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Council for Trade in Goods

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## CARIBCAN

### REQUEST FOR A WAIVER

The following communication, dated 21 March 2023, is being circulated at the request of the Delegation of Canada.

#### 1 REQUEST

By action of the CONTRACTING PARTIES of the GATT 1947 on 28 November 1986 (L/6102), Canada was granted a waiver of its obligations under paragraph 1 of Article I of the General Agreement, with respect to the establishment of duty-free treatment to imports of eligible products into Canada from beneficiary Commonwealth Caribbean countries, as provided in Section 41 of the Customs Tariff, S.C., 1997 c. 36, in accordance with the CARIBCAN initiative (hereinafter referred to as "CARIBCAN"). This waiver was initially granted for the period 15 June 1986 until 15 June 1998. Paragraph 2 of the Understanding in Respect of Waivers of Obligations Under the General Agreement on Tariffs and Trade 1994 provides that any waiver in effect on the date of entry into force of the World Trade Organization (WTO) Agreement shall terminate, unless extended in accordance with the procedures set out in the Understanding and those of Article IX of the WTO Agreement, on the date of its expiry or two years from the date of entry into force of the WTO Agreement, whichever is earlier. Pursuant to the Understanding and the WTO Agreement, the CARIBCAN waiver granted to Canada by the Decision of 28 November 1986 expired on 31 December 1996.

The original waiver was renewed by a Decision of the General Council of 14 October 1996 until 31 December 2006. On 15 December 2006, the WTO renewed the CARIBCAN waiver until 31 December 2011. On 30 November 2011, the WTO renewed the CARIBCAN waiver until 31 December 2013. On 28 July 2015, the WTO renewed the CARIBCAN waiver until 31 December 2023. Canada requests that Members renew the waiver until 31 December 2033, in order that Canada can continue to extend duty-free treatment to imports of Commonwealth Caribbean nations. This request is made in accordance with the Guiding Principles to be followed in considering applications for waivers adopted on 1 November 1956; the Understanding in Respect of Waivers of Obligations under the General Agreement on Tariffs and Trade 1994; and paragraphs 3 and 4 of Article IX of the Marrakesh Agreement Establishing the WTO. The circumstances justifying the renewal of the waiver and the policy objectives underlying CARIBCAN are described below.

#### 2 BACKGROUND

Canadian foreign policy has long recognized a special relationship between Canada and the Commonwealth Caribbean, stemming, in the first instance, from trade and commercial ties which predate Canada's Confederation and continue to the present day by joint membership in the Commonwealth and similar democratic institutions. In 1986, in recognition of this special relationship, Canada responded positively to the request of the Commonwealth Caribbean to institute a package of trade and development assistance measures to assist them in meeting their economic development goals. The cornerstone of CARIBCAN, as these measures are known, was the extension, beginning on 15 June 1986, of preferential, one-way duty-free trade for most imports originating within Commonwealth Caribbean countries.

The considerations that led the CONTRACTING PARTIES to the GATT in 1986 to grant the Government of Canada a waiver from its obligations under paragraph 1 of Article I of the General Agreement remain relevant to the present request to renew the waiver. In particular:

1. The objective of granting preferential tariff treatment under CARIBCAN continues to be the enhancement of the Commonwealth Caribbean's existing trade and export earnings to promote economic development as well as new investment opportunities and encourage enhanced economic integration and co-operation within the region.
2. The duty-free treatment provided under CARIBCAN has been shown to address the trade, financial and development needs of the beneficiaries while not raising barriers for the trade of any other WTO contracting parties. Between 1986 and today, no contracting party to the GATT or a member of its successor, the WTO, has requested consultations with Canada with respect to any difficulty or matter arising from the implementation of the provisions of CARIBCAN.
3. There is no evidence that there has been any diversion of Canada's imports of products, which would be eligible for duty-free treatment under CARIBCAN, that originate in WTO Members who are not beneficiaries.
4. CARIBCAN is not an impediment to the reduction of tariffs and other restrictions on trade on a most-favoured-nation basis. Moreover, CARIBCAN has not prevented the further reduction of Canadian General Preferential Tariff rates available to developing countries.

### 3 COVERAGE

Product and country coverage is specified in the enabling legislation Section 41 of the Customs Tariff, S.C., 1997 c. 36.

The duty-free treatment is provided in respect of all products, except:

- products of HS Chapters 50 to 65 inclusive;
- products subject to MFN rates of duty which are more than thirty-five per cent (35%).

To qualify for the duty-free tariff treatment accorded to Commonwealth Caribbean countries, at least 60 per cent of the ex-factory price of the goods as packed for shipment to Canada must originate in one or more beneficiary countries or Canada. The 60 per cent qualifying content may be cumulated from various CARIBCAN beneficiary countries or Canada. The goods must be finished in the beneficiary country in the form in which they are imported into Canada.

The list of countries eligible to receive the duty-free benefits accorded under CARIBCAN contains the following countries: Anguilla, Antigua and Barbuda, Bahamas, Barbados, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, Dominica, Grenada, Guyana, Jamaica, Montserrat, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Trinidad and Tobago, and the Turks and Caicos Islands.

In light of the continuing relevance of these considerations and taking into account information pertaining to coverage, Canada requests that the Members of the WTO approve its application for a waiver renewal.

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CARIBCAN

*Draft Decision of ... 2023<sup>1</sup>*

The General Council,

*Having regard* to paragraphs 3 and 4 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter "WTO Agreement");

*Conducting* the function of the Ministerial Conference in the interval between meetings pursuant to paragraph 2 of Article IV of the WTO Agreement;

*Taking note* of the request of the Government of Canada for a renewal of the waiver from its obligations under paragraph 1 of Article I of the General Agreement<sup>2</sup> for provision of unilateral duty-free treatment for imports of eligible products originating in beneficiary Caribbean countries as provided for in Section 41 of the Customs Tariff, S.C., 1997 c. 36, in accordance with the CARIBCAN initiative (hereinafter referred to as "CARIBCAN"); such waiver having been initially granted by the CONTRACTING PARTIES of the GATT 1947 on 28 November 1986 for the period from 15 June 1986 until 31 December 1996, renewed by the General Council on 14 October 1996 for a period from 1 January 1997 until 31 December 2006, on 15 December 2006 for a period from 1 January 2007 until 31 December 2011, on 30 November 2011 for a period from 1 January 2012 until 31 December 2013, and on 28 July 2015 until 31 December 2023;

*Bearing in mind* the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries;

*Considering* that the objective of granting preferential tariff treatment under CARIBCAN is to enhance the Commonwealth Caribbean's existing trade and export earnings to promote economic development as well as new investment opportunities and encourage enhanced economic integration and co-operation within the region;

*Considering* also that the duty-free treatment provided under CARIBCAN is designed to promote the expansion of trade and economic development of beneficiaries in a manner consistent with the objectives of the GATT 1994 and with the trade, financial and development needs of the beneficiaries, and not to raise barriers or to create difficulties for the trade of other Members;

*Considering*, moreover, that the duty-free treatment provided under CARIBCAN should not prejudice the interests of other Members not benefitting from such treatment and that it is expected that the extension of such duty-free treatment will not cause a significant diversion of Canada's imports of products eligible for duty-free treatment under CARIBCAN originating in Members who are not beneficiaries;

*Having regard* to the assurances that the Government of Canada does not envisage the introduction of any discriminatory non-tariff measure, in pursuance of CARIBCAN, which would adversely affect the trade of Members who are not beneficiary countries;

*Considering* that the duty-free treatment provided under CARIBCAN by the Government of Canada shall not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a most-favoured-nation basis;

*Considering*, furthermore, that the duty-free treatment provided under CARIBCAN by the Government of Canada shall not adversely affect the maintenance, operation and improvement of the General Preferential Tariff (GPT) of Canada;

*Noting*, furthermore, the assurances given by the Government of Canada that it will, upon request, promptly enter into consultations with any Members on matters falling under the provisions of the GATT 1994 and related to the applications of this Decision;

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<sup>1</sup> Adopted in accordance with the Decision-Making Procedures under Articles IX and XII of the WTO Agreement agreed by the General Council (WT/L/93).

<sup>2</sup> G/C/W/710.

*Having regard* to the Guiding Principles to be followed in considering applications for waivers adopted on 1 November 1956, the Understanding in Respect of Waivers of Obligations under the General Agreement on Tariffs and Trade 1994, and paragraphs 3 and 4 of Article IX of the WTO Agreement;

*Decides*, in view of the exceptional circumstances set out above, that:

1. Subject to the terms and conditions set out hereunder, the provisions of paragraph 1 of Article I of the GATT 1994 shall be waived until 31 December 2033, to the extent necessary to permit the Government of Canada to provide duty-free treatment to eligible imports of Commonwealth Caribbean countries benefiting from the provision of CARIBCAN, without being required to extend the same duty-free treatment to like products of any other Member.
  2. Such duty-free treatment shall be designed not to raise barriers or create undue difficulties for the trade of other Members and provides no basis for establishing rights of access to the Canadian market on the basis of discriminatory non-tariff measures.
  3. The Government of Canada will submit to the General Council an annual report on the implementation of the trade-related provisions of CARIBCAN with a view to facilitating the annual review provided for in paragraph 4 of Article IX of the WTO Agreement. The Government of Canada shall promptly notify Members of any changes in the legislation covered by this waiver and any trade-related measure taken under CARIBCAN, in particular any modifications in the status of eligible imports and the duty-free treatment thereof, and shall furnish them with all the information they may deem appropriate relating to such action.
  4. The Government of Canada will, upon request, promptly enter into consultations with any interested Member with respect to any difficulty or matter that may arise as a result of implementation of the trade-related provisions of CARIBCAN; where a Member considers that any benefit accruing to it under the GATT 1994 may be or is being impaired unduly as a result of such implementation, such consultation shall examine the possibility of action for a satisfactory adjustment of the matter. This Decision does not affect Members' rights.
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