

AGREED MINUTES

Consultations between the Republic of Trinidad and Tobago and Jamaica on Free Movement in the Context of the Caribbean Single Market and Economy (CSME)

2nd – 3rd December 2013

Kingston, Jamaica

The Governments of Jamaica and the Republic of Trinidad and Tobago held consultations from 2nd – 3rd December 2013, at the invitation of Senator the Hon. Arnold J. Nicholson, Q.C., Minister of Foreign Affairs and Foreign Trade, to Hon. Winston Dookeran, Minister of Foreign Affairs, to discuss the free movement of Jamaicans into the Republic of Trinidad and Tobago within the context of the Caribbean Single Market and Economy (CSME).

The delegations comprised the following:

Jamaica:

Senator, the Hon. Arnold J. Nicholson, Q.C., Minister of Foreign Affairs and Foreign Trade (MFAFT)

Ambassador Paul Robotham, Permanent Secretary, MFAFT

Her Excellency Sharon Saunders, High Commissioner of Jamaica to the Republic of Trinidad and Tobago

Ms. Marcia Thomas, Under-Secretary, Foreign Trade, MFAFT

Ambassador Joy Wheeler, Under-Secretary, Bilateral and Regional Affairs, MFAFT

Ms. Jennifer McDonald, Chief Executive Officer, Passport Citizenship and Immigration Agency (PICA)

Dr. Kathy-Ann Brown, Deputy Solicitor-General, Attorney-General's Chambers

Ms. Cheryl Spencer, Senior Director, Foreign Trade Department, MFAFT

Mr. Lloyd Wilks, Director, Diaspora and Consular Affairs Department, MFAFT

Mr. Orlando Williams, Director, PICA

Ms. Lisa-Ann Grant, Director, Work Permit and CSME Department, Ministry of Labour and Social Security

Mrs. Angella Comfort, Acting Director, Caribbean and Americas Department, MFAFT

Mrs. Patricia Rodney Evering, Acting Director, Protocol Department, MFAFT

Ms. Michelle Walker, Head, Legal Unit, MFAFT

Mr. David Prendergast, Head, Trade Agreements Implementation and Coordination Unit, MFAFT
Mr. O'neil Francis, Assistant Attorney-General, Attorney-Generals Chambers
Mrs. Faith Mullings-Williams, Assistant Director, Foreign Trade Department, MFAFT
Mrs. Angella Rose-Howell, Assistant Director, Caribbean and Americas Department, MFAFT
Mrs. Dahlia Gillings-McBean, Assistant Director, Diaspora and Consular Affairs Department, MFAFT
Mr. Ephieum Allen, Deputy Director, Immigration, PICA
Mrs. Mitzie Beaumont-Daley, Senior Legal Officer, Ministry of National Security
Ms. Khadrea Folkes, Legal Officer, Ministry of Labour and Social Security
Ms. Kacy-Ann West, Foreign Service Officer, Trade Agreements Implementation Unit, MFAFT
Ms. Renée Rattray, Foreign Service Officer, Caribbean and Americas Department, MFAFT
Mr. Hanniff Miller, Foreign Service Officer, Diaspora and Consular Affairs Department, MFAFT

The Republic of Trinidad and Tobago:

The Honourable Winston Dookeran, Minister of Foreign Affairs
Her Excellency the Rev. Dr. Iva Gloudon, High Commissioner of the Republic of Trinidad and Tobago to Jamaica
Mr. Andrew Johnson, CEO, Government Information Services
Mr. Gerry Downes, Acting Chief of Immigration
Ms. Lynne Mohammed, Head, CSME Unit, Ministry of Foreign Affairs
Ms. Carlene Gardener, Senior Immigration Officer IV with responsibility for CSME Issues
Ms. Erline Kowlessar, First Secretary, High Commission of the Republic of Trinidad and Tobago, Kingston

In the context of the visit, the Ministry of Foreign Affairs and Foreign Trade (MFA&FT) hosted a working lunch for the visiting delegation from the Republic of Trinidad and Tobago, which included representatives from the Jamaica Manufacturers' Association (JMA), Jamaica Exporters Association (JEA), the Jamaica Chamber of Commerce (JCC) and the Private Sector Association of Jamaica (PSOJ). They agreed on the desirability of a constructive dialogue underpinned by facts, and to work together to find solutions to the issues affecting bilateral trade. They concurred on the importance of reducing tensions in travel and trade in the region and expressed satisfaction at the work of the Jamaica-Trinidad and Tobago Trade Desk.

Minister Dookeran also paid courtesy calls on the Most Honourable Portia Simpson Miller, ON, MP, Prime Minister of Jamaica, and Mr. Andrew Holness, MP, Leader of the Opposition.

At the start of the consultations, Ministers Nicholson and Dookeran gave opening remarks at the consultations that were open to the media. They both highlighted the urgency of dealing with the issue of hassle-free travel of nationals as a matter of priority, as it affected both countries. They both stressed the importance of resolving the tensions which have emerged as a result of the refusal of entry of Jamaican nationals into the Republic of Trinidad and Tobago.

Both Ministers acknowledged that the issues under discussion have the potential to spill over into other areas that could negatively affect relations between both countries, including in the area of trade. It was agreed that every effort should be made to avoid such a development, and to work together to ensure that the interests of both sides, going forward, will be advanced in a mutually beneficial way.

A media briefing was held following the meeting.

The Ministers and their delegations held two rounds of bilateral consultations. The consultations were conducted in a frank and cordial atmosphere and focused on specific issues in the relations between both sides in the context of the CSME. The discussions were forward looking and solution-oriented, and produced the following understanding and agreements:

1. Hassle-Free Travel: Movement of Jamaicans into the Republic of Trinidad and Tobago

- **Implications of the Caribbean Court of Justice (CCJ) Ruling on the Shanique Myrie Case:**

1. Community Law as clarified in the CCJ ruling in the Shanique Myrie Case, entitles CARICOM nationals to a six-month entry stamp, unless one of two conditions is not fulfilled, namely that the passenger is “undesirable” or will pose a charge on the public purse, and that these conditions must be interpreted strictly or narrowly.

2. Where national law is not in conformity with the ruling, the national law must be applied administratively to be consistent with Community Law.
3. The CCJ ruling is still a recent development and there was the need for it to be translated into practical steps leading to its implementation. It was also necessary to provide administrative guidance on the ground. It was agreed that the meeting of the Legal Affairs Committee of CARICOM (LAC) and the upcoming CARICOM Fourteenth Meeting of Officials on Free Movement of Skills and Facilitation of Travel, to be held from 11th – 12th December 2013 in Guyana, would be useful in this regard.
4. They welcomed the decisions of the LAC in their meeting of 29th November 2013, in relation to the implications of the CCJ ruling and looked forward to the meeting of officials on Free Movement of CARICOM nationals, which will address, *inter alia*:
 - Implications of CCJ ruling;
 - Complaints Mechanism;
 - Denial of entry;
 - Security clearance; and
 - Automatic Six month entry.
5. It is necessary to have a common approach and a common interpretation so that there can be consistency in the application of the CCJ ruling. The Immigration Authorities of CARICOM should meet to come to a common understanding of what constitutes a “genuine, present and sufficiently serious threat” to the fundamental interests of society, in the context of determining the “undesirability” of a CARICOM national, as well as any other issues related to the right of entry.
6. The decision on entry or refusal rested with the immigration officials at the point of entry in the first instance. However, in exercising their discretion on entry or refusal, immigration officials would have to operate within the context of the CCJ ruling and the limits imposed by Community Law.

- **Rationale for denial of entry and Treatment of Nationals by Immigration Officials**

1. Respect must be shown to each person that comes through immigration entering the respective jurisdictions.
2. Heads of Immigration Authorities of Jamaica and the Republic of Trinidad and Tobago should meet with their respective staff to tackle issues related to allegations of profiling. It was agreed that there is a need for further training of immigration officers to effectively facilitate the hassle-free travel of Community nationals.
3. The immigration legislation and procedures, in each country, should be reviewed with a view to providing the appropriate mandate to immigration officials and necessary assurances to CARICOM nationals that their right of entry would be respected.

- **Statistics on travel between the Republic of Trinidad and Tobago and Jamaica**

1. They exchanged information on the number of nationals traveling between Jamaica and the Republic of Trinidad and Tobago. It was recognized that approximately ninety-six (96) per cent of Jamaicans that travel to the Republic of Trinidad and Tobago are allowed entry. At the same time, it was appreciated that no person should be denied entry without sufficient cause. Additionally, the Jamaican side indicated that there appeared to be a sharp increase in the number of Jamaicans denied entry into the Republic of Trinidad and Tobago, particularly in the last three months.
2. A mechanism for the sharing of information between Immigration Authorities in Jamaica and the Republic of Trinidad and Tobago should be immediately put in place to transmit data rapidly on nationals of each country who are refused entry.

- **Release of bio-data information to the press**

The bio-data and details on nationals who are denied entry should be kept in a secure manner and not released to third parties unless authorised by law, or the order of a court.

- **Appeals Process**

The CCJ ruling made it clear that there needs to be an appeals process for CARICOM nationals exercising the right of entry. It is essential that at the point of entry, when a decision has been made for denial, an opportunity has to be afforded for an administrative review. If the decision to deny continues, both sides recognized that Community Law requires a judicial review. The practical steps to bring this about need to be further examined in the context of the Fourteenth CARICOM meeting of Free Movement Officials scheduled for 11th – 12th December 2013. It was agreed that legislative changes may have to be introduced and that in the interim, new directives should be issued to the Immigration Authorities to take account of Community Law with a view to application administratively.

- **Complaints Procedures**

They discussed the complaints procedure adopted at the Thirty-Seventh Meeting of the Council for Trade and Economic Development (COTED), held from 5th – 9th November 2013 in Guyana, in relation to CARICOM nationals seeking to exercise the right of entry. They agreed to disseminate information on this procedure through the appropriate channels and to make the complaints form available at points of entry.

- **Access to Consular Representation**

1. They agreed that in the event of a denial, the CARICOM national should, in accordance with Art 36.1 of the Vienna Convention on Consular Relations, be advised of the right to consular representation and that access to such representation should be facilitated by the receiving state.

2. Mechanisms to implement this provision should be explored by Immigration Authorities, their High Commissions in Kingston and Port-of-Spain as well as by CARICOM to give effect to this obligation. In doing so, the practice of other countries should be taken into account.

- **Conditions under which returnees are accommodated**

They agreed that it was desirable to have the appropriate facilities to accommodate passengers who are detained, pending their return. Noting that the airlines have responsibility for the custody of the nationals pending their removal, both sides agreed to exhort the relevant airlines to ensure that suitable provisions are made.

- **Recognition of Skills Certificates**

1. They exchanged views on the recognition of Skills Certificates in their respective countries. Noting that CARICOM has agreed that a single certificate should be sufficient and that this was not the practice in all CARICOM Member States, it was agreed that a mechanism should be found to regularize the procedure across CARICOM and standardize the certificates.
2. The question of the security and authenticity of the skills certificates was regarded as an important issue to be addressed, in order to provide the relevant assurances of the efficiency of the systems in place.
3. They recognized that the CARICOM Trade and Competitiveness Project (CTCP) aims at harmonizing practices and procedures with regard to the free movement of skilled nationals. They noted that the CTCP aims to ensure that all skills certificates are standardized and have the necessary security features. Consultations are ongoing with regard to all components of the CTCP.

- **Status of additional skills categories in the Republic of Trinidad and Tobago's legislation**

1. It was necessary to adopt legislation expeditiously to allow for the free movement of all ten categories of skilled nationals.
2. Pending the adoption of the necessary legislation, the Immigration Authorities of both sides would continue to facilitate the application of all ten categories administratively.
3. To reiterate to immigration officers in both countries that the necessary courtesies should be afforded to nationals seeking to exercise rights under all ten categories in accordance with the relevant decisions of Heads.

- **Cooperation between the Immigration Authorities of Jamaica and the Republic of Trinidad and Tobago**

1. The Immigration Authorities of both sides underlined their readiness to engage in cooperation in areas of mutual interest, both directly and through their respective Ministries of National Security, Ministries of Foreign Affairs and Diplomatic Missions.
2. Such cooperation will include regular communication and real-time information sharing, identification of focal points on each side, conducting joint training, structured consultations by video conference and other means, and exchange of personnel.
3. They agreed that a greater level of cooperation will promote trust and build confidence, by keeping the lines of communication and dialogue open and transparent.
4. They looked forward to the training exercise to be conducted by the CARICOM Technical Action Services Unit (TASU) in February – March 2014, based on the revised immigration manual that is being developed by the CARICOM Secretariat.

- **Follow-up**

Minister Dookeran invited Minister Nicholson to hold a second round of consultations in Port-of-Spain in the first quarter of 2014 to take stock and follow-up on the agreements and understandings reached in Kingston.

Signed on the 3rd Day of December 2013 at Kingston.

Winston Dookeran
Minister of Foreign Affairs and Foreign Trade
Jamaica

Arnold J. Nicholson, Q.C.
Minister of Foreign Affairs
Republic of Trinidad and Tobago

