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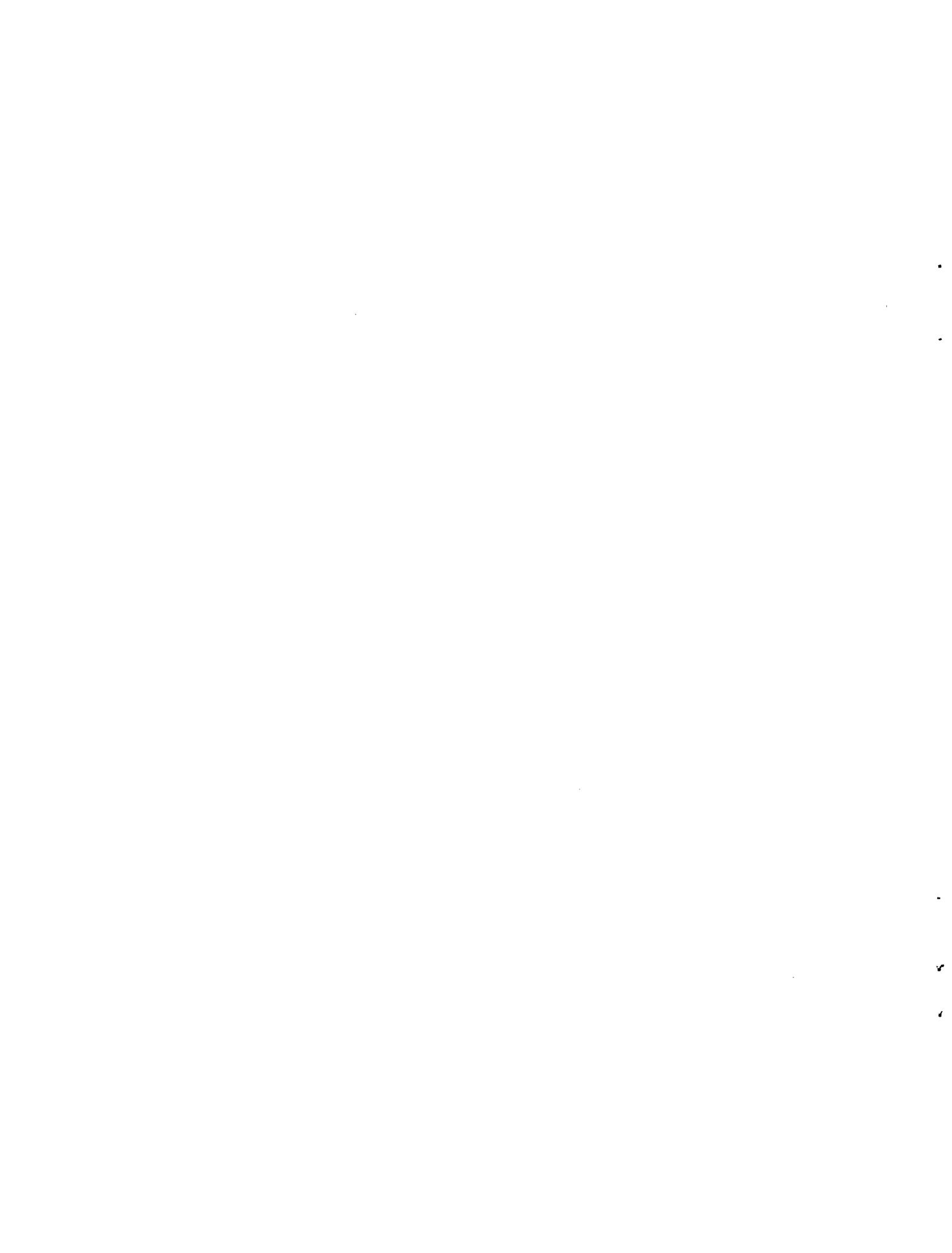
**PROGRESS MADE BY CARIBBEAN COUNTRIES
IN THE WTO BUILT-IN AGENDA ON
SERVICES AND INTELLECTUAL PROPERTY RIGHTS**





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I. INTRODUCTION

The multilateral trading system, like other international systems, has evolved in line with changes in global trade and economic relations. Prior to the Uruguay Round, the Kennedy and Tokyo Rounds of the General Agreement on Tariffs and Trade (GATT) Rounds¹, focused on the liberalisation of trade in goods, subsidies and countervailing duties, technical barriers to trade and anti-dumping, among other areas. Trade liberalisation and more open competition were advanced through major tariff cuts. The Kennedy Round (1964-1967) and the Tokyo Round (1973-1979) led to tariff reductions and bindings valued at over \$40 billion and \$300 billion, respectively. After the Tokyo Round tariff cuts, the average weighted tariff on manufactured goods in the nine major industrial markets fell from 7.0 to 4.7 per cent.

Undoubtedly, two of the more remarkable achievements of the Uruguay Round of trade negotiation was the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). For the first time in the history of multilateral trade negotiations, member countries agreed to extend internationally agreed rules and disciplines to the huge and fast growing area of international trade - trade in services² and also to the non-trade area of intellectual property rights. For services, this signalled an important departure from the traditional view that considered services as relatively non-tradable. A review of the specific commitments undertaken by World Trade Organization (WTO) member countries in the area of service liberalisation indicates that the Uruguay round service package was just the beginning. Developing countries, in particular, made very few commitments under the GATS. During the Uruguay Round, negotiations on some service sectors, most notably financial and telecommunication services, were advanced. Notwithstanding the specific commitments the countries made to provide market access and national treatment in these sectors, they were unable to conclude the negotiations. Recognising the importance of services liberalisation to the world economy, in general, participating countries committed themselves to carry the negotiations beyond the Uruguay Round.

¹ There have been eight Rounds to date beginning with the entry into force of the GATT in 1948, through to the most recent Uruguay Round that led to the establishment of the World Trade Organization (WTO).

² See World Trade Organization (WTO), "Trading into the future", 1995.

Agreement was also reached, despite heavy objection from the developing countries, to provide wide-ranging protection of intellectual property rights. The GATT, the GATS and intellectual property rights form the tripod of the WTO. Therefore, the TRIPS Agreement was accorded similar importance as those of the GATT and GATS in the WTO Agreement. It remains one of the more hotly disputed areas of the WTO, however.

The TRIPS agreement, in spite of its impressive detail, is a masterpiece in compromise and trade-offs. Plans for an agreement on intellectual property rights were put forward by developed countries as early as the late 1970s. These, however, were loudly opposed by developing countries. Developing countries argued that with the stronger intellectual property protection, they would have to pay more for foreign technology. However, they stood to gain little in return, since they were net importers, rather than developers of technology. Developed countries remained intent on securing an intellectual property agreement, however. Pressures on these governments mounted as private corporations and interest groups argued strongly that they were losing billions of dollars through counterfeiting of music, computer software and other products and through copyright violations in developing countries. Although coercion and cajoling by the developed countries might have played a part, in the end, the TRIPS Agreement was an exchange deal. The TRIPS Agreement resulted largely from the exchange of the Multi-fibre Agreement (MFA) for the TRIPS. In this light, it entailed the exchange of a strict trade concession for a trade-related concession. This by its very nature according to some economists is an unequal exchange, favouring the developed countries.³

Immediately following the Uruguay Round, at the Marrakesh Ministerial meeting in Morocco, 125 governments officially signed the whole package of agreements they had reached earlier at the Uruguay Round. Plans were also made for a comprehensive work programme to tackle important issues and commitments that were made by members.⁴ These included a review of implementation of various Uruguay Round Agreements (URAs), dispute settlement procedures, agricultural liberalisation, textile and clothing, transparency in government procurement, Trade-Related Investment Measures (TRIMS), among others. In addition, they also agreed to continue further negotiations on the “unfinished agenda” of the Uruguay Round on services, particularly, basic telecommunications, maritime transport, financial services and the movement of natural persons (mode 4) as well as the Agreement on TRIPS.

Since Marrakesh, WTO members have continued services negotiations, which remained unfinished during the Uruguay Round. These negotiations have yielded substantial results with the conclusion of three agreements on basic telecommunications, information technology and financial services. Many countries made far-reaching commitments to provide market access and national treatment in these services sectors. The negotiations on maritime transport were unsuccessful, however, while negotiations on the movement of natural persons yielded only modest results. The latter was negatively affected by fears of mass movement of poor unskilled

³ See Panagariya, Arvind. “TRIPS and the WTO: An Uneasy Marriage.” University of Maryland, August 1999.

⁴ This is referred to as “the built-in agenda”.

labour to richer countries. Negotiations on information technology have continued with the aim of eliminating further barriers to trade in information technology products.⁵

At the third Ministerial Meeting at Seattle, WTO member countries were supposed to review the multilateral trading system and to set the agenda, however modest, for the Millennium Round of trade negotiations. At this meeting, participating countries were to discuss agriculture, services liberalisation and the review of the TRIPS Agreement. Apart from these issues, there were divergences of opinion among countries on the other issues to be included in the new Round. These, together with demonstrations by various civil society groups such as labour and the environmentalists, contributed to the failure of the Seattle meeting. The United States, for example, was eager to discuss labour standards and e-commerce, while the European Union (EU) had little appetite to discuss issues surrounding agricultural liberalisation. Developing countries raised concerns about the adverse impact of antidumping laws and quotas on textile and clothing. They also noted their difficulties with complying with the TRIPS Agreement. Against this backdrop, they wanted to focus on implementation of existing Uruguay Round agreements, before tackling the new issues.

Another noteworthy new area is the Agreement on TRIMS. TRIMS seeks to ensure transparency and competition in investment policy. In addition, developed countries, notably the United States, have also been putting much effort into persuading the WTO to rule on environmental and labour standards. However, the vociferous opposition of developing countries has so far thwarted such attempts. In any case, from the standpoint of world welfare, there does not seem to be any strong economic justification for the harmonisation of environmental and labour standards. Analysts have argued, however, that it prevents the race to the bottom with respect to the skills and returns to labour.

This paper does not examine the whole of the GATT and the built-in agenda. Instead, the paper analyses only the GATS and TRIPS Agreements in light of the commitments of Caribbean countries. It also examines the implications of these agreements for the subregion and puts forward some recommendations to optimise the subregion's benefit from them. Section I is an introduction; Section II gives a brief overview of the GATS and TRIPS agreements; Section III is an analysis of trade in services; Sections IV and V examine regional commitments in the areas and options for new trade negotiations; Sections VI and VII look at the implications of TRIPS for the Caribbean and makes recommendations aimed at maximising the benefits of these agreements.

⁵ According to the WTO trade in information technology products represents 12 per cent of total global trade.

II. OVERVIEW OF THE GENERAL AGREEMENT ON TRADE IN SERVICES AND THE AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

The GATS was concluded at the end of the Uruguay Round of Trade Negotiations in 1993. The agreement has been hailed as a landmark achievement in the history of multilateral trading systems, since it extends internationally agreed rules and disciplines to the fast growing area of trade in services.

The GATS consists of three main elements, viz., (i) a set of general concepts, principles and rules applying to measures affecting trade in services; (ii) specific commitments undertaken by WTO member countries on market access and national treatment; and (iii) sector-specific annexes of both a substantive and non-substantive nature.⁶

In many respects, the GATS was modelled on the GATT and relies on many of the same principles and rules. However, its architecture differs from that of the GATT because trade in services is different from trade in goods. Each country's GATS schedule gives a positive list specifying the services sectors and modes in which market access and national treatment principles will be applied. Also, within a specific services sector and modes of supply, a negative list specifies various trade restricting measures a country wishes to maintain which are inconsistent with the market access and national treatment principles. Article I of the GATS defined services in terms of four different modes through which services could be supplied. These are: cross-border; consumption abroad; commercial presence and the movement of natural persons. This definition has been widely accepted and forms the guiding principles for WTO members when undertaking specific commitments in trade in services. Like the GATT, the GATS obligates countries which are signatories to the Agreement to adhere to the most favoured nation (MFN) principle. This principle stipulates that each country should immediately and unconditionally accord to service suppliers of any other member treatment no less favourable than it accords to service suppliers of any other country. Yet, in a significant departure from the GATT, members are allowed to maintain or apply measures that are inconsistent with the MFN clause, provided they have established exceptions for such inconsistencies. According to the WTO, more than 70 WTO members have sought exceptions in their schedules of commitments.⁷

Apart from these principles (market access, national treatment and MFN), which form the pillars of the agreement, the GATS includes a number of other provisions intended to facilitate trade in services. One of these is the provision, which requires members to set up inquiry points for information on laws, regulations and administrative practices. The other relates to the need for maintaining objective and transparent criteria for qualification requirements, technical standards and licensing procedures.

Under the agreement, countries have undertaken commitments regarding market access and national treatment on a voluntary positive list basis. Given the incipency of the Uruguay Round service package, the GATS calls for successive rounds of negotiations to accomplish

⁶ For a full text of the Agreement see GATT Secretariat, "The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts" pp.325-64, June 1994.

⁷ WTO Secretariat, "An Introduction to the GATS", pp.4, October 1999.

comprehensive liberalisation of trade in services. In fact, the new round of services negotiation was launched by the WTO on 25 February 2000. The new round of negotiations comprises two phases. First, the rule-making phase during which members will negotiate new rules for services, subsidies, safeguards and government procurement. The second will be the “request and offer” phase, during which members will negotiate further market access on a number of services sectors. This new round presents a further market opening opportunity for developing countries, including the Caribbean to make up for ground lost in the Uruguay Round of trade negotiations.

The TRIPS Agreement is one of the important ‘new issues’ of the Marrakesh Agreement that established the WTO in January 1995. Along with the GATT and GATS, it forms the third leg of the trilogy of the WTO. The Agreement incorporates existing international standards on intellectual property that were enshrined in the Berne and Paris Conventions. However, it also includes new binding provisions. One ambiguous area that is open for future debate is the issue of exhaustion of intellectual property rights.

Before examining the substantive terms of the TRIPS, it is important to ask why countries viewed it as an important agreement. For the Caribbean, in particular, what is the real rationale for the TRIPS and to what extent can the subregion gain real benefits from the agreement? A crucial and related facet of Caribbean reality is that regional production has long depended on foreign direct investment (FDI) inflows as a catalyst for activity. This is the consequence of factors, such as the relatively low level of domestic savings and underdeveloped domestic entrepreneurship. Caribbean countries anticipate that the TRIPS compliance would act as a touchstone for judging the investor-attractiveness of the local economic climate. They hope that compliance with the TRIPS Agreement would encourage inflows of foreign investment into high-value added activities. With the stagnation in agriculture and the new thrust in services, notably informatics, the subregion is hoping that Intellectual Property Rights (IPR) protection would act as a catalyst to domestic software design and development and online trading and marketing. The experience of Costa Rica and the Dominican Republic is encouraging in this respect. Both countries have attracted high-tech investments as a result of improved copyright laws.

As noted by Maskus⁸, intellectual property rights are an important component of a broader ‘cocktail’ of policies that makes a country attractive to FDI. Other important elements of the package of policies include flexible labour markets, a progressive regulatory regime, liberalised markets, competition policy and political stability. For the Caribbean like other developing countries, the relative importance of IPR protection depends, no doubt, on the strength of these supporting factors. China and Brazil have been able to attract significant FDI inflows in spite of weak IPR protection. This is due, no doubt, to compensating advantages, such as large market size (with significant scope for economies of scale) and increased economic liberalisation.

In the Caribbean, however, these compensating advantages are more limited. The markets are quite small and suffer from a shortage of skilled technical expertise. This suggests that non-trade factors, such as IPR protection, might play a more important role in the decisions

⁸ See Maskus, Keith: “Intellectual Property Rights and Foreign Direct Investment”, CIES, May 2000.

of foreign firms to invest in these economies. On the other hand, the TRIPS Agreement is also expected to promote the development of local products and services, by providing protection to artists and innovators. Activities with good prospects in this area in the subregion include indigenous food products, biotechnology, arts and entertainment. These could galvanise the export thrust into foreign markets and diversify the export base.

The preamble to the TRIPS Agreement anticipated that similar benefits to those outlined above would accrue to developing countries. Its principles provide the touchstone by which to judge the implementation of the Agreement. The basic objective outlined in the preamble is the provision of adequate intellectual property protection that does not act as a barrier to legitimate trade, but promotes such trade. The Agreement strives, in this regard, to prevent the no-win situation of under-protection or over-protection of intellectual property rights. Contrary to the unilateral approach sometimes favoured by the United States and other developed countries, the agreement strongly supports the multilateral approach to prevention and settlement of disputes.⁹ In recognition of the differences in development between the developed and developing countries, the agreement provides transitional arrangements for the latter to facilitate their inclusion in the process. These include a grace period for these countries to prepare themselves and assistance for capacity building. Unfortunately, little real assistance has been committed for capacity building. Of importance is the special treatment that is provided for the least developed countries to develop their intellectual property base.

Important for the Caribbean is that the agreement permits 'parallel imports'. This entails the importation of legitimate intellectual property works without the need to seek the prior consent of the original developer of the product or right holder. Parallel imports are important in that they facilitate the sourcing of legitimate goods from markets that provide the most competitive prices. The purchase of electronic and information technology products from Japan and other Asian Tiger economies could be to the Caribbean's advantage in this regard.

The general provisions and basic principles provide the framework for the implementation of the agreement. Article 1 stipulates that members must implement the provisions of the TRIPS Agreement and no more. Members may provide greater protection if they desire, once this does not contravene the TRIPS Agreement. This TRIPS-plus protection could provide an important area of contention in the future. Importantly, members are allowed to adopt any adequate means within their own legal system and practice to implement the TRIPS Agreement. This saves the costs of creating new legal machinery for developing countries. Intellectual property is defined to include copyright and related rights, trademarks (including service marks); geographical indications, industrial designs; patents, including the protection of new varieties of plants¹⁰; layout-designs (topographies) of integrated circuits; and protection of undisclosed information (including trade secrets and test data). Protection is to be provided for nationals, natural and legal persons of other member countries.

⁹ The paragraph calls for inter alia "...the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments and other parties..."

¹⁰ Patent protection for new plant varieties and especially genes is now a particularly contentious issue. The British genetic research monitor, Genewatch, has noted that the filing of hundreds of thousands of genetic patents worldwide could act as a disincentive to future genetic research into diseases and plant varieties, etc., thus leading to higher costs for consumers.

Interestingly, the TRIPS Agreement (a non-trade issue) has also incorporated the GATT principles of national treatment and most-favoured-nation treatment. National treatment means that members are required to grant to nationals of other member States protection that is no less favourable than that granted to its own nationals. An important concern of developing countries, in this regard, is the need for more stringent regulation of foreign financial transactions that could have negative contagion effects on their domestic banking systems. The MFN principle, as noted earlier, forbids discrimination in treatment among nationals of other member countries.

The terms and conditions of protection vary according to the specific area of intellectual property. Copyright protection is provided for performers, writers and broadcasters. Copyright is allowed only for expressions, not for ideas, procedures, methods of operation or mathematical concepts. Developers of computer programmes who have lobbied for the elimination of the distinction between expressions and ideas have not had their way. Interestingly, computer programmes, both source and object codes, are protected as literary works under the Berne Convention (1971). This means that computer programmes are subject to the same general term of protection of 50 years, as literary works. To maintain monopoly interests in this area, however, developed countries have been lobbying for stronger protection than that provided for literary works. In support of their claim, they argue that computer programmes are highly vulnerable to unauthorised copying. It could be argued, however, that some aspects of computer technology, such as generic hardware and software, could be classified as international public goods in this information age, and should not be protected.

Moreover, developed countries have strongly supported the ban on decompilation¹¹. They also oppose the reverse engineering¹² of computer programmes. These could weaken the ability of developing countries to bridge the so-called digital divide.¹³ It is worth noting, for instance, that 'reverse engineering was a major contributor to technological advancement in Japan and the Asian Tiger economies. For authors, the period of protection is the life of the author plus 50 years. For other works, the period is 50 years, except for photographic works. Crucial to maintaining the chain of copyright protection is the so-called neighbouring or 'related rights.' These are granted to performers, producers of sound recordings and broadcasting organizations. However, these rights are not equal to the exclusive rights granted under copyright.

Trademark protection is another important right accorded by the agreement. Trademarks are defined as any sign, or combination of signs capable of distinguishing one undertaking from others, provided that it is visually perceptible. These signs include personal names, letters, numerals, figurative elements and a combination of colours as well as a combination of signs. Signs could gain distinctiveness through use. Also service marks are protected as marks distinguishing goods to ensure uniformity. The term for initial registration and renewal of a

¹¹ Decompilation refers to the process of translating object codes to ordinary programming language or source code but not in the original form.

¹² Reverse engineering entails the process of disassembling a product to determine how it was designed from the component level up, so that it can be produced on a large scale.

¹³ The notion of the digital divide highlights the significant gap between the developed and developing countries with respect to the development and diffusion of computer, information and other digital-based technologies.

trademark is not less than seven years, renewable indefinitely. However, the generally adopted term is 10 years.

The trademark owner could assign the trademark with or without the business to which it belongs, if the business is sold. This is vital for businessmen who are taking over businesses, especially in the Caribbean, to note, since the mark may or may not come with the business and they might have to purchase it.

Geographical indications are a fairly novel right under the TRIPS. These indications identify a good as originating in a member country, region or locality. They are used to associate a given quality, characteristic or reputation of the good with its place of origin. Geographical indications arose out of the system for the appellation of the origin of wines, such as Champagne and Bordeaux. However, they can be applied to other food and drinks, handicraft and industrial goods.

Article 23 proposes additional protection for wines and spirits. This has been questioned by developing countries, which have clamoured for additional protection for other products, such as rice¹⁴, tea, coffee and silk. This is vital for developing countries, as these are some of the products for which they have a comparative advantage. The TRIPS Agreement seeks to avoid conflict in the area of geographical indications by facilitating negotiated dispute settlement. Developing countries need to form clear positions in this area and to advance these at future negotiations.

Member States are obligated to provide protection for independently created industrial designs that are new or original. Also, designs may be deemed not to be new or original if they do not significantly differ from known designs. Member States can protect designs either through industrial design law or through copyright law. Protection of designs is provided for at least 10 years.

Patents, though a well-established right in the other conventions, is one of the more controversial areas of the TRIPS. The controversy has arisen because of attempts to protect gene and microbiological agents. Members are required to provide patent protection for any inventions, be they products or processes, in all fields of technology without discrimination. The criteria for patent protection are novelty, inventiveness and the industrial applicability of the invention. Developing countries, which did not have patent protection at the time of signing onto the TRIPS Agreement, are allowed a grace period of five years for all patents, except those for agricultural chemicals and pharmaceutical products. One questions why exceptions are permitted for these two areas, since grace periods for them could help to control their costs and promote the development of cheaper farm chemicals and generic drugs that could save lives in developing countries. A number of analysts have argued, for example, that patents have inflated the cost of drugs for the treatment of acquired immunodeficiency syndrome (AIDS) and other diseases and have hampered research into finding new cures.

¹⁴ The case of Basmati rice that originated in India, but has been produced by a company in Texas in the United States without the consent of Indian right holders, points to the need for developing countries' vigilance in the area.

Exceptions are provided for inventions that threaten public order, human or animal health and the environment; diagnostic, therapeutic and surgical methods for the treatment of humans and animals; plants and animals other than micro-organisms; and basically biological processes. It is vital for developing countries to resist attempts to patent the cells of plants and animals and other natural living things and natural processes. This could hamper research and development in these areas and retard development in these countries. The minimum term of patent protection is 20 years from the date of filing the application.

Members are also obliged to provide protection for layout-designs of integrated circuits, under the Treaty on Intellectual Property in Respect of Integrated Circuits. Article 36 prohibits members from importing, selling or commercially distributing these products without the consent of rights holders.

The TRIPS offers protection for undisclosed information. This refers to information that is secret and of commercial value because it is secret. Governments are also required to protect undisclosed test data and other data that are submitted for the marketing of pharmaceutical and agricultural chemicals. Importantly, the agreement provides for the exchange of non-confidential information in the settlement of disputes.

Enforcement¹⁵ of intellectual property rights has arisen as a major issue under the TRIPS. A major criticism of the World Intellectual Property Organization (WIPO) was its weak and ineffectual enforcement arm. The TRIPS Agreement has therefore laid down detailed enforcement arrangements. Enforcement is geared towards two goals: to guarantee effective enforcement of the rights of right holders and to prevent procedures that act as a barrier to legitimate trade. Civil procedures are provided for less serious general infringement of intellectual property rights. However, criminal charges can be brought for counterfeiting and piracy. It is also stipulated that counterfeit trademark goods shall not be re-exported. Like any good law, there is a demand for balance between the seriousness of the infringement and the remedies provided.

Dispute settlement is to be facilitated by fostering consultation between members. However, members are not required to disclose confidential information that may be contrary to their interests. Developing countries' representatives should not, therefore, allow themselves to be coerced into disclosing to industrialised countries, information that is harmful to their national interests. Remedies arising out of disputes could be quite severe. For example, a member could have its privilege or concession from another member suspended. A TRIPS Council has been established to monitor the compliance of members with obligations and to assist with dispute settlement.

For the most part, developed countries have failed to deliver on their commitment to providing capacity-building assistance for developing countries to implement and benefit from the TRIPS Agreement. Developed countries need to honour this pledge of technical and financial assistance to developing countries to prepare them for TRIPS compliance. Assistance

¹⁵ Gain.org argues that this push was strongly driven by large multinational pharmaceutical companies and other private conglomerates with a vested interest in enforcement of rights.

should not be provided only for legal and regulatory reform, but for the development of intellectual property, through research and development activities.

III. TRADE IN SERVICES

Trade in services has become the fastest growing component of the world economy in recent years, growing more robustly than merchandise trade. Services have also become a more dynamic contributor to growth in total global output and in employment creation. Underpinning this robust growth in the services sector has been the advances in information technology. A dramatic fall in communication costs has contributed to the robust growth of trade in services worldwide. For example, the cost of a three-minute long-distance call from New York to London fell from US\$250 in 1930 to a mere US\$3.32 in 1990, while the price of microcomputers declined by 28 per cent between 1982 and 1988.¹⁶ Privatisation programmes, which have been implemented in a number of developing countries including the Caribbean, have opened up unprecedented opportunities for multinational service firms in electricity, ports and telecommunication sectors. The United Nations Conference on Trade and Development (UNCTAD) estimates show that roughly 50 per cent of all the new foreign direct investment is accounted for by service industries.

Table 1
Value of trade in services by mode of supply, 1997

Mode of Supply	Statistical proxy used to obtain estimates	Value (US\$ billion)	Share of total Service trade
Mode 1: Cross-border Supply	Business services shown in the Balance of payments (excluding travel and tourism)	US\$890	41.0 %
Mode 2: Consumption Abroad	Tourism and travel payments	US\$430	19.8 %
Mode 3: Commercial Presence	Foreign affiliates productions (estimates of gross output)	US\$820	37.8 %
Mode 4: Movement of Natural persons	Compensation of foreign Employees (shown in the Balance of payments statistics)	US\$30	0.1 %
All modes		US\$2,170	100 %

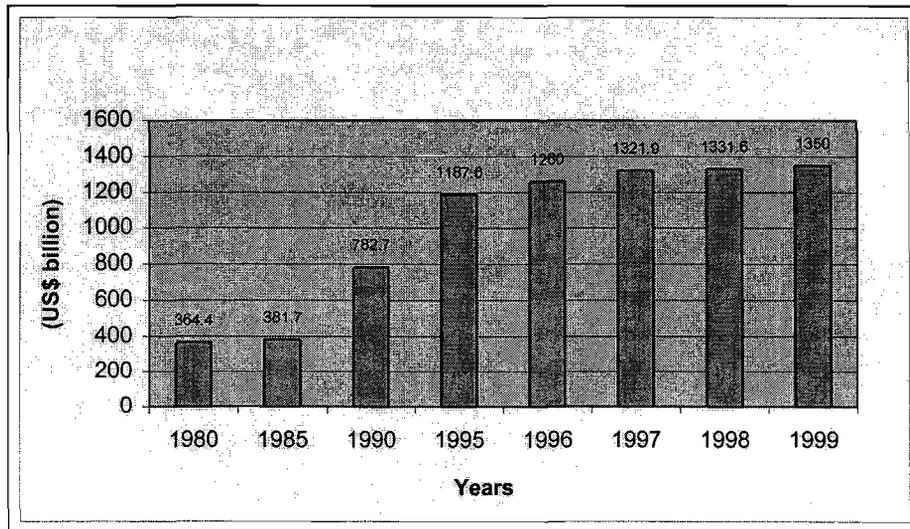
Source: G. Karsenty, 1999, "Just how big are the stakes?: An Assessment of Trade in Services by Mode of Supply", Paper presented at the Services 2000: "New Directions in Services Trade Liberalisation Conference", Washington DC, June 1 to 2, 1999.

Table 1 above shows estimates of the values of trade in services by mode of supply. Although the estimates provide a crude approximation, they nonetheless give an indication of the

¹⁶ See World Bank, 1995, *Global Economic Prospects and Developing Countries*, Washington, D.C.

scope and significance of trade in services in the world economy. The total value of trade in services by the four modes was US\$2,170 billion in 1997. Cross border supply (mode 1) and commercial presence (mode 3) accounted for the largest share of service trade at 41.0 per cent and 37.8 per cent, respectively. The share of movement of natural persons (mode 4) remained negligible at 0.1 per cent, partly reflecting the modest results achieved in the liberalisation of this mode of supply.

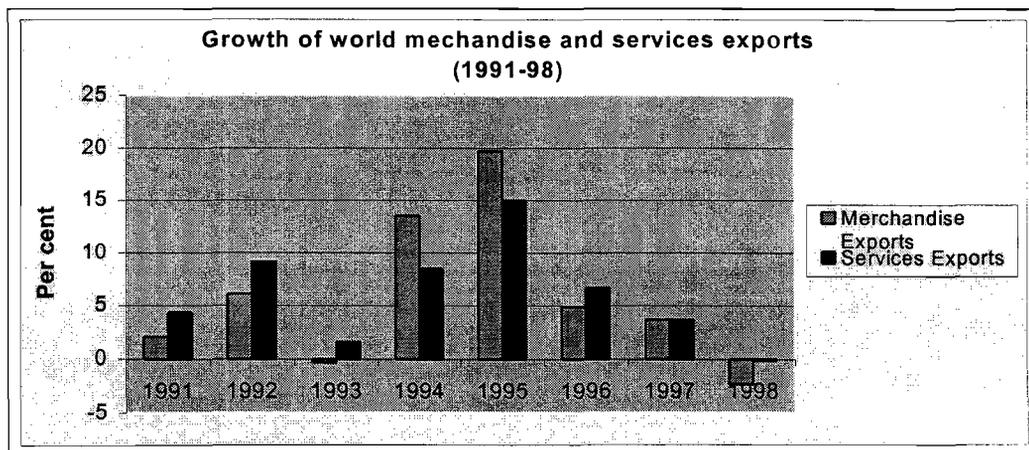
Figure 1
World exports of commercial services



Source: WTO Database.

In value terms, the exports of commercial services have increased from US\$364.4 billion in 1980 to US\$1350 billion in 1999 (*figure 1*). Although the value of world merchandise trade still exceeds that of commercial services by wide margins, the growth in the latter has been stronger.

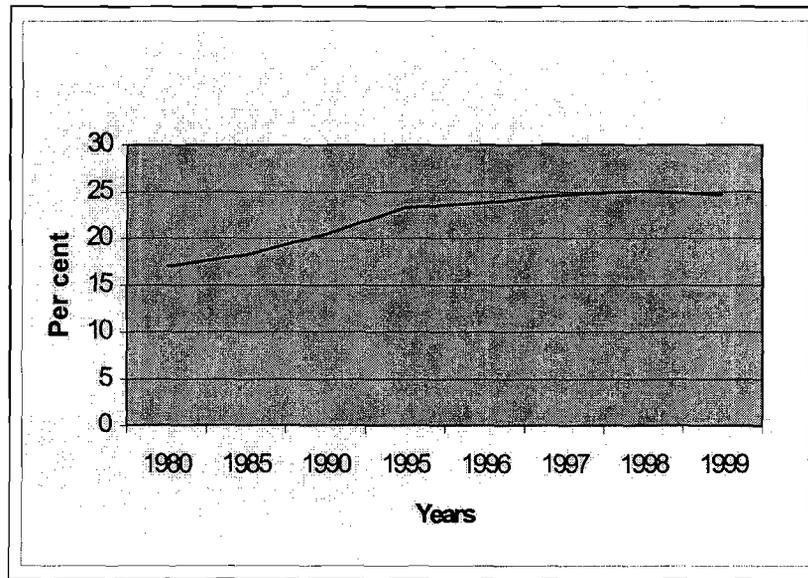
Figure 2
Growth of world merchandise and services exports (1991-1998)



Source: IMF Balance of Payments Statistics Yearbook, various Issues.

Trade in services has grown more robustly over the years consistently outpacing growth in merchandise (*figure 2*). The only notable exceptions were in 1994 and 1995 when growth in merchandise trade exceeded that of services. The growth of world merchandise exports averaged 6.8 per cent during the period 1990-97 compared to 8.0 per cent for commercial service exports.¹⁷ This dynamic growth in commercial services has been observed across all the regions, with Asia recording the fastest growth of 12 per cent, followed by Latin America with 8.0 per cent. Consequently, the share of commercial service in world trade has risen quite considerably from around 17.0 per cent in the 1980 to roughly 25.0 per cent in 1999 (*figure 3*). Detailed and thorough analysis of the scope of service trade is hampered by the lack of comprehensive and comparable data on services. There is no consistent and uniform standard across countries in recording services items in the balance of payments (BOP). Some items are recorded on a net basis, while others are recorded on a gross basis.¹⁸ Of the three categories of commercial services captured in the balance of payment, viz., transportation, travel and other private services¹⁹, only the category 'other private services' has grown more rapidly and currently accounts for nearly half of commercial services exports.

Figure 3
Share of commercial services in world trade (1980-1999)



Source: WTO Annual Report, various Issues.

¹⁷ See World Trade Organization (WTO) Annual Report, 1998.

¹⁸ See International Monetary Fund (IMF), Balance of Payments Manual.

¹⁹ This includes finance and brokerage, communications, non-merchandise insurance, leasing and rental equipment, technical and professional services, income generated by temporary movement of labour, and property income.

In the Caribbean subregion, services have become a very important sector in the economies of many small island States, contributing immensely to both output and employment creation. Commercial service exports have grown significantly from US\$3395 million in 1980 to more than US\$12,437 million in 1998 (see annex, table A.1). Nearly all the countries have experienced a surge in the exports of commercial services. The largest exporters of commercial services in the Caribbean are the Dominican Republic, Cuba, Jamaica and the Bahamas. Commercial service imports, on the other hand, grew more slowly than exports, rising from US\$2,529 million in 1980 to US\$6,460 million in 1998. Unlike merchandise trade, these countries have been recording persistent surpluses on the services account, partly offsetting the huge trade balance deficits. The healthy services balance for the Caribbean countries could be attributed to tourism, which is by far the fastest growing industry, accounting for over one third of the total value of services trade world-wide.

The share of the services sector in output has also grown quite significantly in many Caribbean countries over the years. As table 2 shows, the increase has been more pronounced in the small islands of the Eastern Caribbean, most notably Antigua and Barbuda, Saint Lucia, Montserrat and Grenada. However, the share of trade in services remains very low in Guyana, accounting for slightly less than one third of GDP by 1997. As the share of services in output has increased, so has its share in employment. Apart from tourism, other services, including informatics, financial and offshore financial and professional services, have seen notable growth over the years. Although the number of people employed in these services sectors remains small in relative terms, the trend has nonetheless been sloping upward. The number of people employed in the above-mentioned sector as a percentage of total employment ranged from 6.9 per cent for Trinidad and Tobago, 6.3 per cent for Barbados to 5.1 per cent for Jamaica.²⁰ The Montego Bay area of Jamaica boasts several information processing firms employing more than 3,500 people. Information processing centres have also flourished in Barbados. The Caribbean Data Service (CDS) firm has become the largest employer in the country.

Table 2
Services sector share of GDP for selected CARICOM countries

CARICOM countries	Percent Share	
	1996	1997
Antigua and Barbuda	88.2	87.9
The Bahamas	n.a.	n.a.
Barbados	82.6	83.1
Belize	62.8	64.4
Dominica	70.6	71.2
Grenada	81.7	82.5
Guyana	27.3	30.2
Jamaica	77.1	77.3
Montserrat	86.2	84.0
St. Kitts and Nevis	79.8	80.1
St. Lucia	85.3	87.2
St. Vincent & the Grenadines	74.7	75.9
Suriname	n.a.	n.a.
Trinidad & Tobago	56.4	55.8

Source: CARICOM Secretariat, Statistics Section

²⁰

See World Bank, "Prospects for Services exports from the English-Speaking Caribbean", May 1996.

IV. COMMITMENTS MADE BY CARIBBEAN COUNTRIES UNDER THE WTO-GATS AND TRIPS AND THE CARICOM SINGLE MARKET AND ECONOMY

In examining the commitments which the Caribbean countries have undertaken in the liberalisation of services, one should not only take into account the commitments undertaken in the context of the WTO, but also commitments that are likely to be undertaken under the framework of regional arrangements, such as the Free Trade Area of the Americas (FTAA) process and the CARICOM Single Market and Economy (CSME). Apart from the commitments undertaken in the context of the WTO and the CSME, the Caribbean countries are also participating in the negotiations for the establishment of the FTAA by 2005. These negotiations are aimed at eliminating barriers to trade in goods, services and investment. The FTAA negotiations will be a single undertaking and will improve on WTO rules and disciplines.²¹ Countries have made submissions, which have been consolidated, into a text. No negotiations have been made on the specific issues reflected in the text. The report will be submitted to the Trade Negotiating Committee and then to ministers in Buenos Aires for review before negotiations can start in earnest. The specific commitments that all the participating countries including the Caribbean are expected to make towards services liberalisation will undoubtedly contribute to further liberalisation of trade in services in the subregion.

A. WTO Commitments

Although developing countries participated actively in the Uruguay Round of Trade negotiations they, however, offered few commitments on services liberalisation under the GATS agreement. Whereas the developed and high income countries had undertaken commitments in roughly one quarter of the service sectors under negotiations, developing countries, on the other hand, made commitments in few sectors.

The Caribbean countries only made piecemeal commitments in service liberalisation. According to Blake and Odle (1998), Caribbean Community (CARICOM) countries have undertaken specific commitments in only 9 out of the 12 categories of services sectors under the GATS.²² The sector with most commitments was business services with 27 specific commitments offered by the CARICOM countries. Even in the service sectors in which they have made commitments, they included an array of limitations on market access and national treatment across different services sectors and modes of supply. As can be seen from *table 3* below, Jamaica made more specific commitments than any other country, followed by Trinidad and Tobago with 21 specific commitments. Belize, for example, has undertaken to provide market access and national treatment in only one sector - the health sector - while Barbados offered commitments in only 6 out of the possible 155 sectors.²³ These include legal services, specialised medical services, reinsurance, entertainment services, etc.

²¹ See The San Jose Declaration, Summit of the Americas at <http://www.alca-ftaa.org>.

²² The three sectors in which no commitments were undertaken are construction and related engineering services, distribution and environmental services.

²³ See World Bank, "Prospect for Service Exports from the English-speaking Caribbean", May 1996.

Table 3
Number of commitments made by CARICOM countries

Country	Number of sectors in which commitments were made	Categories in which commitments were made
Antigua & Barbuda	5	18
Barbados	4	6
Belize	1	4
Dominica	4	5
Grenada	4	5
Guyana	4	17
Jamaica	7	32
St. Kitts & Nevis	4	5
St. Lucia	4	5
St. Vincent & the Grenadines	5	8
Suriname	2	5
Trinidad & Tobago	7	21
Total	9	73

Source: Byron Blake and Timothy Odle, (July 1998), CARICOM

It is also worth noting that virtually all the CARICOM countries impose limitations on market access across all the sectors for the supply of services through commercial presence (mode 3) and movement of natural persons (mode 4). In Trinidad and Tobago, for example, licenses are required for purchases of a piece of land of more than five acres and for foreign acquisition of over 30 per cent shares of public companies. These restrictions are often imposed as safeguards to promote local ownership in the domestic economy.

Recognising the role and importance of telecommunications in facilitating international trade and promoting economic growth, many Caribbean countries have sought to liberalise the sector. To this end, they have undertaken far-reaching commitments in the telecommunications sector, albeit with some limitations on market access and national treatment. They have made commitments in the supply of telecommunications services for private and public use. Some countries have even gone further by offering commitments in the value added telecommunications services even though it was formally not part of the negotiations. In terms of the extent of market access and national treatment commitments under different modes of supply, there were fairly marked differences when basic services are compared to value added services. Barbados, for example, has made commitments in the telecommunications services that are for public use, but has stipulated as a limitation on market access that until 1 January 2012 market access will be provided to exclusive suppliers of telecommunications services only.²⁴

²⁴ See WTO, Basic Telecommunication: Schedules of Commitments and Lists of Article II Exemptions, April 1997.

Barbados also made commitments in the value-added services without any limitations on market access. Jamaica also made comprehensive commitments in the basic telecommunications sector with limitations on market access for the supply of telecommunications services through commercial presence. Like Barbados, Jamaica does not impose any limitations on value-added telecommunications services. Antigua and Barbuda has submitted a list of MFN exemptions on the basic telecommunications service sector. These measures apply to the CARICOM countries only and accord them equal treatment as enjoyed by domestic nationals and companies for an indefinite period.

In the area of financial services, the Caribbean countries have made very few commitments. The devastating effects of the global financial crisis of the 1990s, particularly the Asian crisis, have served to caution against the danger of full financial liberalisation. Notwithstanding the implementation of financial liberalisation programmes in the subregion under the auspices of the World Bank and the International Monetary Fund (IMF), the sector still remains heavily regulated. In fact, only Jamaica and the Dominican Republic have made commitments in many subsectors of financial services, including insurance and banking.²⁵ All the other countries made commitments in one subsector and activity. Jamaica's commitment in the insurance and all insurance-related services is unbound²⁶ on market access in modes 1, 2 and 4.

With regard to market access limitations in banking and other financial services, it had offered non-binding commitments for the supply of these services through modes 1, 2 and 4, while no limitations are applied on market access and national treatment for the supply of financial services through commercial presence.²⁷ These activities, however, will have to comply with Jamaican laws and regulations regarding prudential criteria.²⁸ This is essential for Jamaica, since a number of bank failures in the latter 1990s led to a massive government rescue package under the Financial Sector Adjustment Company (FINSAC).

The smaller economies in the Eastern Caribbean as well as Barbados and Trinidad and Tobago made commitments in only one activity of the insurance subsector - reinsurance. Guyana, on the other hand, offered commitments in the banking (deposits and lending) and all the insurance-related services with the exception of reinsurance. Across the Caribbean, virtually no commitments were undertaken in derivative and foreign exchange trading. In the securities trading subsector, only the Dominican Republic had undertaken commitments, specifically in underwriting activities. A cursory analysis of market access and national treatment commitments shows that most CARICOM countries, particularly the large economies, provide full market access and national treatment to mode 2 (consumption abroad). This is line with the objective of

²⁵ In the banking subsector, commitments were undertaken in lending and deposit taking activities only.

²⁶ Unbound in this context means that the government remains free to maintain and/or introduce measures inconsistent with market access or national treatment principles.

²⁷ For a comprehensive List of Jamaica's Schedule of Specific Commitments. See WTO, Council for Trade in service, GATS/SC/45/Suppl.2, 26 February 1998.

²⁸ The Banking Act, [part III, Section 6:1 (a)] on capital and reserve requirements stipulates that to apply for a license a local bank should have a capital of J\$80 million compared to a capital of J\$250 million for a foreign bank.

further diversifying tourism product into all other non-traditional areas such as health, education etc.²⁹

B. WTO-TRIPS

Since the TRIPS Agreement is part of the single undertaking of the Uruguay Round, Caribbean signatories to the WTO are obligated to implement the agreement. Most CARICOM States have signed on to the TRIPS Agreement. However, the countries vary in the extent to which they have passed legislation and made administrative changes to give effect to the Agreement.

Trinidad and Tobago is one of the countries that has progressed furthest in the actual implementation of TRIPS protocols. The country undertook wide-ranging legislative and administrative reform after signing the Marrakesh Agreement. In the area of patents, the Patents Act of 1996 was passed. The Act stipulates that patents are applicable to agriculture, fisheries and handicraft. This is crucial, since the country has good economic potential in these areas. Similar to the TRIPS, exceptions are provided for aesthetic creations, and therapeutic and surgical methods for treating humans and animals. The Trademarks Act (1996) provides for the registration of shapes of goods and packaging, and criminal prosecution for unauthorised use of trademarks with fines of up to US\$8,000 plus imprisonment upon conviction. Geographical indications are more widely defined to include 'traditional designations'. This is vital for Caribbean countries, as their traditional products are not widely known internationally, but must still be protected. Copyright legislation, similar to the minimum terms of the TRIPS has been enacted to protect local artistes and performers. In addition, legislation has been enacted to protect trade secrets and to prevent unfair competition.

The authorities in the Dominican Republic have prepared legislation in compliance with the TRIPS Agreement. The Intellectual Property Association of the Dominican Republic has outlined a number of principles to guide its TRIPS policy. The most important of these are: that all members of the WTO comply with the minimum standards set out in the TRIPS Agreement, especially the most-favoured-nation principle; and that enforcement of intellectual property rights do not constitute a barrier to trade. The Dominican Republic's authorities view intellectual property rights as an important driver of creativity, invention and production. Consequently, they contend that protection of these rights should promote foreign direct investment and innovation in the local economy.

The CSME has made provision for the harmonisation of intellectual property rights legislation. This stems from the view that the region should negotiate the issue from a common framework at the WTO. Funding has been mobilised from the United Nations Development Programme (UNDP) to draft harmonised legislation under the Single Market Project, since it is anticipated that the harmonisation of multiple national legislation would pose a major challenge in resources and time.

²⁹ Blake, Byron and Odle, Timothy, 1998, Analysis of Market Access and National Treatment Commitments made by CARICOM member States under the General Agreement on Trade in Services of the World Trade Organization, op. cit. p.122.

C. CARICOM Single Market and Economy

Although the GATS has served as an important multilateral framework for liberalisation of trade in services worldwide, regional and bilateral agreements have also contributed significantly to the liberalisation of trade in services. The Caribbean subregion has not been an exception to this. In fact, the CSME was born out of the need to foster closer integration of factor markets.

The GATS agreement does not preclude countries from entering into regional agreements regarding liberalisation of trade in services, and explicitly allows countries to enter into labour market integration agreements, which must exempt non-nationals from requirements relating to work permits. Recognising the increasing importance of trade in services in the Caribbean economies, CARICOM countries have undertaken measures to liberalise trade in services in accordance with Protocol II of the CSME.³⁰ Protocol II makes provision for cross-border establishment of businesses and free movement of persons, services and capital. One of the more significant measures undertaken by CARICOM towards liberalisation of trade in services in the subregion has been the commitment to allow university graduates to move and work freely in the single market. Freedom of movement was first provided for skilled and professional personnel, university graduates, media workers, sport personnel and cultural artistes and musicians. This was subsequently modified to include free movement of service providers, managerial, technical and supervisory staff. Once countries pass enabling legislation, implementation of these measures could lead to enormous benefits. Benefits could result from the matching of labour and skills shortages across the subregion.

Substantial progress has been made in implementing provisions relating to the free movement of persons within the Community. As far as the legislative progress is concerned, almost all the countries have enacted national legislation to implement provisions on the free movement of university graduates.³¹ Another important step in facilitating the free movement of people is that a number of countries now actually accept forms of identification other than passports from CARICOM nationals, ranging from photo ID cards, travel permits, birth certificates to drivers' licenses.³² The proposal for a CARICOM passport is still under discussion. Regarding legislation for implementing other approved categories of free movement of persons, only Belize, Guyana, Jamaica and Saint Vincent and the Grenadines have enacted such legislation. Despite these achievements, a number of problems still remain. Chief among these has been the slow pace of introducing the legislative and administrative arrangements in some countries coupled with the lack of harmonisation in legislation enacted in different countries. This has invariably resulted in different administrative procedures for processing and implementing provisions of free movement of persons. Furthermore, and more significantly, the lack of uniform standards of accreditation and quality assurance to ensure that the qualification of people seeking employment within the subregion is compatible also contributes to the

³⁰ See Caribbean Community, Working Document for the Second Special Consultation on the Single Market and Economy, 20-21 November 2000, St. Philip, Barbados.

³¹ Only Belize, Montserrat and Suriname have not yet submitted their legislation.

³² Only Antigua and Barbuda, Belize, Saint Lucia, Suriname and Trinidad and Tobago are yet to implement these measures.

difficulties in implementing provisions of Protocol II on the free movement of persons.³³ This calls for the need to establish a regional accreditation and quality assurance system, which would set subregional standards of competencies and skills to ensure uniformity of educational curricula and training across the single market countries. Also, a database of available skills across the subregion could help to match skills demand with supply.

As indicated earlier, Protocol II also makes provision for the liberalisation of trade in services. This Protocol was concluded in July 1998 and calls for the removal of restrictions on trade in services within one year of coming into effect. Before putting legislative measures in place to implement these provisions, countries have to review restrictions, which currently apply to trade in services in their respective services sectors. Thus far, only seven countries have notified the Council for Trade and Economic Development (COTED) of restrictions currently applied to trade in services. This has been, understandably, a difficult process for many countries to undertake due to the lack of information on trade in services, not to mention the paucity and incomparability of data on such trade. To bridge this gap, the secretariat of the Caribbean Community has taken a decision to: (i) conduct regional studies³⁴ on trade in services; and (ii) strengthen human resource capacity to generate trade in services statistics.

Protocol II also makes provision for the free movement of capital and the right of establishment. This would facilitate cross border business activity by allowing firms to access capital at competitive rates, thereby reducing transaction costs, which has been a hindrance to intraregional flows of finance and investment. Central to this objective is the restoration of currency convertibility and the coordination of macroeconomic policies. All the countries have implemented arrangements for currency convertibility. However, this is still hampered by foreign exchange controls in a number of countries, most notably Barbados, Eastern Caribbean Central Bank (ECCB) countries and Belize.³⁵ Only Guyana, Jamaica and Trinidad and Tobago have abolished foreign exchange controls.

Although the above-mentioned measures are intended to facilitate the free movement of persons, capital and business within the subregion, many countries in the Caribbean still maintain significant barriers against third countries to trade in services across different modes of supply. For example, for non-CARICOM citizens, only people with managerial or technical skills considered to be in short supply are allowed to work. Moreover, the process of obtaining a work permit is extremely cumbersome, lengthy and subject to bureaucratic red tape. Foreigners seeking to provide professional services such as law, medicine, management-consulting, etc., have to be certified by local boards. In Barbados, for example, the practice of law and medicine is reserved for citizens who must also be certified and registered. All these measures hinder the free movement of persons and thereby retard the transfer of technology. It is, therefore, imperative that Caribbean countries remove these barriers in order to reap the benefits, which

³³ Only Jamaica and Trinidad and Tobago have appropriate mechanisms for equivalency and accreditation or mutual recognition in place.

³⁴ Two national sector studies will be conducted in one MDC and one LDC country, and two sector specific studies in the chosen MDC and LDC country.

³⁵ However, this is not deemed to constitute a major impediment to intraregional trade due to the convertibility of EC\$ and the availability of foreign exchange reserves.

this mode of supply is intended to bring. Furthermore, the flow of information in the subregion is hampered by the lack of adequate intellectual property protection. To this end, the Caribbean countries are in the process of upgrading their intellectual property laws to better reflect the provision of the TRIPS Agreement to which they are signatories.

It appears that the major constraint hindering the implementation of commitments, both those arising from the Uruguay Round of trade negotiations and subregional arrangements have been the lack of technical, human, institutional and financial capacity. Moreover, technical assistance programmes and other special capacity-building measures promised to developing countries during the Uruguay Round have not been forthcoming. In addition, GATS special provisions, which are intended to facilitate the participation of developing countries in the multilateral trading system through access to technology, have not been operationalised. These remain issues of great importance to developing countries, particularly the Caribbean.

V. IMPLICATIONS OF THE GATS AND TRIPS AGREEMENT FOR CARIBBEAN COUNTRIES

The GATS and the TRIPS present both challenges and opportunities for the Caribbean. Intellectual property rights, like trade in goods and services, are not value free, nor are they uniformly beneficial to all countries and regions. Countries derive benefits from intellectual property protection, based on their comparative advantage in the development of intellectual property and their ability to enforce those rights. In this respect, intellectual property rights - a non-trade issue - is similar to trade issues (the GATT and the GATS). However, since intellectual property protection is a non-trade issue it is not expected to lead to improved consumer and producer welfare on a similar scale to trade issues, such as GATT and GATS.

The debate over benefits of intellectual property protection has often fallen into one or other extreme. One group of analysts have tended to argue that protection of rights benefit all countries by encouraging creativity, invention and innovation. This, they contend, leads to foreign direct investment and cheaper, better quality commodities for consumers in developed and developing countries alike. The other group, on the other hand, argue that protection creates monopoly rights for developers of intellectual property (who are usually in developed countries), thereby leading to higher-priced commodities, dead weight losses³⁶, reduced consumer welfare and disincentives to invention and innovation in developing countries. These arguments could be used as the point of departure for an assessment of the potential benefits to Caribbean countries of the TRIPS Agreement. However, we must first examine the theoretical foundations and practical implications of the TRIPS before arriving at any conclusion.

Caribbean countries have signed on to the TRIPS Agreement largely because they were obligated to do so under the 'single undertaking' principle for joining the WTO. No doubt, however, they expect the agreement to provide benefits in a number of areas. As espoused by the WTO and many developed countries, Caribbean countries hope that implementation of the

³⁶ Dead weight losses result from the decline in both consumer and producer welfare (surplus) that results from a competitive firm becoming a monopoly and therefore increasing its price and reducing its output.

TRIPS Agreement would promote trade, foreign direct investment, the development of local intellectual property and employment. Intellectual property protection could boost trade in a number of ways. Foreign firms that were previously reluctant to export to markets with little or no protection tend to increase exports and displace 'pirates' once sound protection is provided. This is the so-called 'market expansion' effect. It must be noted, however, that stronger IPR protection could lead to greater 'market power effects'. This strengthened market power tends to also lead to reduced sales in the given market. The decline in sales (exports) tends to result from monopoly power that leads to lower output and higher prices³⁷.

An important consideration for the subregion relates to the strategy of targeting the services sector as the engine of growth. CARICOM has proposed that given the relative comparative advantage of the subregion in the production of services, this sector should be the main focus of the development thrust. This creates a vital nexus with the protection of IPRs. The fact is that foreign investors in the services sector, especially information technology, telecommunications and computer software development and processing, are quite reluctant to invest in markets with weak IPR protection. In fact, many developed countries have been pushing for even stronger protection for these areas than offered in the TRIPS. Caribbean authorities (on implementing the TRIPS provisions) can market their subregion as a TRIPS compliant and stable environment for productive foreign investment.

As expected, the different subsections of the TRIPS are not likely to provide similar benefits to the subregion. Given the structure of the economies and comparative advantage, copyright protection is likely to offer more benefits, at least in the short term. By offering sound protection for local artistes³⁸, performers and broadcasters, copyright protection could promote their activities and income and employment spillovers in the domestic economy. Patent protection might not offer this ready impact since the capability of the subregion in industrial biotechnological and other inventions is somewhat limited. However, patents are still quite important as they can spur joint ventures with domestic firms, licensing arrangements and facilitate learning by doing. These activities can provide the impetus for the development of dynamic industries in the regional economy. In this regard, new 'green-field' investment in light manufacturing is important for economic diversification. However, only a few countries - Trinidad and Tobago, the Dominican Republic and, to a lesser extent, Jamaica - are likely to benefit from this type of investment in any significant way.

As opposed to the benefits of stronger IPR protection, one can point to potential disadvantages that the subregion must be aware of. The possible adverse effects of the TRIPS are likely to result because it is a non-trade issue. The evidence is clear - trade liberalisation benefits both producer and consumer countries. Non-trade issues such as the TRIPS, environmental and labour standards might not be welfare-enhancing for all countries. There are a number of good arguments to show that the impact of the TRIPS on the Caribbean might be

³⁷ Panagariya argues that the TRIPS Agreement, by encouraging monopoly in markets, could lead to dead weight losses, increased inefficiency and reduced consumer welfare.

³⁸ The remake of a song that was produced by Anselm Douglas, a Trinidadian calypsonian, has recently made it quite big on the charts in the United States. If this song had been properly copyrighted, this artist could have made quite a fortune.

negative, especially in the short to medium term. The first argument deals with the nature of the issues covered by the TRIPS. Many aspects of the TRIPS, such as patents, deal with inventions and innovations that can be classified as 'public goods'. These include broad process technology, such as semiconductor technology, plant and animal genes, high-yielding varieties of crops and basic pharmaceutical products. Caribbean countries should be aware that patenting of such basic science and technology could severely hamper research and development in these areas in the subregion. This would result not only from the high cost of securing patents, but also the time and bureaucratic procedures involved in doing so.

Another important issue is the fact that the TRIPS Agreement provides longer periods of protection, on average, than were previously imposed by members. Longer protection periods would increase the period of monopoly protection for foreign firms in small markets, such as those of the Caribbean. This would lead to higher repatriated profits for these firms, but reduced welfare (due to higher prices of products and probably poorer quality goods) for consumers in the region. Maskus³⁹ has pointed out that the "monopoly effect" of IPRs is likely to be higher in small markets. This tends to be the case because these economies have weak, technical capabilities and limited scope for imitating product and process technologies from abroad. As a result, foreign multinational firms can easily dominate the market. This is strongly suggested for the Caribbean where due to weaker competition, multinational firms tend to make higher average profits than in developed countries.

Studies attempting to quantify the benefit of intellectual property rights to countries are few. Maskus⁴⁰, however, provided estimates of the impacts of TRIPS patent changes on international flows for different countries. The figures suggest the likely impact of the TRIPS for the Caribbean, at least in the short to medium term. Maskus found that the United States would realise the largest net gain of about \$5.8 billion per year (*see table 4 below*). The United States was followed by Germany, with \$997 million, while Brazil stood to lose about \$1.1 billion and South Africa \$143 million per year. Net royalties and licensing fees earned by United States-resident firms totalled \$20.9 billion in 1995⁴¹.

Developing countries, as a whole, are likely to realise a net outflow of patent rents due to higher prices of patents and longer durations. The figures also point to substantial increases in manufactured imports by developing countries, notably China. If this is the potential result for a large, diversified market, such as China, an even more significant impact could be envisaged for small Caribbean economies. Foreign direct investment, an important factor for developing countries, was expected to increase in Brazil (\$3,219), Mexico and Indonesia, but could also increase in small economies depending on market size and competitiveness.

³⁹ See Maskus, Keith E. "Intellectual Property Rights and Foreign Direct Investment", CIES, May, 2000.

⁴⁰ See Maskus *op. cit.*

⁴¹ See International Monetary Fund, 1997.

Table 4
Estimates of impacts of TRIPS patent changes
on international flows of economic activity
for selected countries (millions of 1995 dollars)

Country	Net patent rents	Mfg. imports	High-tech mfg. imports	FDI assets	Unaffiliated royalties and licensing fees
United States	5,760	233	-3	n.a	n.a.
Germany	997	2,304	-18	-1084	92
Australia	-28	102	-2	-256	2
Netherlands	-222	133	-3	-1,380	29
Japan	-555	918	-21	-2,326	719
Panama	0.4	16	n.a	284	n.a
Israel	-83	30	5	6	0.6
Colombia	-97	2,927	479	1,093	n.a
South Africa	-143	154	21	23	10
Rep. Of Korea	-326	2,732	588	248	356
Mexico	-562	5,749	1,519	3,182	136
Brazil	-1,172	3,125	627	3,219	144
China	n.a.	15,379	2,585	631	n.a.

Source: Maskus, K, E. "Intellectual Property Issues for the New Round", IIE, July, 2000.

n.a. = not available

Small and medium-sized firms in the subregion have the potential for promoting growth and employment. It is anticipated, however, that IPRs could seriously affect this sector. The reality is that the technology and labour skills of these firms tend to be far below international standards. With the TRIPS, the higher costs of foreign know-how and technology could weaken the competitive position of these firms even further. As a result, these firms could be quickly displaced by foreign multinationals. The case of the Dominica coconut products firm that was bought out by Colgate-Palmolive (in an environment without strong IPRs protection) suggests what could happen in the future.

In a knowledge-driven global economy, TRIPS could curtail the subregion's access to vital technology. The TRIPS is predicted to raise the cost of vital technology, intermediate inputs and supporting services for producers in the Caribbean. Cost escalation could be particularly damaging in the areas of plant varieties, pharmaceuticals, biotechnological inventions and computer and information technology. This could widen the divide between technology producing and importing countries. Higher costs that adversely affect access to computer and information technology could negatively affect the productivity of the regional services sector. This stems from the importance of these technologies in driving productivity in

the sector. For example, computerised bookings and inventory management have led to important efficiencies in the tourism sector.

VI. THE NEW ROUND OF NEGOTIATIONS: NEGOTIATING INTERESTS AND OPTIONS FOR THE CARIBBEAN

Having examined the progress in the WTO built-in agenda on services and the intellectual property rights as well as the commitments undertaken by the Caribbean countries in these two areas, this section briefly identifies negotiating interests and options for developing countries, in particular, the Caribbean, against the background of a possible agenda for the new round. The WTO ministerial meeting in Seattle in 1999 was supposed to have set the agenda, however modest, for the new round of multilateral trade negotiations. Due to the divergences of position on issues to be included in the proposed new round of negotiations, coupled with intense campaigns and demonstration by interest groups, the Seattle ministerial meeting failed. The contentions that surrounded Seattle are likely to cloud the new round of negotiations. It is against this background that developing countries, including the Caribbean, should identify the negotiating interests and options so as to maximise the benefits from the new round of multilateral trade negotiations.

As a broad strategy, it would be in the interest of the Caribbean countries to keep the agenda for the new round of negotiations as close as possible to the built-in agenda on services. This would entail negotiations on emergency safeguard procedures, subsidies and government procurement as well as the review of the implementation of the various Uruguay Round agreements. The liberalisation of trade in services is not a panacea, but will provide disparate benefits for countries. Multilateral trade negotiations impose a heavy burden on the already scarce human and financial resources of the smaller developing countries, such as those of the Caribbean. In addition, these countries lack the experience and capacity to undertake negotiations in the new trade issues, let alone the conventional issues of trade in goods. This asymmetry was clearly reflected at the Uruguay Round of trade negotiations. Moreover, many countries are still preoccupied with the difficult administrative, institutional and financial problems arising from the implementation of the commitments they had undertaken in the context of the Uruguay Round. Therefore, they will be better served by a narrow agenda.

The new round of negotiations aims to achieve progressive liberalisation of services. This presents a market opening opportunity for the Caribbean countries to make up for lost ground of the Uruguay Round of negotiations. To maximise the gains from the new round, Caribbean countries need to press for better market access in the service sectors and modes of export that are of interest to them. One of the areas in which the comparative advantage of developing countries could fully be exploited is the movement of natural persons. One common measure that has been used widely to gauge the quantitative importance of trade in services attributable to the movement of natural persons is worker remittances. By this measure, the Caribbean could have comparative advantage. Remittances from abroad play an important role in the economic development of many Caribbean countries, partly offsetting huge trade deficits. However, the movement of natural persons continues to suffer the brunt of undue restrictions, such as visa requirements; quotas; economic needs tests (ENT), qualification requirements, etc. No

significant liberalisation has been achieved, notwithstanding the GATS special provisions intended to facilitate transfer of technology to developing countries through the movement of natural persons.

In terms of the GATS special provisions, contained in Article IV, developed countries are obliged to help facilitate the increasing participation of developing countries in the multilateral trading system. Developed countries should extend benefits to developing countries in the following three areas: (i) strengthening their domestic service capacity, efficiency and competitiveness through access to technology; (ii) improving their access to distribution channels and information networks; and, (iii) providing better market access in sectors and modes of supply of export interest to developing countries.⁴² These well-conceived provisions have not been operationalised due to the lack of a clear mechanism for delivery. Developing countries, including the Caribbean, should press the developed countries to adhere to these special provisions. This would result in enhanced market access for the supply of services through the movement of natural persons, particularly contract personnel and independent professionals, and thereby enhance the transfer of technology. It has even been suggested that an ENT exemption list as well as short-term exemptions from visa requirements be established to cover the services sector or categories of professions.⁴³

Caribbean countries would improve significantly on their Uruguay Round service commitments by offering enhanced market access and national treatment for a wide range of services sectors across different modes of supply. The new commitments that they undertake must be consistent with their overall national development objectives.⁴⁴ Most importantly, in undertaking commitments, priority must be given to those services sectors and modes of supply that would contribute to improving the competitiveness and efficiency of domestic enterprises. Special attention should be paid to producer services, such as transport and telecommunications that could strengthen the productivity of consumer services, such as tourism.

VII. RECOMMENDATIONS FOR CARIBBEAN COUNTRIES TO MAXIMISE THEIR BENEFITS FROM THE GATS AND TRIPS AGREEMENTS

The policy approaches and strategies that the Caribbean adopts to optimise its gains from the GATS and TRIPS must be practical and pragmatic. Policy makers need to carefully balance domestic needs and realities with international obligations. In relation to the GATS, governments and service providers need to be aware that competition on the domestic and international market will intensify. Therefore, although services hold good prospects for the subregion, its contribution to export earnings would depend heavily on the capacity and initiative of producers, as well as the authorities, in dealing with foreign competition. The vital tourism sector underscores the need for restructuring to improve the competitiveness of producers. In

⁴² GATT Secretariat, 1994, *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts*, Geneva.

⁴³ See Oyejide, Ademola, 2000, "Interest and Options of Developing and Least-Developed Countries in a New Round of Multilateral Trade negotiations", UNCTAD.

⁴⁴ UNCTAD, 1999.

recent times, the industry has become somewhat saturated in some countries due in part to lack of diversification and improvement of the product. Therefore, there is need to diversify within the sector to provide a more varied and higher value-added product. High-end cottage tourism and ecotourism could be juxtaposed with all-inclusive and traditional tourism and cruise tourism, for instance. Tourism product offerings should be expanded to include health and business travel. The subregion needs to further promote the development of the non-tourism services with a view to mitigating the effects of any potential future contraction of the tourism sector on the services industry. In this regard, adequate regulation structures must be put in place especially for industries such as offshore financial services.

Given the onerous burden that the implementation of multilateral agreements imposes on the small Caribbean countries, CARICOM should speed up the implementation of the CSME, particularly liberalising trade in services. This would better prepare the subregion to implement multilateral agreements relating to trade in services. In addition, intraregional liberalisation would provide a vital 'training ground' for international competition. Apart from liberalising trade in services, Caribbean countries should also liberalise government procurement processes by allowing regional firms to compete openly for government procurement contracts throughout the subregion. This would enable firms to develop scale efficiency and achieve international competitiveness through greater specialisation.

TRIPS, like GATT and GATS, is an issue in political economy. Further, it is important to note that in many instances, political considerations might negate economic ones. The challenge for the subregion is to translate IPR protection into more and better technology transfer, encourage foreign direct investment in areas of comparative advantage and promote labour skills and production.

The underlying issue that must be tackled is the ability of the subregion to use and produce intellectual property. In this regard, the first major issue to be confronted is which economic reforms and restructuring are needed to optimise the benefits of IP protection. Subregional manufactures must move speedily to adopt production and process technology that meet international standards. In this regard, protection for foreign investors in these sectors could foster joint venture partners and licensing arrangements that could prove beneficial to the subregion. On the other hand, protection for domestic producers could provide them with the learning period to develop more competitive products. Domestic producers should devise strategies to produce more varied and higher value-added commodities. In textiles, for example, producers could focus more on subregional designs and patterns that have the potential to penetrate niche markets.

Services seem to hold the brightest prospects for fostering growth and employment in the subregion. Further, it is indisputable that intellectual property (new inventions and modes of delivery) is a fundamental driver of productivity in the services sector. This points to the need for a clear road map for the sector. This would entail a systematic and integrated approach to the efficient development of both producer and consumer services. Producer services, such as telecommunications, transport, finance and marketing, must be best utilised to strengthen efficiency and competitiveness of consumer services. Undoubtedly, consumer services, including tourism and entertainment, have been important contributors to subregional growth. The subregion, as a whole, must give effect to copyright legislation to better protect local artistes

and entertainers. This would curtail piracy and counterfeiting of the artistes' work and encourage more and better productions. Importantly, Caribbean musical forms, dance and other artistic expressions must be adequately protected on the international market, to provide suitable royalties and fees for creators. In general, to the extent feasible, the subregion might need to provide stronger intellectual property protection for services since this sector holds greater prospects for contributing to growth and development.

There is an urgent need too for a strategic and proactive approach to human resources development. Intellectual property is the product of human knowledge and skills. This highlights the importance of a well-trained, technically competent workforce for the production and efficient use of intellectual property. There is need for improved pedagogy, a stronger link between science theory and practical applications to technology and product and process development. Moreover, management systems must be audited and strengthened to enhance managerial efficiency and productivity. Very crucial to the whole process is a system of continuous worker training to keep abreast of changes in work processes and procedures.

One area in which the subregion could develop a market niche is tropical medicine and biotechnology. Tropical plant and marine biology research needs to be galvanised to produce generic tropical medicine, health care products and more environmentally-friendly pest control systems. In fact, the University of the West Indies (UWI) has already developed a drug for the treatment of glaucoma from the marijuana plant. It has also been suggested that marijuana could be used in the production of upscale clothing. There is need to set up a subregional patent office to file patents for the fruits of research. A subregional office is probably best, since its work would be akin to a subregional 'public good'. The subregional office would coordinate the work of national units that feed research output to it.

The TRIPS Agreement offers some scope for negotiation and refinement. Caribbean governments need to carefully analyse aspects of the Agreement that could facilitate increased technology transfer to the subregion. In addition, subregional negotiators should propose to the WTO that rigid, harmonised standards of protection are not in the best interest of small, developing countries. In the area of geographical indications, they should question the favourable treatment accorded to wines, relative to other goods. Geographical indications must be sought for local medicinal plants and food products that are indigenous to the subregion. The Regional Negotiating Machinery (RNM) should take a more proactive approach to changes in the area of intellectual property. This is required in the negotiations since various aspects of the TRIPS Agreement are still unsettled and can take a number of forms.

VIII. CONCLUSION

The Uruguay Round of Trade Negotiations was a landmark achievement in the history of the multilateral trading system. Participants managed, through intense negotiations, to extend internationally agreed rules and disciplines to the fast growing area of trade in services and also intellectual property rights. Developed countries, which were the main instigators, made far-reaching commitments in these areas. Developing countries have been more sceptical of the

benefits that they would derive from the GATS and TRIPS. As a result, they have offered fewer commitments in these areas.

Caribbean countries, in particular, have made very few commitments under the GATS. Even in the service sectors in which they have undertaken commitments, an array of limitations on market access and national treatment across services sector and modes of supply was included. The larger economies within CARICOM, notably Jamaica, Guyana and Trinidad and Tobago, made commitments in many service sectors compared to the small Organisation of Eastern Caribbean States (OECS) countries. Most of the countries have also signed on to the TRIPS Agreement, but only a few of them have implemented legislation and administrative arrangements to give effect to it. This underscores the difficulties faced by small States in implementing international commitments because of financial, technical and administrative constraints. Trinidad and Tobago has undertaken the most far-reaching legislation in these areas in CARICOM.

In addition to the commitments undertaken at the multilateral level, Caribbean countries have also made a commitment to liberalise services in the context of Protocol II of the CSME. The most significant measure undertaken by CARICOM in this regard has been the decision to allow university graduates to work freely in the single market countries. Some progress has been made in implementing the provision relating to the free movement of persons within the Community. However, not much progress has been made in implementing provisions on the free movement of capital and the right of establishment.

Pivotal to all negotiations is the need to assess the potential benefits of specific commitments to the subregion. Theory and practical evidence suggest that the GATS, by providing market access in foreign markets and fostering competition in domestic markets, holds the potential to stir growth in services. This calls for a proactive approach to upgrading the services sector through worker training and better use of computer and information technology. Intellectual Property Rights, on the other hand, is a mixed bag. On the one hand, by vesting the owners of inventions and creations with rights, it could promote foreign direct investment in manufacturing and other activities in the subregion. On the other hand, however, TRIPS could lead to higher prices for technology, pharmaceutical products, food and seeds for planting. These effects could stifle the drive for innovation and invention in the subregion. Moreover, studies have shown that TRIPS tend to lead to greater net outflow of monopoly rents from small, undiversified economies, such as those of the Caribbean. The situation is not one of gloom and doom, however. What the subregion needs to do is to undertake a multi-pronged strategy to promote inventions and creations through research and development investments and pursue joint negotiations to represent their interest in international forums.

In addition, the subregion must urge developed countries to deliver on the technical and financial assistance programmes and other special capacity-building measures promised to developing countries under the GATS Article IV. These are issues of great importance to Caribbean countries and should be part of their negotiating interest for the new round of trade negotiations. It is clear that Caribbean countries cannot turn back the march of globalisation, but they can get their economic houses in order and negotiate strategically to realise better benefits from areas such as the GATS and the TRIPS.

Annex**TABLE A.1****Commercial Services Exports
(US\$ Million)**

	1980	1985	1990	1995	1997	1998	1999	Average
Caribbean	3395	4124	6809	11190	11927	12437	9013	8413.6
Antigua and Barbuda	45	150	308	348	...	...	...	212.8
Aruba	-	-	398	626	799	877	972	734.4
Bahamas	731	1104	1465	1523	1573	1517	1789	1386.0
Barbados	332	420	627	890	933	995	...	699.5
Belize	...	22	83	117	124	122	...	93.6
Cuba	...	...	...	1419	2071	2350	...	1946.7
Dominica	6	10	33	54	71	72	...	41.0
Dominican Republic	305	579	1086	1894	2373	2421	2829	1641.0
Grenada	21	31	63	98	...	...	...	53.3
Guyana	18	47	...	130	...	...	...	65.0
Haiti	84	106	43	98	172	178	...	113.5
Jamaica	375	564	976	1568	1672	1727	1795	1239.6
Netherlands Antilles	862	663	1130	1656	1604	1604	1628	1306.7
St. Kitts and Nevis	8	23	54	...	...	...	...	28.3
Saint Lucia	41	70	149	265	...	...	...	131.3
Saint Vincent/Grenadines	18	19	41	72	...	...	...	37.5
Suriname	166	70	31	101	...	...	...	92.0
Trinidad and Tobago	383	246	322	331	535	574	...	398.5

Source: World Trade Organization (WTO) Database.

TABLE A.2

**Values of commercial services imports
(US\$ millions)**

	1980	1985	1990	1995	1997	1998	1999	Average
Caribbean	2529	2759	3370	5579	6036	6460	5082	4545.0
Antigua and Barbuda	17	38	103	136	...	...	...	73.5
Aruba	-	-	111	207	557	528	685	417.6
Bahamas	208	359	520	605	790	939	904	617.9
Barbados	121	144	237	347	389	409	...	274.5
Belize	...	26	54	88	87	94	...	69.8
Cuba	...	...	...	574	528	536	...	546.0
Dominica	6	12	30	37	46	45	...	29.3
Dominican Republic	395	270	435	957	1160	1300	1351	838.3
Grenada	11	21	30	37	...	...	...	24.8
Guyana	104	100	...	168	...	...	...	124.0
Haiti	129	175	71	236	321	370	...	217.0
Jamaica	356	390	667	1073	1196	1233	1264	882.7
Netherlands Antilles	521	447	510	719	730	771	878	653.7
St. Kitts and Nevis	6	10	34	...	...	...	...	16.7
Saint Lucia	22	38	78	119	...	...	...	64.3
Saint Vincent/Grenadines	11	18	30	53	...	...	...	28.0
Trinidad and Tobago	622	711	460	223	232	235	...	413.8

Source: World Trade Organization (WTO) Database.

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