

**IIPI/USPTO**  
**Regional Symposium on the Establishment of the Caribbean**  
**Court of Justice:**  
**The Effect on Intellectual Property and International Trade**  
April 18-20, 2004 – Bridgetown, Barbados

**Theme 4:** *“The Legal Impact of the CCJ on Fostering International Trade and Harnessing Regional Intellectual Property Rights”*  
*Remarks by Maureen Crane-Scott.\**

Outline of points

- ◇ Preliminary Remarks.
- ◇ Rationale for the establishment of the CCJ, its jurisdiction and its expected role in the development of community law.
- ◇ How? by whom? and by what means can the CCJ’s original jurisdiction as the final arbiter of all matters concerning the interpretation and application of the Revised Treaty be invoked?.
- ◇ A brief look at the broad scope of subject matter under the Revised Treaty which the CCJ may be called upon to determine, interpret or enforce when exercising its original jurisdiction.
- ◇ Concluding Remarks.

**Preliminary Remarks:**

Firstly, permit me to begin by thanking the organizers for inviting me to participate as a panelist in this important regional Symposium which is, in my opinion, both timely and relevant to the regional integration process in which we are all engaged.

I believe that many of you will agree with me that the Theme for this morning's panel discussion, "***The Legal Impact of the CCJ on Fostering International Trade and Harnessing Regional Intellectual Property Rights***", would tend to give the impression that the Caribbean Court of Justice is already up and running and that there would be, if not several, certainly a few decisions, rulings or advisory opinions from the Court from which conclusions as to the Court's impact on international trade and intellectual property rights may be drawn. How, after all, can the legal impact of any institution, more especially a Court be properly assessed unless the Court itself has started to function and to exercise its legal jurisdiction in the various areas falling under its mandate?

Ladies and gentlemen, as we all know, the CCJ is still in its early infancy. Its Seat in Trinidad and Tobago is still under construction. Its Registrar, President and Judges are still to be appointed and disputes are still to be filed before it, advisory opinions still to be sought from it and references still to be made to it by national courts or tribunals seeking a ruling or decision of the Court in its original jurisdiction. The truth is that at this point in time, there are no cases, decisions or rulings from which the *actual* impact of the CCJ can be assessed. Nonetheless, like the speakers before me, I will attempt to predict the *likely* or expected impact of the CCJ on the development of international trade and intellectual property within the Caribbean Single Market and Economy.

Perhaps the best place to start, is to revisit very briefly, the underlying rationale for the Court's establishment and to remind ourselves of its intended role in the regional integration process, its role as one of the main drivers of the CSME and its expected role in the development of CARICOM Community law.

**Rationale for the establishment of the CCJ, its jurisdiction and its expected role in the development of CARICOM Community law:**

The question of the establishment of a Caribbean Court of Appeal as a final court of appeal from the domestic jurisdictions of CARICOM Member Countries (replacing, where they still exist, appeals to the Judicial Committee of the Privy Council) has been the subject of discussion within CARICOM for several decades<sup>1</sup>.

As Chief Justice Sir David Simmons reminded us in his welcome remarks yesterday, as far back as 1947, a Meeting of West Indian Governors meeting in Barbados had reflected on the need for a West Indian Court of Appeal and urged its establishment.<sup>2</sup>

A Resolution urging the establishment of a Committee of regional Attorneys-General to consider the question of establishing a final appellate Court in the Caribbean which was tabled by Jamaica and passed at the Sixth Meeting of the Heads of Government of the Caribbean Community held in Kingston, Jamaica in April 1970, is said to represent the critical juncture from which to trace the history of the development of the Caribbean Court of Justice and the debate surrounding the idea of such a court.<sup>3</sup>

Added impetus for the establishment of the Court undoubtedly came in 1989 when CARICOM Heads of Government took a firm decision to establish a Caribbean Court of final appellate jurisdiction.

Although, the Court was originally conceived as an appellate court of last resort to replace the Privy Council, a number of reports, notably the 1972 Fraser Report<sup>4</sup> and the

---

<sup>1</sup> See “*Time for Action*” *Overview of the Report of the West Indian Commission*, 1992 chaired by Sir. Sridath Ramphal at p. 36.

<sup>2</sup> See a Research Paper by Hugh Rawlins, Lecturer, Faculty of Law, University of the West Indies commissioned by the Caricom Secretariat for the Preparatory Committee on the Caribbean Court of Justice in 2000 entitled “*The Caribbean Court of Justice: The History and Analysis of the Debate*” at page 5.

<sup>3</sup> See 1992 West Indian Commission Report at page 5

<sup>4</sup> See the June 1972 “*Report of the Representative Committee of OCCBA on the Establishment of a Caribbean Court of Appeal In Substitution for the Judicial Committee of the Privy Council*” chaired by the late Mr. Justice Aubrey Fraser.

West Indian Commission Report of 1992,<sup>5</sup> recommended the conferment of an original jurisdiction upon a Caribbean Court of last resort in order to permit the Court to function as arbiter in resolving disputes arising from the various regional Agreements which provide the framework for the regional integration movement. These recommendations<sup>6</sup> have evidently played a major role in influencing the current design and structure of the Caribbean Court of Justice.

Accordingly, at the Nineteenth Meeting of the Conference of Heads of Government of the Caribbean Community held in St. Lucia in 1998, Heads of Government accepted the Barbados and Jamaica proposal to invest the Court with both an original and an appellate jurisdiction. Article III of the Agreement Establishing the Caribbean Court of Justice adopted by Member States of the Community on February 14, 2001 consequently provides:

- “1. *The Court is hereby established with:*
- (a) *Original Jurisdiction in accordance with Part II,<sup>7</sup> and*
  - (b) *Appellate jurisdiction in accordance with the provisions of Part III.<sup>8</sup> ”*

CARICOM’s legal Consultant, Mr. Duke Pollard has described the Court’s dual jurisdictions in the following terms:

<sup>5</sup> See the 1992 West Indian Commission Report at page 37.

<sup>6</sup> “We believe that the time is at hand for establishing the Caribbean Court of Appeal - what in an integration context we would prefer to call the Caribbean Supreme Court. We do not wish to minimize the issues which have characterized the discussion...but we are strongly of the view that we cannot,...go on sitting around tables forever discussing the pros and cons of action and in the process forever deferring it... “We believe the CARICOM decision was the right one, even in the context of an appellate jurisdiction alone: but the case for the CARICOM Supreme Court, with both a general jurisdiction and an original regional one, now overwhelming- indeed it is fundamental to the process of integration itself. ...Integration in its broadest sense – involving a Single CARICOM Market, monetary union, the movement of capital and labour and goods, and functional cooperation in a multiplicity of fields - must have the underpinning of Community law. Integration rests on rights and duties; it requires the support of the rule of law applied regionally and uniformly. A CARICOM Supreme Court interpreting the Treaty of Chaguaramas, resolving disputes arising under it, including disputes between Governments parties to the Treaty, declaring and enforcing Community law, interpreting the Charter of Civil Society- all by way of the exercise of an original jurisdiction – is absolutely essential to the integration process.” See the 1992 West Indian Commission Report at page 37.

<sup>7</sup> Articles 12- 24 of Part II of the Agreement Establishing the Caribbean Court of Justice contain provisions governing the exercise by the Court of its original jurisdiction.

<sup>8</sup> Article 25 of Part III of the Agreement Establishing the Caribbean Court of Justice contains provisions governing the exercise by the Court of its appellate jurisdiction.

*“The Caribbean Court of Justice has been designed as a unique multinational judicial institution with two discrete jurisdictions. As a municipal court of last resort, the CCJ will replace the Judicial Committee of the Privy Council. As an international tribunal, the CCJ will employ rules of international law in interpreting and applying the Revised Treaty of Chaguaramas Establishing the Caribbean Community including the CARICOM Single Market and Economy.”*<sup>9</sup>

If the role and importance of the CCJ in the regional integration process can be summed up in a few paragraphs, it will be seen that the CCJ will be far more than a mere replacement for the Judicial Committee of the Privy Council. While the Court in the exercise of its appellate jurisdiction, will undoubtedly replace the Privy Council and assume that body’s position at the pinnacle of the Court systems of individual Member States, the conferral on the CCJ of its separate original jurisdiction as the final arbiter and interpreter of the Revised Treaty will make the CCJ an important driver of the Caribbean Single Market and Economy (CSME). As Mr. Duke Pollard so eloquently stated yesterday, the Caribbean Court of Justice is the “institutional centerpiece” of the CSME, “...if the Court does not fly, the CSME is a dead duck.”

It is anticipated that disputes and questions of interpretation concerning the scope of rights and obligations will inevitably arise under the Revised Treaty<sup>10</sup>, the Caribbean Court of Justice exercising its original jurisdiction will, through its decisions, rulings and advisory opinions, breathe life into the Treaty, making the integration process and the CSME a living reality.

The central role which the CCJ has been called upon to play in the construction and implementation of the Caribbean Single Market and Economy (CSME) though not identical to that of the ECJ, is comparable to that which the European Court of Justice has

---

<sup>9</sup> See article entitled “*Appellate Jurisdiction of the Caribbean Court of Justice (CCJ)*” dated November 2003 by Duke E.E. Pollard, Director, CARICOM Legislative Drafting Facility.

<sup>10</sup> See the comments of the Chairman of the Preparatory Committee on the CCJ cited at page 57 of the Hugh Rawlins Research Paper commissioned by the Caricom Secretariat for the Preparatory Committee on the Caribbean Court of Justice referred to at footnote 2 above.

been playing within the European Community for several decades. It is anticipated that the various decisions, rulings and advisory opinions to emanate from the Court will (together with the text of the Revised Treaty and the other regional Agreements<sup>11</sup> supporting the CSME) in the course of time, become what the West Indian Commission so aptly referred to as Community law.<sup>12</sup> Without such a Court to settle disputes concerning the interpretation and application of the Treaty expeditiously and once and for all, the pace of implementation of obligations and the conferral of benefits under the Treaty is likely to be a slow, inefficient, uncertain and frustrating experience for Member States and nationals alike.

**How?, by whom? and by what means may the CCJ's original jurisdiction as the final arbiter of all matters concerning the interpretation and application of the Revised Treaty be invoked?:**

Although as a municipal court of last resort the CCJ, in the course of exercising its appellate jurisdiction, will undoubtedly have an impact on the development of a Caribbean jurisprudence much in the same way as the Privy Council currently does, its impact will become evident over the long term. However, there is little doubt that its impact is likely to be more immediately seen as the Court begins to exercise its original jurisdiction as the final arbiter on all matters relating to the interpretation and application of the revised Treaty of Chaguaramas.

Examination of Part II of the Agreement Establishing the Caribbean Court of Justice indicates that the Court's original jurisdiction to settle issues relating to the interpretation and application of the Revised Treaty may arise in three (3) broad situations, namely, (i) in contentious proceedings involving disputes between Member States<sup>13</sup>, or between Member States parties to the Agreement and the Community<sup>14</sup>

---

<sup>11</sup> Other Instruments supplementing the Revised Treaty include, The Charter of Civil Society, the Agreement Establishing the Caribbean Court of Justice, The Agreement for the Establishment of an Assembly of Caribbean Community Parliamentarians and the CARICOM Agreement on Social Security;

<sup>12</sup> See the 1992 West Indian Commission Report at page 37.

<sup>13</sup> Article 12(a) Agreement Establishing the CCJ.

<sup>14</sup> Article 12(b) Agreement Establishing the CCJ.

concerning the interpretation or application of the Treaty, or upon the application by a national of a Member State party to the Agreement<sup>15</sup> where such person has established that such person has been deprived directly of the enjoyment of benefits conferred by the Revised Treaty<sup>16</sup>; (ii) pursuant to a direct request by a Member State or the Community for an advisory opinion<sup>17</sup> concerning the interpretation or application of the Revised Treaty; or (iii) upon referral to the Court from a national court or tribunal<sup>18</sup> concerning a question concerning the interpretation or application of the Revised Treaty.

Article 211 of the revised Treaty provides that where a dispute arises between Member States parties to the Agreement, or between the Member States parties to the Agreement and the Community as a whole, or between a Community national and a Member State concerning the extent of the respective rights and obligations under the revised Treaty, the CCJ in the exercise of its original jurisdiction shall have exclusive jurisdiction to hear and deliver final judgment in the matter in dispute.<sup>19</sup>

Article 212 of the Revised Treaty also confers upon the Court an original jurisdiction exclusive to the CCJ to deliver advisory opinions concerning the interpretation and application of the Treaty. Such opinions shall however be delivered only at the request of Member States parties to a dispute, or at the request of the Community.<sup>20</sup>

Finally the revised Treaty provides in Article 214 that where a national court or tribunal of a Member State is seized of an issue whose resolution involves a question concerning the interpretation and application of the Treaty, that court or tribunal may if it

---

<sup>15</sup> Article 12(d) Agreement Establishing the CCJ.

<sup>16</sup> See Article 222 of the Revised Treaty of Chaguaramas, incorporating Article 24 of the Agreement Establishing the Caribbean Court of Justice giving *locus standi* to natural or juridical persons to appear as parties in proceedings before the CCJ with special leave of the Court;

<sup>17</sup> Article 13 Agreement Establishing the CCJ.

<sup>18</sup> Article 14 Agreement Establishing the CCJ.

<sup>19</sup> See Article 211 of the Revised Treaty of Chaguaramas incorporating Article 12 of Part II of the Agreement Establishing the Caribbean Court of Justice.

<sup>20</sup> See Article 212 of the Revised Treaty of Chaguaramas incorporating Article 13 of Part II of the Agreement Establishing the Caribbean Court of Justice;

considers that a decision on the question is necessary to enable it to deliver judgment, refer the question to the CCJ for determination before delivering judgment.<sup>21</sup>

As the Court is called upon to exercise its original jurisdiction, it will work out for itself the situations and conditions under which it will accept jurisdiction to hear disputes, accept referrals or render advisory opinions.

I have located one case from the European Court of Justice to illustrate the point. The case is highlighted in the Annual Report of Proceedings of the Court of Justice in 2003 prepared by its President Mr. V. Skouris. He reports that in the Case of Barcadi-Martini and Cellier des Dauphins [2003] ECR 1-905, the ECJ held inadmissible a question referred to it to enable the referring court to decide whether the legislation of another Member State is in accordance with Community law. In reaching that conclusion the ECJ observed that when such a question is before it, the Court must “*display special vigilance*” and must “*be informed in some detail of the referring court’s reasons for considering that an answer to the questions is necessary to enable it to give judgment.*”

The ECJ pointed out, *inter alia*, that where the national court has confined itself to repeating the argument of one of the parties, without indicating whether and to what extent it considers that a reply to the question is necessary to enable it to give judgment, the ECJ did not have the material before it to show that it was necessary to rule on the question referred and accordingly the question was inadmissible and jurisdiction was declined.

It is obvious that in giving its decision, the ECJ was laying down clear directions and conditions for the referring tribunal to follow when making referrals to the ECJ. It is clear that the case for such referral must be properly made and will not be entertained by the ECJ unless the referring court itself clearly set out a reasoned opinion why a ruling from the ECJ would be necessary to enable the referring court to give judgment. In other

---

<sup>21</sup> See Article 214 of the Revised Treaty of Chaguaramas incorporating Article 14 of Part II of the Agreement Establishing the Caribbean Court of Justice;

words, jurisdiction is not automatically accepted by the ECJ. It is too early to say whether, given a similar situation, the CCJ will take the same approach and decline jurisdiction.

**A look at the broad scope of the subject matter which the CCJ may be called upon to determine, interpret or enforce when exercising its original jurisdiction:**

In order to better appreciate the very substantial scope of the subject matter which the CCJ will be expected to grapple with in the exercise of its original jurisdiction as the final arbiter on all matters relating to the interpretation and application of the Revised Treaty, it is important to recall that in the lead up to the adoption in 2001 of the text of the Revised Treaty of Chaguaramas, CARICOM Member States had over a period of several years incrementally adopted a series of nine (9) Protocols designed to construct the broad framework of the CSME.

The nine (9) Protocols have since been completely subsumed within the text of the Revised Treaty of Chaguaramas adopted by Member States in 2001. The Protocols introduced new or revised provisions in the following broad areas:

**Protocol I – *Institutional Arrangements*;**

Protocol I which has been subsumed in Chapter 2 of the Revised Treaty establishes the Conference of Heads of Government and the Community Council of Ministers as the two (2) principal policy-making organs of the Community. It also identified four (4) new organs to support the policy-making process in the functional areas of Trade and Economic Development (COTED), Foreign and Community Relations (COFCOR), Finance and Planning (COFAP) and Human and Social Development (COHSOD). The Legal Affairs Committee, the Committee of Central Bank Governors and the Budget Committee are important supporting Bodies of the Community.

Article 27 (4) of the Revised Treaty also enables a Member State, subject to the agreement of the Conference, to opt-out of obligations arising from decisions of

competent Organs of the Community, provided that the fundamental objectives of the Community as laid down in the Treaty are not prejudiced thereby.

While it is not easy to provide a precise factual situation which could arise, it is conceivable that a dispute could arise between Member States, or between a Member State and the Community as a whole as a result of the exercise by the member State of its right under Article 27(4) to opt-out of a decision of the Conference of Heads of Government, or the Council of Ministers or the Council for Trade and Economic Development (COTED) or other competent Organ of the Community. In theory, such a dispute could find its way before the CCJ which in the exercise of its original jurisdiction would have to examine the Treaty, interpret Article 27(4) and, having regard to all the circumstances, determine whether the opting-out by the Member State concerned prejudices the fundamental objectives of the Community as laid down in the Treaty.

**Protocol II – *Establishment, Services, Capital and Movement of Community Nationals*;**

Protocol II is now contained in Chapter 3 of the Revised Treaty and addresses the right of establishment, the right to provide services, the right to move capital and freedom of movement of Community nationals. Articles 32, 36 and 39 of the Revised Treaty forbid Member States from imposing new restrictions with respect to the right of establishment, the right to provide services and to move capital and obliges Member States to remove existing restrictions in accordance with programmes established by competent Organs.

Protocol II constitutes, in my view, one of the most important aspects of the CSME. It essentially governs the manner in which the existing technical barriers and restrictions to trade and investment in the region will be dismantled in order to facilitate intra-regional trade and investment and ultimately, the practical functioning of the CSME.

Following the adoption of Protocol II some years ago, Member States were mandated to notify the CARICOM Secretariat of all known restrictions or barriers which might impede the exercise by CARICOM nationals of the right of establishment, the right to provide services or move capital, or which might hamper or impede the freedom of CARICOM nationals to move freely within the Community. A series of CARICOM Secretariat Consultants visited each Member State and reported to the Secretariat on the nature of the restrictions and their compatibility with the Treaty. A timetable was subsequently agreed on by Member States for the removal of such restrictions and a decision was later taken to expedite removal of all remaining restrictions by the year 2005.

It is very likely that despite the best efforts of the Secretariat and Member States to remove all the restrictions, barriers or impediments to intra-regional trade and investment, that natural or juridical persons seeking to exploit Treaty benefits under Protocol II/Chapter 3 may still encounter difficulties in so doing either by reason of new restrictions introduced since the adoption of Protocol II, or simply because restrictions or barriers were not notified or identified due to inadvertence or other such reason. Such difficulties, if not resolved by other means, could potentially end up before the CCJ as a dispute concerning the interpretation or application of the Treaty and requiring the exercise of the Court's original jurisdiction.

In my capacity as Registrar of Companies, I have, like other Registrars from the region, been involved in the process of assisting Barbados in identifying and notifying potential barriers or restrictions on the right of establishment. I have also defended the attempt by successive *ad hoc* CARICOM Secretariat Consultants to identify as a restriction which must be removed, the legal requirement under the Barbados Companies Act, Cap. 308 for external companies to register in Barbados prior to commencing their operations in Barbados. The CARICOM Consultants have argued that since companies incorporated in Barbados do not have to register in the same manner that external companies are required to, the registration requirement is discriminatory and an impediment to trade which must be removed. Barbados and some of the other Member

States have argued that the registration requirement for external companies is a necessary regulatory or administrative requirement which is not discriminatory and cannot be removed without seriously compromising domestic arrangements.

Though admittedly not a matter of earth shattering importance, this could be a matter which the CCJ may be required to rule on in the exercise of its original jurisdiction at some time in the future, either as an actual dispute in the course of contentious proceedings between Member States, or perhaps by way of an advisory opinion referred by a Member State or by the Community.

### **Protocol III - Industrial Policy;**

Protocol III is now contained in Part I of Chapter 4 of the Revised Treaty entitled Policies for Sectoral Development. It addresses industrial policy in the Community in a manner designed to enhance international competitiveness of the Community and achieve sustainable production of goods and services for the promotion of the Region's economic and social development.

Article 66 of the Revised Treaty places an obligation on the Council for Trade and Economic Development (COTED) to promote the protection of intellectual property rights within the Community by, *inter alia*, the strengthening of regimes for the protection of intellectual property rights and the simplification of registration procedures in the Member States.<sup>22</sup>

There is, in my view, an apparent weakness in the Revised Treaty regarding how intellectual property rights have been dealt with. It relates to the fact that the Treaty does not specifically identify by name the various categories of intellectual property which are to be protected by Member States in their domestic laws. Nor are the expressions "intellectual property" or "intellectual property rights" expressly defined anywhere in the Treaty. Further, there is no clear text in the Treaty which specifically imposes an obligation on a Member State to protect trademarks, patents, industrial designs or

---

<sup>22</sup> See Article 66(a) Revised Treaty;

copyright or to adopt the other minimum standards of intellectual property protection expressly required under the WTO/TRIPS Agreement.

No doubt, in crafting the text of the Revised Treaty, the assumption was probably made that Member States by virtue of their obligations under the WTO/TRIPS Agreement, would have already been obligated to enact domestic laws providing for the eight (8) standards<sup>23</sup> of intellectual property protection required under the WTO/TRIPS Agreement.

Despite the absence from the Treaty of a clear definition of intellectual property, or a clear duty upon Member States to enact intellectual property laws, flexibility nonetheless exists for the categories and standards of intellectual property protection to be expressly defined and declared from time to time by a decision of the COTED. Such a COTED decision would then become an obligation to be fulfilled by Member States in the same manner as if it had been set out in the Treaty itself.

Regrettably, it is no secret that there are still some CARICOM States who have not yet passed the legislation necessary to fulfill their obligations under the WTO/TRIPS Agreement in relation to the protection of intellectual property rights. The COTED, however, has been given a clear mandate under Article 66(a) to promote the strengthening of regimes for the protection of intellectual property. This would include ensuring that all Member states have enacted the required legislative regime for Intellectual property rights. The unavailability of intellectual property rights protection in such Member States would undoubtedly be a source of concern to the nationals of other Member States desirous of trading or investing in such countries.

Conceivably, a dispute between Member States or between Member States and the Community about the non-availability of intellectual property rights protection in a Member State which has not yet passed such laws could arise for determination by the

---

<sup>23</sup> The eight international standards required under the WTO/TRIPS Agreement are patents, trademarks, industrial designs, copyright and related rights, integrated circuits, geographical indications, protection of undisclosed information and control of ant-competitive practices in contractual licences.

CCJ in its original jurisdiction. Alternatively, an advisory opinion could be sought from the Court by any Member State, or by the Community as to the interpretation and application of Article 66 (a) of the Revised Treaty as it relates to the role of the COTED in ensuring that intellectual property rights protection is available throughout the Community.

There are seven (7) other Protocols which have now been subsumed within the Revised Treaty. Time does not permit a detailed examination of their provisions or any further speculation as to how disputes could arise concerning the interpretation and application of the Treaty, but suffice it to say that disputes or questions will inevitably arise concerning how any of these subject areas should be applied or interpreted under the Revised Treaty and the CCJ's original jurisdiction could potentially be invoked as provided in the Treaty.

**Protocol IV – *Trade Policy*;**

Protocol IV which is now contained in Chapter 5 of the Revised Treaty addresses trade policy and is largely concerned with the establishment of a regime for the free movement of goods and services within the CSME, cooperation in Customs administration, safeguards, dumping and subsidies and the adoption of a common protective policy in respect of third states.

**Protocol V – *Agricultural Policy*;**

Protocol V which has been subsumed in Part II of Chapter 4 of the Revised Treaty entitled Policies for Sectoral Development, addresses agricultural policy and seeks to affect the transformation of the agricultural sector within the Community based on efficient, diversified, internationally competitive, sustainable and environmentally friendly development.

**Protocol VI – *Transport Policy*;**

Protocol VI which is now located within Chapter 6 of the Revised Treaty addresses transport policy in the Community and is concerned with the provision of adequate, safe

and internationally competitive transport services for the development and consolidation of the CSME.

**Protocol VII – *Disadvantaged Countries, Regions and Sectors*;**

Protocol VII which has been subsumed in Chapter 7 of the Revised Treaty introduces a new regime for dealing with disadvantaged countries, regions and sectors within the Community and is largely concerned with ensuring that the relatively less advanced economies of the Community are allowed to adjust to competition within the CSME.

**Protocol VIII – *Rules of Competition*;**

Protocol VIII which has been subsumed in Chapter 8 of the Revised Treaty addresses Competition policy and Consumer Protection is concerned with putting measures in place to protect anti-competitive conduct by Community enterprises. Consumer protection is also addressed.

**Protocol IX – *Disputes Settlement*;**

Protocol IX which has been subsumed in Chapter 9 of the Revised Treaty addresses the settlement of disputes concerning the interpretation and application of the Treaty

**Concluding Remarks:**

In conclusion, it is evident that the CCJ will have an important role to play in fostering the regional integration process and in ensuring that the rights and benefits promised under the Treaty are secured for the good of the Region as a whole.

The impact of the CCJ is likely to be most keenly felt in the exercise of its original jurisdiction as rulings, decisions and opinions are sought of it by Member States, the Community, interested persons and national courts and tribunals seeking final settlement of matters concerning the interpretation or application of the Treaty.

Although the exact scope of intellectual property protection required within the CSME has not been spelt out in Article 66 of the Revised Treaty, in the exercise of its original jurisdiction, the CCJ may choose to so interpret the provision as to rule that an obligation nonetheless exists for Member States to at least have in place the minimum standards of intellectual property protection required under the WTO/TRIPS Agreement having regard to the Community's participation in the WTO/TRIPS and other international regimes for the protection of such rights.

Finally, a comment on harmonization and the necessity for the Community to adopt a common approach to the registration of Intellectual Property Rights:

- While the vast majority of CARICOM Member States have complied with their international obligations under the WTO/TRIPS Agreement and have put in place the eight (8) international standards concerning the availability, scope and use of intellectual property rights under the WTO/TRIPS Agreement, the texts of these laws in the individual Member States are far from uniform and contain obvious substantive as well as procedural differences in how such rights will be granted, protected and enforced. In the absence of a harmonized or common approach to the protection of intellectual property within the CSME, applicants and rights holders would undoubtedly find themselves faced with different results when seeking registration or enforcement of their rights in all or any of the sovereign Member States which comprise the Community.
- Article 66(b) of the Revised Treaty mandates the COTED to promote the protection of intellectual property rights within the Community by the establishment of a regional administration for intellectual property rights, except copyright. As someone pointed out yesterday, until the regional administration of registrable intellectual property rights is put in place as envisaged by the Treaty, the CCJ in its original jurisdiction could be asked to consider how the application of this obligation is intended to work under the Treaty, and to render advice with respect thereto.

Thank you for your attention.