CARICOM Member States are actively involved in the move towards liberalisation of trade in goods and services. At the regional level, CARICOM Heads of Government have taken measures to establish a CARICOM Single Market and Economy (CSME). Once implemented, the CSME will facilitate economic integration and the movement of goods, services and capital throughout the Caribbean Community without tariffs or other restrictions. Less comprehensive agreements with Cuba, the Dominican Republic and Venezuela are already in effect.

At the hemispheric level, CARICOM is part of the negotiating process for the Free Trade Area of the Americas (FTAA). Internationally, CARICOM Member States are party to the General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO).

Caribbean Export has commissioned two reports to examine any disadvantages which might arise for the region’s Less Developed Countries (LDCs) in an economic union such as the CSME and to investigate CARICOM’s readiness to participate in the liberalisation process in the services sector. The first report identified possible negative effects of economic integration on disadvantaged countries, sectors and regions and steps which CARICOM might take to minimise those effects. The second identified legal, policy and administrative restrictions to free trade in services within CARICOM and made recommendations for strengthening the region’s negotiating capacity in the sector.

Since the commissioning of these reports, several key questions have been dealt with in detail in the Protocols amending the Treaty of Chaguaramas (establishing the legal framework for the CSME). However, in this issue of TRADE WINS, we present edited versions of both reports in the hope that readers will develop an understanding of some of the concerns which need to be addressed in preparing the region for full integration and liberalisation.

It is hoped that members of the private sector will develop an understanding of the ways in which legal policy and administrative decisions affect the operation of trade in services.

In This Issue

3 Disadvantaged Countries, Sectors and Regions in Caricom

6 Legal Regime of Free Trade in Services

TRADE WINS is designed with Caribbean business in mind. The series is intended to bring issues of trade policy to the private sector and other interested parties.
Disadvantaged Countries, Sectors and Regions in CARICOM

Background

Regional groupings of countries for trade and economic purposes are part of a worldwide trend in the development of unions for market access, production and distribution. Such unions are also able to negotiate more favourable terms of trade and to plan collectively for changes in the economic environment. In addition, preferential treatment in trade is becoming a thing of the past and CARICOM countries which may have benefited from such arrangements are likely to find themselves facing more open competition. For these reasons, CARICOM must seriously consider implementation of the Single Market and Economy (CSME) as soon as possible.

What are the Issues?

Due to variations in geographical size, market size, human resources, production capacity and infrastructure, the CSME is likely to affect individual CARICOM territories quite differently. There are 3 principal types of disadvantages which may arise once the CSME is established and it is likely that the countries most affected will be those which have already been designated Less Developed Countries (LDCs) by CARICOM - Antigua & Barbuda, Belize, Dominica, Grenada, Montserrat, St. Kitts & Nevis, Saint Lucia and St. Vincent & the Grenadines. The 3 main types of disadvantages expected are:

- Potential disadvantage which may arise from the vulnerability of the economies of specific countries.

CARICOM will need to develop and implement measures to increase the competitiveness of the countries of the region - and of the LDCs in particular - while decreasing the protective measures already in place.

Fact-o-file

The report suggested that the current groupings of MDC and LDC countries be maintained with some LDC provisions allowed for Guyana. Disadvantaged countries, within the report, are the LDCs outlined by CARICOM. The notion of disadvantaged regions was not considered in the report because the geographical size of the countries involved and the complexity of developing policies for regions within the CSME seemed impractical. Disadvantaged sectors are those which are unable to compete successfully for any of the reasons outlined above.

Under Protocol VII, disadvantaged countries are identified as the LDCs and Member States requiring temporary or transitory support because of natural disasters, the adverse effect of the CSME, temporary low levels of economic development or high debt. Disadvantaged regions are regions within Member States which experience dislocation because of the CSME or which require temporary or transitory support. Disadvantaged sectors of economies within Member States follow the same criteria as disadvantaged regions, with the added consideration of social or economic disorder as a result of losses through natural disaster. (Following the guidelines of Protocol VII, Heads of Government in July 2000 designated the LDCs and Guyana - identified by the international community as a Highly Indebted Poor Country - as disadvantaged countries.).

In This Section

4 Support Structures
4 Special Measures
5 Safeguard Measures
How Might we Address These Issues?

The original report proposed a regime of measures to ameliorate the negative effects of the implementation of the CSME on disadvantaged countries, regions and sectors. It based its measures on a review of the Special Regime for the Less Developed Countries in the Treaty of Chaguaramas.

While CARICOM’s Protocol VII revises the Special Regime, it also broadens the definition of “disadvantage” under the CSME. Consideration for the LDCs is also evident across all of the CARICOM Protocols. Below are some of the key recommendations of the original report and an indication of some of the relevant provisions made by the Protocols.

Support Structures

Various support structures will need to be put in place in order to assist the disadvantaged countries in increasing their competitiveness. The report proposed that technical assistance and research and development expertise should be shared among tertiary institutions in the region and that a Competitiveness Enhancement Fund should be developed to provide matching grants for firms.

It also suggested that the provision in the Special Regime for financial assistance from MDCs to LDCs should be retained.

What the Protocols Provide

Protocol VII provides for the establishment of a Development Fund for technical and financial assistance to disadvantaged countries, regions and sectors. Assistance may be granted in several areas including policy development, negotiations, product design, market development and training.

The Protocols, in general, also encourage the sharing of research expertise among institutions of the region - and in particular, expertise from the MDCs to the LDCs.

Special Measures

The report suggested that several special measures within the Special Regime for increasing investment, production and export capacity in the LDCs should be maintained. It suggested that LDCs should continue to receive exemptions from the Rules of Origin requirement (which exemption would allow goods from the LDCs to enter CARICOM markets duty-free under less stringent rules concerning the origin of the components of the goods).

It also suggested that the framework provided in Protocol II on Establishment, Services and Capital should address the concerns of disadvantaged countries by allowing them to implement liberalisation in the following ways:

- For service sectors in which they believe themselves to be competitive
- For services in which they do not have any current interest
- For services in which they could not be competitive in the long-run

In these areas, trade would be liberalised immediately. The report recommended that a reasonable phase-out period (of restrictions to liberalisation) should be negotiated for other services.

The report also recommended that protection for the industrial development of LDCs be phased out and the system of licences replaced with a system of temporary tariffs bound by the countries' commitments under the World Trade Organization (WTO).

It further recommended research into the nature of franchising arrangements in the aerated beverages, beer and malt industries, and the impact of these arrangements on competitiveness with special provisions for those industries if necessary.

What the Protocols Provide

Under Protocol VII, the Council for Finance and Planning (COFAP) is made responsible for promoting investment in disadvantaged countries through various means including joint ventures, transfer of technology and capital.
flows from other CARICOM countries. Special consideration in meeting the Rules of Origin requirement may also be granted to LDCs.

The Council for Trade and Economic Development (COTED) will develop a list of services which will be exempt from liberalisation (by disadvantaged countries) for a limited period. (These restrictions can only apply if they are no greater than restrictions applied by the disadvantaged countries to states outside of CARICOM.) COTED will also develop a strategy for removing trade restrictions on services which are not included in that list.

**Fact-o-file**

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**Safeguard Measures**

The report recommended the development and enforcement of an effective competition policy to deal with unfair trading practices within CARICOM. It also suggested that all countries should have access to safeguard mechanisms to protect against import surges but it suggested that safeguard measures should not be applied to disadvantaged countries.

The report recommended that disadvantaged countries should be allowed to keep safeguard measures in place for a longer period than those countries which are not disadvantaged.

**What the Protocols Provide**

Protocol VIII specifically establishes a comprehensive competition policy for all CARICOM Member States and Protocol IX provides a disputes settlement mechanism for any conflicts which arise in the implementation of the CSME.

Under Protocol VII, disadvantaged countries will be allowed to limit imports from other CARICOM countries if the imports are causing a decrease in local demand for a local product (seriously affecting a particular industry or sector of an industry). Under special circumstances, safeguard measures can also be implemented against disadvantaged countries.

**Conclusions**

Creation of the CSME is vital to the further development of CARICOM. The new arrangements under the Protocols which amend the Treaty of Chaguaramas provide for careful consideration of the needs of countries, regions and sectors which might be disadvantaged within the economic union.

However, unlike previous arrangements, the Protocols also provide for sustained assistance to help make these economies, regions and sectors more competitive and more economically viable. Members of the business sector should therefore pay close attention to the development of the CSME in order to ensure full participation in this move towards further regional integration.

**Useful References**


Background

CARICOM countries have recently begun a series of negotiations on trade in services, which should bring the region closer to the standard of liberalisation which is developing worldwide. CARICOM’s Protocol II Amending the Treaty of Chaguaramas deals specifically with establishment, services and capital.

The CARICOM-Dominican Republic Free Trade Agreement makes free trade in services a CARIFORUM issue. It is clear, however, that the region will need to pay particular attention to the supporting structures which will facilitate the development and liberalisation of trade in the sector - laws, policies and administrative frameworks.

Since the region has traditionally placed its trade emphasis on areas such as manufacturing and agriculture - trade in goods as opposed to trade in services - governments will need to revisit their structures to ensure that the necessary frameworks are in place to allow full development of the sector. Special attention must be paid to national and regional frameworks so that the region may approach hemispheric and international negotiations with a greater degree of confidence.

What are the Issues?

Current trends in international trade agreements are towards liberalisation of trade in services. As part of the international trading community, CARICOM must demonstrate its commitment to removing barriers to free trade in the sector. In order to do this, however, certain key structures must be put in place.

Private Sector Development

Given the traditional emphasis on trade in goods within the region, governments have paid little attention to providing incentives for the development of the services sector. Institutional and policy support to the private sector is inadequate and the private sector itself is not fully organised around trade in services.

Market research in the area of services is insufficient. Key questions not fully addressed include: supply and demand issues; export potential; and private sector capacity. Trade information and exposure to foreign markets have not been readily available. Private sector organisations geared towards production - particularly for export - have focussed on manufacturing and agricultural products.

A well-informed and organised private sector will need to consolidate a base in the provision of services at the domestic and regional levels and respond to changes in the market as well as changes in the international negotiating arena.

Government Procedures

Development of the services sector at the national level will require support and development of the private sector and clearly established, efficient administrative systems. The legal framework which governs the provision of services and support for the
provision of services (such as the ability to purchase property to establish a business in a CARICOM country) can significantly affect investment in the sector.

At present, the systems which might facilitate investment in the sector are not firmly in place. There are several issues relating to administrative procedures, policy and legislation - such as aliens landholding, foreign companies registration, taxation and immigration - which do not fully encourage development of the sector.

Ministerial discretion in the granting of licences and permits provides an unpredictable business climate. Delays in standard procedures also create uncertainty. National governments often discriminate between local and foreign service providers (sometimes in favour of one group, at other times in favour of the other). This process hinders the free movement of CARICOM nationals and their right to establish businesses within the region.

In addition, protectionist policies and strict regulatory measures in some CARICOM territories seem to go hand in hand with resistance to the legal and administrative reform necessary for trade liberalisation. (In countries where international lending agencies have imposed economic adjustment measures, the move towards liberalisation appears to be somewhat smoother.)

Regional Integration of Trade in Services

The General Agreement on Trade in Services (GATS) is the framework which will govern international trade in the sector. One of the principal obligations operating under GATS is the granting of Most Favoured Nation (MFN) treatment to all countries which are party to the agreement. This means that CARICOM countries will be obligated to grant equal access to services and service providers from within CARICOM and from outside of the region.

Through Protocol II (Establishment, Services and Capital) which amends the Treaty of Chaguaramas, CARICOM governments intend to liberalise trade in services within the region and to give preferential treatment to CARICOM services and service providers. Under GATS, however, CARICOM will not be able to enforce this arrangement unless it can demonstrate that there is an integrated regional economic system in place. This is the regional system exemption which is allowed under GATS - and which is particularly designed for developing countries.

According to the report, Protocol II and the national legislative and administrative frameworks within CARICOM do not appear to meet the GATS requirements for this exemption. GATS requires that regional arrangements must involve “full sector coverage” - in other words, free trade within the region must be applied to all subsectors of services where possible.

Procedures facilitating trade in services must be transparent and territories within the arrangement should be moving towards national treatment where there is no meaningful distinction made between the services of one territory and those of another. (In other words, there should eventually be no trade-related discrimination among CARICOM nationals or their services).

How Might we Address these Issues?

The private and public sectors will need to work hand in hand in order to address these issues. At the national level, governments must ensure that their policies and legislative frameworks support the development of services and meet the requirements of Protocol II and GATS.

Private sectors will need to organise themselves to provide efficient and marketable services and to lobby their governments for the changes which will be necessary to support their trade. At the regional level, CARICOM governments will be required to pursue regional integration without delay, to provide Protocol II with more substantive obligations and to systematically develop a strong negotiating position on services.
Capacity-Building in the Private Sector

In order to facilitate development of a CARICOM services industry, national governments will need to take a long-term view of development in the sector and ensure that the issue is addressed at the level of human resources, market research, fiscal incentives, institution building and advocacy.

The provision of efficient, reliable and competitive services will require training, resources and a vibrant private sector which is able to respond successfully to changes in the local, regional and international markets.

Recommendations

Regional institutions and governments should facilitate greater exchange of information on privatisations, competitive bidding for public and private sector projects, the availability of and market for consultancy services and private sector investment initiatives as well as a directory of regional service providers.

Regional governments should incorporate regional trade promotions in services as part of the work programme and structure of their industrial development and investment promotion agencies.

National human resource development policies should emphasise on-going professional training programmes in order to widen the pool of service providers and enhance the capabilities and knowledge of existing service providers.

Governments should assist national and regional private sector organisations in designing and adopting advocacy programmes which can sensitise service providers and other target groups to the key issues of free trade in services under Protocol II and other agreements within the region and beyond.

Fiscal incentives and/or targeted business development programmes should be designed to assist service providers in increasing their regional networking and establish regional partnerships, regional firms, franchises and strategic alliances. (This should serve to increase their access to the regional market.)

Governments, regional institutions and professional associations should undertake programmes to improve the quality of service and the profile of service providers.

Governments should target resources to assist regional service providers to undertake market research and labour market studies to determine which services are required or are likely to be required in the future and where professional training and investment promotion should be focussed.

Administrative and Legislative Reform

In order to provide a climate which is conducive to local, regional and extra-regional investment in services, CARICOM Member States will need to pay particular attention to the procedures which govern the running of the sector. GATS will require a higher level of transparency than currently exists and greater harmonisation of procedures. Reforms in this area will also serve to increase the confidence of local and foreign private sectors.

Recommendations

In territories where the aliens landholding regimes do not meet the requirement of national treatment (as of right for companies which fall within the qualification category of Protocol II) implementing legislation should be put in place.

Regional standing committees or panels of technocrats from regional institutions should be established to hear and advise on disputes in the areas of exchange control, applicability of licensing and other discretionary powers, professional accreditation, granting of work permits, the operation of securities exchanges and related issues. These bodies should be used as an alternative method of dispute resolution beyond the proposed Caribbean Court of Justice.

In territories where exchange controls still exist, speedier exchange control procedures
should be adopted and individual limits for over-the-counter transactions should be increased in order to make movement from one territory to another more efficient.

Institutional support mechanisms such as the regional stock exchange and sub-regional secondary mortgage market should be further developed since there is a direct relationship between the movement of capital and the development of the services sector. (Such development would also assist in making the CSME more fully eligible for the GATS regional system exemption.) In areas where governments opt to use administrative rather than legal procedures to implement any discretionary powers under their Protocol II obligations, these procedures should aim at greater transparency. Such procedures would include the establishment of a body of precedent of Ministerial decisions, the devising of clear and simple methods of application, the publication of a list of criteria and precedents, the advertising of applications, the laying of Ministerial orders and the creation of appeal procedures.

Governmental procedures for approving or facilitating investment should be enhanced by the removal of unnecessary discretionary powers and the formulation, documentation and publication of elements of the investment regime applicable to regional service providers should be given priority.

The region will also need to consider improving air services and financial arrangements which can facilitate the free movement of services. (These issues are dealt with in Protocols VI and II respectively).

Regional Integration through the CARICOM Single Market and Economy (CSME)

Essentially, the key to successful intra-CARICOM trade in services and full participation in negotiations on services at the hemispheric and international levels lies in the establishment and full implementation of the CARICOM Single Market and Economy (CSME). The CSME will provide the basis for free movement of labour and capital within the region and the possibility of free trade in services. The CSME must then be deepened to extend national treatment to CARICOM nationals and governments must ensure that their national legislation facilitates this process. Successful integration at the regional level is the only avenue through which CARICOM will qualify for the regional system exemption under GATS.

Recommendations

The preamble statement in Protocol II suggesting the extension of freedom of movement in the labour market beyond the supervisory and self-employed categories should be made into a substantive obligation. This will require national governments to introduce measures for facilitating free movement of CARICOM nationals within their borders.

The arrangements of Protocol II should be integrated into national law in each of the CARICOM territories. Resources should be identified to assist Member States with the drafting of national legislation and specific timeframes should be set for the implementation of the terms of the Protocol. Any implementing legislation should also provide for any extensions recommended to Protocol II.

National legislation with regard to the free movement of skilled nationals (movement of labour) should include aspects of Protocol II and the Heads of Government decision with the extension of such rights to non-graduate self-employed and supervisory personnel and artistes, sportsmen and media personnel.

National and regional professional associations and regulatory bodies should work with governments to design and implement more diverse and internationally relevant accreditation requirements, procedures and professional rules.

Existing double taxation provisions for Commonwealth countries should be extended to become an international provision and regional legislation should be examined closely for any other areas of Commonwealth preference. Such preference should be
removed or made to apply to all nations where it can be shown to affect trade in services.

The CARICOM Secretariat and its agencies should be strengthened to undertake the task of monitoring continuing development which is a requirement of GATS.

Conclusions

Negotiations on free trade in services at the hemispheric and international levels provide a unique opportunity for CARICOM Member States to examine their own position on trade in services within the region as a stepping stone to wider economic participation.

Although the legal and administrative frameworks which would support the development of intra-regional trade in the sector are not yet fully in place, national governments and private sectors are in a position to ensure that this is achieved.

Governments will need to act immediately to institute the reforms which are necessary for compliance with GATS and to develop common negotiating positions for future trade agreements.

Members of the private sector will need to monitor the progress and implementation of legislation and policies intended to facilitate development and free trade in services. They will need also to develop institutions which can provide and insist on access to information and support systems.

Any gains made through the regional integration process to date can only be maintained through the concerted efforts of governments and private sectors to work together to consolidate the CARICOM Single Market and Economy (CSME).

Useful Reference


Caribbean Export Development Agency (2000). The Services Sector in CARICOM.
TRADEWINS is a publication of the Caribbean Export Development Agency (Caribbean Export). It is an important part of the agency's advocacy programme - making trade information accessible to those who need it most.

Caribbean Export has identified a need to broaden and consolidate private sector involvement in the business of trade - identifying markets, improving market access, increasing competitiveness and playing a key role in the development of trade policy.

TRADEWINS is a series of edited reports, treaties and agreements reflecting trends in regional business and pointing the way to future development. The series will be published occasionally - as new documents come to hand. Through TRADEWINS, we aim to inform members of the private sector, and others, of the important role of research, policy and negotiation in the development of regional and international trade. We hope that they will be encouraged to better organise themselves, to increase the present levels of research and to lobby their governments for changes which can improve the way they do business.

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The Caribbean Export Development Agency serves the Caribbean Forum of ACP States (CARIFORUM). CARIFORUM comprises CARICOM states (Caribbean Community and Common Market), Haiti and the Dominican Republic. The CARIFORUM Secretariat is located in Georgetown, Guyana.

(Member States of CARICOM are: Antigua & Barbuda, the Bahamas, Barbados, Belize, the Commonwealth of Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts & Nevis, Saint Lucia, St. Vincent & the Grenadines, Suriname and Trinidad & Tobago.) (Haiti has been provisionally accepted into the Community and will attain full status once its accession has been completed. The Bahamas is a member of the Caribbean Community but not of the Common Market.)