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at the

Symposium

Establishment of the Caribbean Court of Justice:
The Effect on Intellectual Property and International Trade

***Topic: Looking Ahead: The Future of the
Caribbean Region and the CCJ***

Place: Sherbourne Conference Center, Bridgetown, Barbados

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Time: 4:00 – 5:00 PM

What is the future of the Caribbean and the CCJ?

Before I discuss the future of the CCJ, I'd like outline a view of the future of the Caribbean and describe the future of the CCJ in relation to that view of the Caribbean.

First, I see the full implementation of the Caribbean Single Market and Economy (CSME) as critical to the region's economic future and its effectiveness in developing a new platform for the competitiveness of the Caribbean countries in the global marketplace. This new platform for competing, which would more effectively consolidate the region's economic power, is necessary given the evolving configuration of international trade. Certain countries, such as Jamaica, Barbados, Trinidad & Tobago and Guyana, will form the nucleus of the CSME by December, 2004; however, it is important that all of the countries of the region

proceed with the steps that are needed for timely and effective full-scale CSME implementation.

With the onset of the CSME, certain changes are likely to occur.

Earlier today there was mention of a regional stock exchange.

Also, we're likely to have companies, whether foreign or domestic, that locate various parts of their operations in different countries in the region based on the comparative advantage a particular country might provide. In fact, such an approach may be essential for the competitiveness of some of the private firms in the region. For example, because of lower skilled labor costs in a particular country, a company may locate the labor intensive part of its operations in that country; its headquarters in another; and its database back office operations in another. Similar modes of operation may arise for other entities to take advantage of the proposed borderless CSME and the need to enhance their competitiveness.

Another factor I would like to highlight is that the Caribbean region, in general, suffers from a low level of self-generated capital accumulation. Consequently, it is largely a capital importing region. Foreign investors in seeking to exercise their investment options normally prefer a stable macroeconomic environment, based on the predictable interpretation and application of laws. A strong rule of law regime is critical to economic development as evidenced by the following statement made in June 2000 by Dr. David Dollar of the World Bank in which he stated, *“ If Jamaica were to improve its rule of law measure to the level found in the Bahamas, Saint Lucia or Trinidad and Tobago, it could expect about 50% more foreign investment, about 2 percentage points higher growth, and improved social indicators, such as lower infant mortality and higher literacy.”*

Because of the relatively small domestic markets in the region, countries of the region must look externally to international trade

as an essential element for achieving sufficiently robust economic growth to bring broad-based prosperity and sufficient resources for the government to address the country's social needs. While tourism is certainly a core aspect of the region's role in international trade, a broader base of economic activity is necessary to ensure the region is not unduly vulnerable to the vicissitudes of the global marketplace. As I mentioned yesterday in my remarks, the region needs to look at opportunities for new business opportunities in knowledge-based and service-based industries, some of which will depend on effective exploitation of intellectual property, which in turn is dependent on sound and consistent interpretation of laws governing intellectual property rights.

So what does this view of the future of the Caribbean mean for the future of the CCJ?

In my view, the CCJ will be at the heart of the region's efforts to successfully accomplish these new approaches to business operation, international trade, and the new way in which individuals, firms and countries in the region will relate to one another within the CSME structure. Yesterday at lunch Judge Damich discussed the creation of the US Court of Appeals for the Federal Circuit. One purpose for its creation was to facilitate more consistent interpretation and application of patent law which was assumed would help foster more industrial innovation in the US and ultimately greatly increased economic growth for the US.

I think that the CCJ will play a similar role in this case with regard to the CSME and the region's effective use of this structure to facilitate economic integration and in turn its increased competitiveness in the global marketplace. In order for the CSME to fully achieve the aims for its establishment, there is a clear need for a permanent, central, regional institution to authoritatively and definitively pronounce on the rights and

obligations arising out of the CSME and the disputes that will arise therefrom. The CCJ is the entity that would perform this role.

In its celebrated May, 1992 report “Time for Action”, the West Indian Commission stated, and I quote, *“But there is now another reason for establishing a court of high authority in the Region, and that is the process of integration itself. Integration in its broadest economic 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 Government 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.

The exclusive jurisdiction of the CCJ in interpreting the law relating to the CSME will avoid the likelihood of conflicting legal opinions on important economic, commercial and financial issues that might otherwise create uncertainty and unpredictability in the business climate and macroeconomic environment, thus benefiting not only CSME development but also ensuring the kind of predictable legal environment sought by investors.

The governments of the region need to seize the opportunities for economic growth that can be found in more effective exploitation of intellectual property. The CCJ would play a critical role in providing the consistency of interpretation of these rights that can help foster growth through intellectual property based industries.

I would like to conclude by highlighting several actions that are needed to ensure the CCJ can play the role envisioned:

First, the work of the future CCJ judges in harmonizing and standardizing critical laws in the region is likely to be made less difficult through the work of CARICOM's Regional Legislative Drafting Facility, which is led by our esteemed colleague Duke Pollard. This Facility was established to draft laws for countries in the region in the areas of the CSME, justice and security, and HIV/AIDS. To the extent that the Facility successfully accomplishes harmonization of legislation through its drafting mandate, then the work of the CCJ can be more efficient by, among other things, obviating the need for the CCJ judges to pronounce on those laws of member states that contain the same provisions as that of another state for which the CCJ judges have already made a pronouncement.

Of course, the financial sustainability of the CCJ is essential. Its sustainability will hopefully be assured through the \$100 million trust fund that is being established, the earnings of which will support the ongoing operating costs of the CCJ.

The issues the CCJ will address, particularly those involving trade matters, will be complex. The budget for the CCJ's operating costs must enable the continuous training for the CCJ judges that will ensure they remain current on evolving legal issues, particularly those involving trade matters. The need for continued training will be even more vital if the region seeks to position itself as a jurisdiction of choice for adjudication of trade matters and other issues where the parties have a choice of where to adjudicate.

Not only will training of judges be important, but the availability of regular, periodic training of members of the bar, including prosecutors, on the legal topics critical to the region's trade and

CSME implementation, among others, is essential. The quality of the cases put before the court will be a significant factor in how effectively and quickly the court can create and develop a body of law regarding the CSME, trade matters and other topics critical to the region.

We also need to ensure that case decisions and the laws, policies and treaties on which the cases are based are readily available to the judges, the rest of the legal community, and the public.

USAID has supported the establishment of a Regional Case Reporting Facility located in the Law Library of the Cave Hill Campus of the University of the West Indies here in Barbados.

Under the guidance of Senator Velma Newton, the UWI Law Librarian, the Facility has so far been able to edit 13,000 unreported regional judgments, 10,000 of which have now been added to the Facility's website which incorporates a searchable, electronic database. The region needs to ensure that this database can continue to be expanded to include CCJ cases,

treaties, and other legal decisions so there is ready access to the body of legal information needed to inform legal decision-making.

Last but certainly not least, the national governments of the region need to relate to the CCJ in a way that ensures its independence and recognizes its role as the highest legal body in the region for determining how parties in the region, including governments, relate to one another under the CSME, in trade matters, and on other matters for which they are the final court of appeal.