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DEEPENING THE CUSTOMS UNION RELATIONSHIP
IN THE
ORGANISATION OF EASTERN CARIBBEAN STATES

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1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes the need for transparency and accountability in financial reporting.

2.

3. The second part of the document focuses on the role of internal controls in preventing fraud and ensuring the integrity of the financial statements. It outlines the key components of a robust internal control system.

4.

5. The final part of the document provides a summary of the key findings and recommendations. It stresses the importance of ongoing monitoring and improvement of internal controls to ensure the long-term success of the organization.

(1)

FOREWARD

The OECS Authority, comprised of the Heads of Government of the Eastern Caribbean States, decided at the Second Meeting that fuller Customs Union conditions should be established to serve the seven island group that forms the Organisation of Eastern Caribbean States (OECS). The objective was to be achieved through an up-grading in the operations of the East Caribbean Common Market (ECCM).

This paper which brings together some of the findings from a preliminary overview of the situation in the ECCM, and a review of customs unions concepts, identifies a range of issues and options that are pertinent to deepening the customs union relationship. To the extent that this paper facilitates a fuller articulation of the Authority's decision, its purpose would be served.

S. St. A. Clarke

(ii)

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INTRODUCTORY

This document brings together the several aspects highlighted in the summary papers offered to the OECS Secretariat on the subject of Customs Union operations. Preparation of those summary papers was stimulated by decisions of The Authority of OECS concerning, first establishment of Customs Union operations; and second, inclusion of the subject as a priority in the Medium Term Programme of Work (1984 - 89) that forms the Annex to the Memorandum of Understanding concluded between the United Nations Economic Commission for Latin America and the Caribbean (ECLAC), and the Organisation of Eastern Caribbean States (OECS).

The mandate of the OECS Heads of Government requires examination of considerations relating to deeper Customs Union operations among the member States of the OECS. It is therefore relevant to take account that the Eastern Caribbean Common Market (ECCM) Agreement came into effect in June 1968, and to presume that envisioned customs union operations would be to heighten the effectiveness of the ECCM. From the standpoint of the usually accepted definitions it is worth bearing in mind that in a common market the members proceed beyond the requirements of a customs union to eliminate restrictions among themselves on international movements of factors of production; while in an economic union members proceed beyond the requirements of a common market, to unify their fiscal, monetary and socio-economic policies.

The exercise therefore would seem to be directed towards achieving the highest level of customs union type operations within the framework of the Eastern Caribbean Common Market consistent with the particular circumstances in the OECS area. Close reference to the detailed provisions of the ECCM Agreement reveals that it contains many elements that their implementation would go much beyond purely customs union operations. Nevertheless the efficacy of those elements in large part depends on the effectiveness of the customs union components.

Accordingly, the structure adopted for this document starts by focussing on the provisions in the ECCM Agreement which are directly facilitative of customs union operations.

In addition to identifying those particular features, the first section incorporates a short overview of their general application.

The economic relationships of the OECS territories have the unique feature that while together they constitute a common market, they all also participate in the wider common market, Caricom. This ECCM-Caricom relationship is looked at in the second section, with concentration on the aspects that most closely affect the intra-OECS customs union relationship. Inevitably several other aspects of the ECCM-Caricom inter-relationship are not brought out in this text.

The third section provides a review of the broad body of customs union concepts, to bring out the nature of such arrangements and the criteria that from time to time have been accepted as applying to them. This is supplemented by a summation of the effects that are generally attributed to customs union arrangements.

The fourth section provides some comments on applicability of usually accepted criteria in the circumstances of the OECS/ECCM area. Inevitably it also implies a preliminary conceptualisation of customs union operations in the particular circumstances of the OECS, with major attention being given to the movement of goods, which is the primary concern of customs unions. Regarding the latter, it is worth noting that the term customs union is developing a more generalised application, and is often used in reference to what may be deemed the next higher form of integration, the common market. This arises from the basic situation that such arrangements for the movement of goods are invariably related to encouraging economic factor movements.

This paper does not deal with a series of related ongoing exercises at the level of Caricom. In this regard particular mention may be made of the harmonization of the ECCM cet and the Caricom cet; the new examination of Caricom's rules of origin; the newly introduced regime for agricultural products; and the various decisions in the Nassau Understanding that seek to modify sub-regional trade. The equal treatment

of the OECS territories within the CARicom framework in all these matters, and the common approach to the Caricom relationship can for most practical purposes be left aside in considering the intra-OECS customs union relationship.

Equally it should be noted that the circumstances in the OECS/ECCM combine features that go much beyond merely the movement of goods. The OECS territories already have in place some features like common currency, single Central Bank, that are more usually associated with economic union. These elements which are strongly facilitative of a deeper intra-OECS customs union relationship, and encouraging for freer movement of the economic factors of production, are the subject of a separate study. The consideration of matters relating to allocation of industry, complementarity in production lay beyond the immediate objectives of this paper where the focus is to consider some of the implications and options of deepening the customs union relationship within the OECS.

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I - THE EASTERN CARIBBEAN COMMON MARKET (ECCM) FRAMEWORK

1. In a Customs Union, the primary function is to create a regime for the movement of goods that is deemed to be beneficial to the participating countries. The standard approach is for the members to eliminate all tariffs among themselves, and in addition to form a common tariff against all other countries with which there is a trading relationship. To achieve the former is a matter of adopting mutually advantageous national legislative measures favouring the partners; but to achieve the latter it is necessary for agreement to be reached on a common tariff nomenclature or schedule, and a set of identical tariff rates.

Immediately a comparison can be made of these generally accepted basic characteristics of a customs union, as against the provisions for them in the ECCM Agreement.

ECCM Provisions

2. The provisions in the ECCM Agreement concerning the movement of goods approximate to these two main criteria. From the outset the ECCM arrangements required the abolition of import duties on goods deemed to be eligible for tariff-free treatment, consigned from one member territory to another. Parallel with this there was the decision to establish a common customs tariff on goods originating in non-member territories and countries.

Intra-ECCM Trade:

3. The stipulations regarding intra-ECCM trade defined import duties so as to include any tax or surtax of customs, and in addition any other charges of equivalent effect - whether fiscal, monetary or exchange - which are levied on imports. Furthermore, the non-application of import duties

in intra-ECCM trade was emphasised by the specific indication that this would also be the case for goods produced in a partner country though not produced in the importing country, and that the treatment of such products would be on the basis of non-discrimination among partner sources as regards any internal charges that may apply.^{1/}

4. As regards the effect of internal taxation on goods imported from partners, the provision expressly forbade the application of any fiscal charges in excess of what applies to like domestically produced goods. Also, provision was made that no charges should be so applied as to afford effective protection to like domestic goods, whether directly or indirectly. Additionally, members were forbidden to apply fiscal charges to goods imported from partners which the importing country does not itself produce, in such a way as to afford effective protection of the domestic production of substitute goods.^{2/}

5. The provisions therefore sought to achieve the principles of:

- (i) easy movement of goods of area origin within the ECCM, free of trade duties and charges, whether applied directly or indirectly;
- (ii) equality of treatment of partners' products on the same basis as that accorded to domestic products;
- (iii) access to the domestic markets of the member countries, of goods produced in partner countries, under conditions where no protection is accorded to domestic producers of like goods or of substitutes.

Extra-ECCM Trade:

6. In respect of trade with countries outside the ECCM area, article 7 of the ECCM Agreement provided for the establishment of a common customs tariff.

^{1/} ECCM Agreement Article 5

^{2/} ECCM Agreement Article 8

No criteria was set in the Agreement for the method of determination of the common rates, how the common tariff should be brought into effect, or how it should be administered. It is therefore worthwhile to recall that at the time of establishing the rates of duties for the ECCM common customs tariff (CCT), although some difficulties arose from the existence then of various preferential obligations, the prime consideration was to set up a tariff in conformity with the perceived economic developmental and financial interest of the territories in the ECCM group.

7. The ECCM participants were not 'bound' in the free selection of duties for the common tariff, and they could have made them higher if they so wished. However in the absence of a better system, the approach adopted was based on the arithmetical average of the then country rates, as far as was logically justifiable. In the process practically all raw materials and socially sensitive goods were made duty free; and for machinery and other production goods very little (if any) duties were provided. In addition the transitional arrangement was built into the common tariff that for some items special (national) duties would be retained to be gradually adjusted towards a common rate.

8. Aside from the foregoing, the territories retained their individual treatment of extra-ECCM trade relations, particularly in the application of charges having equivalent effect to customs duties, and also in the regulation and administration of trade. As a consequence there has not been uniformity throughout the ECCM area in such matters.

Application of the Provisions

9. In implementing these provisions of the ECCM Agreement, import duties between the member states were^{3/} deemed to be eliminated from the inception of the ECCM, and in 1972 the common external tariff came into effect. In its first formulation the ECCM CET was a two-column tariff with general and preferential rates; but this was changed to a single column tariff in 1978 to conform with the changed situation which derived from the EEC/ACP relationship that emerged under the Lome II Convention. Subsequently,

^{3/} The ECCM Agreement was signed at Grenada, 11 June 1968 and came into force 11 July 1968.

in 1979, the CET was updated to achieve a wider coverage of items. For a limited number of items individual states retained the right to apply the Special Duty rates instead of the common ECCM rate. It was understood that this would be for some limited period; that the special rates would be altered from time to time in the direction of the common rates; and that progressively the number of items attracting special rates would be gradually reduced. It should however be noted that even at 1985 the ECCM CET is not yet applied by all the OECS territories.

10. Consistent with the application of a common external tariff, the OECS territories agreed on a common set of principles for the interpretation of the tariff. These rules for interpretation are deemed to be an integral part of the tariff, and are set out in the notes that precede the rates of import duties.

11. In addition, the common external tariff incorporates a list of Conditional Duty Exemptions and Reductions. This list contains the cases in which the governments participating in the ECCM may admit goods which are dutiable in the customs tariff, either duty-free or at a duty rate lower than the rates provided for in the common tariff. The goods granted such treatment need to be imported under the conditions specified in the list, which indicates the uses that would justify the special treatment.

12. All decisions concerning the granting of these exemptions and reductions fall within the executive competence of the individual governments, who are free to refuse the exemptions should they so decide. An important qualification is that the OECS/ECCM countries should withhold those benefits from goods or articles which are obtainable at comparable cost from a manufacturer in the ECCM area.

13. While the foregoing describes the general situation of extra-OECS trade from the standpoint of the ECCM provisions, account has to be taken that in treating the external trade of the OECS, trade with Caricom stands in a special relationship.

14. All the OECS territories participating in the ECCM are in addition members of the Caribbean Community and Common

Market (Caricom) which includes also Barbados, Belize, Guyana, Jamaica and Trinidad and Tobago. Subject to similar area-origin criteria under Caricom, trade with those countries are also carried out free from import duties within the terms of the Treaty of Chaguaramas. That Treaty however has exceptions applying to the OECS territories in its Schedules III and IV, whereby the rates of duty applied to the goods listed in the schedules are established by legislation in each ECCM member state.

15. In regard to the movement of goods the other Caricom countries therefore stand in a similar "custom union type" relationship to the OECS territories as the OECS do among themselves, but for the exceptions in favour of the OECS/ECCM countries under the CARICOM arrangements.^{4/} For practical purposes therefore OECS/ECCM trade may be considered as being conducted at three levels identifiable as: intra-ECCM, ECCM-Caricom, and ECCM/rest of the world.

16. To diverge briefly, if the volume of the global trade of the OECS territories is allocated according to these three categories what emerges is that in a global trade of some EC\$1,717 million in 1982, total intra-OECS trade was only EC\$107m, just 6.2%. Contrasted to this, total trade of the OECS/ECCM territories with the other Caricom countries amounted to EC\$341 million, or about 20% of OECS global trade; and total OECS/ECCM trade with the rest of the world was EC\$1,269 million or 74% of their global trade. Within this over-all picture of OECS global trading, the total of OECS imports was allocated: intra OECS/ECCM 4.2%; From other Caricom 15.3%; and from the rest of the world 80.5%.

17. It immediately becomes apparent that the provisions under the ECCM Agreement applying to intra-ECCM trade related (in 1982) to under 5% of imports, while those affecting non-Caricom trade related to some 80% of imports. Also it is evident that a neat dichotomy between intra-ECCM trade and extra-ECCM trade is not strictly possible because of the special situation of ECCM-other Caricom trade, which accounts for over 15% of OECS imports.

Charges having equivalent effect to customs duties:

18. It is of significance that the ECCM provisions included the prohibition of all charges having equivalent

^{4/} A fuller consideration of the OECS/ECCM-Caricom relationship is pursued at Section II

effect to customs duties in respect of intra-ECCM trade. The reason for prohibiting such charges is that they have restrictive effect on free movement of goods in just the same way as custom duties have. Similarly the reason for arriving at a desirable level of uniformity in the application of such charges in extra-ECCM trade is to minimise the scope for trade diversions and distortions.

19. The best definition of the concept has been stated as...."any pecuniary charge imposed unilaterally, however small and irrespective of its title and method of collection, which is levied on goods because they are crossing a border, constitutes a charge having equivalent effect to customs duty". Consistent with this, it should be borne in mind that a pecuniary charge forming part of a general system of internal taxation applied to national and imported goods on precisely the same terms, would not be treated as being a charge having equivalent effect to that of a customs duty.

20. It follows that not only is the restrictive effect on trade important, but also that the principle of non-discrimination in intra-ECCM trade in respect of domestic and non-domestic goods, (the principle of equal treatment), should be observed. In this context one needs to consider the range of special taxes chargeable on imports that supplement import duties in the OECS/ECCM territories.^{5/}

21. Review of the supplementary charges and taxes on imports reveals a wide range variously designated: stamp tax; stamp duty; package tax; excise duty; consumption tax; consumption duty; surtax on value; customs surcharges on certain goods categories; surcharge on consumption tax for selected items; purchase tax. As can be seen in Summary Table 1, not only is there variation as between the particular charge, tax or duty, adopted by each country, but there also is variation in the rate and application even where a particular type of charge, duty or tax is applied by several countries.

22. Some of these charges, duties and taxes form part of the general system of internal taxation and are impartial between domestic and non-domestic ECCM goods - in particular, purchase taxes and consumption taxes which are normally levied

5/ To the extent that such charges, taxes and other pecuniary impositions do not form part of a general system of internal taxation, they would be incompatible with customs union functioning.

for revenue earning purposes, rather than in implementation of a policy toward external trade. Some others however apply only to goods crossing the customs border, for example, package tax (most usually levied at a flat rate); stamp tax or duty (most usually ad valorem on cif value); surtaxes on import value; and customs surcharges.

23. It is of course necessary to examine the applicability and operation of each of these charges, duties or taxes in detail before conclusions can be reached as to whether there would be a distortive effect on the common external tariff.

Regulation and Administration of OECS/ECCM Trade:

24. In addition to unification of the OECS/ECCM common external tariff and the question of charges which have equivalent effect to customs duties, there are a range of non-tariff elements that affect trade. In this regard it is not inappropriate to recall that within the terms of the General Agreement on Tariffs and Trade (GATT), the ECCM arrangements should so operate that substantially the same duties and other regulations of trade are applied by each of the participating countries.

25. Given the wide acceptance of the GATT definition among trading nations it follows that in reviewing the operation of the ECCM, consideration should be given not just to the tariff framework but also to the range of non-tariff aspects affecting trade.

26. At the level of general trade regulations, (i.e. in terms of prohibitions, licencing, permits and special certifications), a substantial degree of uniformity has already been achieved throughout the OECS area. For ease of reference and comparison the general import trading regulations of the seven OECS territories are brought together in Summary Table 2.

27. The OECS territories maintain few prohibitions on imports. As would be noted from the condensed information in the summary table, the particular prohibitions range from general to specific. Most of the OECS territories maintain a general prohibition against all imports from South Africa; and it would seem that there is no other such all-embracing

prohibition. In some cases there is a more limited general prohibition against the transmission of perishables through the general mail service. But for the remainder, such prohibitions as operate are specific whether as to country or as to products. In one country there is a specific drug prohibition (hexachlorophene), as also of pyrotechnics products; in another there is prohibition of imports of processed fruits and vegetables except from specified sources; and in one other country there is prohibition of bags, sacks, etc. previously containing cotton. There is only one case where prohibition has been explicitly stated in terms of goods competing with local products.

28. As regards licensing requirements, the general practice in each of the OECS territories is that most goods are imported under open general licence; but in each case this is supplemented by a list of items that require individual licensing - and the specific items on the lists vary from the one territory to the next. In addition there are specific licensing requirements for pesticides in two of the territories; and in another territory there is the requirement for licensing of imports from centrally planned European and Asian countries. Where specific licences are required, most of the territories have the provision that they are usually valid for six months; but in any event the goods must arrive before the end of the calendar year.

29. Similarly, there is a fair measure of uniformity as regards items of imports that require prior approval and permits. In every territory drugs and pharmaceuticals fall in this category; and in fact it is only in one territory that this particular requirement applies to other products - in that case "live animals meat and certain meat products", and "firearms ammunition and explosives".

30. Generally, live animals, meats and some food products are treated along with plants and parts of plants, as requiring the imports to be accompanied by certificates, primarily for satisfying health requirements. Beyond that some special certifications may be required depending on the nature of the goods. Sanitary certificates (e.g. certification of disinfection where there are importation of used clothing), phytosanitary certificates (for live plants), and veterinary certificates are required in all the territories. In addition

at least one territory requires foreign meat inspection certificates for imports of frozen, chilled, salted or canned meats; and in another territory certificate of origin is required for all processed fruit and vegetables.

31. This very capsulated overview of the several sets of general trade regulations is meant to show what exists and also the variations as between the individual OECS territories. The latter consideration is important in the context that a customs union embracing all the OECS should ideally operate as a single customs territory. It would therefore be immediately apparent that it would be eminently desirable to have the maximum obtainable uniformity of trade regulatory devices, to the extent that overall objective of fuller customs union operations is pursued.

SUMMARY TABLE 1
SUPPLEMENTARY TAXES/DUTIES ON IMPORTS

ANTIGUA/BARBUDA	DOMINICA	GRENADE	MONTserrat	ST. KITTS/NEVIS	SAINT LUCIA	SAINT VINCENT + THE GRENADINES
<p><u>CONSUMPTION TAX</u> (Act 12 of 1968) And 1974 7%, 12% or 20% on all goods other than specified as subject to other taxes in second and third schedules where specific rate on volume.</p>	<p><u>CONSUMPTION TAX</u> where ad valorem tax rate 10 - 40% dependent on goods. Where specific duty separate system.</p>	<p><u>CONSUMPTION TAX</u> foodstuffs, cloth- ing, Nevs. and tobacco, certain chemical products and preparations (mainly) medicinal, cosmetic and cleansing), cement jewelry manufact- ures of metal, headgear of straw, phono records, matches. (Levied on cif and import duty).</p>	<p><u>CONSUMPTION TAX</u> on certain CARICOM/also certain non- CARICOM products.</p>	<p><u>CONSUMPTION TAX</u> 15% cif value on all goods, (except for clothing which 12%)</p>	<p><u>CONSUMPTION TAX</u> (Act 30 of 1968) alcoholic bever- ages, tobacco goods, toilet articles, jewelry, phono records, gasoline and diesel, cement, motor vehicles, radios and TV's, furniture.</p>	<p><u>CONSUMPTION TAX</u> Varying rates 0-55% on wide range of goods inc. certain foods, beverages medicinal, fuels, footwear, china, crystals, air- conditioners, vehicles, perfumery and cosmetics, clothing.</p>
<p><u>SURTAX ON VALUE</u> * 3% on value of listed goods.</p>	<p>(SURCHARGE ON CONSUMPTION TAX ABOLISHED)</p>	<p>PURCHASE TAX 20% on Radios and Television Sets</p>	<p>(SURTAX ON IMPORTS ABOLISHED)</p>			
<p><u>CUSTOMS SURCHARGE</u> (Act No. 12 of 1977) 3% on cif on certain imported building materials and food- stuffs</p>	<p><u>SERVICE CHARGE</u> 5% of cif</p>	<p><u>NATIONAL IMPORT LEVY</u> 5% on all imports</p>	<p><u>SERVICE TAX</u> 5% on cif</p>			
					<p><u>EXCISE DUTY</u> Rum (local) \$6.00 per proof gal. Excise equalization Duty \$3.50 on rum from CARICOM</p>	<p><u>EXCISE DUTY</u> (On all spirits) Rum \$9.00 per proof gal.</p>

* 1975

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SUMMARY OF TABLE 1 (CONT'D)

ANTIGUA/BARBUDA	DOMINICA	GRENADA	MONTserrat	ST. KITTS/NEVIS	SAINT LUCIA	SAINT VINCENT & THE GRENADINES
	(Stamp tax abolished) <u>STAMP DUTY</u> 5% cif levied on bills of entry. Certain reduced rates and exemptions in effect.	<u>STAMP DUTY</u> 15% of cif value on each set of customs entry bills (where not exempt from customs duty).		<u>STAMP TAX</u> 2% of cif value	<u>STAMP DUTY*</u> 7% on cif value (but fertilizers and chemicals 1/5 of 1% milk products and baby foods 5% . School books 3% Cigarettes 15%)	<u>STAMP TAX</u> 5% of cif value
	<u>PACKAGE TAX</u> EC\$ 0.50 per c. ft or part on packages. EC\$1.00 per unit in bags or drums. EC\$0.50 per c. ft or cwt. loose or unpacked.	<u>PACKAGE TAX</u> EC\$0.25 per 5 c. ft minimum charge being EC\$1.00	<u>PACKAGE TAX</u> \$0.15 per package (parcel post only).		(Package Tax repeated)	(Package Tax abolished)
All foreign transactions subject to a	Foreign exchange charge 1.5%	Foreign exchange tax 5% (except for payment for imports of some basic foods and drugs)	Foreign exchange charge 0.75%		Foreign exchange tax 2%	Foreign exchange Levy 1%
	Surcharge on petroleum products 50¢ per gal (except kerosene)					

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SUMMARY TABLE 2
PROHIBITIONS, LICENSING, PERMITS AND SPECIAL CERTIFICATIONS AFFECTING IMPORT TRADE

ANTIGUA/BALEUDA	DOMINICA	GRENADE	MONTSERRAT	ST. KITTS/NEVIS	SAINTE LUCIA	ST. VINCENT & THE GRENADINES
<u>PROHIBITIONS</u> Imports from South Africa.	<u>PROHIBITIONS</u> Imports from South Africa. Perishable biological materials on mail service.	<u>PROHIBITIONS</u> Imports from South Africa, Chile, South Korea.	<u>PROHIBITIONS</u> Fireworks (pyrotechnics). Imports of hexachlorophene.	<u>PROHIBITIONS</u> Perishable biological materials on mail service. Used bags, sacks, baling material previously containing cotton.	<u>PROHIBITIONS</u> Imports from South Africa. Items on Fifth Schedule of Customs Act No. 25 of 1967	<u>PROHIBITIONS</u> Imports from South Africa. Some goods including fireworks, iron trees.
<u>LICENSING</u> Most goods open general license. A range of items need individual licenses.	<u>LICENSING</u> Open general license most goods. Pesticides Range of items need individual license.	<u>LICENSING</u> Open general license most goods. Pesticides	<u>LICENSING</u> Open general license most goods Range of licensed items including certain foodstuffs and wood furniture and other manufactured goods of wood.	<u>LICENSING</u> Most imports free of licensing. Range of licensed items. Goods from centrally planned European and Asian countries.	<u>LICENSING</u> Range of goods (including fruits vegetables, some locally manufactured items).	<u>LICENSING</u> Most goods under general license. Goods from Japan Range of items need individual license.

SUMMARY OF TABLE 2 (CONT'D)

ANTIGUA/BARBUDA	DOMINICA	GRENADA	MONTserrat	ST. KITTS/NEVIS	SAINT LUCIA	ST. VINCENT & THE GRENADINES
<p><u>PERMITS</u></p> <p>Drugs and Pharmaceuticals (require proper approval).</p>	<p><u>PERMITS</u></p> <p>Drugs and Pharmaceuticals (prior approval).</p>	<p><u>PERMITS</u></p> <p>Drugs and Pharmaceuticals (prior approval).</p> <p>Motor vehicles with engine capacity greater than 2,000 cc (prior approval).</p>	<p><u>PERMITS</u></p> <p>Drugs and Pharmaceuticals (prior approval).</p>	<p><u>PERMITS</u></p> <p>Drugs and Pharmaceuticals (prior approval).</p>	<p><u>PERMITS</u></p> <p>Certain drugs and Pharmaceuticals.</p> <p>Live animals, meats and certain meat products.</p> <p>Firearms, ammunition & explosives.</p>	<p><u>PERMITS</u></p> <p>Drugs and Pharmaceuticals (prior approval).</p>
<p><u>SPECIAL CERTIFICATIONS</u></p> <p>According to nature of goods.</p> <p>Live animals, plants parts of plants and food-stuffs require health certificates.</p>	<p><u>SPECIAL CERTIFICATIONS</u></p> <p>Sanitary, veterinary free sale etc. (according to nature of goods).</p> <p>Live animals, plants parts of plants and food-stuffs need accompanying health certificates.</p>	<p><u>SPECIAL CERTIFICATIONS</u></p> <p>According to nature of goods.</p> <p>Live animals, plants parts of plants and food-stuffs require health certificates.</p> <p>Foreign meat inspection certificates required for frozen, salted, pickled or canned meat.</p>	<p><u>SPECIAL CERTIFICATIONS</u></p> <p>According to nature of goods.</p> <p>Live animals, plants, parts of plants and food-stuffs require health certificates.</p>	<p><u>SPECIAL CERTIFICATIONS</u></p> <p>According to nature of goods.</p> <p>Disinfection certificates required for plants, plant products and goods containing cotton seed, etc.</p> <p>Live animals require health certificates.</p>	<p><u>SPECIAL CERTIFICATIONS</u></p> <p>According to nature of goods.</p> <p>Phytosanitary certificates for imports of live plants and parts of plants</p>	<p><u>SPECIAL CERTIFICATIONS</u></p> <p>According to nature of goods.</p> <p>Live animals, plants parts of plants and food-stuffs require health certificates</p>

ANTIGUA/BALEBUDA	SPECIAL CERTIFICATIONS	Certificates of origin required for all processed fruit and vegetables.					
DOMINICA	SPECIAL CERTIFICATIONS						
GUENADA	SPECIAL CERTIFICATIONS						
MONTSERRAT	SPECIAL CERTIFICATIONS						
ST. HELENS/NEVIS	SPECIAL CERTIFICATIONS	Certification of distinction with used clothing.					
SEYHELEUA	SPECIAL CERTIFICATIONS	Certification of distinction with packages of used clothing.					
ST. VINCENT/ GRENADINES	SPECIAL CERTIFICATIONS						
	<u>OTHER</u>	For a range of items including: sugar, rice, onions, carrots, cabbage imports are reserved for the Central Marketing Corporation.					
	<u>OTHER</u>	State Trading Corporation bulk imports rice and brown sugar.					
	<u>OTHER</u>	Imports of cement, rice in bulk and raw sugar reserved for Government's Marketing and National Importing Board.					
	<u>OTHER</u>	Ministry of Trade handles bulk imports of flour, rice, milk.					
	<u>OTHER</u>	Ministry of Trade handles imports of bulk sugar and rice.					
	<u>OTHER</u>	Govt. Marketing Corp. imports all sugar and rice. Imports of Milk.					

II - THE ECCM - CARICOM INTER-RELATIONSHIP

32. An important element in considering OECS/ECCM customs union operations, is that the ECCM arrangements are embraced within the wider activities of the Caribbean Community and Common Market (Caricom). It would therefore not be inappropriate to consider the situation in terms of a customs union within a wider customs union. The differentiations between ECCM and Caricom then become important.

33. The manner in which this evolved was that the Caribbean Free Trade Association (Carifta) came into effect 1 May 1968 with four members - Antigua, Barbados, Guyana and Trinidad and Tobago. The other countries (excluding Montserrat) which presently constitutes the OECS acceded to Carifta 1 July 1968. Jamaica and Montserrat acceded to Carifta 1 August 1968. Parallel with the establishment of Carifta, the now OECS countries (then the West Indies Associated States) negotiated the East Caribbean Common Market (ECCM) Agreement which was signed on 11 June 1968 and came into effect 15 July 1968.

34. The primary consideration in formulating the ECCM Agreement was to devise a mechanism enabling its participants to take fullest advantage of the concessions available to them under the Carifta arrangements. The strategy was to advance the process of integration among themselves beyond what was stipulated in Carifta. The East Caribbean Common Market (ECCM) would operate within the wider free trade zone with the ECCM territories acting jointly.^{1/} For this purpose there was to be a higher level of coordination and harmonisation among the ECCM countries in the main fields of economic policy and implementation.

35. The Carifta Agreement was superseded by the Treaty establishing the Caribbean Community - 4 July 1973, which raised the status of Carifta to Common Market (Caricom).

^{1/} This explains why various provisions identical to those in the Carifta Agreement were included, and still appear, in the ECCM Agreement.

To the Carifta arrangements were added provisions for a common external tariff and common protective policy, harmonisation of incentives to industry, and various elements of functional co-operation that could permit extending the scope of the integration arrangements.

36. The evolution of Carifta into Caribbean Community and Common Market had two significant elements for the OECS/ECCM: first, several measures not dissimilar to the ECCM initiatives began to be introduced at the Caricom level; and secondly, the special concessions that had been provided in Carifta for the ECCM territories were elaborated into a Special Regime for the LDC's of Caricom.

37. In the meantime there were not any substantial amendments to the integrative provisions of the ECCM Agreement. It seems reasonable to accept that the rationale for establishing the ECCM within Carifta is no less valid in respect of Caricom, taking account that the formal integration provisions in the ECCM Agreement remain deeper than those of Caricom. For the purposes of this paper, the significant consideration is that a range of Caricom requirements apply throughout the ECCM area; and the implementation of decisions taken at the Caricom level which are agreed for the OECS countries,^{2/} are administered simultaneously with decisions taken under the ECCM umbrella.

37a. Given the background to the evolution of the ECCM and Caricom respectively, it is of some importance that the Caricom Treaty Annex contains a provision at Article 67 which gives express recognition to the ECCM. This is stated in the terms:

"Nothing in this Annex shall effect any decisions or things done under the East Caribbean Common Market Agreement immediately before the coming into force of this Annex or the continued application and development of that Agreement to the extent that the objectives of that Agreement are not achieved in the application of the objectives of this Annex, provided such application or development does not conflict with obligations under this Annex of the Member States which are parties to that Agreement".

^{2/} In applying the transitional and other special arrangements in Caricom favouring the ECCM territories (Caricom LDC's), Caricom decisions frequently contain elements meant to meet their particular circumstances.

Tariff Provisions and Origin Rules

38. The respective provisions governing the operation of the ECCM and Caricom both include provisions prohibiting the application of import duties, taxes, surtaxes or any other charges having equivalent effect to customs entries, to goods originating within the common markets. They both also have the proviso that this treatment does not extend to the imposition of non-discriminatory internal charges. In addition they both have origin criteria that must be met if goods are to receive ECCM area treatment, and Caricom area treatment, respectively. Beyond these similarities, there are particular provisions in Caricom that apply to the OECS/ECCM countries under Caricom's special regime of the Less Developed Countries, including a situation in which the OECS/ECCM countries may retain customs duties on goods from the Caricom MDC's. The specifics of the two sets of provisions, and the de facto situation arising from their simultaneous application, results in a somewhat complex set of relationships.

39. A central consideration is that the ECCM common external tariff (CET) stands side by side with the Caricom common external tariff. Both CET's being based on the Customs Cooperation Council Nomenclature (CCCN) results in a high degree of coincidence of tariff heading numbers and the related description of goods. There are however differences in the levels of disaggregation of the tariff heading, in some cases resulting in a tariff number applying to one set of goods in the ECCM CET but a different set of goods in the Caricom CET.^{3/} Further, it has to be noted that for many products the rate that applies in the ECCM CET is different from the rate that applies in the Caricom CET.^{4/} On the whole the general level of tariff of the ECCM CET is lower than that of the Caricom CET.

40. Also of significance are the juridical differences in the conditions for ECCM area treatment and Caricom area treatment. The latter apply to goods entering ECCM countries from non-ECCM-Caricom countries. Goods moving within the ECCM area, to be eligible for ECCM area treatment should conform to one of the following conditions:

^{3/} To give an example:
in Caricom 49.11.1 - Unframed photographs, maps, charts
diagrams.

In ECCM 49.11.1 - Trade advertising material, commercial
catalogues and the like.

^{4/} Example: 06.03 - Cut flowers and flower buds etc.
Caricom CET 45%; ECCM CET 25%

- (a) be wholly produced within the ECCM area;
- (b) fall within a description of goods listed in a "process list";
- (c) contain materials imported from outside the ECCM area that do not exceed a stipulated percentage of the export price.

In addition these "origin rules" provide that the seventy-three items which constitute the Basic Materials List (attached as Schedule to Annex A of the ECCM Agreement) would be regarded as originating wholly within the Eastern Caribbean Common Market. Regarding (b) it must be remarked that there is not an ECCM process list.

41. The origin provisions and qualifications in the Caricom context are different in that goods to be treated as being of Caricom origin must be either:

- wholly produced within the Caricom region
- or - produced within Caricom, wholly or partly from materials imported from outside Caricom, by a process which effects a substantial transformation.

The characteristics of "substantial transformation" are spelled out variously as:

- (a) tariff heading classification of the commodity different from the classification of the materials;
- or (b) conforming to a particular prescribed process;
- or (c) meeting the criteria that the value of extra-regional materials used does not

exceed a stipulated percentage of the^{5/}
export price of the finished product.

42. The Caricom rules of origin, however, sets out the list of conditions that are to be compiled with the MDC's^{6/} and the LDC's respectively, for a wide range of products. In some cases where the LDC's are permitted the value of extra-regional materials used not to exceed 80%, the MDC's are limited to 65% in other cases where the LDC's are permitted 60% of extra-regional materials, the MDC's must make a tariff jump. Where a time qualification applies (e.g. 2 years after entry into operation of the new origin system) the LDC's are in the majority of cases given a longer period - 4 years.

43. It is far from clear whether or not OECS customs officials apply any general distinction in the treatment of imports, as between ECCM goods and non-ECCM-Caricom goods, to satisfy the ECCM origin rules as distinct from the Caricom origin rules. The evidence suggests that at the de facto level of day-to-day operations the Caricom rules of origin are applied in respect of both ECCM goods and non-ECCM-Caricom goods. To a large extent this seems to be attributable to two factors - first, the absence of an ECCM Process List, and second the availability of Caricom rules for manufactures from within the LDC's. Therefore by default the Caricom origin rules come to be applied in intra-ECCM trade. The consensus seems to be that no real harm is done because (a) almost all of ECCM trade is liberalised anyway, and (b) the level of trade in manufactures is not very great.

44. A related element that bears noting, is that whereas different customs documents/forms were used depending on whether imported goods originate from within the ECCM or from non-ECCM-Caricom countries, this practice has virtually ceased and Caricom documents are used. This again is by default.

45. The point was made earlier that decisions taken within the ECCM frame are implemented simultaneously with decisions taken at the Caricom level (to the extent that the latter apply to the OECS territories). A good recent example is the range of tariff revisions that were embraced in the Nassau Understanding. Included in that package, were decisions to increase the rates of customs duty on an agreed list of items. Subsequent translation of that list of items into

5/ Article 14 and Schedule II of the Annex to the Treaty establishing the Caribbean Community.

6/ Schedule II of the Annex to the Treaty establishing the Caribbean Community and Common Market.

tariff headings had the consequential effects for the ECCM CET of introducing a measure of disaggregation, in some categories in addition to changing the rates of duty. Similarly, it is of importance to note that decisions at Caricom level do on occasion have the effect of stimulating amendment in the ECCM Agreement. Annex II to the ECCM Agreement adopted in 1975, was consequential on change in the value-added qualification for Caricom LDC's, from 50% to 60%.

Some Further Considerations

46. Concerning other aspects that affect the movement of goods, both the ECCM and Caricom texts have similar provisions concerning Revenue Duties and Internal Taxation, in both cases the objective being to achieve non-discriminatory treatment as between imports (eligible for the respective area market tariff treatment), and similar goods and substitutes in domestic production. In the previous section of the paper attention was drawn to the importance of eliminating any discriminatory effects that may derive from "other charges having equivalent effect to customs duties" within the context of OECS customs union operations. That observation is no less valid in the wider context of Caricom, as between the total membership of Caricom, and as regards the ECCM/Caricom inter-relationship.

47. In a similar context the non-tariff mechanisms for the regulation and administration of trade ought also to be non-discriminatory in their operation, as between the total membership of Caricom, and as regards the ECCM/Caricom inter-relationship. At the Caricom level these mechanisms are more diverse and sophisticated than at the ECCM level. While no attempt is made here to provide a coverage for Caricom as was done for the ECCM, it can be observed that the evidence suggests they are impartial in their operation as between the OECS countries and the non-OECS-Caricom countries.

48. As regards the treatment of exports within the two common markets, they both leave open the right of participating members to refuse as eligible for area treatment goods that enjoy subsidy in the exporting partner country (i.e. export draw-back). In addition they both contain identically worded provisions in respect of dumped and subsidised imports.

Taking all this together, the rules of competition appear to be essentially the same except for the concessions in Caricom that apply to the ECCM territories (for example those of Caricom Annex Schedules III and IV).

49. However, it might also be noted that the Caricom text expressly prohibits the application of export duties, and provides for freedom of transit - elements which do not appear in the ECCM text, and which in their applications become in effect extensions of the ECCM provisions. In a similar manner the specific provisions in Caricom permitting the temporary application of quantitative restrictions as a result of balance of payments difficulties could legally be applied on goods of area origin by OECS countries by virtue of their membership in Caricom although there is not a similar provision in the ECCM Agreement.

50. Such aspects bring into focus the decision-making processes behind the ECCM/Caricom inter-relationship, within the OECS. The general pattern is for measures introduced at the Caricom level to be reviewed by the OECS Secretariat and within the OECS Economic Affairs Committee to determine the consensus that the group should pursue within the Caricom Council. By this means the OECS group (as Caricom LDC's) invariably manages to have decisions at Caricom reflect concessions that are deemed necessary to their unique circumstances. Such concessions are seen as being within the framework of Caricom's Special Regime for the Less Developed Countries.

51. An important aspect that has to be borne in mind, is that the mutual rights and obligations of the OECS countries as among themselves is defined by the ECCM text: while the Caricom text defines these matters as between an OECS country and a non-OECS-Caricom country. However, the application of Caricom provisions (that are outside the ECCM) among the OECS States brings into play a juridical relationship between OECS countries that derive from their participation in Caricom.

Transition and Harmonisation

52. Within Caricom, the OECS group benefit from two types of concessions - those that are transitional as for example the items of Caricom Schedules III, and others that

are "permanent," being essentially differential treatment favouring the LDC's, which are reviewed from time to time. For the purposes of this paper there is not really a need to analyse the second group of concessions; and among the first group (the transitional concessions) the most important is that relating to the common external tariff.

53. The provisions for establishing the Caricom common external tariff allowed for the ECCM CET to be seen as fulfilling the initial obligations of the OECS countries in this respect.^{7/} But it also provided that this situation would be kept under review, in the light of the prevailing economic situation of the LDC's to determine an appropriate phasing for arriving at a single common external tariff covering the whole Caricom area. By this means the ECCM common tariff was left to operate parallel with the Caricom common external tariff pending their harmonisation.^{8/} In practice there is a measure of overlap of the Caricom rates and the ECCM rates so that in fact for about 45% of the items in the tariff the rates are identical. For the rest there is a differential between the Caricom rates and the ECCM rates, the latter being the lower in most cases.

54. The situation is much less clear-cut in other aspects of common protective policy. Both the agreements leave participants free to act independently in respect of third country trading partners. In the case of the ECCM this would be conducted within the framework of harmonization of development, investment and industrial policies, and also uniform treatment of non-resident capital within the framework of common monetary policy. The Caricom undertakings are that member states would pursue such policies (including quantitative restrictions) on imports from third countries, as would facilitate the implementation of a common protective policy as soon as practicable; and further, there should be a seeking for progressive co-ordination in trade relations with third countries or groups of third countries.

55. While the conditions for liberalizing the movement of goods is generally the same in both the ECCM and Caricom,

^{8/} The process as originally envisaged would have commenced August 1977, and concluded August 1981.

there are substantial differences between the two as regards facilitating the movement of production factors. For example where ECCM contains the provision that....."member territories shall on the coming into force of this Agreement immediately abolish as between themselves restrictions on the movement of capital belonging to persons resident therein. Current payments connected with the movements of such capital between member territories shall not be subject to any restrictions"^{9/}.....in Caricom there is only a commitment to....." examine ways and means for the regulated movement of capital within the common market."^{10/}

56. Similarly, where the ECCM provides that steps taken by member territories to free the movement of persons should be kept under review and evaluated, and that..... "proposals for the phased removal of obstacles to the freedom of movement of persons within the (ECCM) common market"..... should be submitted, Caricom has only a saving provision in respect of movement of persons in Caricom.^{11/} In fact, the Principles of the ECCM Agreement explicitly states that the ECCM activities shall include the abolition as between member territories of the obstacles to the free movement of persons, services and capital.

57. The immediate implications of intended easier movements of production factors, within the ECCM area is that there is greater possibility for benefitting from comparative advantages where they exist. Of course the extent to which this is realised depends on the process of implementation. It is however of much importance that the ECCM operations are meant to work in the area of production to a greater extent than are those of the Caricom. For the present it is the measures for harmonisation of fiscal incentives to industry ~~that~~ is of importance in the ECCM/Caricom relationship, in particular the differential that is granted to the LDC's as against the MDC's in Caricom.

^{9/} OECS Treaty Annex Article 13

^{10/} Caricom Treaty Annex Article 3

^{11/} Caricom Annex Article 38....."Nothing in this Treaty should be construed as requiring or imposing any obligation on a Member State to grant freedom of movement into its territory whether or not such persons are nationals of other Member States".

III - OVERVIEW OF CUSTOMS UNION CONCEPTS

The Basic Propositions

58. The establishment of Customs Unions (and other special tariff arrangements) between politically independent states are often seen as at least a partial solution to many of the economic and political problems encountered in international relationships. The usual line of argumentation is that a Customs Union creates a wider trading area, removes obstacles to competition among the participants, makes possible a more economic allocation of resources, and thus operates to increase production and raise planes of living. In addition, Customs Unions are considered to be conducive to the expansion of trade on a basis of multilateralism and non-discrimination among partners.

59. It is on the basis of such argumentation that sometimes the purpose of a customs union has been stated as essentially to permit (by virtue of a more extensive economic territory) a more developed division of labour better adapted to the existing natural and economic conditions, and consequently the potential to yield a more abundant and lower-cost production destined for the combined market. If this is so, then it may be expected that what would evolve is a greater degree of specialisation, either because each country extends its production of those commodities for which it is better suited, or because within the same category of products the countries agree to specialise on specified types.

60. The generalisation that the larger economic area of a customs union is conducive to increasing the potential and scope for internal division of labour has also been linked with the view that customs union initiatives are movements to promote change in the international division of labour.^{1/}

61. But there also is the other view of customs unions as mechanisms for making higher protection feasible and effective for limited areas going beyond the boundaries of a single state, and promoting greater self-sufficiency for the larger area because self-sufficiency for single states was clearly impracticable or too costly. (It would of course, also follow that under

1/ It should be noted that where this is an objective, the lower the rates of duty in the customs tariffs, the less effect of this kind the customs union would have.

customs union there would be a decrease in the degree of self-sufficiency of each member, to the extent that specialisation develops, although there is an increase in the degree of self-sufficiency of the customs union area as a whole).

62. While each of these propositions would be true in some measure they do not apply equally to different customs unions. For this reason it is desirable and necessary to examine the particular circumstances before arriving at judgements and conclusions.

Nature and Criteria

63. The general view postulates that a customs union should meet three basic conditions:

- (a) complete elimination of tariffs as between the member territories;
- (b) establishment of a uniform tariff on imports from outside the union;
- (c) apportionment of customs revenue between the members in accordance with an agreed formula.

64. From time to time further criteria have been stipulated in customs unions negotiations such as:

- (d) foreign goods requiring only one and the same customs declaration;
- (e) all goods entering from outside the union being subject to the same customs regulations;
- (f) goods imported into the union paying only once the rates fixed by the tariff common to the countries forming the union.

65. International law does not establish any definition of a complete customs union aside from what is stipulated in the General Agreement on Tariffs and Trade (GATT).^{2/} There is stated that - "For the purpose of this Agreement:

^{2/} See Article XXIV paragraph 8(a)

- (a) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories so that
- (i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XXX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and
 - (ii) subject to the provisions of paragraph 9 substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union".

66. What has become accepted in practice as constituting the format for customs union operations centre around this range of characteristics; but there have been variations depending on particular concessions that the involved countries are prepared to make.

67. Historically, customs unions that have been established reflect the features of having; free exchange of the products of the participating countries; uniformity of the external import tariffs of the participating countries and suppression of intra-union tariffs; pooling of customs revenues and their apportionment between the participating countries in accordance with a formula established in advance. However, there also have been cases where provision is made for the removal of tariffs between members, and adoption of a common tariff against imports from the outside - but leave intact (except as subsequently altered by mutual agreement) the whole machinery of import limitations, import licences, special exemptions and administrative and regulatory mechanisms.

Tariffs

68. Provisions for (a) elimination of tariffs internal to the union, and (b) the establishment of a common external tariff on imports from outside the union, are in their way the two primary features of customs unions. It is by effectively combining these two actions that definition is given to the new wider area embracing the participating countries. While the former is on the whole usually straight-forward, taking account that the states are contiguous, to effect the latter tends to be more difficult.

69. Decisions in favour of customs unions often have a proviso that the common tariff should not be "higher" than the tariffs of the member countries prior to the union. In fact this provision in the GATT is stated in the terms that the duties and other regulations on trade "shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of trade applicable in the constituent territories prior to the formation of such union".^{3/} To satisfy this requirement a commonly used approach is to average the national rates for each commodity group, so that some partners move up and others move down to arrive at the common rate.

70. It might, however, be immediately observed that even if the new tariff is made up of the lowest rates previously levied by any of the member countries on each class of imports, the common tariff may still be more restrictive in fact, than the previous tariffs, because customs unions operate to convert revenue duties to protective duties. For this reason, it is often assumed that in a customs union the purpose of the tariffs is protection, not revenue; and that either a tariff will be high enough to bring domestic production into being, or it will not be imposed at all.

71. This in turn opens up the question of whether, or to what extent the customs tariffs of the individual countries were primarily of a protective nature or were mainly for revenue earning purposes. Such consideration of course affects the level of the common external tariff for the various classes of goods that would emerge from negotiations.

^{3/} See Article XXIV 5(a)

It is not easy to distinguish sharply between revenue duties and protective duties. On the one hand, protective duties are those which operate to reduce imports, not only by making commodities of the specific kind involved more expensive to potential customers (and so lessening their consumption) but also, and chiefly by diverting consumption from imported commodities to the products of corresponding domestic industries.

72. On the other hand, revenue duties may be regarded as those duties productive of revenue which do not act as effective stimulus to the domestic production of commodities similar to those paying the duties. Even such duties, however, operate to increase the proportion of aggregate domestic consumption which is directed towards domestically produced commodities.

73. The substantial difference then between revenue duties and protective duties is that revenue duties have only a generalised protective effect, whereas protective duties have both this generalised effect and a special effect in stimulating the domestic production of commodities similar to those subject to the protective duty, (with the consequence that protective duties tend to be more effective than revenue duties as restraints on importation).

Apportionment of Customs Revenues

73a. As regards (c), apportionment of customs revenue between the members, whenever customs revenues are very important, the method of their allocation between the members of a customs union is likely to be a major issue. Generally, the greater the disparity in economic levels between the members, and the greater the differences as between the members in the normal consumption of imported commodities, the greater is likely to be the difficulty in finding a formula for allocation of customs receipts, which can be mutually acceptable.

74. Different approaches have been adopted in the past but none have been without problems. In the Zollverein,* the simplest possible formula of allocation, which is, allocation according to population, was found to be generally practicable; but modification was necessary in at least two instances - in respect of members with relatively high per capita income levels

* Customs union of the German states in the nineteenth century.

and in respect of members with specially important external trade relations.

75. In Customs unions in which British Colonies have participated, (as well as in some other customs unions), allocation was in general according to the place of consumption of the dutiable goods. However, this formula could be difficult to apply either where imported raw materials are processed in one member territory for sale in another, or where wholesale distribution was concentrated in one territory.

76. Although allocation according to consumption has been the more favoured approach, customs unions that embrace contiguous countries still found it necessary to allocate a fraction of the receipts as compensation for administrative expenses to the territory or territories in which the import duties were actually collected. In some cases agreed percentages were applied, and in others lump sum per annum allocations were made.

77. The crux of the problem, however, is that when a common tariff is in operation, the question of transfer of customs receipts will arise mainly in the case where an importer enters goods for customs which will subsequently be sent on to another territory within the union. This is more so the case where the union countries are contiguous and customs boundaries between them are eliminated and also customs services.

Single treatment of Imports

78. The features (d) (e) and (f) - respectively, (foreign goods requiring only one and the same customs declaration; all goods entering from outside the union being subject to the same customs regulations; goods imported into the union paying only once the rates fixed by the tariff common to the countries forming the union) - are often subsumed within the provisions for uniform treatment of imports. Where the countries are contiguous and customs frontiers between them are removed, the logic of the situation would lead to their implementation. However the implementation gives rise to a range of customs administration considerations, not the least of which are ensuring comparable efficiency in the

* Customs union of the German states in the nineteenth century.

several countries of entry, and the locus of authority in matters of administering the customs law and regulations.

Customs Administration

79. To satisfy the criteria for uniform treatment of imports and in particular the features (d) (e) and (f), it has been found desirable in some cases to merge in some degree or fashion the customs administration staffs of the participating countries. This comes not only from seeking greater administrative economies, but also from the fact that when the tariff wall is removed between countries, each is likely to acquire an active concern in the character and standards of customs administration in the other member countries. If the countries are of comparable importance, this concern is greater depending on the extent of their differing economic interests and conditions, and differences in loyalties (as between sectors) in each territory.

Several degrees of merger of customs services have been distinguished:

- (1) Complete absorption by a dominant member of the responsibility for enforcement of the customs laws and regulations.
- (2) A merged central customs and administrative staff responsible to the customs union as a whole (and not to particular members);
- (3) Active participation by officers of more efficient members in the administration of the customs of other members;
- (4) Mutual supervision;
- (5) Complete autonomy of administration with reliance upon mutual integrity and submission to arbitration in case of disputes.

80. One consequential aspect of merged administration is that the greater the extent of unification in the customs services, the more important becomes the question of executive control of the customs administration, and the manner in which such authority is allocated.

Allocation of Authority

81. Beyond the day-to-day administration of customs, there are important aspects concerning the manner in which to effect changes in tariffs, changes in customs codes, and the conduct of negotiations with outside countries on tariff matters. It is with regard to these aspects that questions of allocation of authority arise, for which there are a range of possible alternatives.

82. There is the possibility of the countries participating in the union adopting terms of equality in tariff legislation and administration. By these arrangements changes in the tariff could be made only by mutual consent, with customs administration remaining in the charge of the individual countries, subject only to an agreed common administrative code. In such a situation, policy is decided by standard diplomatic procedures, all the members having equal status, and unanimity is required to institute tariff or administrative changes, and to negotiate effectively with non-member states.

83. There is also the possibility of the sovereign states comprising the customs union establishing a Customs Council which reaches decisions binding on all by majority vote. In this situation customs inspectors, instead of being local civil servants, become officers answerable to the Council. And through the Council negotiations are conducted with third countries, and commercial treaties concluded. This latter aspect is in some cases circumscribed where individual members are anxious to ensure for themselves greater freedom of action in negotiating commercial treaties with third countries.

84. Between those two alternatives is the possibility where the customs laws and administration are "assimilated", with permanent conferences established to supervise the application of the tariff and of the customs regulations. This approach which is looser and more cumbersome than the Customs Council

retains direct participation in decision-making particularly in the crucial areas of:

- (a) harmony of relations as against third countries;
- (b) procedures for tariff revision;
- (c) allocation of revenues from import duties collected in one country on goods destined for a partner.

Inhibiting Factors

85. Whether or to what extent intended objectives are realised depends on a range of circumstances, some of which could inhibit the customs union operation. For example, a significant economic consequence of a customs union is to make a country's territory an additional field of operation for the tariff protection of its partners' industries. This assumes some specific actions for effectively opening the internal market in each country to the goods from partner countries, and could expose local products to competition from lower cost industries in partner countries. But if there is aversion to opening of markets to the competition of each other's industries, there will not be progress toward specialisation, division of labour and such derived economies as may have been envisaged.

86. Perhaps an even more central factor is the extent to which the yield from taxes on trade constitutes a high proportion of total revenue. If a customs union is established between countries which before had only revenue duties, and if all the duties levied by the customs union continue to operate mainly as "revenue duties", an appraisal of the customs union would turn chiefly on its administrative economies, or conveniences, or on political aspects.

87. There are situations where economic factors are not on the whole such as to make specially close commercial ties between neighbouring countries genuinely attractive. They may be typically rival exporters of the same staple commodities; and also they may be poor sources of supply for the goods in most urgent demand from abroad. Further, the existence of price controls, subsidies, etc., make it extremely difficult if not impossible to completely remove trade barriers, unless the process is carried beyond the customs union stage. In addition, where there is heavy dependence on indirect taxation as a source for government revenue, a good deal of the possible administrative economy of customs union is likely to be lost, if the establishment of some uniformity in such taxes did not accompany formation of the customs union.

88. In some cases, there is not the possibility to create a full customs union, because it would involve the establishment of special institutions to perform functions that individual member countries do not have the capacity to undertake on a continuing basis. Invariably this involves not only an additional money-cost but also the surrender of some sovereignty in legislative matters, which the countries may not be willing to concede.

89. It is against the background of this range of concepts that the OECS/ECCM customs union possibilities are considered in the fourth section of this paper.

Effects (Gains, Losses)

90. There are in essence two approaches to assessing the effects of customs unions, and the treatment varies depending upon the assumption that is made as to the nature of the political process. The first approach assumes governmental activities to be "non-economic" and focuses on the economic costs of such activity, which when compared to the non-economic benefit determines whether or not the customs union on balance is beneficial. The second approach assumes that government activity is directed towards maximising economic welfare and formation of the customs union as a means to develop optimisation procedures in support of overall government objectives.

91. Traditionally the first approach was taken as the point of departure, and the analyses concentrated on trying to identify the gains and the losses attributable to customs union, separating those which enhance from those which lower the total of social welfare.^{4/} But more recently the orientation has been towards the more fundamental question of why customs unions are formed. Such change reflects both a theoretical and an institutional imperative. The former being the failure of traditional trade theory to explain why policies other than free trade or modified free trade are followed by governments; the latter due to the interest of developing countries in economic integration as a means of accelerating their rate of economic progress.

92. For small developing countries entering customs unions, the economic considerations as a rule are regarded as attractive.

4/ This was based on the implicit assumption that "real income" is identifiable on social welfare function lines with the utility derived by individuals from their personal consumption of goods and services.

and to the extent that there is an economic case for such specially close economic ties between the countries, the case is likely to be stronger where it rests on specific economic criteria. But in practice the essence of the relationship goes beyond purely economic considerations to embrace other aspects of policy. As a consequence customs union analysis has come to be based on acceptance of the idea that it is a deliberate use of tariff policy by two or more countries to achieve objectives not attainable through individual action. And related to this is the further idea that the customs union approach is attractive to countries that individually are unable to affect their terms of trade, although they are able to trade at the foreign rate of product transformation.

93. Such considerations focus tariff policy in customs unions as essentially protective mechanisms, which, by the elimination of tariffs within the union along with the maintenance of tariffs against countries outside the union, enable the partners in the union to develop as sources of supply, thereby replacing some imports from countries outside the union.

Trade Effects

94. Because of the central place tariffs in customs union arrangements and the effects that tariffs have on trade, analyses of the operations of customs unions invariably stress the trade aspects. The general approach is in terms of separating these effects as to whether they are "trade creating" or "trade diverting". In the first category are put the accretions to trade among the partners, and in the second the extent to which the union has resulted in substituting supplies from inside the union for imports from outside the union. In practice the net trade result is a combination of these two effects.

According to the traditional view, if the trade creation is the greater element there is an addition to social welfare; and if the trade diversion is the greater there is a reduction in social welfare.^{5/}

95. Some consideration has been given to the question as to whether trade diversion always results in lowering of welfare, and it is now accepted that this is not necessarily so. The line of argument may be summarised as follows: when a customs

^{5/} It may be noted that this approach leads virtually automatically to the conclusion that welfare is maximised under free trade conditions.

union is formed some dutiable goods formerly imported from outside sources will be replaced by the same goods imported from a partner country, duty-free but at a higher real cost. The shift to a higher-cost source of supply tends to lower the country's real income, and consequently consumer welfare; but the tariff reduction also works as removal of a constraint on consumption and may raise welfare. If the second effect is favourable, and outweighs the first effect, there is a net rise in welfare.

96. Conceptually at least there can be new trade creation without trade diversion. Such a case would apply to commodities which one of the members will now newly import from a partner (but which it did not formerly import at all) because the price of the protected domestic product is now lower than the price at any foreign source plus the duty. Equally it is conceptually possible for a customs union to have no new trade-creating effect and only trade-diverting effect. This might occur where the common tariff shuts off foreign sources of supply, and inside the union existing industries acquire a new set of customers in partner countries without undergoing any significant change (as would be expected to happen if the industries were to meet new competition originating from partner countries).

97. As a consequence of the large attention paid to these trade effects, there is strong support for the view that the primary purpose of a customs union, and its major consequence, is to shift sources of supply. What is more, the shift can be either to lower-cost or to higher-cost sources depending on the circumstances. Where intra-union supplies are substituted for lower-cost foreign imports, the shift is to higher-cost sources. But account also has to be taken of shifts between the partners. In this case a customs union would increase welfare to the extent that it diverts trade from lower-cost foreign to higher-cost partner sources. This approach of course emphasises the trade aspect, without taking account of inter-commodity substitution, changes in the terms of trade, and other effects of the customs union arrangements.

98. The traditional postulation that trade diversion invariably reduces welfare has been further modified by the recognition that there is a welfare increasing effect where the trade diversion results also in inter-commodity substitution.^{6/}

^{6/} The welfare increasing effect is maximised when the rate of substitution in consumption equates the product transformation rate.

Further, where there is variability of production, diversion of trade can result in welfare gains, not only in the partner countries, but also in the "home" country. The main results of such analyses have been to demonstrate how indeterminate the trade effects can be, the outcome depending on the circumstances of the countries in the union.

99. A further aspect to take account of is that when a customs union operates more to divert trade from its previous channels, rather than to create new trade, the internal removal of duties operates to increase the protective effect (for high-cost producers) of the duties which remain. This is a consequence achieved not by reducing imports into their own national territory, but by extending the operation of the protective duty in their favour to the territories of the partner countries in the customs union.

100. If therefore one sums up the orthodox view of customs union the general line of economic reasoning would run: When a customs union is formed, the tariff is taken off imports from the partner countries and the relative price between these goods and domestic goods is brought into conformity with the real rates of transformation. This by itself tends to increase welfare. But on the other hand, the relative price between imports from union partners and imports from the outside world are moved away from equality with real rates of transformation. This by itself tends to reduce welfare. The shift to imports from union partners therefore involves both a gain and a loss. But what most matters is the relation between imports from the outside world and expenditure on intra-union commodities. The larger the purchases of intra-union commodities and the smaller the purchases from the outside world, the more likely it is that the union will bring gain.

101. This welfare argument gives rise to two general conclusions - first that given a country's volume of international trade a customs union is more likely to raise welfare the higher the proportion of trade with the country's union partners, and the lower the proportion with the outside world. The second is that a customs union is more likely to raise welfare the lower is the total volume of foreign trade; for the lower the level of foreign trade, the lower must be purchases from the outside world relative to purchases of intra-union commodities. This means that the sort of countries who ought

to form customs unions are those doing a high proportion of their trade with their union partners, and making a high proportion of their total expenditure on intra-union trade. Countries which are likely to lose from a customs union, on the other hand, are those countries in which a low proportion of total trade is domestic, especially if the customs union does not include a high proportion of their foreign trade.

Further Conceptual Considerations

102. It would be gathered from the foregoing that most of the enquiries into customs union had been confined mainly to studying the effects of customs unions on welfare, rather than for example, on the level of economic activity, the balance of payments, or the rate of inflation. This aspect assumes importance when it is recognised that gains and losses may arise from a number of different sources, among which may be included:

- (i) new trade creation and/or trade diversion;
- (ii) specialisation of production due to comparative advantages;
- (iii) economies of scale;
- (iv) changes in the terms of trade;
- (v) forced changes in efficiency due to increased competition;
- (vi) changes in the rates of economic growth in and among the partner countries.

By and large the analyses of customs unions have been almost completely confined to investigations of (i) and (ii) above, with some slight attention to (iii) and (iv). The item (vi) has scarcely received attention, while (v) is usually ruled out of the enquiries by the assumption (often contradicted by the facts) that production is carried out by processes which are technically efficient.

103. The problem revolves around the difficulty of defining the other effects of customs union operations as additional to creation and trade diversion, rather than as component parts of the trade effects. For example, when there is initial production in several partners, and the union allows one or two to capture the entire union market, the replacement of higher-cost partner production with lower-cost domestic production on the one hand and the reduction in the cost of production of domestic goods on the other, are both integral parts of the same phenomenon. Nevertheless it is useful to consider the separate elements and the conditions in which they contribute to gains and losses, even while recognising that the possible gains from a customs union resulting from improvements in the terms of trade, economies of scale, and reductions in disguised unemployment, do not show up as readily as the trade effects.

104. On this question of the economic benefits arising from other causes, e.g. economies of scale, or through forced efficiency, there have not been as comprehensive enquiries as for trade effects, nevertheless some situations can be identified clearly. For example, on economies of scale, it is fairly evident that if the market is expanding all the firms in a given industry could grow and economies of scale could be realised, but if the market is static then growth can be achieved only at the expense of competitors. (However, in making such evaluation a distinction has to be drawn between the costs of production proper, and the costs of selling - for if the cost of selling is rising faster than cost of production is falling, then there is not likely to be expansion, and economies of scale would not be realised).

105. Similarly, as regards possible gains through forced efficiency, the thesis is that firms which may not be adopting methods known to be technically more efficient, when thrown into competition with firms in partner countries, will be forced to adopt more technically efficient methods - and thereby the efficiency in the use of resources may increase, (and could turn out to be a significant source of gain).

Scale of Production Effects

106. The common assumption is that customs unions effects are mainly limited to trade creation and trade diversion, even

where these effects are redefined to include both a production and a consumption component. This of course holds true for industries and firms where the money costs of production, per unit of output, is increasing over the long run relative to the economy as a whole. But there are firms and industries where the reverse is true and unit costs decrease as output expands. In this latter category falls the situation where a small country by itself may be unable to reach a scale of production large enough to make low unit cost of production possible, but two or more such countries combined may provide a market large enough to make low unit cost production possible.

107. However, it does not seem probable that the prospects of reduction in unit costs of production (as the result of enlargement of the tariff area) are ordinarily substantial even when the individual member countries are quite small in economic size; for it is the supply conditions of factors of production which are the relevant restrictive factor on expansion of output if it is to be achieved without increase of unit costs. Unless the customs union operates so as to appreciably increase the inter-member mobility of factors of production, it does not in this sense increase the "scale" of the economy from the point of view of production conditions, even if it does increase it from the point of view of the size of the protected market for sales.

Terms of Trade Effects

108. There is conceptually at least, the possibility of economic benefit from tariffs which countries may be able to exploit more effectively combined in a customs union, than if they operate as separate tariff areas. A customs union by increasing the extent of the territory which operates under a single tariff, tends to increase the effect of the tariff as a means of improving the terms of trade of that area vis-a-vis the rest of the world. This derives from the recognition that if the area is large enough to affect the terms at which its trade takes place, the imposition of a tariff improves its terms of trade.

109. More specifically the tariff may not only divert consumption from imported to intra-union produced commodities, but it could also alter, in favour of the tariff-levying area,

the rate at which its exports exchange for the imports which survive the tariff. In short it works in the direction of improving the terms of trade. Any improvement in the terms of trade for the area, carries with it an increase to the area in the total benefits from trade. The greater the economic area of the tariff levying unit, the greater is likely to be (other things being equal) the improvement in its terms of trade with the outside world, resulting from its tariff. But it has to be borne in mind equally that where the area is too small to influence the external prices, it abstracts from the terms of trade effects, and they are not likely to be realised.

Administration Economies

110. Finally, more practical than theoretical, are the gains that may be made through administrative economies. In respect of the costs to trade, there are broadly two types of savings that can be achieved:

- (a) reductions in the costs involved for exporters and importers in meeting the customs requirements, (due to having one set of requirements in the place of several sets of requirements); and
- (b) reduction in the costs involved in tariff levying and in administering the customs machinery (due to the reduction in the proportion and volume of imports requiring customs inspection and clearance).

111. In addition however, the customs union has the further effect that when the tariff frontiers are removed between its members, there is a reduction of administrative expense to the governments due to the frontiers between them no longer having to be watched for custom purposes. Given the economic area of the customs union, the larger number of tariff frontiers eliminated, the greater these administrative economies (per unit volume of trade).

IV - ISSUES AND OPTIONS IN DEEPENING THE CUSTOMS UNION
RELATIONSHIP WITHIN THE OECS

112. In the first section dealing with the ECCM framework the questions of liberalisation of internal trade and the achievement of uniformity in external trade was considered in the context of the Treaty provisions and their implementation. This was supplemented in the second section by the similar and related questions as they apply to the OECS countries in the context of Caricom. The third section provided a review of customs union concepts. In this section the focus is on some of the issues that derive from deepening of the customs union relationship within the OECS.

113. Comparison of the ECCM arrangements with the more commonly accepted customs union criteria reveals several aspects on which the ECCM Agreement remained silent. There were no ECCM stipulations concerning: uniform customs legislation and regulations; the use of one and the same customs declaration for goods entering and moving within the ECCM area; goods imported from outside the ECCM area paying duty only once (at the rates fixed by the common tariff); the apportionment of customs revenue; or common customs service. Consideration now has to be given to the scope for applying these various elements in the particular circumstances of the OECS.

114. Freedom of internal trade and the common external tariff (together with the principles for its interpretation and the list of conditional duty exemptions and reductions), presently constitute the prime components of the ECCM customs union type relationship. All the other elements are at varying degrees of standardization; and overall the relationship derives from arrangements administered individually by the member territories. It should be noted too that the frame adopted by the ECCM common tariff does not include an agreed administrative code, incorporating such aspects as definition of value for customs purposes, or an integrated approach to the administration of customs operations.

115. Immediately it can be concluded that the first step towards a fuller customs union relationship would be to harmonize the customs legislation, regulations procedures, rules and orders. And the second step would be to achieve the

highest feasible level of uniformity in the customs services, so that at whatever point imported goods enter the union the treatment would be the same.

Need for a Common Body of Trade Law

116. One must bear in mind that the operation of any set of procedures and rules for regulating the Customs Union has to be seen against the overall background of the commercial policy of the OECS, and the power of the OECS to enforce them. It is therefore relevant to point to an aspect to which not much attention has been given so far, that is the necessity for customs union arrangements to operate against a background of legal uniformity. The emergence of a common body of law relating to trade, especially in the interpretation and applications relative to the customs union, is an essential part of the dynamic process.

117. This is all the more significant when one considers that the relevant OECS Treaty provisions are general, and give very little indication of the law in practice, thus only providing the bare bones and leaving the courts to give it substance when such eventualities arise. And it must be borne in mind too, the norm is that within each OECS territory the courts will apply the national legislation interpreted within its own legal framework of theory and practice. This is so because a common code of commercial law throughout the OECS region does not presently exist.

118. It follows that initially, the formulation and application of this aspect of commercial law can only be seen and understood by examining the decisions of the OECS institutions, and the several courts. It is very probable that a pattern could emerge in which, successively, reliance is placed on previous decisions of the OECS institutions, as a guide to the gradual development of greater uniformity in national legal interpretation and application - that is OECS decisions becoming the main source of commercial law.

119. Presently there is no legal forum at the level of the OECS for handling the interpretative functions which are necessary for translating the decisions of the OECS institutions.

and for developing "case law" and making it better known and understood. But article 3(h) of the OECS Treaty does provide for "co-ordination, harmonization and pursuit of joint policies" in matters concerning the Judiciary. Accordingly the development of uniformity in this aspect of commercial law could be seen as a priority, supportive of customs union operations, especially as the Judiciary would not be precluded by rule or practice from taking into account the interpretation and application of relevant policy considerations.

120. The process of "co-ordination, harmonization and pursuit of joint policies" could well go in the direction of the establishment of an OECS Court, to handle the whole range of legal issues that stem from day-to-day operation of the many provisions of the OECS Treaty. In that situation, a common body of trade law supportive of the customs union operations would be only one dimension of the development of an OECS legal framework including gradually a body of case law.

121. It would seem, judging from the experience in other customs unions, that most of the "case law" would be likely to develop around the issue of "charges that have the effect of customs duties". Further it would seem that the degree of attention given to the issue, would be directly related to the strength of interest of some private sector enterprises in some particular products and/or markets.

Customs Legislations and Regulations

122. This desirability of having a high measure of uniformity in customs legislation, and the administrative regulations has already been indicated in the previous sections of the paper. Review of the situation reveals that (i) the legislative instruments relative to trade take a variety of forms in the various OECS territories; and (ii) there is need for an up-dated consolidated customs law in virtually all the countries. In some cases the main instrument is a Customs Act supplemented by a Customs Duties Act or Ordinance, and in other cases the main instrument is a Trade and Revenue Act supplemented by Customs Import and Export Tariffs Ordinance or some such equivalent.

123. In the majority of cases, these instruments were promulgated in the 1960's, and have had numerous amendments to the sections and schedules since that time. In some cases however the main instrument goes back even further (in one case to 1926), with a range of subsidiary legislative instruments dealing with particular aspects of trade, customs administration rules, statutory trade orders, and departmental regulations. As a consequence it is very difficult to obtain an amended up-dated text of the main instrument and of the administrative regulations; and it is virtually impossible to undertake a detailed comparison of the situation of the seven territories.

124. Several of the territories have become currently engaged in reviewing the customs or trade and revenue law primarily because there is an urgent felt need for a consolidated text. However it is increasingly becoming apparent that the new legislation which will emerge, will not be a consolidation, but will involve changes in the law. Since the original legislations were written, commercial practices have changed, patterns of trade have changed, and inevitably the administration of customs also has changed. Most important, the range of revenue earning taxes have widened, and import duties and trade procedures have increasingly become a subject of negotiation within the Caricom/ECCM frame. This latter aspect has stimulated a trend toward greater uniformity, which logically could in time yield the result of adoption by all the territories of identical legislation. With identical legislation conferring similar powers, the customs services of the OECS territories would have a common working base, and the possibility would be opened for them to act together.

125. A further aspect that should be noted, is the trend towards the framing of new customs legislation so that it deals with aspects of control and management, defining and enunciating the principles and procedures. By this means it is expected that the frequent revisions and up-dating (and need for consolidation) would be substantially reduced. A necessary corollary however, is that the promulgated rates for generating tax revenues are legislated separately, these being revised more frequently to adjust to budgetary and policy requirements.

126. Similarly, where formerly a range of regulations often were included in the text of the law, there is

increasing acceptance of the greater desirability that the regulations which flow from the law be promulgated separately from the law. In several cases the Customs Regulations were part of the body of "Statutory Rules and Orders" which were Gazetted separately from the Customs Ordinance. As with the Customs Act, there is the high desirability to achieve the greatest uniformity of customs regulations within the OECS area.

127. It has been no easier to obtain copies of the customs regulations for purposes of comparative study. By and large, the regulations outline the particulars that need to be satisfied in respect of entry, warehousing, clearing and discharge of goods and the procedures for exportation of goods. Documentation to be presented, the manner of its completion, conditions to be met etc. are usually spelled out, often as instructions to traders and customs brokers. The measure of uniformity that may be achieved will very much depend on the extent to which there are country-specific elements that need to be retained.

Some Technical Aspects

128. Within the body of the legislations and regulations are a range of technical aspects, the treatment of which directly affect customs union type operations. Most important among these are the classification of goods which affects the incidence of tariff rates; the valuation of goods, which affects the computation of the duty; the conditions relating to refund of duty (drawbacks) on imported goods; and the certification of the origin of goods, which determine whether they get common market area treatment. These various technical elements which need to be standardized to achieve customs union operations, are usually settled by a process of negotiation. In the earlier sections reference was made to the cet which reflects the agreed classification; but adherence to the classification is no less important. Similarly mention was made that the ECCM does not indicate a common system for valuation; but within the wider Caricom relationship there has been a general movement by the OECS territories to adopting within the legislative instruments a more or less uniform approach based on the Brussels definition of value.

Definition of Value for Customs Purposes

129. On occasion it has been pointed out that tariff negotiations and agreements on tariffs can be vitiated by changes in the methods of valuation that are applied to imports. This is because even where agreement on tariff rates exist, the incidence of the tax on the particular imported goods can vary depending on the method of valuation applied. Concerns of this nature led the major trading nations to the standardisation, as far as practicable, of definitions of value and of procedures for determining value, and the laying down of principles for common international application.

130. It is the reality that agreements between countries to apply the same ad valorem rates of duty are of doubtful efficacy unless the provisions and processes relating to the valuation of goods in the countries participating in such agreements so operate that the incidence of the agreed rates on imported goods cannot be varied unilaterally simply by varying the valuation system. For this reason it is essential that countries which comprise a customs union apply a common definition, since the object of the union would not be achieved, if valuation in the countries concerned were based on different definitions (and applications) of value.

131. The foregoing consideration has to be seen in the light that for customs union (and other such trading associations and even for national trade), where the provision of protection against imported goods from third countries is a substantial consideration, ad valorem duties are preferred above specific duties. Ad valorem duties offer the advantages of being better able to cope with fluctuating prices and graduations of quality.

132. The general intention of adopting a standard definition of value, is to provide a basis for the preparation of statutory definitions which would apply to all transactions, whoever the parties to them may be, and whatever their conditions. One objective therefore is to induce a higher measure of uniformity in legislation, and beyond that to achieve uniformity in application. The Brussels Definition of Value for Customs Purposes, has been widely adopted as the standard definition, and currently applies to the bulk of goods passing in international trade. More recently however, attention has turned to the GATT Customs Valuation Code as the basis for customs valuation.

133. The initial purpose of applying a standard definition of value, was to ensure at national level, a single formula to be applied uniformly to all classes of importation, so as to have consistency in valuation and to ensure equitable, impartial treatment as between all imported goods. As regards the Brussels Definition of Value, it is not without significance that in its development one purpose was to get a definition of value suitable for use in customs unions. Even where countries are not in such trading associations, and even though the methods and procedures for the application of the definition of value necessarily vary according to the administrative organisation of the country concerned, nevertheless there is the tendency towards some uniformity from country to country, in the legislations based on the Definition. In the circumstances of Customs Unions however, uniformity of application is paramount and requires more than the adoption of an identical text.

The Current Definition of Value

134. The OECS territories generally adopted the Brussels definition that imported goods should be valued at the price that they "would fetch at the time when the duty becomes payable at the point of entry on a open market sale between buyer and seller independent of each other", so that price is the sole consideration. The essential element is that the seller bears all costs, charges and expenses incidental to the sale and to delivery of the goods so that the price is inclusive of those components. In practice this means the cost of the goods plus insurance freight (the CIF price). In some cases checks may need to be made to ensure that commissions, brokerage fees, special discounts etc are included in the CIF price. The purpose is to discount the influence upon the valuation of any special discounts or rebates that may exist between buyer and seller, but not freely available to all buyers so as to avoid discrimination among importers.

135. It is of no less significance to note that the value for customs purposes would not include delivery charges from the port, or the amount of any internal tax, or traders mark-up. Consequently it would not correspond to commercial prices within the country, which include such elements. In short the Brussels Definition does not allow customs valuation by use of internal

prices in the country of exportation or of the prices of national goods in the country of importation. This implies that where the "open market price" would be affected by the quantity, or the quality, or the level of transaction (i.e. whole sale or retail) these have to be taken into account in the valuation for customs purposes.

136. By 1 November 1969 all the OECS territories (excepting St. Lucia) were already listed among the countries applying the Brussels Definition of Value, by the Customs Co-operation Council. (More recent listing would no doubt show all the OECS territories as included in that category, valuation in the St. Lucia Customs (Amendment) Act No. 9 of 1973 being obviously based on the Brussels Definition). The essential consideration is then not so much to advocate adoption of the principle of having a standard definition of value through the OECS/ECCM area, as to achieve a common application. The point is that lack of uniformity even in application of a common definition could lead to undesired trade diversions.

137. As in several other aspects however, action within the OECS is in large measure pre-conditioned by decisions and commitments of the OECS territories at the Caricom level. Subsequent to the agreement in the Tokyo round of Multi-lateral Trade Negotiations to implement a new GATT Customs Valuation Code in place of the Brussels Definition of Value (for purposes of customs valuation), the Caricom Common Market Council of Ministers agreed to adhere to the GATT Customs Valuation Code. The OECS territories participated in that decision. Further, while not being contracting parties to the GATT there would seem to be some obligation, as de facto members of GATT, to introduce the new system of valuation.

138. This course of action would require adjustments in the domestic legislation, in the customs regulations and in the customs administration. Very evidently the adherence of non-OECS-Caricom countries to the GATT Customs Valuation Code (some of those countries being Contracting Parties to the GATT), would result in a duality in valuation practices in Caricom, if the OECS countries did not also adhere to the Code. In the circumstances it would seem that adopting the new code would be an element in the development of the OECS Customs union relationship.

The Indicated Actions

139. For the purpose of achieving fuller customs union operations within the OECS/ECCM it can be accepted that all the participating countries already accept the principle that there should be a standard definition of value and apply it to the fullest degree. What seems necessary is to determine the extent of uniformity in (i) the domestic legislations and their interpretations; (ii) the customs procedures and practices as they relate to the valuation of imported goods; (iii) the degree of implementation as between the countries comprising the OECS/ECCM.

140. As regards national legislation, so far the general pattern has been to amend the text of the Definition by providing the explanatory provisions that are considered necessary. In addition the need to give the legal form required to render it operative in domestic law, is often met by adding complementary provisions clarifying the purport of the definition. The extent to which this resulted in a measure of disuniformity in interpretation has not been established. The desirability for uniformity of interpretation throughout the customs union area cannot be questioned. It well may be that there is need for an "advisory body" to ensure effective uniformity in interpretation and application of the valuation process.

141. Beyond the legislations and interpretations, lie the customs regulations that detail the procedures and practices. It is in this area that uniformity in application of a standard definition to value has to be ensured, to achieve precise and uniform valuation of imported goods throughout the area of the customs union. Not only has the administration of customs valuation got to be uniform and impartial, but it also has to be such that traders are able to estimate with a reasonable degree of certainty the value for customs purposes. This requires that importers should know before-hand how the Definition of Valuation applies to their particular importations - (i.e. the adjustments that would be made to arrive at the valuation for customs purposes where the actual commercial conditions under which the goods are imported varies from the notional conditions under which the value is to be determined).

Treatment of "Drawbacks" etc.

142. Parallel with uniform assessment and imposition of duty is the need for a high degree of uniformity in the treatment of reliefs from duty, abatement of duty, and the conditions for drawbacks and rebates. To the extent that, the variations in application, as between the territories, is substantial, it serves to reduce the effectiveness of the customs union arrangement.

143. The provisions in the national legislations that apply for granting drawback of the duty paid on the importation of goods in respect of their being exported or put on board an aircraft or ship for use as stores, are broadly the same. Also there is great similarity in the conditions concerning deterioration or damage of goods, their packaging etc., and drawback in respect of returned goods. It would seem that the main area of differences relate to goods used in local manufacture.

144. Directly related to this is the implementation of the conditional duty exemptions and reductions, which it was earlier pointed out remained in the discretion of the individual governments. Studies done in OECS/EAS suggest that in some territories the practice was to be very liberal in granting exemptions. While those studies were concerned with the revenue effect, it must be pointed out that from the customs union standpoint substantial variations of application between the countries could result in some trade distortion. Where the control mechanisms are not sufficiently strict to ensure that such imported goods do not pass directly to internal trade, the objective of common treatment of imports from third countries is frustrated.

Single Treatment of Imports

145. In an earlier section it was indicated that some customs union arrangements there have included provision for adjustment for revenue losses. In such cases it is not unusual to have also arrangements for single treatment of foreign goods imported into the customs union area. There are no provisions in the ECCM Agreement corresponding to the concepts that foreign goods entering the ECCM area would (a) require only one and the same customs declaration and (b) pay only

once the rates fixed by the common tariff. In practice these concepts are met in part by the regulations governing re-exports of goods, which normally are treated differently from retained imports. Invariably the arrangements are that re-exports are held in-bond for onward transmission to the destination country, with customs duty paid at the destination. Immediately it would be noted that these arrangements require two sets of declaration - first at the entrepot port and second at the port of final destination.

146. Generally, where goods entered and duty paid, if later re-exported to another ECCM country is again liable for duty, (even if it is on a depreciated value). In some cases it may be possible for drawback of duty paid to be obtained in the first country, but this depends on meeting the conditions that apply to refunds of duty. Obviously where the countries in a customs union are contiguous sharing a land mass, it is easier to adopt the single treatment approach because of the greater ease of policing the area. On balance it does seem that the alternative of arrangements for warehousing are better suited to the circumstances of the OECS territories. However, as pointed out earlier, there are substantial differences in those provisions and regulations, in the main deriving from the country-specific situations. Further the extent to which this may be an important customs union consideration depends on trade patterns and transport linkages.

Allocation of Customs Revenues

147. Inevitably the abolition of import duties on goods moving within any customs union or common market arrangement results in revenue losses for the participating countries. In addition there may be some further losses of revenue deriving from application of a common external tariff, depending on its general level and structure as compared to the previously applied national tariff. Allied to this is the change in the proportions collected by each of the participating countries resulting from the changed customs boundary. To compensate for this it is not unusual for some scheme of customs revenue reallocation to be adopted.

148. As pointed out, the ECCM has no provision for customs revenues reallocation. On the freeing of internal trade and

the introduction of the common external tariff, the individual territories sought to offset the revenue losses by the adoption of consumption taxes. The question of allocation of customs revenues was broached at least once in the early negotiations of the ECCM Agreement, but it did not become a subject of debate. Accordingly, no concessions were made on this point, and there seems to have been little concern since then to consider this aspect as an important issue.

150. The rationale for this situation would seem to stem largely from the fact that the ECCM territories are not contiguous, and as such each and every one had to retain defined customs boundaries and full customs operations. Further, in each territory the bulk of imports have been for consumption within the territory, and not for transmission to some other destination territory within the ECCM area. It follows that the conceptual "allocation of customs revenues according to place of consumption" is largely met by the logic of the situation, each territory retaining the collected customs revenues and defraying its own customs administration expenses.

Administration of Customs

151. Regarding present exercise of authority in customs matters, each Government retains full authority for administration of customs within its territory and legislative authority over those aspects on which the ECCM Agreement is silent. With regard to those matters provided in the Agreement, the Economic Affairs Committee of the OECS as the principal organ of the common market, makes the decisions concerning intra-ECCM and extra-ECCM trade. There is no customs council as such, the common market policy and legislation including changes in the common tariff being arrived at by negotiations in which all the participating states have equal status.

152. Given the recognition that the quality of customs administration in each country affects the overall effectiveness of the union, there is the desirability for the closest collaboration in maintaining high quality in administering the customs in each country. As pointed out in the third section, there are several alternative means for achieving this, the ultimate form being a unified customs service. It was also

pointed out that the two elements of policy decision making and day-to-day operations have to be addressed; the former tending to be a more centralised function than the latter.

153. In the circumstances of the OECS territories each with its separate customs service, there is an urgent need for some central mechanism to deal with the policy aspects of trade from the standpoint of matters crucial to the functioning of the Comptrollers of Customs. If a Customs "Council" were put in place, then it could be the means for co-ordinating the numerous technical elements, and facilitating the approach to uniformity and greater standardization in the areas and to the extent that is deemed feasible. Immediately the Comptrollers of Customs could be a nucleus for such a body, addressing themselves to formulating and implementing decisions for advancing the customs union.

154. On the other question of having equally high quality of day-to-day customs operation throughout the union, an obvious approach would be a mechanism that allows for exchange of customs officers. This however introduces a range of other considerations, not the least of which is the varying nature of the separate services, and also the fact that each is part of the larger civil service administration. Such exchanges would of course be a normal feature of a unified customs service. Whether or not such approaches can be accepted depend on a very wide range of considerations, and would demand high governmental commitments.

155. It should not be assumed at the outset that such measures would yield administrative economies. It should be borne in mind that a customs union results in the elimination for administrative purposes of tariff frontiers, only if and to the extent that the territories are contiguous. The existence between the territories of "high seas" is sufficient to reduce whatever potential there is for administrative economies deriving from the union. Unless the territories comprising the customs union are contiguous, the customs union arrangement cannot make any significant contribution to the reduction of costs incurred in administering tariff frontiers.

156. Further, it has to be recognised that administrative changes introduced would not all involve economies. To the extent that there are: additional burdens of negotiation; the need to maintain a machinery for the co-ordination of customs administration codes; provisions for mutual supervision where this is deemed desirable; or machinery for the settlement of disputes - there would be reductions in any net financial benefits that might be gained. It also follows, if (a) there are no substantial gains from reduction of customs inspections and trade frontiers administration, and (b) there are added costs attributable to co-ordination requirements, that there could be the result of a higher cost of administration.

Concluding Remarks

157. In the foregoing the various elements have been considered singly, but it is of utmost importance to appreciate that in their operation they are not independent of each other. For example, if one assumes the OECS territories to be at a stage of full customs union relationship, then materials that enter duty paid at one port (say St. John's) and are processed within the area may qualify for drawback as the result of finished product exported from another port (say Plymouth). Given implementation of an OECS common policy of export encouragement that includes the granting of drawbacks, then arrangement would need to be in place for drawback granted at Plymouth to be recovered against the duty paid at St. John's. Of course, if a system for reallocation of revenues were already operative, it should take such a circumstance into account and then there would not be need for a special arrangement to deal with drawback.

158. In the same vein, it would be seen that as the customs union relationship deepens (with high level of unification in the administration of customs etc) the less important become the need for rules of origin applying to intra-OECS trade.

159. Such considerations bring into sharp focus the operation of the common external tariff of the union, not only in terms of its level, but also in terms of its structure. Determination of what is appropriate would need to be made in the light not only of the policies that apply to trade, but also those policies that apply to industrialization and the overall development process.

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