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*Anti-dumping and Subsidies
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SERVICES NEGOTIATIONS IN THE WTO: WHERE DO THE BENEFITS LIE?

KEISHA-ANN THOMPSON

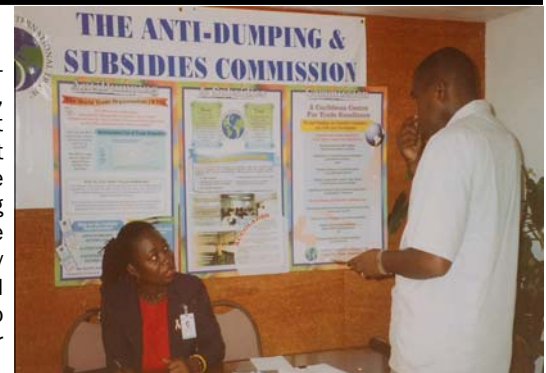
INTRODUCTION

The Current Round of WTO services¹ negotiations is significant for a number of reasons, not least of which is the fact that this is the first truly global services negotiation in which most trading countries, some newly acceded to the WTO, are participating. However, most developing countries are at a serious disadvantage in the negotiations because of the relatively short history of services negotiations and the complex data and measurement issues. Theoretically, countries do not have to make commitments to open up their services markets before they are ready. However, the balance of power in the WTO may force some to make commitments without adequate reciprocity. In light of their data and expertise deficits, developing countries may make less than favourable commitments, which will only be discovered in hindsight.

In this article, we examine trends in trade in services and as a matter of necessity, highlight tourism, which based on its growth and pace of liberalisation, is the single most important component in trade in services. Tourism is important to Jamaica since it is the largest foreign exchange earner and an industry in which Jamaica has a comparative advantage. Given the lack of data and information on the impact of post Uruguay Round liberalisation on service industries and economies in most developing countries we will examine the results of a few studies to assess how liberalisation in services could affect a developing country such as Jamaica, and whether the issues raised in negotiations, will benefit developing countries. These factors give us insight into possible strategies for future growth for a country as dependent on tourism as Jamaica is.

BACKGROUND TO THE GATS AND SERVICES NEGOTIATIONS

Given the critical role that services have played in global trade and economic activity in many countries for decades, it is surprising that they were not included on the international negotiating agenda until 1986. Services were thought of in many circles as only non-tradable domestic activities, which by their very nature did not lend themselves to export. However, with developments in technology, trade in services started to expand across



ADSC Staff member with a member of the public at the recently held Consumer Affairs Commission, Consumer Protection Act Workshop

borders, and it was recognised that rules were needed to govern trade flows. These developments along with the lobbying efforts of certain private sector groups in the United States of America and the United Kingdom culminated in the establishment of the General Agreement on Trade in Services (GATS), which came into being in 1994 as a corollary to the General Agreement on Tariffs and Trade (GATT).

The GATS is the multilateral and legally enforceable agreement governing rules on international trade in services. It defines international trade in services as: the provision of a service according to one or more of the following "Modes:" cross-border supply (Mode 1), which resembles international trade in goods; consumption abroad (Mode 2), under which the consumer enters the territory of the supplier; commercial presence (Mode 3), which entails the establishment in one member country of a branch or subsidiary of a service supplier in another member country; and movement of natural persons (Mode 4), which involves the physical relocation of individuals engaged in the provision of a service. The GATS is also a framework for further liberalisation of trade. Members are required to remove restrictions to trade in services in all given modes of supply to facilitate Most Favoured Nation (MFN),² Market Access,³ and National Treatment.⁴ Negotiation to pursue further liberalisation was mandated by the GATS to start in 2000 and is currently taking place in the "Doha Round," with the aim of achieving higher levels of liberalisation in services. Since the start

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THE WTO IN BRIEF

AUDEL CUNNINGHAM

SIXTH MINISTERIAL CONFERENCE

“...the Hong Kong Ministerial was projected as a crucial forum at which WTO members had to make significant trade concessions in order to facilitate the successful completion of the Doha Round of Negotiations in 2006.”

The Sixth WTO Ministerial Conference was held in Hong Kong, China from December 13-18 2005. Owing to the lack of consensus at the last Ministerial Conference held in Cancun Mexico in September 2003, the Hong Kong Ministerial was projected as a crucial forum at which WTO members had to make significant trade concessions in order to facilitate the successful completion of the Doha Round of Negotiations in 2006.

By all indications, the Conference was quite successful, the WTO Director General Pascal Lamy having indicated that the participating trade Ministers had managed to put the Doha Round of Negotiations back on track towards completion in 2006. He further indicated that the Ministerial Conference has “effected a “rebalancing in favour of developing countries whose interests have now been placed at the heart of the negotiations”. Among the most significant achievements of the Conference are:

- ⇒ Agreement for the elimination of all export subsidies in agriculture by 2013
- ⇒ The conclusion of an agreement for developed countries to eliminate export subsidies on cotton at the end of 2006 and to grant duty and quota free treatment to cotton exports from least developed countries (LDCs).
- ⇒ Agreement on a framework for full modalities in the agriculture and non-agricultural market access (NAMA) negotiations
- ⇒ A mandate for firm instructions to be given to negotiating Groups to establish ways to provide flexibilities for small vulnerable economies
- ⇒ A call for all WTO members to participate actively in services negotiations with the aim of achieving progressively higher levels of liberalisation with appropriate flexibilities for individual developing countries.
- ⇒ The understanding that in services negotiations, LDCs are not expected to undertake further commitments owing to their particular economic situations and the difficulties they face

WTO PANEL PROCEEDINGS OPENED TO PUBLIC FOR FIRST TIME

In a noted break with existing practice, members of the general public were allowed to view a WTO Dispute Settlement Panel proceeding in Geneva for the first time. Formerly, only parties directly involved in a dispute or those who have requested third party status were allowed to observe the proceedings.

In the case “Continued Suspension of Obligations in the EC - Hormones Dispute,” the panel agreed to open up the proceedings on the joint request of the parties, Canada, The European Communities and the United States. In commenting on the importance of the panel’s decision to

open the proceedings, one EC Representative, Fabian Delcros noted that it was “important that the public and interested organizations see that the WTO procedures are objective, impartial and professional.”²

DOWNWARD TREND IN NEW ANTI-DUMPING INVESTIGATIONS

The WTO Secretariat has reported continued declining trends for both the initiation of new anti-dumping investigations and the number of new measures in the period January 1 - June 30, 2005. The statistics produced by the Rules Division of the WTO based on Members’ reports revealed that 15 members reported the initiation of 96 new investigations compared to 106 initiations in the corresponding period in 2004. 12 members applied 53 new final anti-dumping measures during the relevant period compared to the application of 58 new measures in the corresponding period in 2004.

South Africa reported the highest number of new initiations during the period (17) followed by the European Communities (15), India (13) and China (11), Turkey (8), Egypt (7), Malaysia, Mexico and the United States (4 each) and Brazil, Israel, Peru, Australia, Argentina and Columbia with fewer than 4 initiations each. The Secretariat further noted that China remained the most frequent subject of new investigations (22) followed by Chinese Taipei (9) and India (8).

With respect to the application of new final anti-dumping measures, the United States reported the highest number (13), more than double the number reported for the corresponding period in 2004 (6).

SAUDI ARABIA TO BECOME THE 149TH WTO MEMBER

On November 11, 2005, the General Council formally concluded negotiations with Saudi Arabia on the terms of its membership in the WTO. These negotiations commenced in July 1993. As part of its terms of accession to the WTO, Saudi Arabia has committed to gradually lowering trade barriers and expanding market access for foreign goods. All tariffs on goods have been bound and at the end of the ten year implementation period, average bound tariff levels will decrease to 12.4 and 10.5 percent for agricultural and non-agricultural products respectively.

In respect of services, important commitments have been made in financial services and insurance. Foreign insurance companies and banks will be permitted to setup commercial ventures in Saudi Arabia either in the form of direct branches or locally incorporated joint stock companies. Existing foreign insurance providers will be given three years to convert either to a Saudi cooperative insurance company or to a direct branch of a foreign insurance company. Financial services can only be provided by commercial banks, but non-commercial, banking and financial institutions may provide asset management and advisory services.

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LET'S GET TECHNICAL

AUDELE CUNNINGHAM

CONDUCTING A LIKE GOODS ANALYSIS

The determination of “like products” figures prominently in both anti-dumping, countervailing and safeguard investigations. In an anti-dumping investigation, the determination of which products are like the imported products is relevant on two levels:

Firstly, a like product determination is relevant to determining the normal value of the imported product in the country of export. In this regard the objective is to identify which products are “like” the imported product in the country of export, for the purpose of price comparison. For example, if the investigation concerns the effect on the domestic industry of “dumped” calendars from Country X, the Investigating Authority in order to determine the normal value of the calendars in Country X, will have to identify which products in that country are “like” the exported calendars, and then make an appropriate price comparison.

Secondly, a like product determination is always relevant in order to determine the scope of the domestic industry for the purpose of conducting “standing” and injury analyses. In this regard, the Investigating Authority is obliged to identify which domestically produced products are “like” the imported product. Not only does the like product determination in this instance indicate the range of domestic producers who have the standing or capacity to present a complaint of the dumping or subsidization of goods, but it also indicates the range of producers who can be taken into account in an injury analysis.

In safeguard investigations, the determination of like products is of relevance only to the latter of the above-mentioned concepts. This is because the trigger for a safeguard investigation is not the dumping or subsidizing of goods or some other perceptibly unfair pricing strategy, but rather increased imports causing harm to a domestic industry.¹ There is accordingly no need to inquire as to the normal value of the imported product in the country of export.

The World Trade Organization’s Safeguards Agreement does not provide a definition of “like product”, but there is no reason to believe that the concept of a “like product” in such investigations, would not be markedly similar to that which obtains in anti-dumping and countervailing investigations. The definition provided in both the Anti-dumping Agreement (ADA) and the Agreement on Subsidies and Countervailing Measures (SCM) is:

“...The term “like product” (produit similaire) shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.”²

This definition indicates that the notion of likeness involves considerations that surpass the nature of the products, and implicates considerations of the competitive relationship existing between them. This last observation is particularly relevant in safeguard investigations, given that the domestic industry in such cases may be defined to include not just the producers of like products but also producers of “directly competitive products”. This begs the question as to what are the precise criteria that an investigating authority should apply in determining the issues of likeness and the existence of a competitive relationship.

Both WTO jurisprudence and the consistent practice of WTO members highlight the following non-exhaustive list of considerations as being useful in conducting these analyses:

1. Product tariff classification

The relevance of tariff classification in a like products determination is that a similar tariff classification for products, indicates to tariff experts that the products may have a sufficient or great degree of likeness. Accordingly, tariff classification has its greatest probative value when the products are classified not just under the same general sub-heading, but also under the same product line level. A similar tariff classification may be strongly indicative of the likeness of products but is not conclusive on the issue as other criteria might tip towards an opposite conclusion.

2. Manufacturing process

The primary consideration for the investigating authority under this consideration is whether the goods being compared have undergone a similar manufacturing process and whether notwithstanding different manufacturing processes, their product specifications, performance and characteristics are the same.

3. Composition of the Goods / Raw Materials

Similar product compositions and utilised raw material may be indicative of likeness, especially where the goods being compared have the same end use and physical characteristics. A finding that the differences in raw materials result in different performance characteristics may however detract from a finding of likeness.

4. Marketing methods / Distribution channels

The utilisation of similar marketing methods and distribution channels might reveal the manufacturers’ perception that the goods are sufficiently alike and should be treated accordingly. It is to be noted however that differences in marketing methods may not necessarily detract from a finding of likeness especially where a consideration of other factors lead to an opposite conclusion.

5. Price/Substitutability/Consumer Preferences

These elements treat with the competitive relationship between the imported and the domestic product. Where the products being compared are marketed at

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“The relevance of tariff classification in a like products determination is that a similar tariff classification for products, indicates to tariff experts that the products may have a sufficient or great degree of likeness.”

Trade Terminology Search

NICHOLE SUPERVILLE-HALL

S C G N L L A L G O F X U
 D G S H A D C A T A O J C
 O C E O R E C R A C T U X
 O S T N E M E E R G A S M
 G E A G N I S T I W H I R
 E C R K E N S A F U I E N
 K I D O G I I L F V T I M
 I V N N R M O I S R G A A
 L R U G O I N B O R N M C
 L E O R T S J P A D B A O
 O S B V C X X M A A M W U
 R G F H E E G T S A M F N
 P F S C R N E S N G A T T
 M U L T I L A T E R A L E
 A Z D P D D E F I C I T R
 J N M L O S R E B M E M V
 C U R R E G I O N A L L A
 D A P P E L L A T E Z O I
 C E G A R T I B R A A D L

FIND THE FOLLOWING WORDS:

ACCESSION	DUMPING-
AGENDA	MARGIN
AGREEMENTS	EXPORTER
AMBASSADOR	GATS
APPELLATE	GATT
ARBITRAGE	HONGKONG
BILATERAL	JAMPRO
BOUNDRATE	LIKEGOODS
CANCUN	MANDATE
COUNTERVAIL	MEMBERS
DEFICIT	MULTILATERAL
DEMINIMIS	NAMA
DIRECTOR-	REGIONAL
GENERAL	SERVICES

Find the hidden trade term that most Members are aiming to lower.
 Answer on page 12.



The CARICOM Standard

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OUTSIDE THE WTO

AUDEL CUNNINGHAM

JAMAICAN APPOINTED TO HEAD INTERNATIONAL TRADE CENTRE

In a significant development for Jamaica and the region a Joint WTO-UNCTAD-ITC press release dated November 15, 2005, advised of the appointment of the President of Jamaica's Trade and Investment Promotion agency, JAMPRO, Patricia Francis, as the new Executive Director of the UNCTAD/WTO International Trade Centre. The appointment was made jointly by United Nations Secretary General, Kofi Annan and Director General of the World Trade Organization, Pascal Lamy. The ITC is the joint technical cooperation agency of UNCTAD and the WTO for business aspects of trade development. Mrs. Francis will serve for a period of three years commencing June 2006.

Mrs. Francis has extensive management experience in the fields of trade promotion and technical assistance to developing countries. During her ten year tenure as President of JAMPRO her organization won the award for Best Small Economy Investment Promotion Agency in 2004; her position as former president of the World Association of Investment Promotion Agencies and her work with the ITC in developing a national export strategy for Jamaica have prepared her for this appointment. In commenting on Mrs. Francis' appointment, UNCTAD Secretary General Supachai Panitchpakdi commented that her "many years of work on the development dimension of trade and investment, both for her own country and for other developing nations, will be invaluable for [the] ITC." When contacted by this Commission's staff, Mrs. Francis indicated that she was honoured to have been selected for the position and felt that it was a huge opportunity for developing countries at this juncture in the trade arena to have someone at the table who understands trade from their perspective. Mrs. Francis graciously accepted congratulations on behalf of the Commission's Board, Management and Staff.

FORECAST FOR INCREASE IN FOREIGN DIRECT INVESTMENT 2005-2008

The 2005 Global Investments Prospects Assessment (GIPA) conducted under the auspices of UNCTAD, has forecast growth in Foreign Direct Investment over the short and medium term. This sends a positive message for developing countries but UNCTAD Secretary General Supachai Panitchpakdi, has cautioned that countries need to seize investment opportunities and pay attention to the quality of the FDI given the fierce competition for investment.

During the 2005 study, a number of reasons were expressed for the need to be cautious about FDI growth prospects in the medium term. Major threats listed were, protectionism, reduced growth in industrialized countries, instability of some major economies, global terrorism and the volatility of petroleum prices. The study further noted that investor attention appears to be shifting away from traditionally important locations to emerging markets. Asia and Europe are the two regions with the most possibilities. Latin America is likely to maintain its recent FDI recovery but flows to Africa are liable to be relatively modest in the short run. The US is expected to remain the most attractive country for FDI in the developed world.

UNCTAD RELEASES REPORT ON VOLUNTARY PEER REVIEW IN COMPETITION POLICY FOR JAMAICA

In a recent report on the Voluntary Peer Review in Competition Policy conducted for Jamaica, UNCTAD noted that the most important challenge that the local competition policy regulator, the Fair Trading Commission faces, is its own structure. The report referred to the ruling of the local Court of Appeal in the case of the *Jamaica Stock Exchange v The Fair Trading Commission* (2001)¹ in which the structure of the FTC was found to be contrary to the rules of natural justice and noted that the judgment has had dire consequences for the FTC's ability to enforce the anti-competitive practices provisions of the Fair Competition Act.

The report further noted that an important legislative issue that needs to be addressed is the lack of merger and acquisition provisions in the Fair Competition Act. It noted that although contemplated in 1991, these provisions were never enacted and that as a consequence, Jamaica does not now have any legislative provisions that provide a framework to review and make decisions on whether a proposed merger is against the public interest. ■

Endnotes

¹ Supreme Court Civil Appeal No 92/97 (2001)



Trade Talk For “Dummies”

SARA-RUTH ALLEN

One of the features of the workplace of International Trade, is the tendency of everyone involved to use words, abbreviations and acronyms and assume that the audience knows precisely what is being referred to. Those who hear them often formulate an understanding of what is being referred to without a full working definition or explanation. If you don't do it yet, you will soon find yourself doing it. In this corner, we will enlighten our readers about words, abbreviations and acronyms used in “trade speak” which you often hear and of which you want to know the precise meaning.

Non-Agricultural Market Access (NAMA)

In this issue we take a look at an acronym that is one of the “buzz” words which form a central part of the mandate for completion of the current Doha round of WTO negotiations, “NAMA”, Non-Agricultural Market Access. NAMA refers to Market Access for Industrial Products. The list of industrial products contemplated under NAMA includes manufacturing products, fuels and mining products, fish and fish products, and forestry products. Trade in these products accounts for approximately 90% of the world's merchandise exports with developing countries accounting for one third. Of this one third, Asia and Mexico together account for 80%.

Since the Cancun Ministerial in 2003, NAMA negotiations aimed at continuing to improve market access in industrial trade have progressed in Geneva based on provisions in the Framework Agreement, also called the “July package”, signed in August 2004. The issues at stake are of utmost importance to the advancement of developing countries and they are being pressed by developed countries to increase compromise in this area. For developing countries, it is important that a methodology be established that includes greater flexibility for developing country members as they grant greater access to their markets. In order to better understand NAMA issues and its importance, a brief look into the past is helpful.

BACKGROUND

What is **market access**? In the WTO framework, the term stands for all government-imposed conditions (regulations/measures) under which a product may enter a country, under non-discriminatory conditions. Market access is regulated for the most part through border measures such as, tariffs, tariff-rate quotas, quantitative restrictions and other non-tariff measures.¹ In addition to the basic principles of non-discrimination and transparency, one of the goals of the WTO is for members to have predictable and growing access to markets for goods and services. Security and predictability in trade in goods are achieved through the commitments embodied in the **binding of tariffs**.² Binding tariffs effectively sets a ceiling or maximum level and is a most important commitment for members as agreements can only thereafter be made to reduce tariffs that are bound.

The basic framework for negotiating tariff concessions involves defining the rules of the process; determining how to reduce (whether on a product-by-product or sectoral basis or by formula); new bindings; implementation period; special and differential provisions and the tabling of offers. The table below shows the evolution of the negotiating methodology. Under the General Agreement on Trade and Tariffs (GATT)³ 1947, negotiations were centred on tariff reduction in select sectors. A variety of methods are possible for negotiating tariff reductions. Some are based on formulae⁴ and a combination of methods may be used. “...after a method or combination of methods has been agreed, the final outcome for each product...[may still] depend on bargaining between countries...”⁵ over those specific tariff rates.

During the GATT years, members selected the sectors they wished to liberalise and the amount by which they wished to reduce their tariffs in a process of liberalisation which involved rounds of requests and offers. Under the WTO, increasing access and predictability are attained through periodic rounds of negotiations. Members have decided to use formulae to cut tariffs across-the-board.

NEGOTIATION HISTORY		
ROUND	DEVELOPED	DEVELOPING
GATT - Dillon 1947 -1961	Request /Offer	-
Kennedy 1964-1967	Linear Cut formula (50% cut) but allowed less for select products	Request/Offer
Tokyo (1973-1979)	“Swiss formula” with coefficient of 14 & 16 used, some exceptions allowed (peaks generally reduced)	Request/Offer
Uruguay (1986-1994)	Targeted simple average reduction (33.3% AVG)* plus some sectoral agreements (zero for zero and harmonization)	Request/Offer ceiling bindings

*Proposals for application of a Swiss formula were rejected; in particular, by the US; in the end there was agreement on a 33% average reduction, while the US used a request and offer, item by item, method.

In 2001 at the Doha Ministerial,⁶ members agreed to aim to reduce or eliminate barriers to trade. NAMA Negotiations have since been challenged with reaching agreement on a particular formula in order to reduce tariffs. At the Cancun Ministerial in 2003, a proposal (known as the Derbez Text) put forth on the modalities⁷ in NAMA was rejected by developing countries, on the basis that it did not reflect the needs of the developing countries. In July 2004, in what is known as the July package, members finally adopted the Derbez Text after much debate, with an additional paragraph (“the vehicle,” now known as Annex B (a Framework for Establishing Modalities in Market Access for Non-Agricultural Products), which is deemed to give developing countries needed flexibility to continue negotiations on important elements.

USING A TARIFF REDUCTION FORMULA

A formula approach is expected to achieve a uniform cut across all sectors. The use of a formula “provides transparency (every Member will know how the other will reduce its tariffs); efficiency (simpler process than request / offer approach), equity (reduction in tariffs) depends on rules rather than “bargaining power”); predictability (easy to foresee the results of the negotiations).”⁸ The impact of any tariff reduction formula depends on the numbers which are the essence of the formula. Under a linear formula approach, high and low tariffs are both reduced at the same percentage rate, leaving the highest tariffs still at high levels even after any percentage reduction has been made.

The strongly supported Swiss formula is a special kind of harmonizing method, which recognises the wide diversity in the current range of tariffs and narrows the gap between high and low tariffs. The idea is to reduce higher tariffs by a greater proportion. Using a “coefficient” mechanism, high starting tariffs are reduced at a faster rate than lower tariffs. The Swiss (or non-linear) formula⁹ has been used in negotiations, and is a function of both the coefficient a and initial tariff. The coefficient is a variable that represents the desired level of cuts and once the formula is chosen, the coefficient is what is negotiated. With their tariff structures characterized by high average

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TRADE REMEDIES CORNER

NICHOLE SUPERVILLE-HALL

The WTO Rules Negotiations – Past, Present and Future

INTRODUCTION

Over time and especially since the institution of the General Agreement on Tariffs and Trade (GATT) and the subsequent formation of the World Trade Organization (WTO) it has been recognised that transparent, practical rules and disciplines in international trade can lead to desirable predictability and increase trade between nations. Though “rules” generally refer to rules governing trade in goods, in this article reference to “rules” concerns the rules that govern imports, such as anti-dumping, subsidies and safeguards; these rules can be found in the WTO agreements. Effective rules go a long way towards reducing distortions to trade and help to place developing countries on a more even footing with their more developed counterparts. The current WTO Rules negotiating process arose from this recognition by Ministers at the Doha Ministerial Conference held in Qatar in November 2001. Although much work had been done in the area of negotiating rules since the completion of the Uruguay Round, many aspects of the existing rules remained ambiguous and favoured some nations more than others.

The Negotiating Group on Rules (the Group/NGR) originated out of Doha and was given its mandate¹ to commence negotiations on the WTO rules and disciplines by Ministers at Doha. Ministers agreed that the following specific areas needed to be addressed; the Agreement on Implementation of Article VI of GATT 1994 (Anti-dumping Agreement/ADA); the Agreement on Subsidies and Countervailing Measures (SCM) and, in this context, WTO disciplines on fisheries subsidies; and WTO provisions applying to regional trade agreements (RTAs); these are the *raison d'être* of the Negotiating Group on Rules. One of the main objectives of the group continues to be the clarification and improvement of the disciplines of anti-dumping and subsidies while maintaining the basic concepts, principles and effectiveness of the agreements. The needs of developing and least-developed Members were also mandated to be given particular attention. Negotiations on rules are open to all WTO Members and to observer governments in the process of becoming or considering membership. However, final decisions can only be taken by Members.

The Negotiating Group on Rules² forms part of the WTO's Trade Negotiations Committee (TNC) and along with the Negotiating Groups on Market Access, and Trade Facilitation, respectively, reports directly to the General Council. Because of the nature of the work of the Anti-dumping and Subsidies Commission (the Commission), the focus of this article is the progress of the Group in the area of the anti-dumping and subsidies rules. The Doha mandate called for a two-phased process in the negotiations, in which participants would in the first phase, identify the provisions that needed to be amended and in the second, would seek to clarify and improve the areas identified. Transparency in the process is important and the Ministerial Declaration required that “*the negotiations shall be conducted in a transparent manner among participants, in order to facilitate the effective participation of all...*” The TNC was admonished to build on the best practices established over the previous two years with regard to internal transparency and participation of all Members.

THE WORK BEGINS

In the first stage of the negotiations, participants submitted formal papers to the Group indicating the provisions of the ADA and the SCM which they wanted to see clarified and improved. These papers were then discussed in formal meetings of the NGR. This was the general *modus operandi* of the NGR until the largely unsuccessful Ministerial held in Cancun Mexico in September 2003. It seemed that while the work of the NGR was considerable;³ by September 2003 the NGR had received 141 proposals and revealed many of the deficiencies in the trade remedies and subsidies processes; no concrete decisions as to the way forward had been arrived at by the Group. In fact the Draft Text⁴ distributed to Ministers at Cancun contained the following instructions for the NGR:

“We instruct the Negotiating Group on Rules to accelerate its work on anti-dumping and subsidies and countervailing measures, including fisheries subsidies, with a view to shifting its emphasis from identifying issues to seeking solutions. We note the progress that has been made in the negotiations on improving transparency in Regional Trade Agreements and encourage the Group to reach a provisional decision soon on its work on transparency and to accelerate its work on the clarification and improvement of RTA disciplines under existing WTO provisions, taking into account the developmental aspects of RTAs.”

After Cancun, the tone of the NGR changed somewhat. An increased number of informal sessions were held where Members were able to review and discuss proposals in more detail. Members' proposals became less abstract with some providing actual draft language for the proposed changes to the Agreements. As at 19 July 2005 when the Chairman of the NGR, Ambassador Guillermo Valles Galmés of Uruguay reported⁵ to the Trade Negotiations Committee participants had submitted “55 elaborated proposals, of which 45 relate to trade remedies (anti-dumping and to a lesser extent countervail), four to horizontal subsidies disciplines and six to fisheries subsidies.” While definite agreement on these subjects has not been attained, the process has highlighted common areas of concern shared by Members and it is hoped that this will go a long way towards final resolution of outstanding issues. It was not anticipated that a final outcome could be reached at the Hong Kong Ministerial and as has been seen although the Ministerial reaffirmed the WTO's commitment to the process of evaluating and upgrading the rules, no final decisions were taken in this area.

Members had initially believed that final resolution would have been possible in January 2005. After the failed Ministerial in Mexico the new completion date hoped for was December 2005. However, issues like initiation and circumvention have remained sticking points for members. Jamaica has a particular interest in the initiation issue because of the potential administrative burden that could result if some proposed amendments were accepted by Members.

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Services Negotiations in the WTO... continued from page 1

of the negotiations there has been little progress. The outlook now, however, seems to be positive, based on the agreements reached at the recently concluded Ministerial in Hong Kong.

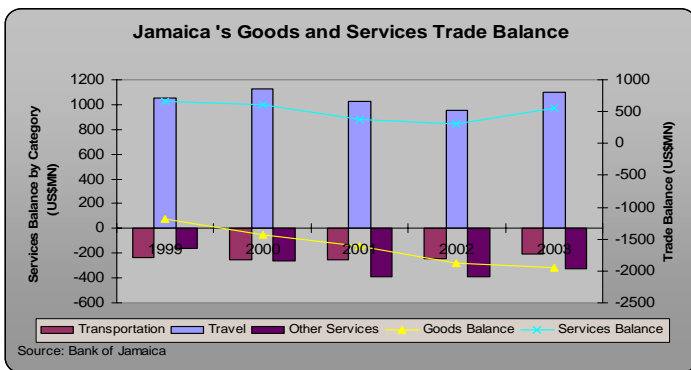
TRENDS IN SERVICES TRADE

The latest statistics show that trade in commercial services grew in nominal terms by 18% to US\$2.1 trillion in 2004, stronger than the 14% growth recorded in the preceding year.⁵ Travel⁶ on average accounts for 31% of the total value of services exports, which is the single largest contributor. The World Tourism Organisation indicates that the growth of tourism arrivals significantly outpaces the growth of Gross Domestic Product (GDP). Tourism is defined by the WTO as the activities of "any person on a trip between two or more countries while he or she is *en route* away from his or her usual place of residence for more than 24 hours, but no more than one consecutive year for leisure, business and other purposes."

Developed countries dominate the trade in services. However, it should also be noted that services account for a significant proportion of GDP in many developing countries. In Jamaica in particular, as shown in the diagram below, on average, services account for approximately 67% of GDP and approximately 75% of employment. In fact, it is a key sector for the economy and the most important source of foreign exchange for Jamaica, contributing positively to Jamaica's trade balance; and developments with respect to GATS negotiations will have significant economy wide implications.

Tourism has been one of the oldest areas of economic activity covered under the GATS and the most liberalised. In fact, some regard tourism as one of the most remarkable economic and social phenomena of the past century. The number of international arrivals has grown from 25 million in 1950 to an estimated 763 million in 2004. As mentioned previously, services exports consistently register surpluses and the most important contributor to this is travel. Added to this is the spill over effects it has on other areas of economic activity; and, it is a significant source of employment.

Figure 1



Tourism is one of the sectors in which Jamaica has very few barriers to trade. As indicated in the context of Jamaica's second trade policy review, "Jamaica's schedule of specific commitments under the GATS places no limitations on market access, save for registration and licensing requirements. There are no national treatment limitations. The movement of natural persons remains unbound."⁷ Measures such as registration of companies and work permit requirements can hardly be considered barriers to entry. For example, Jamaican legislation allows for total foreign control of hotels, resort cottages and tour operations, subject to the same licensing and registration requirements as domestic firms.⁸

ISSUES AND IMPLICATIONS

Many studies about the effects of liberalisation of services have been done, and most conclude that countries stand to gain from further opening up of their services sectors. According to the World Bank,⁹ by 2015, liberalisation of services in developing countries could provide as much as \$6 trillion in additional income in the developing world, four times the gains that would come from trade in goods liberalisation. Another study done by the independent Commonwealth agency, The Productivity Commission, estimated that the real income of the world as a whole would increase by \$130 billion as a result of eliminating post Uruguay Round trade barriers to services.

However, while these studies predict an overall improvement, one has to look at the details to see whether liberalisation will automatically translate into increased benefits. The study by the Productivity Commission¹⁰ estimates that US\$100 Billion of the gains would accrue to China alone. Also interesting is that its model estimated that those countries with sectors with already low barriers, such as Jamaica and its tourism sector,¹¹ may actually contract. Alternately, those with high barriers would expand (Asia). The reason posited for this shift is the increased competition from the newly expanded service sectors in Asia. Little can be done about this, other than to ensure that opportunities presented by other countries opening up their markets are used to make the sector in Jamaica more competitive. Jamaican negotiators have taken the view that the opening up of service sectors must result in opportunities for developing countries to gain increased market access and to diversify exports.

One area of the negotiations, the movement of natural persons, Mode 4 presents a possible opportunity for such increased access. An example of this would be the fact that Jamaican tourism could benefit from efficiency gains to be had from its hospitality professionals and students going to other markets to gain expertise. The United Nations Conference on Trade and Development (UNCTAD) indicates that gains of as much as US\$ 156-200 Billion (10 times more than gains in other areas of negotiations) could be made by developing countries from the liberalisation of the movement of workers. However, developments in the current round of negotiations indicate that developing countries may gain little ground with the developed countries in this area, especially as it relates to low and semi-skilled workers. At the 52nd session of UNCTAD's Trade and Development Board, participants noted that, "Services offers tabled to date by the most important trading partners were unsatisfactory because they did not provide commercially meaningful access in the sectors and sub-sectors of interest to developing countries."¹² In fact, the draft Ministerial text on services is silent on this issue.

Jamaica could also gain from liberalisation if GATS commitments do not remove the flexibility of developing countries to support their industries. In this context it is important that subsidies and countervailing measures be considered, since developed countries are better able to support their industries. Such support could result in the erosion of benefits that would have accrued to developing countries from their own efforts. It is important therefore, that developing countries have recourse to measures to counter this kind of support. It is a matter for concern that there has been no progress in the negotiations in respect of disciplines on services subsidies where they have harmful effects on domestic service supplies.

With the high level of financial outflows currently present in the sector, which promises to increase with liberalisation, any benefits of liberalisation will be dissipated unless appropriate measures to prevent this are addressed in the GATS negotiations. This issue is

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similar prices, viewed by consumers as being substitutable and used by them for similar purposes, there will be evidence of a dynamic competitive relationship that points to some degree of likeness.

The seminal decision of the WTO Dispute Settlement Panel and the Appellate Body in the case of "Japan: Taxes on Alcoholic Beverages,"³ provides a useful illustration of the interplay of these considerations in coming to a like product determination. In issue in this case, was whether a domestically produced Japanese alcoholic product, shochu, was a like product to other imported products such as vodka and if so whether Japan in taxing the imported spirits in excess of shochu was in violation of its GATT Article III (2) obligations.

The Panel in a decision upheld by the Appellate Body, found that vodka but not other imported spirits such as brandy was a like product to shochu. In coming to this conclusion, the panel examined considerations such as tariff classification, end uses of the products, product composition and product characteristics. After examining the evidence presented in respect of each of these matters, the following conclusions were arrived at:

- Vodka and shochu shared the same physical characteristics, except for the respective filtration strength of the two products, their definitions were virtually identical.
- Vodka and shochu bore the same tariff classification in Japan's tariff binding, revealing the view of the Japanese officials that the products had marked similarities.
- Vodka and shochu were like products as both were white, clean spirits made of similar raw materials and their end uses were virtually identical.

Other spirits were deemed not to be like shochu owing to their different appearance, composition and end uses.

It is to be appreciated that the issue of likeness is to be determined on a case by case basis and against the background of specific factual matrices. The considerations discussed herein are not to be mechanically applied across the board but tailored to yield precise outcomes. Above all, even though a great measure of deference is to be paid to the determinations of investigating authorities, the investigating authority must abide by the overarching obligation to make reasoned conclusions on the basis of all available evidence.■

Endnotes

¹ WTO Safeguards Agreement, Article 2:
 "A member may only apply a safeguard measure to a product only if that Member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive goods."
² ADA Article 2.6, SCM Footnote 46
³ WT/DS8, WT/DS10, WTDS11



Mrs Patricia Francis Ambassador Ransford Smith
The Commissioners and Staff of the Commission extend congratulations to Ambassador Ransford Smith and Mrs. Patricia Francis on their recent appointments to UNCTAD and the ITC, respectively.

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Prior to the December Ministerial, the Chairman instituted a third stage in the rules negotiations; a process of bilateral and pluri-lateral consultations which proceed alongside the other two activities. This process is designed to enable the Group to better identify issues of general concern to members and act as a catalyst in the search for solutions to those particular issues. A Technical Group whose purpose is to oversee the creation of a standardised anti-dumping questionnaire has also been created. The anticipated outcome of this exercise is a more streamlined investigation process that is less costly and more predictable for investigating authorities and parties to an investigation.

The NGR has managed to capture the attention and participation of many WTO Members. Groups of Members aligned because of similarities in ideology and consensus on certain issues have evolved since the formation of the Group. The most well known of these alignments may be the group known as the Friends of Anti-dumping (FANs). This group comprises Brazil, Chile, Colombia, Costa Rica, Hong Kong, China, Israel, Japan, Korea, Mexico, Norway, Chinese Taipei, Singapore, Switzerland, Thailand and Turkey. As a group and sometimes through smaller groupings, the FANs have made a number of proposals and submissions to the NGR on such subjects as: Determination of Normal Value, Issues Related to Affiliated Parties, Definition of Domestic Industry Article 4.1 of the ADA, Determination of Injury, Lesser Duty Rule, De minimis Margins of Dumping, Reviews, Initiation and on Facts Available.

The issues being negotiated at the NGR are critical to the practice of trade remedies. The Commission's Executive Director has attended NGR meetings on behalf of Jamaica. Additionally, the Staff of the Commission has submitted written commentary⁶ to the Group through Jamaica's Permanent Representative in Geneva in respect of those proposals that would directly affect the way it carries out an investigation or Jamaica's businesses. The Commission relying on its experience in conducting investigations takes a position it deems appropriate; whether it supports the particular proposal or not.

Where the Commission does not support the proposal, the Staff may suggest how the proposal may be refined. The Commission has also on occasion deemed it appropriate to submit a proposal of its own as to how best to address a given issue. Participation by Jamaica is necessary as some Members' submissions, if left unchecked and adopted without amendment, would result in changes to the rules that would impair Jamaica's ability to use trade remedies, or might lead to undesirable outcomes for Jamaican businesses.

There must be a careful balancing of interests by Members if the rules negotiations are to be successful. In respect of Jamaica's position, it is important to ensure that the resulting rules can be utilized by Jamaica's domestic industries while preventing the abuse by other countries that could be harmful to our exporters operating in foreign markets. An example of this is a proposal⁷ tendered in October 2005 by Hong Kong, China, on issues relating to initiation and completion of investigations, which contemplates disclosure of the intention to investigate prior to the initiation of an investigation. Such a disclosure could lead to temporary changes in the behaviour of the exporters in question that could compromise the effectiveness of an investigation. The Commission was able to weigh in with a response to the proposal giving the Group its perspective to consider when reviewing the particular proposal. The Group was reminded in Jamaica's response that pre-investigation notice requirements for initiation of a new investigation could create an opportunity for exporters to flood the markets of importing members with dumped imports. As a small

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WTO RELEASES REPORT OF TRINIDAD AND TOBAGO'S SECOND TRADE POLICY REVIEW

Trinidad and Tobago's second Trade Policy Review was conducted on the 14th and 16th September 2005. In its recently published report, the WTO secretariat noted that since Trinidad's first trade policy review in 1998, the CARICOM member country experienced rapid economic growth facilitated by international trade and underpinned by its rich natural endowments, attractiveness as an investment destination and favourable developments in world markets. Further observations noted in the report are:

- The hydrocarbons sector was the mainstay of the economy given the country's position as an important supplier of energy and petrochemical products to the world market. In contrast however, the support given to agriculture neither halted its decline nor stemmed the rising domestic prices of agricultural produce.
- Reforms in the area of services have had the greatest impact on financial services and telecommunications and are being extended to other activities like port administration and financial services. This was deemed crucial for the country to achieve its ambitions and objectives of becoming a knowledge based economy and research hub.
- The overall fiscal situation improved and current expenditure was controlled. Noteworthy in this regard is the fact that the Central Government has been posting current account surpluses since the 1999/2000 financial year.
- Growth in domestic prices was contained although inflationary pressures built up since early 2004, particularly triggered by higher food prices.
- The country has bound its entire tariff in the WTO but the gap between applied and bound rates is wide. The bound rate for almost all agricultural goods is 100% while most industrial products have been bound at 50% with certain exceptions at 70%.
- The country has made more active use of anti-dumping measures since the last review. As at May 2005, the Anti-dumping Authority had initiated 11 investigations and had made 9 determinations. Five Anti-dumping orders are currently in force.

ECONOMIC STUDY REPORTS SLOWER TRADE GROWTH IN 2005

Trade Statistics released by the WTO indicate that world trade growth will slow in 2005, in part, as a result of the sharp rise in oil prices. The growth rate expectation for merchandise exports is 6.5% as opposed to the 9% growth recorded in 2004. The statistics reveal that trade growth accelerated in OECD countries in the second quarter of 2005 but there is evidence of significant growth deceleration in Asian trade and in United States' imports in the first half of the year.

Key features of 2004 world trade developments in the report are:

1. Strong economic growth and rapid trade expansion;
2. Sharp increase in net oil imports of China, the US and India since 2002 have been a major factor behind the expansion of oil trade and the increase in oil prices;
3. Transportation services, boosted by rising transportation costs and a strong increase in the volume of merchandise trade, expanded by 23% to \$500 billion; and

4. The merchandise exports of least developed countries were estimated to have increased by one third to \$62 billion. Higher commodity prices and an increase in the volume of crude oil produced by these countries contributed to this strong performance.■

Endnotes

- ¹ Document TN/MA/16
- ² WTO News Release, September 12, 2005

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*Trade Remedies Corner, continued from page 8*

under-resourced investigating authority from a developing country, Jamaica's participation in the rules debate has been hailed by some Members as being very important.

### MEETINGS

The Group continued to meet in the lead up to the Hong Kong Ministerial with the last meeting being held on the 28 – 30 November 2005. Reports are that a lot of time at that meeting was devoted to discussion about the impact of anti-dumping investigations on exporters.<sup>8</sup> In the days preceding the Ministerial, no real consensus on Hong Kong emerged from the Group. However, some hope was gleaned from the draft Ministerial text<sup>9</sup> circulated in the waning days of November 2005, by the Chairman of the General Council and the Director-General. It contained in Annex D, among other things, a commitment to continuing the negotiations with regard "in particular, to the transparency, predictability and clarity of the relevant disciplines, to the benefit of all Members, including in particular developing and least-developed Members".

### CONCLUSION

It was the hope of many trade remedies practitioners that a clear way forward for the Group would presented in Hong Kong. It is clear however, that more topical issues like services, NAMA, cotton, bananas and duty free and quota free market access took precedence over rules at the recent Ministerial, indeed, the section pertaining to rules in the draft ministerial text issued prior to the Ministerial remained unchanged in the final Ministerial Declaration issued on 18 December.<sup>10</sup> Despite the apparent lack of attention given to them, the rules negotiations are of vital importance to the continued strength and effectiveness of the practice of trade remedies. The Agreements must be optimised to provide support to investigating authorities and a framework that allows for the execution of investigations in a transparent manner, giving exporters a less onerous opportunity to respond to an investigation while allowing investigating authorities the flexibility they need to carry out effective investigations must be crafted. This is fundamental to the continued use of trade remedies and to international trade practice in general and the Negotiating Group on Rules must see its mandate through to the end if the goals set at Doha are to be attained by 2006.■

### Endnotes

- <sup>1</sup> Negotiations, implementation and development: the Doha agenda: [http://www.wto.org/english/tratop\\_e/dda\\_e/dda\\_e.htm](http://www.wto.org/english/tratop_e/dda_e/dda_e.htm)
- <sup>2</sup> More information on how the negotiations are organised is available at: [http://www.wto.org/english/tratop\\_e/dda\\_e/work\\_organ\\_e.htm](http://www.wto.org/english/tratop_e/dda_e/work_organ_e.htm)
- <sup>3</sup> By September 2003 the NGR had received 141 proposals
- <sup>4</sup> Available at: [http://www.wto.org/english/thewto\\_e/minist\\_e/min03\\_e/draft\\_decl\\_rev2\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min03_e/draft_decl_rev2_e.htm)
- <sup>5</sup> TN/RL/13, 19 July 2005
- <sup>6</sup> See the Commission's submissions at: <http://www.wto.org> the document symbol is TN/RL/W/188
- <sup>7</sup> WTO document symbol [TN/RL/GEN/69] [JOB (05) 232]
- <sup>8</sup> Bridges, Weekly Trade News Digest, Volume 9, No.37, November 2, 2005
- <sup>9</sup> See complete text at: [http://www.wto.org/english/thewto\\_e/minist\\_e/min05\\_e/draft\\_annex\\_e.htm#annexd](http://www.wto.org/english/thewto_e/minist_e/min05_e/draft_annex_e.htm#annexd)
- <sup>10</sup> Full text available at: [http://www.wto.org/english/thewto\\_e/minist\\_e/min05\\_e/final\\_text\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.htm)

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Services Negotiations in the WTO... continued from page 7

of critical importance to developing countries as UNCTAD estimates that only 50% of the money that a tourist spends will benefit the destination developing country. Negative effects of liberalisation relate to the environment, gender and human rights. This highlights the importance of clarifying the issue of domestic regulation. Many fear that the negotiations could leave Members unable to effectively regulate the industry. The GATS indicates that Members will not be barred from putting the necessary regulatory framework in place. However, in practice it is quite possible that a particular regulation could be disputed as being a trade barrier. The need for developing countries to effectively defend their interests in such disputes is obvious. In fact, the World Tourism Organisation has reported that, for tourism to contribute to poverty alleviation and development, legislation, taxes, regulative fees, and investment conditions to benefit the local population must be put in place. This is in stark contrast to the liberalisation goals of the GATS negotiations, which, while seeming to preserve this right, are inherently ambiguous.

Technology is of critical importance to developing countries, especially in relation to tourism products which are increasingly being sold via the internet. Of particular importance are the Computerised Reservation Systems (CRS) and Global Distribution Systems (GDS), which are in the hands of large corporations in developed countries. Limited access in this area will essentially amount to limited market access. Developing countries may be at a disadvantage if they are not able to access this technology. Developed countries have promised greater access to such technologies but developing countries need more specific commitments from the developed countries in this area. If in the worst case scenario, an agreement is arrived at and developing countries find that they have opened up to a degree and at a pace not in their interest, then there should be some "escape clause". The escape clause contemplated, referred to as an Emergency Safeguard Mechanism (ESM), has its origins in Article X of the GATS, which states:

There shall be multilateral negotiations on the question of emergency safeguard measures based on the principle of non-discrimination. The results of such negotiations shall enter into effect on a date not later than three years from the date of entry into force of the WTO Agreement.

An ESM would allow countries to temporarily suspend concessions they have made if import surges injure their services industries. For example, if a foreign hotel chain entered the Jamaican market or merged with local hotel chains in Jamaica, employing its own nationals and essentially crowding out a significant number of local hospitality professionals, Jamaica would then be able to place restrictions on the use of these foreign nationals. If Jamaica were to place restrictions contrary to its commitments, without an ESM it would be deemed to have defaulted under the GATS. The use of an ESM could also be used against Jamaican nationals working overseas, so it is a double-edged sword. Notwithstanding this possibility, developing countries must have a safety net on which to rely, particularly because they lack the resources to adequately assess the impact of their commitments. Additionally, because of this group's relatively low level of development and ability to compete, they are more likely to experience large import surges from the developed countries.

Developing countries could utilise the ESM to recoup some of the power that they may lose through liberalisation commitments, to regulate their service sectors, pursue national policy objectives such as growth and development, and strengthen the capacity of domestic service suppliers. Since the mandate was given, there have been negotiations on the issue but no real progress has been made.

Article X is only an agreement to negotiate. This means that a further dimension of the problem is that negotiations on the ESM are not keeping pace with those in other areas of the GATS, in particular market access and domestic regulations. It is noteworthy that the developed countries argue that there is no need for an ESM, since the GATS already contains provisions that would allow Members the flexibility to deal with import surges. The mandate in Article X recognises that situations not already addressed under these other provisions may arise and hence the need for an ESM. Additionally, developing countries' resource constraints which results in an inability to defend against challenges under the WTO Dispute Settlement system further supports the need for an ESM.

CONCLUSION

While developing countries may benefit from liberalisation in services, this is highly dependent on the areas in which and the pace at which such liberalisation takes place. In particular, as indicated by developing countries and supported by many studies, Mode 4 liberalisation, access to technology and domestic regulations, have to be seriously addressed in the current round of negotiations if developing countries are to benefit. Also, market access in other service areas, such as financial services, transportation, telecommunication services, and marketing are critical. This would encourage diversity in the services industry and have positive spill over effects on the rest of the economy, since, unlike services such as tourism that fulfil final consumer demand, these will actually enhance firms' productivity. Additionally, because market access commitments from the developed countries may not meaningfully address the developing countries' concerns, if policy space is lost, there must be recourse to an ESM and countervailing measures, where appropriate. In light of the foregoing, it is not surprising that the current round of negotiations has not been progressing as hoped. To echo our senior trade officials, the round is likely to gain little momentum if issues of importance to developing countries are not addressed.■

Endnotes

¹ The term, "services" covers a wide range of intangible and heterogeneous products and activities such as transport, telecommunications, computer services, construction, financial services, wholesale and retail distribution, hotel and catering, insurance, real estate, health and education, professional, marketing and other business support, government, community, audio-visual, recreational, and domestic services.

² This means treating all countries in the same way so that any concessions given to one Member must be extended to all Members.

³ This means foreign companies having free access to domestic markets.

⁴ This means treating domestic and foreign firms or service suppliers in the same way.

⁵ WTO International Trade Statistics 2005.

⁶ Travel covers goods and services acquired from an economy by non-resident travellers for business and personal purposes during visits.

⁷ WT/TPR/S/139, page 134.

⁸ Incentives under The Hotel (Incentives) Act and The Resort Cottages Incentives Act do not discriminate and are applicable to domestic and foreign owned hotels.

⁹ World Bank's report "Global Economic Prospects for Developing Countries" 2001

¹⁰ "Multilateral Liberalisation of the Services Trade", Staff Research Paper, March 2000.

¹¹ The study did not speak specifically to Jamaica or the Caribbean but its implications are clear especially for our Tourism sector, which has relatively little barriers to entry in any of the four modes of supply.

¹² TD/B/S2/Add.4

¹³ Diaz Benavides, David, "The Sustainability of International Tourism in Developing Countries", Paper presented at the OECD Seminar on Tourism, Policy and Economic Growth, Berlin, 6-7 March 2001.



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tariffs, developing countries would typically be required to make higher cuts and therefore, argue that such a formula does not provide special and differential treatment for developing countries and does not honour the promise contained in the Doha mandate of less than full reciprocity¹⁰ for them in required reduction commitments.

THE STATE OF PLAY

There has been a lack of consensus on the modalities to be employed in achieving the objectives of tariff reduction and elimination. The debate continued as to the extent that various proposed formulae would deliver on the promise set forth in paragraph 16 of the Doha Ministerial Declaration. On the one hand, developed countries want an increase in binding commitments and desire to effect reduction on all eligible tariff lines. They also want to see greater cuts in tariffs from developing countries (i.e. greater access to developing country markets). On the other hand developing countries, which typically have both greater dependence on tariff income and domestic producers who are more vulnerable to competition from imports are requiring less than full reciprocity in reduction commitments and seek to maintain flexibility in the approach to reducing tariffs.

Though the discussions heated up, with several "mini-Ministerials" being convened to attempt to move the agenda, as December drew near, there was still wide divergence of positions and it did not appear that members would be able to settle full modalities in NAMA negotiations in Hong Kong. As late as November 8, 2005, two new papers were presented by developing countries; one, by eleven members stating their understanding and views on the flexibilities for developing countries; and another presented by Barbados on behalf of twenty-two "Small, Vulnerable Economies," which proposed that small, vulnerable economies (those with share of world exports below 0.1%) should not be subjected to the tariff reduction formula but rather agree to reduce their individual tariff lines by 10-15%. Leading up to Hong Kong, members were beginning to be told that there should be a "recalibration of expectations" for Hong Kong.

During the recent Ministerial members continued to disagree on whether or not developing countries should be able to retain flexibilities even if the formula is restructured. A core group of 9 developing countries led by South Africa and India argued that the current basis for negotiations do not adequately reflect developmental concerns and are calling for the levels of ambition in NAMA to be 'calibrated' with the ambition achieved in other market access negotiations. In reference to the disproportionate cuts being proposed in industrial tariffs (under NAMA) they state that "developing countries cannot be expected to pay for the much needed reforms of the agriculture sectors of developed countries.■

Endnotes

¹ <http://www.wto.org>

² A "binding" is a commitment not to raise tariff rates above levels specified in the schedules of concessions

³ The original GATT 1947, provided the basic rules of the multilateral trading system from 1 January 1948 until the World Trade Organization entered into force on 1 January 1995. These rules, which dealt only with trade in goods, were supplemented and modified by many further legal instruments adopted over the years.

⁴ "Reduction methods Making sense of 'fixed percentage' and 'harmonizing' cuts, the 'Uruguay Round' approach, and Swiss formulae" http://www.wto.org/english/tratop_e/agric_e/agnegs_swissformula_e.htm

⁵ Ibid

⁶ The Commission's last Issue explained Ministerial Meetings

⁷ Modalities are simply the methods/targets to be used to accomplish the objectives of the negotiations

⁸ http://www.wto.org/english/tratop_e/markacc_e/nama_negotiations_e.htm

⁹ The Swiss formula $t_f = a \times t_0 / a + t_0$ where a is the coefficient t_f is the final tariff, t_0 the initial tariff.

¹⁰ The non-reciprocity principle was established in Paragraph 8 of Article XXXVI, which is in Part IV of the GATT. Paragraph 8 states that: "The developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less developed contracting parties". An interpretative note to this paragraph adds that the developing countries "should not be expected, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs, taking into consideration past trade developments".



CARICOM NEWS

KEISHA-ANN THOMPSON with contributions from PAMELA MORGAN

CARICOM AND SUGAR

In April, following a challenge by Australia, Brazil and Thailand, the WTO ruled that EC sugar subsidies were unfair, and that the EC had 15 months to bring its measures into conformity with its WTO obligations. This WTO ruling coincided with the proposals of the EC to reform its sugar regime, the deadline for implementation of which is July 31, 2006, within the WTO 15 month time frame. The WTO ruling did not specify that the EC had an obligation to reduce prices to the African Caribbean Pacific (ACP) group of nations, of which CARICOM is a part. However, reforms will result in ACP prices being cut. CARICOM strongly objected to these proposals for reforms and, as part of the ACP group of countries, has lobbied to have them amended; in particular to modify the price reduction schedule, lengthening the period to eight years from the four proposed, and reducing the percentage reduction to between 20% and 25% instead of the 39% proposed. The ACP was also trying to secure increased compensation for losses, known in EC jargon as "accompanying measures". The EC is promising US\$50million for at least the first year after the price cut takes effect, but divided among the 18 ACP members it is woefully inadequate. The ACP countries were unsuccessful in their bid to have the price cuts lowered to the 20% range and the EU settled on 36% to be achieved over a period of four years (taking effect in 2006) with accompanying measures for their producers (€6.3 billion) and an inadequate amount (€40 million) to ACP producers in 2006.

In tandem with these developments, as some Member countries of CARICOM have already started dismantling their sugar industries, Jamaica's Prime Minister the Most Honourable P.J. Patterson, outlined the way forward for Jamaica's sugar industry. Prime Minister Patterson indicated that the industry would now be centred on three products, raw sugar, molasses, and ethanol. The aim is also to increase production by rationalising the plants and land use, and securing expertise and investment. Some aspects of these proposals conflicted with details of a report produced by EC consultants who visited the island. In particular, the report was less than sanguine about Jamaica's ability to produce ethanol economically.

JAMAICA'S AMBASSADOR APPOINTED TO UNCTAD

Ambassador Ransford Smith, Jamaica's Permanent Representative to the Office of Specialised Agencies of the United Nations in Geneva, has been elected President of the governing body of the United Nations Conference on Trade and Development's (UNCTAD). The body, the Trade and Development Board guides the work of UNCTAD in the four years between the meetings of the quadrennial conference (the highest decision-making body of UNCTAD). The Board meets in Geneva once a year in regular session and up to three times a year in executive sessions to deal with *ad hoc* policy and institutional issues. The 52nd Annual Session was held in October 2005. Among the issues discussed at the special session were: the need to assist developing countries with the adjustment costs associated with liberalisation, the prospect of aid for trade, and the issue of preference erosion; recognising in this context, that preferences contributed to economic growth and progress in the developing world.

BANANAS

In the continuing Banana saga, the EU in September submitted a second request for arbitration on its proposal for a new tariff for bananas from countries benefiting from Most Favoured Nation Status.

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This request follows the rejection by the earlier arbitration panel of a proposed duty of €230 per tonne. On the 27th October, the arbitrators again rejected the EU proposal of a lower duty of €187 per tonne, stating, "the European Communities' proposed rectification, consisting of a new MFN tariff rate on bananas of €187 per metric ton and a 775,000 MT tariff quota on imports of bananas of ACP origin, would not result "in at least maintaining total market access for MFN banana suppliers", taking into account "all EC WTO market-access commitments relating to bananas". If preferences to ACP Banana producers are preserved, then the higher tariff would be beneficial. Caribbean producers had indicated that the proposed tariff would leave them unable to compete. The arbitrators' ruling therefore does not bode well for regional producers, as the EU will have to arrive at an even lower proposed tariff following this new ruling. The new EU regime is expected by 1st January 2006.

CARICOM, THE FTAA AND THE IV SUMMIT OF THE AMERICAS

In the lead up to the IV Summit of the Americas, Ministers of the Region had written to the US and Brazilian Co-chairs of the Free Trade Area of the Americas (FTAA) three times to enquire about the status of the negotiations and these efforts had been met with silence. The most recent attempt was aimed at convening a meeting in order to draft consensus language on the FTAA to be included in the Mar del Plata Summit of the America's declaration. Unfortunately, the IV Summit of the Americas ended without any commitment on a Free Trade deal, dashing the hopes of those who thought that it would have revived the FTAA process. Based on the results of the summit, it seems that the resulting FTAA may be a watered down version of what was originally intended, including only a portion of the countries in the hemisphere, as some of the countries initially involved are calling for its demise. The original FTAA would have represented a combined population of 800 million and total gross domestic product of between US\$ 11-13 trillion. Of this CARICOM would have represented 1.74% of the total FTAA membership and 0.23% of the GDP.

CSME PROGRESS

While Jamaica, Trinidad and Tobago and Barbados are slated to complete the legal and administrative work for full implementation of the CSME by January 2006, the Standing Committee of Caribbean Statisticians (SCCC) is aiding the progress of the CSME through data collection and sharing. At its thirtieth meeting held in Kingston, Jamaica from 26-28 October, under the theme "The CSME and the Achievement of the Millennium Development Goals - The implications for Statistics in the Region", discussions focused on the statistical infrastructure an enabling factor for the establishment and functioning of the CSME. For more information on Members' progress visit the CARICOM website at www.caricom.org.

ECONOMIC PARTNERSHIP NEGOTIATIONS

The third phase of negotiations for an Economic Partnership Agreement (EPA) between CARIFORUM countries and the European Union was launched in Saint Lucia on September 30. The meeting adopted the joint report on negotiations that took place in Phase II, reviewed the progress of the negotiations thus far, and provided guidance on future negotiations. Vital trade and aid issues relating to the CARIFORUM banana, sugar and rum industries were also discussed. The talks have been declared a success, notwithstanding protests by civil society that despite the rhetoric, development is not really an EU priority.

HONG KONG AND BEYOND

Prior to the start of the Hong Kong Ministerial, Caribbean Trade Ministers along with the Secretary General of CARICOM, H.E. Edwin Carington, Director General of the Caribbean Regional Negotiating Machinery (RNM), Ambassador Dr. Richard Bernal, Geneva and Brussels-based Caribbean diplomats, Senior Capital-based Officials from CARICOM countries as well as Cuba and the Dominican Republic, and officials from the RNM, CARICOM and OECS Secretariats participated in a preparatory meeting. At the Thirteenth Special Meeting of the Council for Trade and Economic Development (COTED) on External Trade Negotiations, the participants noted the need for the WTO negotiations to put development at the top of the Agenda. Failure to do so they warned, would lead to a breakdown in the negotiations. In particular, they were disappointed with developments with respect to banana and sugar and indicated that these would impact on the Hong Kong talks. The countries reiterated their commitment to the successful conclusion of the round and noted that the results should leave developing countries better off. CARICOM Ministers in their opening statements at the Ministerial revisited this issue. Clement Rohee of Guyana, CARICOM's WTO spokesperson was named by the Chairman of the Sixth Ministerial Conference, Sec. John Tsang, as one of the six Ministers to act as facilitators in the discussions that took place in Hong Kong. Minister Rohee dealt with specific development related issues, a role he also played in Cancun. His main role in the talks was to help to oversee the process and ensure that all delegations had an opportunity to air their views and ensure that there was transparency and inclusiveness in the negotiations.

The CARICOM Ministers held fast to their previously stated positions in conjunction with other developing countries with the outcome that Hong Kong was more successful than had been predicted. According to the Director General, "There has been a rebalancing in favour of developing countries, whose interests have now been placed at the heart of our negotiations as we provided for in 2001 when we launched this round." CARICOM leaders assessed that the Hong Kong Ministerial highlighted the importance of the CSME to CARICOM Member States' negotiating ability. ■

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