

Services Trade and Domestic Regulation in Jamaica

Introduction

The service sector has become an increasingly important sector in national output and employment of developing countries. For many developing economies and least developed countries (LDCs), services constitute a fast growing and often-dominant sector in Gross Domestic Product (GDP), with important forward and backward linkages to other sectors of the economy. In recent years, Jamaica, like many countries throughout the world, has taken a strong interest in the level and growth of its services sector. This development has generated significant attention on areas such as the increased contribution of services to the national economy as well international trade.

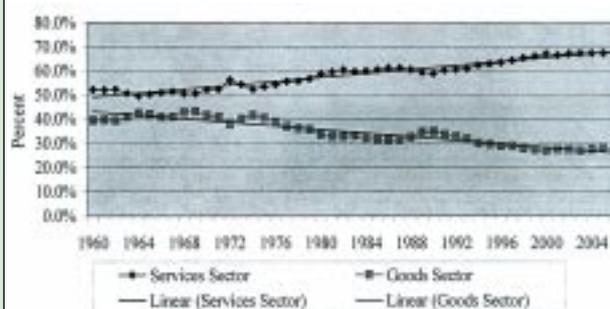
In terms of key data inputs on the sector's performance, the services sector still remains very difficult to measure; data on its contribution to key areas of the macro-economy such as GDP, employment, international trade and investment flows are sometimes immeasurable, very difficult to generate, and, at times, significantly underestimated. However, given the increased levels of trade in services over the last decade driven by increased advances in technology and communications and movement of persons worldwide, more countries have been paying increased attention to developments in this sector. As one of several low-income countries, Jamaica has taken on the challenge to liberalise the services sector in keeping with the General Agreement in Trade in Services (GATS).

This briefing paper examines the importance and contribution of services in the economy of Jamaica, while analysing the liberalisation process and regulation in respective service sectors. It also discusses Jamaica's commitment under the GATS.

Importance of services sector

In the present day world the services sector is the fastest growing sector of the global economy and it accounts for two thirds of global output, 30 percent of global employment and 20 percent of global trade. Although it is difficult to measure the value of services, its importance in a nation's economy is beyond doubt. In the case of Jamaica the structure of the economy has evolved from goods producing one during the 1960s to a service producer presently, with services now constituting 70 percent of GDP (1996 constant prices). The substitution of services for goods producing activities in the Jamaican economy reflects global trends over the last two decades and clearly underlines the importance of service in the economy. Figure 1 shows how the goods and services sector has evolved since 1960.

Figure 1: Percentage Contribution Services and Goods to GDP (1960-2006)



Source: Author's calculations, STATIN's National Income and Product Accounts, various years

Contribution of Service Sector

The following section highlights the trends in the service sector of six selected countries, in terms of growth, contribution to GDP, employment, trade and investment flows, and competitiveness. In Jamaica, services constituted around 60 percent of GDP in 2005 with a clear shift from a goods producing economy towards a services dominated economy. Much of the growth in Jamaica's services sector is attributed to the expansion of telecommunications, transportation and tourism over the last two decades. In addition to this, there has been growth in the financial and the distributive trade sectors during the last decade. The services sector consistently accounts for the highest percentage contribution to GDP.

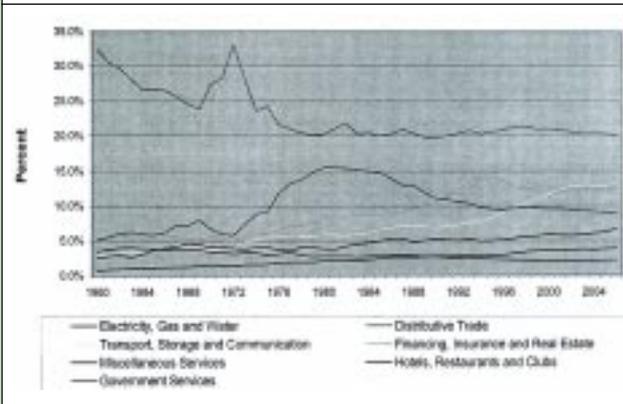
This pattern has persisted since 1960 when value added output of the services sector was 52.2 percent of GDP. It has maintained an annual average of above 50 percent, increasing to 67.7 percent by 2006. Distribution has retained the dominant position since 1960. At other periods since then, one of the three government services, i.g. financing, insurance and real estate and transport, storage and communications has been the second most significant contributor to GDP (see Figure 2).

In examining the GDP growth trends, the sector consisting of transport storage and communications has experienced the fastest growth since 1960, followed by electricity, gas and water then financing. However, tourism remains the most dominant area of services in the Jamaican economy and is the single largest contributor to foreign exchange earnings.

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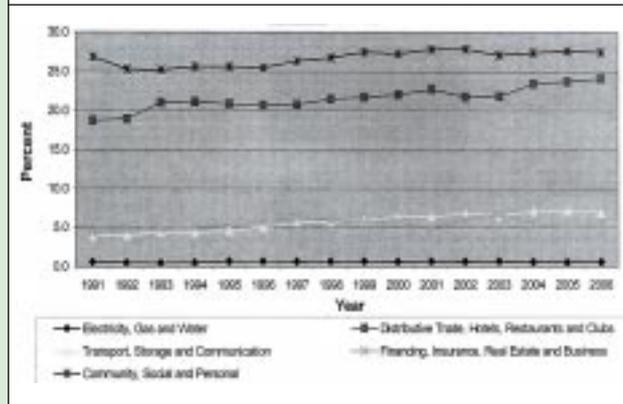


Figure 2: Percentage of Contribution to GDP: 1960-2006



Source: Author's calculations, STATIN's National Income and Product Accounts, various years

Figure 3: Contribution of Employment by Sub-sector – 1991-2006 (%)



Source: Author's calculations, STATIN's Labour Force Surveys, various years

Tourism growth has benefited from the overall economic liberalisation programme, which commenced in 1991, and included liberalisation of foreign trade, foreign exchange rates and financial markets.

Services have accounted for around 55 percent or more of national employment, particularly for women and specifically in personal, community, and social services. Services have clearly gained in importance over industry and agriculture in the past few decades in terms of employment creation. The services sector has continued to expand and created an annual average of 35,000 jobs during 2005-06. This represents an even more definite shift towards an economy dominated by services. On analysis, it is found that the community, social and personal services sub-sector is the leading employer of labour followed by wholesale, retail, restaurant and services (see Figure 3). Not unexpectedly, high levels of informal economic activities and informal workers with relatively low value added contributions characterise these two sub-sectors.

In terms of contribution of services to exports, the growth over the last two decades has been extraordinary. Services now account for the over one half of exports from the Jamaican economy. Jamaica's trade interest lies in tourism, telecommunications, transportation, financing, insurance and business services, electricity, gas and water. Furthermore, the Jamaican economy has similarly become more successful

in attracting high levels of FDI in recent years, with such inflows rising from around US\$100mn in 1995 to over US\$500mn in 2005. FDI inflows have grown at an average annual rate of 20 percent between 1996 and 2005.

Liberalisation and Changes in Regulation

Trade liberalisation was first commenced in the early 1980s as part of IMF stabilisation and World Bank adjustment programmes; however, the liberalisation process continued with CARICOM Common External Tariff reforms and the reforms triggered by World Trade Organisation's (WTO's) international trade regime. Trade liberalisation in Jamaica necessitated implementation of policies by the state that removed quantitative restrictions and opened the domestic market, providing an opportunity for the private sector to play a more important role in the production, especially in growth-oriented activities.

Domestic market liberalisation includes privatisation of state-owned enterprises (SOEs), which had been initiated, in the early 1980s. Privatisation intensified after 1985 when three of the largest SOEs, National Commercial Bank, the Caribbean Cement Company and Jamaica Telecommunications Company, were divested. The financial sector reforms commenced in 1986, followed by extensive reforms in the year 1991 and included financial market liberalisation,

Box 1: Important Service Sectors in Jamaica

Telecom: Currently, there are over 3.0 million active voice telephones in Jamaica for the population of 2.6 million people, representing an average of over 1.14 telephones per capita.

Transport: The sector has benefited from major investment projects such as Highway 2000 (72 km road) and the North Coast Highway (97 km road) which have facilitated more efficient passenger as well as freight transportation. In 2006, this sector contributed 13.3 percent to GDP, up slightly from 12.3 percent in 2001.

Distributive Sub-sectors: The distributive sub-sector covers wholesale and retail activities, with tourism represented in the sub-sector hotels, restaurants and clubs. Historically, distribution has been the largest single sector contributing the most significant annual contribution to GDP, and growing since the 1960s. Distributive trade has contributed an annual average of over 20 percent to Jamaica's GDP since 2001. When combined with tourism, the contribution of this service sub-sector averages over 25 percent annually since 2001. In Jamaica, tourism activity is recorded under the sub-sector Hotels, Restaurants and Clubs, which is part of Miscellaneous Services (about 75 percent) in the national accounts.

Banking and Insurance: This sector (banks, insurance, mortgage societies, and credit union, real estate and business services) has averaged annually just over 12 percent in its contribution to value added output. In 2006, the sector contributed 12.2 percent to Jamaica's GDP.

Table 1: Jamaica's Horizontal Commitments

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	Measure	
Mode	Market Access	National Treatment
3	Compulsory company registration commitment also implies specific administrative responsibilities mandatory	No restrictions on ownership of land. (Commitments seem to suggest that authorities can or may intervene to ensure that land is used for specified projects)
4	Work permits, visas and licenses normally required. For work permits, grant is on non-competing basis. Managers and executives exempt from Work Permit for period less than or equal to 30 days; For experts and specialists for periods less than or equal to 14 days	Two types of treatment: <ul style="list-style-type: none"> Managers, executives, experts and specialists, no limitations specified; For all other categories unbound (Technically speaking, these conditions are the same)

Source: WTO. (1996), 'Trade Policy Review: Jamaica Report', Caricom Secretariat

liberalisation of exchange and interest rates and removal of restrictions on foreign investment flows.

In terms of fiscal restraint, an important area of administrative reform was geared towards reducing the size of the public sector; the government/GDP ratio (which reflects the size of the public sector) fell from about 50 percent in 1986 in the late 1980s to 24 percent in 1989, but increased to 35 percent in 1996. The size of the public sector was reduced from 105,000 to 75,000 during the 1980s.

There were also significant changes in the country's tax structure with policies simplifying the tax system. Further, import-licensing requirements were abandoned and import quota requirements significantly reduced in order to liberalise. With respect to tariff reforms, a large number of tariffs and duties were simplified and ultimately reduced. Major outcomes of the IMF and the World Bank programmes have been reduction in expenditure on social infrastructure and an economy over burdened by debt.

The liberalisation policies also led to major financial market crises in 1996. The debt to GDP ratio shows Jamaica to be one of the highest indebted nations in the world reaching as high as 150 percent. In 1996 Jamaica abandoned its relationship with the IMF. Since then Jamaica also has significantly reduced its borrowing and diluted its relationship with the World Bank. Economic policies however continue to be influenced by external factors particularly the wider globalisation of trade and financial markets.

Regulatory Reforms in the Services Sector

The main areas, which experienced major reforms as a result of the liberalisation and structural adjustment programmes in Jamaica, were the utilities and the financial sectors. The other main growth area in service trade and tourism underwent very little change apart from growth in the cruise ship business. Although privatisation received the most attention, the reforms also involved major structural and regulatory changes in the utilities and financial sectors. Government also introduced an anti-trust law in 1993, making Jamaica one of 12 developing countries to have enacted competition legislation at the time.

Utilities were regarded as natural monopolies, which meant that a single firm could provide services at lower cost than two or more firms. As a result, Jamaica restricted entry to the telecommunications, water, electricity and transport markets and either allowed a state owned firm to control the

industry, as with water utility or a private franchised enterprise with public regulation, as was the case in telecommunications (telephone). Even though technological changes have made the natural monopoly argument in telecommunications and electricity less tenable and the transport industry has always been subject to competitive markets, a single firm has typically dominated these sectors.

With privatisation of telecommunications, electricity and one of the airports and partial liberalisation of public passenger transport, regulatory changes became an integral part of the reform agenda as a means of protecting consumers, reassuring investors and promoting competition, especially in the network industries. Independent regulation in the 1990s took the form of re-regulation, with the introduction of the Office of Utilities Regulation Act in 1995 and the creation of the Office of Utilities Regulation (OUR) in 1997 to replace the Public Utilities Commission (PUC), which had been introduced in 1966 and operated until 1975.

The Jamaican financial sector had also developed under severe restrictions in the pre-1980 period. With liberalisation and privatisation in the financial sector after 1987, the concern was market failure, from information asymmetry and externalities rather than any natural monopoly consideration. In order to support the liberalisation and the development of a market based economy Jamaica decided to introduce policies to tackle problems of market distortion and generally to provide a framework for a more competitive economy.

This resulted in the introduction of the Fair Trading Act (1993) and the Fair Trading Commission. The central features of the new policy and law were the prohibition of certain types of restrictive business practices, restricting unfair consumer practices and liberalisation of the professional services market (Sampson, 1995).¹

The primary legislative instruments governing the utilities sector are the Office of Utilities Act, 1995, which set up the OUR and the Fair Trading Commission Act of 1993 and the Consumer Protection Act of 2004. In addition, each industry carries industry specific legislation setting out how regulation should be handled in that particular industry. OUR was given the mandate to regulate electricity, telecommunications, water & sewerage disposal and transportation (ferry, rail and public passenger). The main functions of OUR are:

- to receive and process licence applications;
- recommend the awarding of licences to the respective portfolio minister;

- promote the interests of the consumer while having regard for the interest of the provider;
- make available information on the sector to the public;
- set rates and service standards; and
- provide advice to the portfolio minister.

Regulatory Appeals Tribunals

There are various appeals tribunals provided for industries regulated by the OUR. In addition, provisions exist for similar tribunals to be established for communications under the Broadcasting Act and for the financial sector under the Financial Services Commission (FSC) Act. In practice, they are established on an *ad hoc* basis, providing for potential proliferation of regulatory appeals tribunals.

The Fair Trading Commission (FTC)

The governance structure and mandate of the FTC as a statutory body is provided under the Fair Trading Commission Act of 1993. Its main role is to provide for the maintenance and encouragement of competition in the conduct of trade, business and in the supply of goods and services. Its main functions are to conduct investigations into anti-competitive practices in trade (including services) and business and take the necessary corrective action in relation to its findings. The board of the commission consists of five part time members headed by a chairman appointed by the portfolio minister. The board of commissioners is supported by a secretariat headed by an Executive Director appointed by the Commission and approved by the portfolio minister. The Executive Director also serves as one of the five commissioners.

The Consumer Affairs Commission (CAC)

The Consumer Affairs Commission was established as a result of the Consumer Protection Act, 2004. The Commission itself is not a regulatory body, but plays a role in correcting market failure whereby it acts as a consumer advocacy agency. In addition to such responsibilities it is expected to champion the cause of the consumers and in so doing provide information to citizens about their rights as a consumer investigate complaints of dishonest practices, act as a mediator from time to time and initiate court action if necessary.

The Act provides for an advocacy role in the area of sale, purchase or provision of goods and services, establishing the rights of protection and duties of consumers and providers. It deals with misleading information, deceptive conduct, false representations, unfair and unsafe practices and ensures that contracts made between consumers and providers contain provisions that satisfy the test of reasonableness.

The WTO Negotiations and GATS Commitments

Jamaica became a member of WTO on March 09, 1995 and was one of the several developing countries to have made commitments under the GATS in the mid 1990s. The Ministry of Foreign Affairs and Foreign Trade have responsibility for formulation of trade policies and for the negotiation of bilateral and multilateral agreements. Jamaica's trade policy is also guided by the provisions of the Revised Treaty of Chaguaramas, which obliges member countries to coordinate certain external trade arrangements with the other member

states of the Caribbean Community. Jamaica is a member of the CARICOM Single Market and Economy (CSME). The aim of a single market is to create a single economic space in the region to facilitate the free movement of goods, services, capital and people.

Under the GATS, countries committed to liberalise trade in services on a general obligations and specific commitment basis. Under general obligations, the principles (most favoured nation treatment, national treatment and non-discrimination) as enshrined in the General Agreement on Tariffs and Trade (GATT) were adopted. Specific commitments were negotiated with undertakings based on Market Access (Article XVI), National Treatment (Article XVII) and Additional Commitments (Article XV111) of the GATS. Participating countries were required to schedule only those measures, which were inconsistent with these provisions, as they relate to the specified sectors or service activities.

Jamaica scheduled 'horizontal' commitments regarding commercial presence and movement of natural persons for all sectors included in its schedule. Specific commitments were made in business services (including professional services, computer and related services, research and development services, real estate services and other business services; educational services; recreation, cultural and sporting services and transport services). The commitments in professional and other business services, including computer services generally accord national treatment, employment of foreigners ("presence of natural persons") is subject to the relevant domestic legislation. For some services (e.g. tax agents) an economic needs test may be required. There are no bound restrictions with respect to national treatment. Total foreign ownership is allowed in all sectors.

Jamaica also presented a Schedule of Specific Commitments to the GATS Negotiating Group on Basic Telecommunication (NGBT) in 1996. These commitments were finalised in 1997. Jamaica also presented specific offers to the GATS Negotiating Group on Financial Services in 1998 when the limited restrictions on foreign ownership in the insurance sector were proposed for removal. Jamaica scheduled horizontal commitments on commercial presence and the presence of natural persons for all sectors included in its Schedule² are set out in Table 1.

Specific Commitments

Jamaica made specific commitments in the sectors (see Table 2). The commitments in professional and other business services, including computer services generally accord national treatment; employment of foreigners ("presence of natural persons") is subject to the relevant domestic legislation. For some services, (e.g. tax agents) an economic needs test may be required.

Treatment of Modes of Supply

- Telecommunication:** In Mode 1 (cross border supply) some services such as voice telephone services (domestic, fixed network only) and voice telephone services using international, wire and wireless networks have not been allowed to bypass the supervision of

Table 2: Jamaica's Specific Commitments

Sector	Sub sector/Activity
Business Services	Professional Services Computer Related Services Research & Development Services Real Estate Services Other Business Services, namely advertising Services, Market research and public opinion polling services, Management Consultancy
Education Services	Primary Education Secondary Education Higher Education
Financial Services	All Insurance and Insurance Related Services Life, Accident and Health Insurance Non-Life Insurance Auxiliary Insurance Services Re-insurance and Retrocession
Health-Related and Social Services	Hospital Services
Tourism and Travel Related Services	Hotel and Restaurant Services Travel Agency and Tour Operator Services
Recreational, Cultural and Sporting Services	Entertainment Services Entertainment Services
Transportation Services	Maritime Transport Freight Services Road Transport Passenger Transportation Services
<i>Source: WTO. 'Trade Policy Review (2006) Jamaica Report', CARICOM Secretariat</i>	

exclusive private operators before September 2013. For other services, such as packet-switched data transmission services and electronic and voice mail, full market access has been given to the cross border supply of these services. Full national treatment will be accorded to Foreign Service suppliers using this mode of supply. Under Mode 2 (consumption abroad), full market access and full national treatment will be given in all of the telecommunications services except for voice telephone services, telex services, telegraph services, private leased circuit services, facsimile services and enhanced/value-added facsimile services. Limitations have been placed on the market access of those Foreign Service providers using Mode 3 (commercial presence) of supply. The application of work permits will be the most common form of limitation for both market access and national treatment. However, under Mode 4 (movement of natural persons) foreign managers and executives will be exempted from the work permit requirement if they stay for a period of less than fourteen days.

- (ii) **Tourism:** In respect of tourism Jamaica's Schedule of Specific Commitments under the GATS sets no limitations on market access for cross-border supply, consumption abroad, and commercial presence, for the activities of hotels and restaurants, as well as travel

agencies and tour operators. Only the movement of natural persons remains unbound. Similarly, there are no limitations on national treatment.

(iii) **Financial Services:** Fast growth accompanied by lax credit policies led to insolvency problems resulting in government intervention through the Bank of Jamaica and the creation of the Financial Sector Adjustment Company (FINSAC) to rescue some institutions and enhance regulation. Most of the banks and insurance companies taken over by the government after financial collapse have since been privatised.

(iv) **Banking:** The Department of Supervision of Banks and Financial Institutions of the Bank of Jamaica (BOJ) is responsible for the supervision of banks and specified financial institutions. BOJ has a large array of regulatory tools to direct the operation of the banking sector. In 1998 the Jamaica deposit Insurance Corporation was established to manage and administer the deposit insurance scheme. The banking system consists of commercial banks, merchant and trust banks, finance companies, building societies and development banks. Minimum capital requirements vary according to the type of financial institution (they are higher for banks) and also, in the case of banks, according to whether the bank is foreign or national); for prudential reasons foreign-

owned banks are subject to higher minimum subscribed capital requirements than local banks. Licensing requirements for foreign-owned banks are the same as those for domestic banks. Foreign banks may establish both branches and subsidiaries. The same capital-fixed-asset and credit limit exposures apply to foreign and domestic-owned banks. The Bank of Jamaica (Authorised Dealers) Order 1995 authorises institutions licensed under the Financial Institutions Act to operate as authorised dealers. Authorised dealers are allowed to lend and borrow in foreign currency, as well as trade foreign currency instruments. Apart from this, there are also *cambios* and *bureau de change*, which are authorised to buy and sell foreign currency only.

- (v) **Insurance:** The Financial Services Commission (FSC) is in charge of the verification needed to register insurance companies. Authorisation by the FSC has to be consistent with the Insurance Act. Foreign insurance companies are required to establish a branch or agency to operate in Jamaica. They are also required to deposit in Jamaica the equivalent of the capital requirements set for locally incorporated companies. Jamaica has made national treatment commitments in both the life and non-life insurance sectors during the Uruguay Round negotiations. These commitments were

enhanced in the Negotiations on Financial Services, concluded in December 1997. All forms of insurance activities are open to foreign suppliers; the sector has been further liberalised and is open to foreign investment with up to 100 percent foreign equity permitted.

- (vi) **Securities Trading:** The FSC is in charge of granting the licenses required to operate in the Stock Exchange. The Stock Exchange also has associate members with no trading rights. The Stock Exchange Council is the governing body; its members include two representatives from the public sector and up to four broker-members, and a representative of the associate members.
- (vii) **Air Transport:** There are two major airports in Jamaica: Norman Manley International in Kingston and Sangster International in Montego Bay. Vancouver Air Services was recently given a concession to operate Sangster International for 30 years. The flag carrier, Air Jamaica was privatised in 1994, however after financial failure it was reacquired by the state in 2005. There are nine local operators providing charter services, all of which are totally locally owned, in accordance with the Civil Aviation Act, 1966, which requires that airlines be substantially owned and controlled by Jamaican citizens. Airline operations are monitored by the Civil Aviation Authority, under the Ministry of Transport and Works. Maintenance services are provided by private operators. National treatment applies on the provision of these services, subject to technical requirements.
- (viii) **Maritime Transport:** Maritime activities are mainly governed by the Marine Board Act, the Port Authority Act, the Merchant Shipping Act and the Harbours Act. The Port Authority of Jamaica, a statutory public company, has regulatory responsibility for the operations of both privately and publicly owned ports. Jamaica is a member of the UN Convention on a Code of Conduct on Liner Conferences. It has exempted cargo reservation from MFN treatment in its Schedule under GATS, limiting it to signatories of the Convention for an indefinite period. Shipping services are provided by over 30 shipping lines. Jamaican shipping companies may benefit from the incentives included in the Shipping Incentives Act, which exempt them from income tax and from import duties for a period of 10 years after their establishment.

Conclusion

Since 1995, Jamaica has made significant strides in meeting its obligations under the relevant WTO Agreements. Implementation has taken the form of the upgrading and modernisation of the legislative and institutional framework with a view to facilitate compliance. Jamaica has implemented the WTO Agreements on Anti-dumping, Subsidies and Countervailing Measures and Safeguards through the Customs Duties (Dumping and Subsidies) Act, 1999. Jamaica fully supports the development and maintenance of an international regime for the promotion and protection of IPRs.

Jamaica has experienced a major transformation in its economy, moving from a goods producer in the immediate post-war years to a service economy. The service sector in terms of GDP contribution has grown from 50 percent in 1960 to 70 percent in 2006. In terms of export earnings the service sector has increased its share from 26.2 percent in 1976 to 69 percent in 2005. The major areas attracting investments are tourism, telecommunications and transport infrastructure. Jamaica's main areas of competitive advantages are also in the services sector; tourism, telecommunications and financial services. Jamaica has yet to fully exploit the potential of certain service sectors such as health services, educational services, culture, sports, entertainment and offshore financial services.

Jamaica has a substantial body of legislation and regulatory agencies to guide developments in the service sector. Some of these regulatory rules and laws however require updating to reflect changes in technology and developments in the market place. In terms of the regulatory framework there is too much reliance on the portfolio minister to support the establishment of rules and regulations. There is a need to improve the governance structure of the OURA and to establish a corporate style or executive supervisory board so as to improve transparency and accountability.

In terms of the appeals process there is a need to set out limits on the appeals process, the grounds on which appeals may be permitted and the composition of the tribunal while providing for a single structure, with a permanent secretariat and a pool of specialised experts that might be called upon from time to time. There has been very limited regional cooperation to date in terms of developing the services sector within CARICOM. So far each country has sought to unilaterally liberalise its market. Much could be gained from more regional cooperation. It is hoped that the establishment of the CARICOM Competition Authority will mark a new beginning in terms of regional cooperation.

Endnotes

- 1 Sampson, Cezley (1995), *Economic Competition and Restrictive Business Practices: The Development of the Jamaica Competition Legislation*, Geneva UNCTAD
- 2 Caricom Caribbean Export Development Agency (2004), 'Jamaica Country Brief', Caribbean Community Secretariat, Guyana

This Briefing Paper is an abridged version of Jamaica's country background paper prepared by Cezley Sampson and Claremont Kirton, Part Time Lecturer and Senior Lecturer & Head, Faculty of Social Sciences respectively, University of West Indies, with support from the Economic Affairs Division of the Commonwealth Secretariat, London under the project entitled, 'Services Trade and Domestic Regulation: A Multi – Country Study in Commonwealth Asia, Africa and the Caribbean'.

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