OVERVIEW OF INTERNATIONAL NEGOTIATIONS ON MARITIME SERVICES

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Introduction

Maritime transport is by far the main mode of international transport for goods, and it continues to increase. The volume of global sea-borne trade for 2002 totalled 5.88 billion tons, and represented a 0.8% rise from the previous year. For small Caribbean islands that are heavily reliant on trade with the rest of the world, and almost exclusively on maritime shipping as the medium for that trade, transportation issues being discussed in the World Trade Organization (WTO) are important because of their potential to affect the terms and conditions of trade with our region.

Recent studies and economic research confirm that transport costs play a pivotal role in determining geographical patterns of trade, production, industrial structures and income. It is not surprising then that shipping patterns have the ability to affect the amount of trade between and among countries, and vice versa. In the case of CARICOM countries for instance, a report by ECLAC suggests that “although transport costs are not the only reason for a low trade level between CARICOM and [the countries of the Central American Common Market], they are a contributory factor.”

Whilst there has been an overall decrease in the cost of freight as a percentage of overall trade for both developed and developing countries (about 5% and 8% respectively) the Caribbean, along with some African countries remains consistently well above the average, at between 12-15%. A recent Commonwealth study confirmed the widely held view that, due to lack of economies of scale, and other inherent disadvantages, small countries have higher sea freight costs which can have a big disadvantage in their trade with partners.

The maritime services sector is a major and growing part of overall services trade. When the current negotiations in the Doha Round of the WTO and the Free Trade Area of the Americas (FTAA) are completed they should result in increased global and hemispheric trade. This should bring new trading opportunities and increase the importance of maritime services. At the same time, maritime transport is a major factor in the ability of CARICOM firms to supply goods to

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1 An ECLAC study by Harding and Hoffman in 2003, estimates CARICOM total global trade (imports and exports) at $20.5 billion in 2000, 85% of which is conducted outside of CARICOM countries.


the other economies in the region with which there are trade agreements in place – Costa Rica, the Dominican Republic and Cuba.

This brief will provide an overview of developments in maritime transport services and some of the issues in international negotiations on maritime services and consider their implications for CARICOM states.

**The WTO Maritime Services Negotiations**

At the conclusion of the Uruguay Round negotiations in 1994, the General Agreement on Trade in Services (GATS) under the World Trade Organization included rules on the liberalisation of trade in all services, except services “supplied in the exercise of governmental authority.”

On accession to the WTO, countries generally commit to the principle of *most favoured nation treatment (MFN)* whereby a country extends immediately and unconditionally to service suppliers of all WTO Members, treatment no less favourable than that accorded to like suppliers of any other WTO Member. Other general obligations under the GATS include obligations of *transparency*. There are also specific commitments, which refer to *market access and national treatment*. With regard to market access, countries allow foreign firms to provide services in their territory; and under national treatment, local service suppliers must not receive better treatment than foreigners. These commitments are legally binding in national Schedules of commitments and are usually made in accordance with one of the four recognised modes through which services are supplied in international trade.\(^4\)

At the conclusion of the Uruguay Round, agreement could not be reached on commitments in maritime transport services. As a result, the Ministerial Declaration on Negotiations on Maritime Transport Services called for negotiations to be continued on a voluntary basis, aimed at arriving at a schedule of commitments in international shipping, auxiliary services and access to and use of port facilities leading to the elimination of restrictions within a fixed time scale. In order to do so it was agreed to establish the Negotiating Group on Maritime Transport Services (NGMTS), which was to conclude negotiations and make a final report no later than June 1996.

The work of the NGMTS centred primarily around what is referred to as the “three pillars” of the maritime transport sector: *blue water services* (i.e., international shipping services in the strict sense - freight and passenger transportation); *auxiliary services* such as agency, freight forwarding, cargo handling services, storage and warehouse services, freight transport agency services); and *additional commitments*. The last was considered to be those services

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\(^4\) Services can be supplied through four means that are referred to as Modes under the GATS. **Mode 1** refers to cross border supply, whereby the consumer receives the service in his country provided by a foreigner, such as a shipping line. **Mode 2** refers to the consumer moving to another country to receive the service; e.g., ship repairs. **Mode 3** refers to commercial presence by a foreign provider such as a firm investing in port operations in a foreign location or a shipping line establishing a subsidiary abroad. **Mode 4** refers to the temporary presence of natural persons (the foreign supplier moves overseas to provide the service, for example foreign crews on ships).
relating to access on a non-discriminatory basis to services generally available in the port, such as pilotage, lighterage, repair and bunker.

This categorisation into three pillars should not necessarily be seen as a reflection of how the sector works, but rather as a tool to facilitate negotiations. It was thought that this would enable negotiators to proceed with negotiations in the most practical manner, especially in light of the huge differences on the political acceptability of liberalisation measures in some areas of the maritime sector. In this initial phase, the NGMTS produced a draft model schedule on maritime transport that reflected the three pillars and commitments with regard to the four modes of supply. For the purposes of international maritime negotiations the following services were included:

**Maritime Transport Services**
- International Transport (freight and passengers) less cabotage transport

**Maritime Auxiliary Services**
- Maritime Cargo Handling Services (not including direct activities of independently organised dockers)
- Storage and Warehousing Services
- Customs Clearance Services
- Container Station and Depot Services
- Maritime Agency Services
- Maritime Freight Forwarding Services

**Port Services**
- Pilotage
- Towing and tug assistance
- Provisioning, fuelling and watering
- Garbage collecting and ballast waste disposal
- Port Captain's services
- Navigation aids
- Shore-based operational services essential to ship operations, including communications, water and electrical supplies
- Emergency repair facilities
- Anchorage, berth and berthing services

Unfortunately, negotiations on maritime transport broke down because of intransigence by some countries on politically sensitive maritime issues. To date, only 47 of the 148 WTO Member countries have made commitments in the sector. They reveal huge differences in the breadth and depth of obligations. CARICOM countries, (Antigua and Barbuda, Jamaica, St Kitts and Nevis, St Lucia, St Vincent and Trinidad and Tobago) have a few commitments mostly related to blue water services. St Lucia and St Vincent and the Grenadines made commitments in auxiliary services; and Antigua and Barbuda and Trinidad and Tobago and Jamaica, to a lesser extent, in port services. (See Annex 1 for CARICOM commitments.)
Negotiations on maritime and related services

Shipping services (blue water)

The objective of negotiations in blue water services is to grant greater market access to foreign carriers, and extend national treatment to such maritime transport service suppliers. Market access restrictions are usually aimed at ensuring a competitive advantage to national carriers. The most common forms of restriction are cargo reservations. Limitations on national treatment include such measures as direct subsidies, tax concessions to national carriers, soft loans, preferential port dues and services fees.

Various developments in the liner shipping industry have introduced a new dimension to the competitiveness aspects of the maritime transport business such that global carriers have to fill ever larger ships to reduce costs by realising economies of scale. Complex alliances of service suppliers and employment patterns of vessels also require a regulatory framework that not only ensures access to markets for the carriers involved, but also a high degree of regulatory stability. In the meantime, trade negotiations have to focus on some key areas.

Most countries have inscribed limitations in their Mode 3 (commercial presence) obligations in their services schedules under the GATS. They basically limit the scope for foreign shipowners to establish themselves in the country concerned for the purpose of owning, operating and registering ships. In order to ensure effective control over ships flying their flags, most major ship-owning countries, with the exception of open registry countries, attach conditions to ownership and management before a ship can be accepted on their register. These conditions usually relate to minimum requirements on equity participation by nationals, and national requirements in management, among others.

The area of Mode 4, presence of natural persons, also remains largely restricted because developed countries, the main ship-owning nations, have been resistant to make commitments here. Nevertheless, developing countries are the main suppliers of the labour for world merchant fleets, and will continue to push for greater liberalisation in this area.

Port and auxiliary services

Negotiations here are primarily concerned with the dismantling of market access restrictions to providers of port services, such as cargo handling, stevedoring maritime agency services, freight forwarding services, storage and warehousing, and customs clearance services. They are geared towards the changeover from a public utility to commercial approach to ports, as well as towards the dismantling of monopolies.

Cargo handling and terminal operations services are already being liberalised in quite a few countries, and perhaps offer the greatest opportunities for Caribbean islands that are now significantly upgrading their port and transhipment facilities. Notably, in the 1990s, more and more countries became involved in the international management of container handling facilities. In fact, privatisation became the norm in the container industry which has resulted in a rapidly growing competitive market. Investment is needed on a huge scale, and much of this will be
provided or managed by private terminal operating companies. Carrier participation is generally made to maximise control over handling operations and terminal costs. Container and shipping companies will be seeking more involvement in port services; and the increasing involvement and mergers by both terminal operators and shipping lines make participation in the container terminals an attractive opportunity. The trend is likely to continue, and there will be growing competition as more and more terminal operating port authorities seek to attract private investment. CARICOM should welcome these opportunities to collaborate with terminal operators and shipping companies as they continue expansion in their port and related facilities.

**Access to and use of port services**

This area of negotiations is slightly different as it relates to non-discriminatory access to and use of port and auxiliary services, and attempts to eliminate discrimination against foreign consumers of port services. The services contemplated are those usually supplied by national authorities and are not usually available on a commercial basis. They include: pilotage, towing and tug assistance, bunkering, waste disposal, navigational aids, emergency repair, among others.

It has been generally accepted by countries that these services should be supplied on a non-discriminatory basis but countries still levy dues for certain services in a *de facto* discriminatory manner especially where there are monopolies or where services are being provided by cartel type organisations.\(^5\)

**Multimodal transport**

Multimodal transport is essentially an international through-transport combination with various modes of transport such as ship, rail, truck, aeroplane, primarily through the use of containers. Containers ensure the transport of unitised cargo from its origin to its final destination, with efficiency and least possible risk. It is a concept which places the responsibility for transport activities under one operator, who then manages and co-ordinates the total task from the shipper’s door to the consignee’s door, ensuring the continuous movement of the goods along the best route, by the most efficient and, cost-effective means, to meet the shippers requirements of delivery. This requires simplified documentation and is increasingly done through electronic means such as electronic data interchange (EDI).

Multimodal transport is one of the key issues that remained largely unresolved in the Uruguay Round of trade negotiations. However, given the manner in which liner shipping is evolving, there is a clear need to include this in the liberalisation process, either as *additional commitments* (as part of the third pillar, or as auxiliary services, or as a new fourth pillar). Discussions at the WTO have still not resolved this issue.

Major shipping lines are increasingly moving into logistics services in an attempt to implement differentiation strategies, whilst maintaining ocean carriage as a core business. This move from hardware-based service suppliers into a service industry that is driven by information

\(^{5}\) It is not surprising that the Model Draft Schedule calls for access to port services on “reasonable… terms and conditions.”
technology is expected to open new opportunities for shipping lines. The estimated value of such an industry stands at about United States $40 billion, and large companies see liberalisation of this industry as vital because it will provide a policy framework to enter into competition with freight forwarders and other transport operators engaged in multimodal transport and logistics services.

These arguments for liberalisation of the multi-modal industry have been recently voiced at the WTO. Proponents of this more comprehensive liberalisation framework for maritime services (Switzerland, European Union, Australia, Hong Kong and Japan) argue that supply chain and logistics management should play a key role in international trade because the share of transport costs in the final price of the product is steadily increasing. They contend that total logistics costs (including packaging, storage, transport, inventories, administration and management) are estimated to reach up to 20% of total production costs in developed countries, while freight alone can be up to 40% of export values for certain landlocked developing countries. This may also be the case for small island economies as in the Caribbean. The availability of competitive logistics services would enhance overall economic efficiency by allowing service suppliers to provide services all the way to the consumer’s door, which might require converting to road/ rail from sea transport. Also, new supply chain management strategies, such as prompt reaction to the needs of consumers, have redefined demand for transport services by imposing shorter stock replenishment and reduction cycles. This means a reduction in the quantities ordered and an increase in the frequency of orders, and consequently a significant increase in the number of deliveries to the end-user. These countries see the need to increase discussions at the WTO that would allow suppliers of logistics services to do so in a liberalised regime.⁶

Some countries have been very resistant to engage in discussions on liberalising multi modal transport primarily because of the fear that it will open up their inland transport sector to GATS coverage. The WTO discussions have become the forum for criticism of the United States by the European Union, Japan, Nordic countries, Canada, Mexico and others. The United States jealously guards its legislation (the Jones Act), which restricts U.S. domestic deep-sea, Great Lakes and inland shipping to vessels owned, built, flagged and crewed in the U.S. It can be expected therefore that any discussion about the further opening up of the maritime sector will meet strong United States opposition.

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⁶ WTO Secretariat, Communication from Australia, Hong Kong, China, Nicaragua, Taiwan, Penghu, Kinmen and Matsu (March 31, 2004); and Communication from Switzerland (S/CSS/W/78).
Other issues

Apart from the GATS, another set of negotiations having an impact on shipping and maritime issues are those related to Trade Facilitation, one of the contentious “Singapore Issues” in the current Doha Round of the WTO. It has relevance for the maritime sector because it is concerned with the improvement of customs and related processes, simplification and streamlining of documents and procedures for border crossings, as well as creating an environment for transport operations that benefit stakeholders. There is still no agreement on whether these concerns should be addressed multilaterally at the WTO, or through bilateral agreements.

The relevance of maritime services negotiations to the Caribbean

The international trend towards larger cargo ships, containerisation and the growing role of transshipment in maritime cargo transport has resulted in the smaller countries in the region having to import an increasing proportion of their cargo via non-CARICOM transhipment ports, such as Miami. In response, some Caribbean governments are developing bigger and better transhipment ports. For instance Jamaica, the largest transhipment port in CARICOM, has undertaken new upgrading work, and the Bahamas is expanding its Freeport Container Port Facility to increase its capacity and make it a hemispheric transhipment centre. These developments will position the two countries to take advantage of the anticipated increased volume of cargo that will be stimulated by the freer trade in the FTAA. The intended consequence is that, not only will this attract more investment and revenue generation in Caribbean ports, but that the unit costs of exporting and importing Caribbean goods will decrease, and the frequency of traffic in and out the Caribbean increase. But this may not address the needs of the smaller ports in the region that are not serviced by the larger carriers as often, or on a regular basis. Various calls have been made to governments of the region to invest or make the private sector interested in regional feeder/connector services that will link the major transhipment ports with the smaller ports of the Caribbean. Possibilities exist for governments to open feeder services among the smaller ports to foreign investment. One such request was made by the European Union to the Jamaican government in the current round of Services negotiations in the WTO.

Caribbean countries often only have one port, which usually has a natural monopoly. This has delayed the introduction of port reforms involving greater participation by the private sector. Bearing in mind the state of the global industry and the move to streamline and make more efficient port procedures, the need is strong for governments to make greater use of technologies that increase productivity, shortcut intermediaries and reduce transaction costs. Alliances and joint collaboration with foreign investors could increase the ability of the region to provide more up to date technological services that will not only increase the attractiveness of our ports for use by international liners and containers, but also decrease the overall costs of transport for local traders and consumers. The time may be ripe for new approaches to the

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7 See article by Norman Girvan at - www.kaleidoscope.caribseek.com/Norman_Girvan/ El_Gran_Caribe/index-print.shtml
management of Caribbean ports especially if the Region would like to take advantages of opportunities in maritime services that will emerge from the Free Trade Area of the Americas.

**Market access requests to CARICOM countries**

During the current GATS negotiations, some Caribbean governments\(^8\) have been asked by some of their trade partners, in particular the European Union, Japan and Panama to take more commitments in all sub-sectors and all modes of supply including international transport, access to and use of ports facilities, auxiliary services (such as cargo handling, storage and warehouse services, customs clearance services, container stations and depot services, maritime agency service) and multi modal activities. Japan’s requests for market access in port services apparently stem from the need to expedite the movement of Japanese cargo shipments through Caribbean ports. Delays at the port lead to increased cost and negatively affect supply chains.

Similarly, in the negotiations on a Free Trade Area of the America (FTAA), the Dominican Republic made the following requests of Jamaica and Trinidad and Tobago:

**Jamaica**
Take full commitments for all 4 modes of supply in other cargo services (CPC #72129).

**Trinidad and Tobago**
Take full commitment for all 4 modes of supply in the following services:
- Transport of passengers by ferry
- Transport of Cargo (frozen or refrigerated goods, bulk liquids of gases, containerised freight)
- Support services for maritime freight.

The move to gradually make all aspects of shipping more integrated and seamless could have the effect of decreasing costs in the region, although governments may want to retain some measure of regulatory control over port services for social, political or economic reasons.

**Conclusion**

It is advisable for CARICOM countries to explore cheaper and more effective ways of transporting goods in the region through development of multi modal transport facilities and ventures. This may require a new approach to maritime transport services, express delivery services (courier) as well as other modes of transport. It is also imperative that governments improve efficiency in Caribbean ports in order to accommodate the larger volumes of cargo that hemispheric and multilateral trade liberalization may bring. At the same time, with respect to international trade negotiations, the maritime services industry in the Caribbean should focus on what it needs in foreign markets to expand its business. Individual firms should consider whether and in which areas of maritime services they can supply services overseas on a competitive basis so that their negotiators can concentrate on offensive market access interests. This should inform the requests that are made of other WTO Members and in the FTAA negotiations as well.

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\(^8\) This request has been made by one or more of these countries to Barbados, Grenada, Guyana, Jamaica, Trinidad and Tobago.
REFERENCES


## ANNEX 1

### COMMITMENTS BY CARICOM COUNTRIES IN MARITIME TRANSPORT SERVICES

<table>
<thead>
<tr>
<th>Member</th>
<th>INTERNATIONAL SHIPPING</th>
<th>AUXILIARY SERVICES</th>
<th>PORT SERVICES</th>
<th>OTHER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antigua* and Barbuda</td>
<td>Freight: None except Mode 3; MA&amp;NT: reference to Merchant Shipping Act. No commitment on passenger transport</td>
<td>No commitments</td>
<td>No commitments</td>
<td>Maintenance and repair of vessels: Mode 3 reference to Business Act</td>
</tr>
<tr>
<td>Jamaica*</td>
<td>Freight: none except Mode 3 MA: registration and licensing requirement No commitments on passenger</td>
<td>No commitments</td>
<td>No commitments</td>
<td></td>
</tr>
<tr>
<td>St. Kitts and Nevis</td>
<td>Commitments on ship registration</td>
<td>No commitments</td>
<td>No commitments</td>
<td></td>
</tr>
<tr>
<td>St. Lucia</td>
<td>None</td>
<td>Commitments only on trans-shipment services and free zone operations</td>
<td>No commitments</td>
<td></td>
</tr>
<tr>
<td>St. Vincent and the Grenadines</td>
<td>None except Mode 3; MA: subject to Exchange Control Act, Commercial Code and NT: withholding tax</td>
<td>Commitments only on trans-shipment services and free zone operations with Mode 3; MA: subject to Exchange Control Act, Commercial Code and NT: withholding tax</td>
<td>No commitments</td>
<td></td>
</tr>
<tr>
<td>Trinidad and Tobago</td>
<td>No commitments</td>
<td>No commitments</td>
<td>Commitments on navigation aids, and communication /meteorological services</td>
<td>Commitments on ship surveys and repairs/building with Modes 1 &amp; 2 unbound</td>
</tr>
</tbody>
</table>

MA – market access; NT – national treatment

1 * Shipping commitments include cabotage.
2 “None” stands for no limitations to the commitments undertaken in the sector.
3 This table relies on the classification adopted in the model draft schedule on maritime transport services of 15 April 1996 as well as on the services sectoral classification list (MTN.GNS/W/120).