICOM Member States to issue a national passport utilizing the common CARICOM format. Other Member States have confirmed their intention to issue new national passports in the CARICOM format.

The issue of Contingent rights consequent on the free movement of persons is the only area which remains outstanding and for which there needs to be a regional policy. Trinidad and Tobago, through the Ministry of Trade and Industry has however prepared a draft policy paper which when finalized, would be forwarded to the CARICOM Secretariat as an input into the regional policy.

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<sup>10</sup> The Caribbean Community (Removal of Restrictions) Act, 2005 (Act No. 2 of 2005).

**(5) Right of Establishment:** Article 32 of the Revised Treaty of Chaguaramas grants the Right of Establishment to persons, companies and other legal entities such as partnerships. As such, an individual wishing to establish a business must be engaged in non-wage earning (self-employed persons) activities of a commercial, industrial, agricultural, professional or artisanal nature; or form or register a company if he/she wishes to engage in any of those types of economic activity.

The following rights are accorded to CARICOM Nationals wishing to establish a commercial presence under the CSME:

- (a) Ease of entry to establish a commercial presence and indefinite stay to do so.
- (b) Ease of administration for the registering and/or incorporation of companies.
- (c) Access to capital in the receiving member state.
- (d) Access to land, buildings and other property for purposes directly related to the establishment of a business.
- (e) Freedom of entry for managerial, supervisory and technical staff and spouses and immediate dependent family members.

With respect to the registration and/or incorporation of companies in all States participating in the CSME, **a person or company** may establish a business presence, having complied with the relevant legal and administrative requirements provided under the laws of that Member State.

This provision is currently operational subject to the rules and regulations governing the establishment of businesses in each respective Member State. With the coming on stream of harmonized Companies' legislation, companies and other business entities, which, once incorporated in one Member State, will be able to easily move to another Member State and establish a business presence, without the need for re-incorporation or registration.

Given the fact that there is the absence of any stipulated guidelines to be followed by a CARICOM National entering Trinidad and Tobago for the purpose of establishing a commercial presence, the CSME Unit is in the process of developing such guidelines, with the input of relevant Ministries and departments, which will be submitted to the CARICOM Secretariat for endorsement and approval.

#### **(6) Free Movement of Services**

For an economic space to be achieved, it is critical that there exists free movement of services. There are four (4) ways in which a service can be traded, supplied or provided. These are:

**Mode 1, Cross Border** – Here, the service crosses the border with no physical contact between supplier and consumer. The use of the internet to sell marketing services is an example.

**Mode 2, Consumption Abroad** – Here, the consumer moves across the border to purchase a service. For example, a Jamaican comes to Trinidad for vacation and purchases accommodation.

**Mode 3, Commercial Presence** – Here the service is supplied by way of establishing a company or some legal entity in the consumer's market. RBTT Bank Ltd has established commercial presence in Grenada.

**Mode 4, Movement of Natural Persons** – Similar to Mode 3, in that it is the supplier who crosses border to meet the consumer without establishing a commercial presence. For example, a Jamaican lawyer representing a client before the Court in Trinidad and Tobago.

In order to effect the free movement of services under the CSME, all Member States are required to remove restrictive or discriminatory measures in the areas of establishment, services and capital. These restrictive or discriminatory measures have been approved by the Council of Trade and Economic Development (COTED) and itemized for each Member State in a Programme for the Removal of Restrictions. The status of the Trinidad and Tobago Programme for the removal of restrictions on services, capital and establishment is as follows:

- (a) In the areas of Foreign Investment; Air Transport Services; Taxi Services; Architecture; Customs brokerage; Auctioneer Services and Tourism Services, all work has been **completed**.
- (b) Patents and Trademarks are **pending** a legal opinion from the CARICOM Secretariat:
- (c) Government Services in which a Monopoly exists **e.g.** Postal Services; Electricity transmission and generation; Telecommunications Services and Sewerage services have been **exempted** under the provisions of the Revised Treaty of Chaguaramas
- (d) Financial Services including Banking Services; Insurance Services; Brokerage and related securities services are **not being considered at this time, pending the harmonisation of financial policies**. However, CARICOM Nationals are still free to move to provide these services, but must meet whatever local conditions are applicable:
- (e) Company Registration and Legal services are **under regional discussion**:
- (f) Taxation of dividends paid out of approved tourism projects, Pilotage Services, enactment of the Movement of Factors Act are **Works in progress**

**(7) Free Movement of Capital:**

Trinidad and Tobago has for some time now abolished Foreign Exchange Controls and there are no restrictions to Capital Market activity. Currently Trinidad and Tobago, Barbados and Jamaica comprise the Regional Stock Exchange. A Double Taxation Agreement as was enacted into our national law since December 1994 to encourage regional trade and investment.

**(8) Common External Policy - Free Movement of Goods:**

The Free Movement of Goods within the Single Market, like that of the Common Market arrangement requires a set of administrative arrangements, which ensure that:

- (a) goods of Community origin are freely traded without imposition of external tariffs or discriminatory internal charges;
- (b) goods from outside the Single Market are subject to a uniform tax; and

- (c) there is ease of administration in transportation and payments to facilitate trade and regional production.

Since July 1998, Trinidad and Tobago has implemented the fourth phase of the Common External Tariff.

**(9) Public Education Programme:** It has been recognized that the successful implementation of the CSME hinges on a well informed and educated public. To this end, Trinidad and Tobago has embarked on a two- phase programme of Public Education. Phase I of the Programme, which was implemented during the period May to December, 2004 was successful in sensitizing the public on the CSME while Phase II which is currently under - way is seeking to educate the public at large on the opportunities that come with the CSME.

**(10) Harmonization of Laws:** The CARICOM Secretariat has identified a number of areas in which Model legislation will be developed and which will be adapted by Member States. Trinidad and Tobago has compliant legislation in the areas of Anti-dumping and Countervailing Duties, Standards and Technical Regulations and Sanitary and Phyto-Sanitary Measures.

The effective implementation of these elements will ensure that CARICOM Nationals are conferred with the following rights, which are contained in the Revised Treaty:

- (a) Free Movement of Persons;
- (b) Free Movement of Capital;
- (c) Free Movement of Goods;
- (d) Freedom to provide Services; and
- (e) To establish a commercial presence

Apart from these rights however, the successful implementation of these elements will also enable the enjoyment and accrual of certain benefits that may be derived from the CSME.

#### **D. BENEFITS OF THE CSME:**

The benefits that can be derived from the deepening and strengthening of this integration process include:

- (a) Increased inflows of new capital, entrepreneurship and technology from other States by the establishment of new businesses, acquisitions, mergers and joint ventures within a legal and organized framework;
- (b) Enhanced trade and economic links with third countries through the coordination of external relations by the Community
- (c) Stronger voice in international fora
- (d) Increased production and trade in goods and services in a larger market;
- (e) An improved services sector including transportation and communication;

- (f) Greater opportunity for travel, study and work in CARICOM countries; and
- (g) Increased employment opportunities and improved standards of living.

#### **E. REGIONAL COMMITMENTS FOR THE ESTABLISHMENT OF THE CSME:**

January 1<sup>st</sup> 2006 has been identified as the official date of entry into force of the Single Market component of the CSME. The Single Economy aspect is intended to be functional by 2008. At the 14<sup>th</sup> Inter-Sessional Meeting of the Conference of the Heads of Government in 2003, Trinidad and Tobago, Jamaica and Barbados committed to be Single Market ready ahead of official date of entry. In July, 2005, these three (3) Member States will be depositing their instruments of Single Market-readiness in Guyana. As of that time, the markets of these three (3) Member States will be accessible to all participating Member States. This, in essence means that the nationals of all participating Member States would be treated as nationals of Trinidad and Tobago, Barbados or Jamaica with respect to provision of services, goods, capital as well as the right of establishment.

Trinidad and Tobago, Barbados and Jamaica are currently on target for and fully committed to full implementation of the Single Market elements of the process ahead of schedule. To date Trinidad and Tobago has in place all basic infrastructures in terms of CSME compliance.

It should be noted, that even now, some aspects of the Single Market are in operation and benefits are being accrued from this arrangement. Manufacturers in Trinidad and Tobago have, for quite some time now, been operating within a Single Market framework despite the fact that there are still some barriers to be removed by other Member States in respect of the trade in goods. Capital is moving freely and cross listing and trading are taking place on the Regional Stock Exchange, which comprise Barbados, Jamaica and Trinidad and Tobago. Other Member States will join as soon as they have the necessary legislative and administrative structures in place. Further skilled persons are already capitalizing on the greater opportunity for work.

An ongoing project even as Trinidad and Tobago moves further towards full compliance with respect to both the Single Market and Single Economy components will be the Public Education Programme. This Programme will be intensified as Trinidad and Tobago seeks to ensure that all groups of civil society are properly educated on the workings, opportunities and benefits of this arrangement. Trinidad and Tobago has already been successful in sensitizing the national public on the CSME. Within four (4) to six months of the launch of Phase I of the Programme, four (4) out of every ten persons surveyed by Market Facts and Opinion knew of the CSME.

Globalization presents a harsh reality for small states such as Trinidad and Tobago, and the other Members States of the CARICOM. The survival of our region hinges on our preparedness to face open international competition and to adapt to technological developments. The CSME is our policy instrument for enhanced international competitiveness and greater prosperity for all our people. As was stated by the Honourable Owen Arthur, Prime Minister of Barbados, “.... **The economic problems which the Caribbean has experienced have not been caused by the operations of the CSME but rather by its absence.**”