No. 13488

MULTILATERAL

Agreement on the harmonisation of fiscal incentives to industry (with appendices). Concluded at Georgetown on 1 June 1973

Authentic text: English.

Registered by the Caribbean Community Secretariat, acting on behalf of the Parties, on 28 August 1974.

AGREEMENT[1] ON THE HARMONISATION OF FISCAL INCENTIVES TO INDUSTRY

The Contracting Parties

In pursuance of the declared intention set out in article 23 and in annex A of the Agreement establishing the CARIFTA Free Trade Association[2] to take measures to secure the adoption of a regional policy of incentives to industry as early as possible;

Recognising the need for promoting the balanced and harmonious development of the region by means of the conferment of incentives to industry;

And noting that steps have been taken for the establishment of a Common Market within a Caribbean Community;

Have agreed as follows:

Article 1. ESTABLISHMENT OF SCHEME

By this Agreement, the Contracting Parties establish a Scheme to be known as the "Harmonisation of Fiscal Incentives to Industry Scheme" (hereinafter referred to as the "Scheme" which shall be implemented under and in accordance with this Agreement.

Article 2. PARTICIPATION IN THE SCHEME

1. Participation in the Scheme shall be open to—

(*a*) (i) Antigua;

(ii) Barbados;

(iii) Belize;

(iv) Dominica;

(v) Grenada;

(vi) Guyana;

(vii) Jamaica;

[1] Came into force on 18 April 1974 in respect of the following ten countries, i.e., the date by which their instruments of ratification had been deposited with the Caribbean Community Secretariat (the Commonwealth Caribbean regional Secretariat before 1 August 1973), in accordance with article 22:

Country	*Date of deposit of instrument of ratification*
Grenada	5 July 1973
Jamaica	25 July 1973
Trinidad and Tobago	28 August 1973
St. Vincent	11 September 1973
Guyana	15 September 1973
Belize	29 October 1973
St. Lucia	8 November 1973
Montserrat	7 January 1974
Dominica	14 January 1974
Barbados	18 April 1974

[2] United Nations, *Treaty Series*, vol. 772, p. 2.

(viii) Montserrat;

(ix) St. Kitts-Nevis-Anguilla;

(x) St. Lucia;

(xi) St. Vincent;

(xii) Trinidad and Tobago;

(*b*) Any other state of the Caribbean region that becomes a member of the Caribbean Community.

2. States listed in paragraph 1 (*a*) of this article the Governments of which sign this Agreement in accordance with article 20 and ratify it in accordance with article 21 shall become participants in the Scheme.

3. States referred to in paragraph 1 (*b*) of this article, the Governments of which accede to this Agreement in accordance with article 26, shall become participants in the Scheme.

Article 3. DEFINITIONS

1. In this Agreement, unless the context otherwise requires—

"Approved enterprise" means an enterprise which is approved by the relevant authority of a Member State for the purpose of conferring a benefit under the Scheme;

"Approved product" means subject to this Agreement a product of manufacture approved by the relevant authority of the Member State for manufacture by an approved enterprise;

"Benefit" means any relief granted by a Member State to an approved enterprise under and in accordance with this Agreement;

"Enterprise" means a company incorporated under the laws of the State conferring a benefit to an approved enterprise and engaged or about to engage in an industry;

"Income tax" means any tax (by whatever name called) on income or profits imposed by a Member State;

"Industry" means a manufacturing or processing industry and includes deep sea fishing and shrimping, but only if they form part of an integrated processing operation;

"Group I Enterprise" means an enterprise in respect of which the local value added is 50 per centum or more of the amount realised from the sales of an approved product;

"Group II Enterprise" means an enterprise in respect of which the local value added is 25 per centum or more but less than 50 per centum of the amount realised from the sales of an approved product;

"Group III Enterprise" means an enterprise in respect of which local value added is 10 per centum or more but less than 25 per centum of the amount realised from the sales of an approved product;

"Enclave Enterprise" means an enterprise producing exclusively for export to countries outside the Common Market;

"Local value added" means the amount (expressed as a percentage of total sales of the approved product) by which the amount realised from the sales of an approved product (in respect of a continuous period of twelve months) exceeds the aggregate amount of the following:

(i) the value of imported raw materials, components and parts of components, fuels and services;

(ii) wages and salaries paid during the period to persons who are not nationals of the Member States;

(iii) profits distributed and remitted directly or indirectly to persons (including companies) who are not resident in any Member States;

(iv) interest, management charges and other income payments accruing directly or indirectly to persons (including companies) not resident in any Member State, other than a branch or agency of banks not resident in any Member State;

(v) depreciation of imports of plant, machinery and equipment;

"Member State" means a State referred to in paragraph 2 or 3 of article 2 of this Agreement;

"More Developed Country" means Barbados, Guyana, Jamaica and Trinidad and Tobago; and "Less Developed Country" means any other Member State referred to in paragraph 1 (*a*) of article 1[1] of this Agreement;

"National" means a person who is a citizen of any Member State and includes a person who has a connection with such a State of a kind which entitles him to be regarded as belonging to or, if it be so expressed, as being a native or resident of the State for the purpose of such laws thereof relating to immigration as are for the time being in force;

"Production date" means the date on which an approved enterprise commences production of the approved product or such other date as may be specified in accordance with the laws of a Member State as the case may be;

"Sale" means sales ex-factory of an approved product.

2. The local value added shall be weighted by the wages and salaries paid to nationals of any Member State expressed as a percentage of total sales of the approved product and calculated by the following formula:

$$\frac{V(100 + W)}{100}$$

where "V" is the local value added expressed as a percentage of total sales of the approved product; and

"W" is the wages and salaries paid to nationals of any Member State, expressed as a percentage of total sales of the approved product.

3. For the purpose of sub-paragraph (i) of the definition of "local value added" in paragraph 1 of this article, in determining the value of the content of any component produced by any of the Member States, no account shall be

[1] Should read "2".

taken of any element in the cost of that component, other than the value of the imported raw material content.

4. For the purposes of sub-paragraphs (iii) and (iv) of the definition of "local value added" in paragraph 1 of this article, a Company shall be taken to be not resident in any Member State if it is controlled directly or indirectly by a person (including a company) who is not resident in any Member State; and such a person shall be taken to have control of such a company if he exercises or is able to exercise control over the affairs of the company and in particular, but without prejudice to the generality of the foregoing, if he possesses or is entitled to acquire the greater part of the ordinary and paid up share capital (excluding shares which carry no voting rights) or voting power of the company.

Article 4. DISCRETION AS TO BENEFITS

The extent to which any benefit under this Agreement may be granted to an approved enterprise shall be at the discretion of Member States, so, however, that no Member State may grant benefits to an approved enterprise for a period or at percentage rates in excess of, or on conditions contrary to, those specified under this Agreement.

Article 5. CLASSIFICATION OF APPROVED ENTERPRISES

1. For the purpose of the grant of any benefit under this Agreement each enterprise must be classified under one of the categories:

(*a*) Group I Enterprise
Group II Enterprise
Group III Enterprise respectively; or

(*b*) Enclave Enterprise,

as the case may be.

2. For the purpose of the classification of an enterprise as a Group I Enterprise, Group II Enterprise or Group III Enterprise, the local value added shall, in the first instance, be estimated in order to determine the Group in which the enterprise is to be classified.

3. On an appraisal of the performance of an approved enterprise pursuant to article 16 of this Agreement, the approved enterprise must be re-classified into the appropriate Group and allocated the appropriate number of years of relief set out in appendix I to this Agreement, as is determined by such appraisal, or the status of such approved enterprise must be deemed revoked in accordance with paragraph 2 (*a*) of article 16 of this Agreement as the case may be.

4. Where an enterprise is engaged in a highly capital intensive industry—

(*a*) nothing in the foregoing provisions of this article shall apply thereto for the purpose of this Agreement; and

(*b*) a Member State may grant any benefit thereto for a period not exceeding that for which the benefit may be granted to Enclave Enterprises in accordance with appendix I to this Agreement.

5. In paragraph 4 of this article a "highly capital intensive industry" is one, the capital investment in which is not less than—

(*a*) $25 million in the currency of the Eastern Caribbean Territories in any Less Developed Country;

(*b*) $50 million in the currency of the Eastern Caribbean Territories in any More Developed Country.

Article 6. RELIEF FROM TONNAGE TAX AND CUSTOMS DUTY ON PLANT, EQUIPMENT, MACHINERY, SPARE PARTS AND RAW MATERIALS

Member States must not grant to an approved enterprise relief from customs duties (including tonnage tax) on plant, equipment, machinery, spare parts, raw materials and components imported from outside the Member States for use in the manufacture of approved products for a period in excess of that respectively specified in appendix I to this Agreement, so, however, that if the relevant authority of the Member State is satisfied that raw materials of a comparable price and quality and in adequate quantities are available from Member States for import and the approved enterprise continues to import raw materials from States other than Member States, the relevant authority must impose tariff and quota restrictions on the importation of such raw materials from States other than Member States provided that no restrictions shall apply to any relief from customs duty on imported raw materials or components used in Enclave Enterprises.

Article 7. RELIEF FROM INCOME TAX

1. Member States must not grant to an approved enterprise relief from income tax in respect of profits or gains derived from the manufacture of the approved product for a period in excess of that respectively specified in appendix I to this Agreement.

2. Subject to the provisions of this Agreement any relief from income tax shall be granted only in respect of profits accruing from the production date of an approved enterprise.

Article 8. RELIEF FROM INCOME TAX LIABILITY ON EXPORT PROFITS

1. Member States must grant relief from income tax on export profits only in accordance with this article.

2. Member States must provide that if relief is granted under this article to an approved enterprise, such relief may not be enjoyed by that enterprise during any period for which relief is granted under Article 6 or 7 or both.

3. The relief which may be granted to an approved enterprise under this article shall be by way of a tax credit and must not be in excess of the percentage of income tax liability on the full amount of export profits of the approved enterprise from the manufacture of the approved product specified in the second column of the table below, where the amount of export profit expressed as a percentage of the full amount of the profits of the approved enterprise from the

manufacture of the approved product is as respectively specified in the first column of the table.

TABLE

First column *Percentage of export profits*	Second column *Maximum percentage of income tax relief*
10% or more but less than 21%	25%
21% or more but less than 41%	35%
41% or more but less than 61%	45%
61% or more	50%

4. For the purposes of paragraph 3 of this article export profits shall be taken to be the profits produced by the following formula:

$$\frac{E \times P}{S}$$

where "E" is the proceeds from export sales for the year;

"P" is the profits of the approved enterprise from all sales of the approved product for the year; and

"S" is the proceeds of all sales for the year.

5. No relief under this article may be granted by a Member State to an enterprise engaged in a traditionally export-oriented industry in respect of a product of that industry that is traditionally exported by that Member State.

6. Subject to paragraphs 7 and 8 of this article, relief under this article may be granted only in respect of the export of an approved product to a State other than a Member State.

7. Less Developed Countries may grant relief under this article to an approved enterprise for export to More Developed Countries, other than Barbados, for a period not exceeding five years next following the expiration of any period of relief granted under article 6 or 7 or both of this Agreement.

8. During the period of five years after the commencement of this Agreement, a Less Developed Country may, notwithstanding paragraph 6, grant relief under this article in respect of the exports to More Developed Countries, other than Barbados, by an approved enterprise to which no relief under articles 6 and 7 of this Agreement is granted.

Article 9. DEPRECIATION ALLOWANCES

Member States must provide that in computing the profits of an approved enterprise for the purposes of any relief from income tax under article 7 of this Agreement, there shall be allowed and made—

(*a*) as from the production date of the approved enterprise, a deduction on account of any depreciation allowance which would, but for that relief, be claimable in the year;

(*b*) such further deduction as an initial allowance for capital expenditure on plant, machinery and equipment incurred by the approved enterprise in the manufacture of the approved product after the expiration of the period of relief from income tax granted in accordance with article 7 of this Agreement as the Member State may determine, but so that such deduction does not exceed 20% of the capital expenditure.

Article 10. CARRY FORWARD OF LOSSES

1. Member States must provide that, upon the cessation of any relief from income tax under article 7 of this Agreement, the net losses made during the period of such relief may notwithstanding the grant of that relief in accordance with this Agreement be carried forward for the purpose of set off in computing the profits of an enterprise for the period of five years next following the cessation of the relief.

2. If the status of an enterprise as an approved enterprise is revoked or deemed revoked under the laws of a Member State or under those laws made pursuant to paragraph 2 (*a*) of article 16 of this Agreement, such an enterprise shall be treated for the purpose of carrying forward losses incurred before such revocation, as if it was an approved enterprise.

3. In this article "net losses" means the excess of sum of all losses over the sum of all profits made during the period of the relief.

Article 11. DIVIDENDS AND OTHER DISTRIBUTIONS

1. Dividends and other distributions out of profits or gains accruing to an approved enterprise from the manufacture of the approved product during the period of relief from income tax under article 7 of this Agreement must not be subject to any limitation as to the time within which the dividends and other distributions are to be made.

2. Subject to paragraph 3, such dividends and other distributions made by an approved enterprise out of profits or gains accruing during the period of relief from income tax under article 7 of this Agreement, or made by a recipient of such a dividend or other distribution may be exempt from income tax in the hands of a recipient.

3. Where the recipient is not resident in any Member State, the exemption shall apply to so much only of the tax as exceeds his tax liability on such dividend or other distribution in his country of residence.

Article 12. INTEREST

Interest (in any form) on loan capital and any other borrowings of an approved enterprise (whether in the form of overdraft, debenture or otherwise) must not be exempt from income tax in the hands of the recipient.

Article 13. EXCLUSIONS AND LIMITATIONS

More Developed Countries must not grant relief from income tax under article 7 of this Agreement to an approved enterprise respecting the manufacture of

any product specified in the list given in appendix II to this Agreement, but nothing in this article shall be construed as authorising the grant of relief under article 8 of this Agreement to an approved enterprise respecting the manufacture of any product referred to in paragraph 5 of article 8 of this Agreement as well as in appendix II to this Agreement.

Article 14. TREATMENT OF ESTABLISHED INDUSTRIES

Member States must provide that where 60 per cent and, in the case of Barbados, 90 per cent of the domestic market of a More Developed Country for any product is already supplied by industry in that State, no relief from income tax under article 7 of this Agreement may be granted to an enterprise by that State.

Article 15. SAVINGS FOR BENEFITS UNDER EXISTING LAWS

1. This Agreement is not to be taken to have revoked or otherwise affected any rights in the nature of benefits enjoyed by an enterprise under the law of a Member State in force immediately before the commencement of this Agreement and those laws may continue to have effect for the purpose of the enjoyment of those rights.

2. Member States must provide that all applications for such rights pending under those laws at the commencement of this Agreement must, under the legislation of Member States referred to in article 17, be deemed to have been made under that legislation and must be dealt with accordingly and Member States must not grant rights in the nature of benefits pending the enactment of such legislation.

Article 16. APPRAISALS

1. Member States must provide that the relevant authority appraise the performance of an approved enterprise classified in a Group to which a benefit other than relief under article 8 of this Agreement is granted for the purpose of determining whether any change in the classification in the group of that enterprise under article 5 of this Agreement should be made—

(*a*) in the first instance, at the end of three years after the production date; and

(*b*) thereafter at the end of each period of two years until the cessation of all benefits other than relief from income tax under article 8 of this Agreement.

2. Where, on an appraisal pursuant to paragraph 1 of this article, an approved enterprise—

(*a*) fails to maintain its classification and fails to qualify for re-classification in any other group set out in appendix I to this Agreement, the status of that enterprise as an approved enterprise shall be deemed revoked for the purpose of relief under articles 6 and 7 of this Agreement and nothing in paragraph 1 (*b*) of this article shall apply;

(*b*) maintains its classification or is reclassified to a lower or higher group set out in appendix I to this Agreement, that enterprise shall continue as an approved enterprise and the provisions of paragraph 1 (*b*) of this article shall continue to apply accordingly.

Article 17. IMPLEMENTATION

Member States shall be responsible for implementing the Scheme as early as possible by legislation in accordance with this Agreement.

Article 18. ADMINISTRATION

1. The Eastern Caribbean Common Market Secretariat shall (where so requested) assist its Member States in the performance of the appraisal under article 16 of this Agreement.

2. The Commonwealth Caribbean Regional Secretariat shall collect information and act as clearing house for the flow of information collected from Member States regarding the operation of the Scheme.

Article 19. REVIEW OF SCHEME

This Scheme shall be reviewed by the Council at the end of five years from the commencement of this Agreement.

Article 20. SIGNATURE

This Agreement is open for signature by any State mentioned in paragraph 1 (*a*) of article 2 of this Agreement.

Article 21. RATIFICATION

This Agreement shall be subject to ratification by the signatory States in accordance with their respective constitutional procedures. Instruments of ratification shall be deposited with the Commonwealth Caribbean Regional Secretariat which shall transmit certified copies to the Government of each Member State.

Article 22. ENTRY INTO FORCE

This Agreement shall enter into force on 1st July 1973, if instruments of ratification have been previously deposited in accordance with article 21 of this Agreement by at least ten of the States mentioned in paragraph 1 (*a*) of article 2 thereof, and if not, then on such later date on which the tenth such instrument has been so deposited.

Article 23. REGISTRATION

This Agreement and any amendments thereto shall be registered with the Secretariat of the United Nations.

Article 24. AMENDMENTS

1. This Agreement may be amended by the Contracting Parties.

2. Any such amendment shall be subject to ratification and shall enter into force one month after the date on which the last instrument of ratification is deposited with the Commonwealth Caribbean Regional Secretariat.

Article 25. WITHDRAWAL

A Member State may withdraw from this Agreement by giving notice in writing to the Commonwealth Caribbean Regional Secretariat. Such withdrawal shall take effect 12 months after the notice is received by the Commonwealth Caribbean Regional Secretariat.

Article 26. ACCESSION TO THE TREATY

1. Any State of the Caribbean Region may apply to become a party to this Agreement and may if the Member States so decide, be admitted to membership in accordance with paragraph 2 of this article.

2. Admission to membership shall be upon such terms and conditions as the Member States may decide and shall be effected by the deposit of an appropriate instrument of accession with the Commonwealth Caribbean Regional Secretariat.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorised thereto by their respective Governments have signed the present Agreement.

DONE at Georgetown, Guyana, on the 1st day of June 1973 in a single copy, certified copies of which shall be transmitted to all Participating Governments.

Signed by
for the Government of Antigua
on at

Signed by GEORGE C. R. MOE
for the Government of Barbados
on 13th June 1973 at Bridgetown, Barbados

Signed by GEORGE PRICE
for the Government of Belize
on August 28, 1973, at Chaguaramas, Trinidad and Tobago

Signed by RONALD O. P. ARMOUR
for the Government of Dominica
on 5th July 1973 at P.O.S., Trinidad
[and Tobago]

Signed by DEREK KNIGHT
for the Government of Grenada
on 5th July 1973 at Port-of-Spain, Trinidad and Tobago

Signed by F. E. HOPE
for the Government of Guyana
on 1st June 1973 at Georgetown, Guyana

Signed by PERCIVAL J. PATTERSON
for the Government of Jamaica
on 26th June 1973 at Kingston, Jamaica

Signed by P. A. BRAMBLE
for the Government of Montserrat
on 10/12/73 at Georgetown, Guyana

Signed by C. A. PAUL SOUTHWELL
for the Government of St. Kitts-Nevis-Anguilla
on 6th July 1973 at Port-of-Spain, Trinidad
[and Tobago]

Signed by JOHN COMPTON
for the Government of St. Lucia
on 15th June 1973 at Castries, St. Lucia

Signed by J. F. MITCHELL
for the Government of St. Vincent
on 4th July 1973 at Port-of-Spain, Trinidad and Tobago

Signed by GEO. M. CHAMBERS
for the Government of Trinidad and Tobago
on 5th June 1973 at Port-of-Spain [Trinidad and Tobago]

APPENDIX I
(articles 5, 6 and 7)

PERIODS OF BENEFITS UNDER ARTICLES 6 AND 7

Classification of an approved enterprise	*Maximum number of years relief from income tax and customs duties in respect of an approved enterprise located in:*		
	More developed countries (other than Barbados)	*Barbados*	*Less developed countries*
Group I enterprise	9	10	15
Group II enterprise	7	8	12
Group III enterprise	5	6	10
Enclave enterprise	10	10	15

APPENDIX II
(article 13)

AGREED LIST OF INDUSTRIES FOR EXCLUSION FROM HARMONISATION SCHEME

Aluminium products:
- (1) Tubular furniture
- (2) Window frames
- (3) Hollow ware

Automobile mufflers which are not produced as part of an integrated automobile exhaust system.

Clocks

Hats and caps

Shirts and knitted underwear

Packaging materials:
- (1) Plastic film
- (2) Twine
- (3) Paper bags

(4) Cardboard boxes
(5) Corrugated cardboard containers

Tissue paper products

Umbrellas

Nails

Brushes and mops

Coir products, mats and matting

Mattresses

Drinking straws

Aerated waters

Rum

Beer

Bakery products

Cigarettes

Concrete blocks

Concrete pipes (non-asbestos)

Concrete tiles

Copra

Edible oils and fats from copra

Handicraft items

Phonograph records

Pop Corn

Printing

Stationery (excluding continuous business forms)

Syrups