

# **The OECS and Trade in Services: Multilateral and Hemispheric Imperatives**

## *Introductory Overview of Services*

In recent years, cross-border trade in services has accounted for some 22% of world trade, or about USD\$1.3 trillion annually.<sup>1</sup> The services sector is the largest and fastest-growing sector of the world economy, providing more than 60% of global output/production. Services trade, alone, amounts to one-fifth of total world trade. Services trade in the Western Hemisphere became particularly prominent throughout the 1990s; in countries that constitute the Free Trade Area of the Americas (FTAA) framework services represented some 25% of world-wide services exports.

Services constitute the largest and most dynamic component of most developed and developing country economies; consider that for the past two decades trade in services has grown faster than merchandise trade. The services sector, alone, in the Organization of Eastern Caribbean States (OECS)<sup>2</sup> Member Countries accounts for some 80% of GDP<sup>3</sup>; this comes as no surprise as in terms of trade, services are more important for smaller countries.<sup>4</sup> The growing importance of services to the economies of the OECS and the Caribbean, as a whole, is perhaps most poignantly reflected in developments in CARICOM's quest to achieve single market goals, where the services sector ranks high in priority. Indeed, hemispheric negotiations that encompass the FTAA also focus very deliberately on services negotiations and are occurring at a time when tremendous strides toward services advancement within the ambit of Protocol II<sup>5</sup>, dealing with *Establishment, Services and Capital* in the context of the CARICOM Single Market & Economy, are underway.

At the broader hemispheric level, though, negotiations in services remain tentative; while a Draft Text is in place, it remains 'square bracketed' and broad consensus on schedules and substantive aspects of the Text is still pending. Negotiations into the specifics of a wide

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<sup>1</sup> This figure actually understates the true size of international trade in services, much of which takes place through establishing commercial presence in the export market, and is not recorded in balance-of-payments statistics. *The internationalization of services generally makes reference to cross-border transactions and establishing a commercial presence.*

<sup>2</sup> The nine OECS Member States are Antigua and Barbuda, Commonwealth of Dominica, Grenada, Montserrat, St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines; Anguilla and British Virgin Islands are Associate Members of OECS.

<sup>3</sup> Government services represent a major share of total services, accounting for some 15 to 20% of GDP.

<sup>4</sup> In many OECS Member States, including countries of CARICOM proper, commercial services exports (particularly, tourism and financial services) represent amongst the largest foreign exchange earners.

<sup>5</sup> The Protocol consists of the following elements: the right of establishment, the right of capital mobility, free movement of labor, the removal of existing restrictions on the free movement of services, national treatment provision guarantees in respect of all members of CARICOM, and perhaps most important the obligations not to impose any *new* restrictions on services upon the execution of the Protocol.

range of services issues will really take-off in the next 18 month cycle of the FTAA negotiating process starting with the move of the FTAA Secretariat to Panama.<sup>6</sup> With respect to the multilateral level, in the wake of the Uruguay Round, negotiations in services were mandated as part of the WTO's built-in agenda and began in early 2000.<sup>7</sup>

### ***Barriers to Trade in Services: A Review***

A key element of expanding trade are negotiations to reduce barriers and facilitate access to international trade and investment opportunities. Unlike international tariff barriers and border measures, however, which inhibit trade in goods, the barriers inhibiting trade in services are more likely to be non-tariff in nature, comprising discriminatory domestic regulatory barriers/bottlenecks.<sup>8</sup> For example, ownership rules or reviews may prevent a foreign service provider from establishing in a domestic market or rules may exist which place foreign service providers at a disadvantage when competing with domestic firms. Many of the regulations affecting trade in services are related to qualification and licensing requirements, procedures and technical standards. Regulatory measures can reduce market access in many ways, not only by being applied differently to a foreign firm than to a domestic one, but also by not being applied in a transparent or uniform manner. While the regulations and standards are often in place to meet legitimate public policy objectives, services-based trade negotiations are meant to ensure that these requirements are based on objective and transparent criteria and are not more burdensome than necessary in order to achieve the regulatory objective. Ultimately, however, the Services Agreements serve to establish disciplines to *progressively liberalize* trade in services, so as to permit the achievement of free trade imperatives under conditions of *certainty* and *transparency*.

Restrictions on the ability of a foreign firm to deliver its services to consumers can include: regulations and approval processes which are not clear, which change without warning or are not administered in a uniform manner; or entry requirements that limit the ability to foreign individuals to enter the market to provide their services. Hence, at the core of barriers to services trade are transparency and predictability bottlenecks in national regulatory policy. More so, implicit in barriers to services trade with respect to *market access* is the typical 'absence' or 'opaqueness' of information on conditions related to the operation in and compliance with regulatory requirements in domestic markets as well as actions that could be taken to alter/redress the regulatory environment in question by a foreign party (foreign service provider). Examples of barriers to market access in services are rules, policies or practices that place limits on:

- the number of service suppliers (i.e., in the form of quotas, monopolies, rights for exclusive supply);

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<sup>6</sup> The shift of the FTAA Secretariat to Panama will be in April, 2001 ending February 2003.

<sup>7</sup> In January 2000, WTO Member Governments started a new round of negotiations to promote the progressive liberalization of trade in services.

<sup>8</sup> This notwithstanding, nondiscriminatory regulatory diversity also constitutes a robust barrier to international trade in services.

- the total number of service transactions, assets or operations (i.e., usually expressed in terms of a quota);
- the total number of persons that may be employed in a particular service sector; measures which restrict the legal entity through which a foreign service supplier may deliver the service (e.g., subsidiaries, branches, joint ventures); and,
- the level of shareholding or investment that a foreign service supplier may make.

The fact is, domestic regulations play an important role in either *increasing* or *limiting* the ability of service exporting firms to provide their services in that market. Critical here is the rationalization for the regulation, i.e. a *legitimate* reason relating to the public interest or, conversely, a reason that is in blatant violation, in intention and purpose, of free trade imperatives. Clear rules, therefore, on trade in services help pave the way to addressing restrictions on transnational services trade that are contrary to principles premised on most-favored-nation treatment and national treatment centered on the level playing field concept.

### ***Methodological Approaches to Services Negotiations***

As regards choosing between methodological approaches to services there are two notable options, and then a third, which is a hybrid of the two. The first is the 'positive list' approach where a given country would have the discretion to decide what areas within the services discipline would be liberalized. With respect to the 'negative list' approach Member Countries would only list those disciplines that they have an interest in not liberalizing and that means that everything not listed, in this context, would 'automatically' be liberalized. Commitments in this respect could not be retracted should it be decided that exceptions should apply after the fact. There are obvious implications, in this regard, for potential services that have not as yet been conceptualized, as any 'new' services would then have to be liberalized. This could be disadvantageous to small economies especially as some 'emerging' service areas may have to be protected. In addition, the top-down or negative list approach would be partial to a maximum degree of liberalization, automatically providing for national treatment and market access to new services, which is disadvantageous to small developing countries. There is a third approach to services which is a hybrid of the 'positive' and 'negative list'. CARICOM countries, in general, are partial to this approach; in fact, the hybrid approach was conceptualized by small states.

A positive list approach to services is employed at the WTO level; whilst, the North American Free Trade Agreement (NAFTA) uses the negative list approach. NAFTA countries have traditionally pushed for services to be negotiated using a negative list approach in the FTAA. The United States, in particular, believes that FTAA countries should negotiate liberalization according to a top-down (negative list) approach, whereby all sectors are liberalized except where a particular FTAA country negotiates a 'reservation' for a particular sector or measure.

## ***Services in the Multilateral Framework***

Services-related issues, at the multilateral level, fall within the ambit of the General Agreement on Trade in Services (GATS). Article XIX (Negotiation on Specific Commitments), Article XX (Schedule of Specific Commitments), Article II (Most Favored Nation Treatment), Article XVI (Market Access) and Article XVII (National Treatment) collectively constitute the harbingers of the GATS rules. The GATS has two parts: the framework agreement containing the general rules and disciplines; and, the national 'schedules'<sup>9</sup> which list individual countries' specific commitments on access to their domestic markets by foreign suppliers.<sup>10</sup> The GATS separates services trade into four modes of supply: cross-border supply (i.e. commercial cross-border transactions), consumption abroad, commercial presence, and the presence of natural persons. It is on the above basis that classification of modes of services trade that the services sector is negotiated. A major barrier to services trade, for services industries that have traditionally been heavily regulated, is discriminatory or non-transparent regulatory policy. As a result of this, most-favored-nation treatment<sup>11</sup>, market access and national treatment are three of the preminent principles included in the general framework of the GATS.

The GATS took the fundamentally important step of creating a set of rules, that provide a legal framework for addressing barriers to trade and investment in services, and set some precedents for market access commitments as well. GATS is designed to reduce or eliminate governmental measures that prevent services from being freely provided across national borders or that discriminate against locally-established service firms with foreign ownership. However, while disciplines built into GATS attempted to prevent new trade barriers the actual reduction of service related trade barriers, already in place, within government/domestic regulations was left for future rounds of multilateral negotiations. This remains complicated by the fact that transnational service flows are largely intangibles and associated barriers to as well as discriminatory practices in respect of those flows, by foreign service providers, at national borders are also not explicit as they are in the case of barriers to trade in goods. This notwithstanding, the GATS does provide a forum for further negotiations to open services markets around the world.

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<sup>9</sup> A country's commitments in its WTO services 'schedule' amount to a legally binding guarantee that foreign firms/companies will be allowed to supply their services under stable conditions. Member Governments choose those service sectors or sub-sectors on which they will make commitments guaranteeing the right of foreign suppliers to provide the service. Each Member must have a schedule of commitments, but there is no minimum requirement as to its coverage—some cover only a small part of one sector. Governments have the discretion to set limitations specifying the level of market access and degree of national treatment they are prepared to provide. Alternatively, with respect to market access and national treatment the signatory country may outline the *specific provisions* in national laws for which it takes a 'reservation'.

<sup>10</sup> The GATS covers all internationally-traded services with *two exceptions* : services provided to the public in the exercise of governmental authority; and, in the air transport sector, traffic rights and all services directly related to the exercise of traffic rights.

<sup>11</sup> Member Countries, however, have the flexibility of taking exemptions, in principle limited to 10 years duration from the MFN principle.

## *Services in the Hemispheric Framework*

Since the Toronto Ministerial meeting, the Negotiating Group on Services has met on five occasions: February 29-March 3, 2000, May 30-June 2, 2000, August 15-18, 2000, October 16-20, 2000, and December 11-14, 2000. Between twenty-one and twenty-six countries participated in these meetings. With the exception of three meetings, all countries were represented, either directly or through a sub-regional Delegation.

The first phase of FTAA negotiations culminated in the Toronto Ministerial of November 1999; the second phase is due to be completed in April 2001. The Toronto Ministerial mandated that Draft Texts be completed for each one of the Chapters of the respective Negotiating Groups. Such a Draft Text - (*FTAA.ngsv/02*) - was fashioned for the Negotiating Group on Services in the latter part of 2000. The Negotiating Group has discussed the text on the "six elements of consensus" (i.e., Scope, Most Favored Nation Treatment, Transparency, Denial of Benefits, National Treatment, and Market Access) that had been previously identified by the Group in its annotated outline (*FTAA.ngsv/rep/01*) as forming part of the Services Chapter. The Group has also discussed other topics that have been identified by one or more Delegations as those that might, in principle, be included in the FTAA Chapter on Services. In addition, the Group has reviewed institutional issues.

Articles 1 through 7 of the Draft Chapter contain text proposals on the six elements of consensus. Article 8 contains definitions of terms of the Services Chapter. An additional section contains text proposals on the other elements which are those that have been identified by one or more Delegations as those that could, in principle, be included within a Services Chapter. These are: domestic regulation; granting permits, authorizations, licenses and certificates; annex on professional services; general and security exceptions; non-obligatory local presence; standard of treatment; recognition; regulatory exclusions; additional commitments; list of specific commitments; reservations or commitments; liberalization of nondiscriminatory measures; future liberalization; future work; Committee on Cross-Border Trade in Services; Consultations; Council for Trade in Services; dispute settlement; technical cooperation; relations with other international organizations; restrictions to protect the balance of payments; special safeguards; subsidies; competition; and special and differential treatment.

In the development of the Draft Chapter on Services, the Group adopted the following work methodology: a) Various Delegations submitted texts on the above topics, as well as definitions. Some Delegations also provided explanatory notes regarding their proposed texts. b) The Chair of the Group prepared a consolidated text based on the proposed texts, and distributed it to the delegations in advance of each meeting. c) Delegations have engaged in discussions of the consolidated text with the objective of arriving at consensus and in so doing, eliminating a number of brackets.

A number of elements/areas of the Draft Text for the Negotiating Group on Services are 'square bracketed'. This notwithstanding, the Negotiating Group on Services has made important progress on its work programme, particularly in identifying options for the *scope* and *coverage* of a Services Chapter as well as in developing a framework incorporating rights and obligations for services. It is the understanding of the Group, however, that the text

remains open to additional presentations of text and/or modifications of existing texts. Some Delegations have noted that supplemental or specialized provisions will need to be defined for certain services sectors and for particular modes of supply whose characteristics so require. Below are some pertinent/notable facts regarding the Negotiating Group on Services:-

*Chair:* CARICOM (for the third FTAA negotiating cycle).<sup>12</sup>

*Vice-Chair:* Venezuela (for the third FTAA negotiating cycle).

*Objectives (San Jose Ministerial Declaration):*

- Establish disciplines to progressively liberalize trade in services, so as to permit the achievement of a hemispheric free trade area under conditions of certainty and transparency;
- Ensure the integration of smaller economies into the FTAA process.

*1999 Meetings:*

- First Meeting, Miami, Florida, 8-9 September 1998
- Second Meeting, Miami, Florida, 11-13 January 1999
- Third Meeting, Miami, Florida, 12-16 April 1999
- Fourth Meeting, Miami, Florida, 12-16 July 1999
- Fifth Meeting, Miami, Florida, 13 September, 6 - 7 October 1999

*2000 Meetings:*

- Sixth Meeting, Miami, Florida, 29 February - 3 March 2000
- Seventh Meeting, Miami, Florida, 30 May - 2 June 2000
- Eighth Meeting, Miami, Florida, 15 - 18 August 2000
- Ninth Meeting, Miami, Florida, 16 - 20 October 2000
- Tenth Meeting, Miami, Florida, 12 - 15 December 2000

Please see the **Annex** that lists the Schedule of FTAA Negotiating Groups for the period May to September and make reference to the Negotiating Group on Services Meetings.<sup>13</sup>

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<sup>12</sup> The United States Chaired the Negotiating Group in the second cycle of negotiations and Peru Vice-Chaired.

## ***Recommendations for the OECS Sub-Region with Respect to Services Negotiations***

On the issue of recommendations regarding the sub-region's approach to services trade negotiations two issues are of critical importance; specifically, *the rule-making exercise and the negotiations on further liberalization.*

### *Multilateral Aspects of Services Negotiations*

From the multilateral perspective, in the case of rule making, it is critically important for the OECS to pay particular attention to the GATS built-in agenda to negotiate disciplines on emergency safeguard measures<sup>14</sup>, subsidies, government procurement; and, domestic regulations (to ensure measures relating to qualification requirements, technical standards and licensing requirements do not constitute unnecessary barriers to trade). Specifically, the inclusion of safeguard measures in GATS is critically important to small developing economies. To date, attempts have been made to restrict the applicability of safeguard measures to cross-border trade in services; CARICOM holds strongly to the view that this should be extended to other modes of supply. As regards subsidies, the *CARICOM Negotiating Proposal to the WTO* has expressly indicated that their negotiation must take into account the need for appropriate flexibility for developing countries. CARICOM, on behalf of Member Countries, has stressed – therefore- that negotiations should allow for the maintenance of existing, and the introduction of new, programmes to encourage the development of the domestic services capacity of those economies as provided by Article IV.

On 28 March 2001 the Special Session of the Council for Trade in Services adopted "Guidelines and Procedures for the Negotiation of Trade in Services" (S/L/93), thereby putting in place the framework for negotiation of further services liberalization in keeping with Article XIX of the GATS. After long debate and four document revisions, this agreement takes into account various proposals advanced by developing countries, including CARICOM, in specifying the agreed Objectives and Principles, Scope<sup>15</sup>, and Modalities and Procedures for future negotiations on Services to advance rule formulation and expand specific commitments in the sector. Furthermore, with respect to the negotiation of further liberalization, the starting-point is seen to be the elaboration of the negotiating guidelines. The guidelines are expected to provide necessary direction for the negotiations on the objectives; the sectoral coverage of the negotiations (non-exclusion of any sector); the

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<sup>13</sup> The last meeting of the Negotiating Group on Services – the Tenth Meeting - took place in Miami, Florida on December 11 -14, 2000. Delegates from the following twenty-three countries were present: Argentina, Bahamas, Barbados, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Lucia, Trinidad & Tobago, United States, Uruguay.

<sup>14</sup> Negotiations on safeguards are to completed by 15 March 2002.

<sup>15</sup> With respect to Scope, while there shall be no *a priori* exclusion of any service sector or mode of supply, special attention shall be given to sectors and modes of supply of export interest to developing countries. MFN exceptions shall be subject to negotiation but appropriate flexibility shall be accorded to individual developing country Members.

possible modalities that may be used in the negotiations (bilateral, plurilateral or multilateral); the flexibility for developing countries (opening fewer sectors and liberalizing fewer types of transactions); the treatment of least-developed countries; and, the treatment of autonomous liberalization undertaken since the conclusion of the Uruguay Round.

Further to consistency with CARICOM proper's negotiation position, implicit in the sub-region's conceptualization of modalities of multilateral services negotiations must be the understanding that negotiations on services be based primarily on the 'request and offer approach'. This must be the fundamental modality of negotiations. Where alternative/supplemental negotiating techniques are employed they must not deviate from the positive list approach, outlined in Part III of the GATS; and further more, used only where there is consensus, and if they are *unambiguously* specified in negotiating guidelines and procedures. Such negotiating guidelines and procedures would have to be established prior to substantive negotiations on specific commitments undertaken.

It would also be incumbent upon OECS policy-makers - with respect to negotiating strategy - to continue to build the special case for small developing economies, the assessment of trade in services as mandated by article XIX, and the services which the OECS will likely liberalise in the next Round of Negotiations. With respect to small developing economies the sub-region must continue to attach great importance to Paragraphs 2 and 3 of Article XIX and to Article IV which speak to special and differential treatment relevant to the OECS. CARICOM is of the view that in appropriate circumstances the treatment of small developing economies can be approximated by dealing with proposals in terms of small service providers. Implicit in this are modalities for negotiations that will accommodate gradual liberalization, differing levels of participation in plurilateral and multilateral initiatives, flexible time frames and the provision of phase-in and transitional periods for developing countries.

Regarding negotiating strategy, the sub-region must also not be reticent in its collective response to the recent developments with respect to tourism in GATS. The fact is, within the ambit of the multilateral trade framework tourism is an issue of particular relevance and importance to OECS trade policy-makers. The increasing importance of the services sector in the Caribbean, at large, is attributable to the significant growth of tourism since the mid-1990s.<sup>16</sup> The tourism sector is at present the single largest contributor to economic activity in some countries of the sub-region, most notable is Saint Lucia - due primarily to its broad linkages with other economic sectors. Activity in the tourism sector in Saint Lucia, for example, based on value-added in the restaurant and hotel sector the largest component of GDP grew by 2.5% in 2000; the cruise ship segment remained extremely buoyant with recorded growth of 26.3% in the same period. Whilst the tourism sector is of major importance to OECS Member States, however, they are confronted by problems with respect to this sector especially because the sector is highly dependent on other services such as air, maritime and road transport, financial services and health services, etc., which are still maturing.

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<sup>16</sup> According to IMF data for 1999, tourism exports as a whole, estimated at US\$ 443 billion, were 33% of global services exports and 6.5% of total exports.

More than 100 WTO Members have commitments in tourism, which is amongst the most liberalized sector, under the GATS. There have been recent developments with respect to tourism in GATS in the form of a proposal for an Annex on Tourism in the **list of 2000 services proposals** for 'new' negotiations in the WTO framework. The proposal for a special GATS Annex on tourism services was initiated by the Dominican Republic, El Salvador and Honduras. It is incumbent upon OECS Member States to follow this development in a deliberate fashion and with keen interest as the sub-region has a stake in creating a competitive environment favoring the growth of tourism.

In addition, the OECS Member States have to critically consider the extent to which the current GATS structure is adequate enough to address the problems which confront their tourism industry. Similarly, there are issues that relate to the degree to which the GATS definition of tourism, in general, sufficiently covers the scope of services activities regarded as key tourism-related (especially as viewed by the World Tourism Organization) - hence, the GATS Annex on tourism. On all these issues, in addition to tourism, the OECS sub-region must have a renewed commitment to critically paying closer attention to services trade issues at the multilateral level.

#### *Hemispheric Aspects of Services Negotiations*

CARICOM has made submissions – to the Draft Chapter - on special and differential treatment in several areas including: Sectoral Coverage, MFN, National Treatment, Denial of Benefits, Market Access, Transfer of Technology, Movement of Natural Persons and Technical Cooperation. However, while a consolidated text has been produced, there has been very little substantive discussion on the issues underlying the FTAA Draft Text on Services. The only substantive issue that has perhaps reached some degree of consensus is that the negotiations should take into consideration the differences in *size and level of development* of countries. However, in this area there is as yet no agreement as to the appropriate modalities to be utilized in facilitating this mandate.

Participating governments must have a continuous and in-depth exchange of views on levels of market access and market conditions being provided by countries in the hemisphere; especially, given that the process of liberalization must take into account differences in levels of development and size of economies. Hence, it is imperative that the OECS Member States move toward collectively establishing how they can formulate and articulate an integrated approach in this regard. In engaging in this exercise OECS Member States should be particularly cognizant of the need to thoroughly discuss, amongst themselves, negotiating modalities and procedures for market access in services that takes into account elements related to the *mandate, objectives, and principles* of the exercise of negotiating the FTAA. Ultimately, without further progress on the definition of the structure, the rules and disciplines for the Services Chapter, it would be difficult to make a determination on negotiating modalities.

Then there is the issue of the most efficient and appropriate methodology for dealing with services-related cross-cutting and institutional issues.<sup>17</sup> More concerted thought and

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<sup>17</sup> Issues related to services are also under consideration by other Negotiating Groups including Investment, Competition Policy, and Dispute Settlement.

attention has to be given by OECS trade policy-makers on cross-cutting issues relevant but not unique to services; for example: general exceptions; security exceptions; restrictions to protect the balance of payments; disclosure of confidential information; payments and transfers; institutional issues; definitions; transparency; taxation; and movement of natural persons.

The area of sectoral negotiations also remain critically important to the OECS, and CARICOM proper. Of relevance to the sub-region is the United States' view that during the next Round sectoral negotiations should commence. The United States appears to be interested in the following areas in order of preference<sup>18</sup>:

- a. Financial services
- b. Telecommunications
- c. Movement of natural persons
- d. Transportation (maybe including some aspects of air transportation, but definitely not maritime transportation)

The extent to which a normative framework for services is further articulated on in the FTAA will determine the advantages of a sectoral focus being at the apex of any negotiating agenda; especially for smaller developing countries. Sectoral services negotiations, some scholars have argued, must not be engaged in without discussing in tandem other issues that are closely related. It is critically important that OECS Member States remain cognizant of the fact that negotiations over the liberalization of services trade must be undertaken in a *'broad agenda'* that comprises other relevant areas such as agriculture, etc.

A critically important factor for OECS services policy-makers to also pay particular attention to is how the United States defines the scope of the Services Chapter of the FTAA. To the United States the scope of the Services Chapter applies to cross-border supply of services; however, it maintains that investment to supply services is more appropriately addressed under the Investment Chapter of the FTAA. The United States also believes that the scope and coverage of the Services Chapter of the FTAA should be comprehensive and should cover, in principle, all service sectors and service suppliers. In this respect the United States defines cross-border services as including three ways of supplying a service<sup>19</sup>: from the territory of one Party into another Party; in the territory of one Party by a person of that Party to a person of another Party; and by a national of a Party in the territory of another Party. Ultimately, given the trading relationship between the United States and the

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<sup>18</sup> This proposal is likely to be supported by a number of Delegations, including Chile, Costa Rica, Mexico and Panama.

<sup>19</sup> The United States excludes services supplied in the exercise of governmental authority from the services chapter of the FTAA. In addition, in areas related to social services - including education and healthcare services - the United States is not seeking the FTAA negotiations to promote privatization of such public services. Other exclusions apply, including government procurement of services which the United States believes is more appropriately addressed under the Government Procurement Chapter of the FTAA. The United States has also indicated that it supports excluding air transport services, but could include certain services related to air transport, under the Services Chapter of the FTAA Agreement.

Caribbean, Member States have to be particularly sensitive to the United States' conceptual and strategic approach to hemispheric services negotiations.

### *Liberalization of Intra-CARICOM Trade in Services*

While the thrust of this *Policy Brief* has been on the multilateral and hemispheric imperatives of services trade liberalization it would be remiss to view them in a vacuum by not speaking to the CARICOM Single Market and Economy (CSM&E). Specifically, the above recommendations, with respect to multilateral and hemispheric services imperatives, must be viewed in tandem to and within the context or regional backdrop of, Protocol II. The Protocol remains particularly focused on facilitating national treatment to *all* Member Countries of CARICOM; but in addition, works to prevent the imposition of any 'new' restrictions upon the entry into force of the Protocol. Equally important, the Protocol is working to dis-assemble restrictions currently in place with respect to the free movement of services, the right of establishment and the free movement of factors of production within the region; which remains a significant undertaking.

In any single economic space that would result from moving beyond the provisional application of Protocols, including Protocol II, and bringing to fruition the CSM&E, services would play a critically important role in the free movement of *all* factors of production. Indeed, the CARICOM framework for services and the CARICOM Protocols, in general, are being viewed as necessarily constituting a WTO-Plus and FTAA-Plus undertaking in so far as it must be a more *robust* and *deeper* commitment to liberalization. This notwithstanding, the liberalization of intra-CARICOM trade in services remains an undertaking, that while it continues in earnest, is an ambitious exercise – not without hurdles - that has many years yet before it is brought to fruition. This is particularly the case regarding work at the national level to execute the legislation that eventually would serve to enact the various provisions of Protocol II.

In a study prepared for the CARICOM Secretariat, entitled *Programmes for the Removal of Restrictions under Protocol II (April 2001)*, Watson and Erriah analysed over 350 different restrictions or seeming restrictions for CARICOM proper (including the OECS sub-region). Restrictions were identified for at least one Member Country - not to mention numerous restrictions across all countries in areas like accounting, insurance, telecommunications and medical services, to name a few.

Most restrictions – with respect to CARICOM Member Countries (including those of the OECS sub-region) - affected the rights of establishment (300 cases), followed by the movement of natural persons (279 cases), followed by cross border trade (80 cases) followed by consumer moves to supplier (16). However, there were variations within countries (see Table 1 below for greater detail).<sup>20</sup>

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<sup>20</sup> Some of these variations may be influenced by differences in how different Consultants and countries categorized restrictions in preliminary work used as a basis for Watson and Erriah's report. *The reader should keep in mind Watson and Erriah also made use of extensive excel tables comprising spreadsheet analysis of specific restrictions, by Mode, and the services/industries they affected - that are **not** reviewed here. Hence, the analysis of Watson and Erriah's report here remains cursory at best.*

**Table 1: Number of Specific Restrictions Identified for Each Mode of Service Delivery<sup>21</sup>**

Country	Cross Border Trade <i>Mode 1</i>	Rights of Establishment <i>Mode 2</i>	Consumer moves to supplier <i>Mode 3</i>	Natural persons <i>Mode 4</i>
Antigua & Barbuda	9	9	0	11
Barbados	8	15	2	15
Belize	4	23	1	23
Dominica	9	30	2	34
Grenada	2	44	1	19
Guyana	12	25	6	40
Jamaica	9	67	1	73
Montserrat	6	6	1	5
Saint Lucia	5	41		15
St. Kitts and Nevis	3	2	1	5
St. Vincent & Grenadines	2	10	0	4
Suriname	3	16		20
Trinidad and Tobago	9	12	1	15
<b>Grand Total</b>	<b>80</b>	<b>300</b>	<b>16</b>	<b>279<sup>22</sup></b>

Source: Watson and Erriah, *Programmes for the Removal of Restrictions under Protocol II* (CARICOM Secretariat: April 2001, PP: 16).

According to Watson and Erriah, there were 147 cases out of 358 where the specific restrictions were either identified as being removable in the short run; suggesting that 41% of the services that are restricted can be freed up easily well within two years. In addition, Watson and Erriah noted that a further 51 cases (14%) existed where respective consultants felt the restriction was not discriminatory and did not need to be removed. Watson and Erriah indicated further (based on further analysis presented in spreadsheet analysis in their Study) that an additional 35 or just about 10% of restrictions could be removed in the short to medium run or within two to three years. Table 2 below outlines the term structure for the removal of restrictions for each Member Country.

<sup>21</sup> When making reference to this table the reader should be aware of the fact that there were 358 service areas identified as having restrictions by at least one mode. Most service areas identified had restrictions to the rights of establishment and the movement of natural persons but in some cases the restriction did not apply to either of these two cases and in others it applied to only one or the other.

<sup>22</sup> This means that of the 358 service categories identified as having restrictions, the movement of natural persons was restricted in 279 of these cases.

**Table 2: Term Structure for Removal of Specific Restrictions Across Member States**

Country	Short term <sup>23</sup>	Short to medium term <sup>24</sup>	Medium term <sup>25</sup>	Medium to long term <sup>26</sup>	Long term <sup>27</sup>	Nothing to remove <sup>28</sup>	Grand Total
Antigua and Barbuda	5	0	1	2	2	3	<b>13</b>
Barbados	3	3	3	3	4	5	<b>21</b>
Belize	15	2	4	1	2	2	<b>26</b>
Dominica	23	1	3	0	5	3	<b>35</b>
Grenada	21	6	7	1	6	4	<b>45</b>
Guyana	18	6	4	3	7	3	<b>41</b>
Jamaica	25	7	10	7	10	14	<b>73</b>
Montserrat	0	0	2	0	3	3	<b>8</b>
Saint Lucia	18	5	8	1	7	5	<b>44</b>
St. Kitts and Nevis	1	0	1	0	1	3	<b>6</b>
St. Vincent & the Grenadines	5	2	2		0	1	<b>10</b>
Suriname	7	1	4	5	2	0	<b>19</b>
Trinidad and Tobago	6	1	0	1	4	5	<b>17</b>
<b>Grand Total</b>	<b>147</b>	<b>35</b>	<b>48</b>	<b>24</b>	<b>53</b>	<b>51</b>	<b>358</b>

Source: Watson and Erriah, *Programmes for the Removal of Restrictions under Protocol II* (CARICOM Secretariat: April 2001, PP: 17).

Much remains to be done with respect to addressing and mitigating restrictions on services imperatives regionally, notable here is the free movement of natural persons. However, the CARICOM framework in services provides for an important uniform and collective foundation upon which Member Countries can better participate in multilateral and hemispheric services frameworks. For this reason, the CARICOM CSM&E Protocol II remains intimately connected with multilateral and hemispheric services regimes.

### ***Concluding Remarks***

The above analysis should *not* be interpreted as an exhaustive account of pertinent multilateral and hemispheric services and services negotiating imperatives. It offers but a modicum of insight into the theoretical nuances of the sector and *some* aspects of services negotiation with respect to the multilateral and hemispheric levels.

<sup>23</sup> Short term is 0-2 years.

<sup>24</sup> Short to medium term is between 2-3 years.

<sup>25</sup> Medium term is between 3-4 years.

<sup>26</sup> Medium to long term is between 4-5 years.

<sup>27</sup> Long term is 5 years or more.

<sup>28</sup> N/A means that there is nothing to remove as what appears to be a restriction is a necessary regulation.

What the reader should take away from the above is that in broad terms, services negotiations – in general - can be conceptualized as comprising two parts - *the rule-making exercise* and *the negotiations on further liberalization*.<sup>29</sup> These factors are critically important in the advancement of services negotiations and a recognition of this, as well as its robust integration into the conceptual thinking of and approach to respective services sector policy-making in the OECS Member States is critical.

Progress on services negotiations is key if expanding the multilateral trade agenda is to be contemplated and executed.<sup>30</sup> However, negotiations over the liberalization of services trade must be undertaken in a '*broad agenda*' that comprises other relevant areas. Current services negotiations both at the multilateral and hemispheric levels present small developing countries, like the OECS, with opportunities; however, these can only be capitalized on provided the sub-region is able to 'effectively' contribute to *defining* and *implementing* an agenda sensitive to their needs and interests.

Services have long been thought of as the fastest route for the development of small developing economies.<sup>31</sup> OECS Member States must demonstrate a more robust commitment to both multilateral and hemispheric services negotiations given that they will ultimately influence not only sectoral growth patterns both within and exogenous to the region but also the larger economic fortunes of the region given the critical role of services in the Caribbean's micro-economies.



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<sup>29</sup> The GATS requires that for *each* round of negotiations, guidelines and procedures be developed.

<sup>30</sup> Ultimately, as far as the multilateral trading framework is concerned the services negotiations (together with those in agriculture) are critically important ingredients for an eventual launch of a new multilateral Round.

<sup>31</sup> A competitive economy cannot exist without an effective and advanced services sector, as services encompass many different economic value-added activities.

# ANNEX

## FTAA - TRADE NEGOTIATIONS COMMITTEE

### SCHEDULE OF MEETINGS –(MAY 2001 / SEPTEMBER 2001)

- 1) Market Access = NGMA
- 2) Agriculture = NGAG
- 3) Services= NGSV
- 4) Intellectual Property Rights = NGIP
- 5) Investment = NGIN
- 6) Subsidies, Antidumping and Countervailing Duties= NGADCV
- 7) Competition Policy= NGCP
- 8) Government Procurement = NGGP
- 9) Dispute Settlement= NGDS
- 10) Smaller Economies = SME
- 11) Electronic Commerce = ECOM
- 12) Civil Society = SOC
- 13) Trade Negotiations Committee = TNC
- 14) Sub-committee on Administration and Budget = ADM
- 15) TNC Experts on Business Facilitation = EBF
- 16) Technical Committee on Institutional Matters = TCI

#### *May 2001*

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
6	7 NGSV	8 NGSV	9 NGSV	10 NGIN	11 NGIN	12
13	14 NGMA	15 NGMA	16 NGMA	17 NGGP	18 NGGP	19
20	21 NGCP	22 NGCP	23 NGADCV	24 NGADCV	25	26
27	28 NGIP	29 NGIP	30 NGAG	31 NGAG		

\* Simultaneous Meeting

#### *June 2001*

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 NGAG	2
3	4 NGDS	5 NGDS	6 EBF	7 EBF/ SME*	8 SME	9
10	11 ADM	12 ADM	13 ADM	14 TCI	15 TCI	16
17	18 NGGP	19 NGGP/ NGSV*	20 NGGP/ NGSV*	21 NGSV	22 NGSV	23
24	25 NGIN	26 NGIN	27 NGIN/ NGIP *	28 NGIP/SOC	29 NGIP/SOC	30

\* Simultaneous Meeting

*July 2001*

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2 NGMA	3 NGMA	4 NGMA	5 NGMA	6 NGMA	7
8	9 NGADCV	10 NGADCV	11 NGADCV/ NGCP*	12 NGCP	13 NGCP	14
15	16 NGAG	17 NGAG	18 NGAG	19 NGAG	20 NGAG	21
22	23 ECOM	24 ECOM	25 SOC	26 SME/SOC	27 SME	28
29	30 NGDS	31 NGDS				

\* Simultaneous Meeting

*August 2001*

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1 NGDS	2 TCI	3 TCI	4
5	6 NGMA	7 NGMA	8 NGMA	9 NGMA	10 NGMA	11
12	13 NGGP	14 NGGP/ NGSV*	15 NGGP/ NGSV *	16 NGSV	17 NGSV	18
19	20 NGIN	21 NGIN	22 NGIN/NGIP	23 NGIP	24 NGIP	25
26	27 NGAG	28 NGAG	29 NGAG	30 NGAG	31 NGAG	

\* Simultaneous Meeting

*September 2001*

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3 NGADCV	4 NGADCV	5 NGADCV/ NGCP *	6 NGCP / TCI *	7 TCI	8
9	10 ECOM	11 ECOM	12 SME	13 SME/ SOC*	14 SOC	15
16	17	18	19	20	21	22
23	<b>24 ADM</b>	<b>25 BILATERALS</b>	<b>26 TNC</b>	<b>27 TCN</b>	<b>28 TNC</b>	29
30						