

A Review of Proposals on Autonomous Liberalisation in Services

The subject of autonomous liberalisation had been under consideration since the preparatory stage preceding the Seattle Ministerial. In the discussions that followed, particularly in the context of the Special Sessions held under the auspices of the Council on Trade in Services in 2000, which focused specifically on the issue of the treatment of autonomous liberalisation, there were exchanges on the definition of autonomous liberalisation (AL) and discussions on whether credit should be granted to autonomous liberalisation in the new market access negotiations, and if so what kind of credit. In this regard, there seems to be an emerging consensus on the recognition of autonomous liberalisation. However, the criteria for determining what qualifies as autonomous liberalisation and the methodology to be adopted to determine how AL measures should be credited are still being discussed.

While, the drafters of the General Agreement on Trade in Services (GATS) had not worked out the details on how autonomous liberalisation should be treated, Article XIX of the Agreement contained a mandate to develop modalities for the treatment of autonomous liberalisation stipulating that Member Countries should "establish modalities for treatment of liberalisation undertaken autonomously by Members since previous negotiations". In this regard, there has been general agreement on the desirability of formulating relevant criteria prior to the start of negotiation of specific commitments. Several proposals on elements for criteria and modalities for granting credits for autonomous liberalisation have been tabled including proposals from the European Union, the United States of America, Korea, Hong Kong and a Group of Developing Countries including Dominican Republic and Cuba.

Autonomous Liberalisation Measures:

Autonomous liberalisation measures may take various forms. The spectrum ranges from policy changes directly affecting terms of market access or national treatment to regulatory reform, which indirectly affect market access conditions. Several developing countries had also undertaken autonomous liberalisation measures in the context of adjustment programmes under the IMF and the World Bank. In December 1998, developing countries, in the General Council on coherence between the International Monetary Fund, the World Bank and the WTO, called for the recognition of those measures. Document WT/GC/W/140 contains a checklist of issues raised during that discussion.

Justification of Recognition for AL Measures:

Reasons given in support of the recognition of autonomous liberalisation measures include: the need to protect the negotiating position for those Members which have undertaken autonomous liberalisation and the desirability of giving other Members the incentive to undertake autonomous liberalisation. Recognition of AL measures is also important in so far as it adds an element of transparency to the negotiation process.

Treatment of Autonomous Liberalisation under the GATT:

Autonomous liberalisation first became a negotiating issue during the Uruguay Round and was discussed quite extensively in the negotiating group on market access. The product of those discussions was a paper distributed in December 1991 by the Chairman of that Group. It was called the Chairman's guidelines on (a) Credit for tariff bindings and the liberalisation of non-tariff measures, (b) Recognition for autonomous liberalisation measures.

Paragraph 9 of the Chair's Guidelines stated that "Developing countries which have autonomously liberalised tariffs or non-tariff measures since 1 June 1986, will be given appropriate recognition by other individual participants in the context of achieving the Uruguay Round trade liberalisation objectives." It was also recognised that longer term approaches to this issue needed to be determined. ***Hence there was recognition of autonomous liberalisation measures under the GATT.*** Prerequisites for the treatment of autonomous liberalisation under the GATTs were: that AL measures be GATT – consistent; be notified at an early stage of the negotiation and that there be a contractual commitment to be made that trade liberalisation would be of a lasting value to trading partners. (Background Note by Secretariat on Autonomous Liberalisation, WT/TF/COH/S11, June 1999)

However, while the Chairman's Guidelines had no legal force, the essential difficulty for the treatment of autonomous liberalisation under the GATT was that contracting parties could not agree as to whether autonomous liberalisation meant tariff bindings undertaken autonomously, or the application of tariffs below bound rates. Consequently countries had difficulty in determining what measures were to be given recognition. With respect to how credit was granted for autonomous liberalisation under the GATT, this is somewhat difficult to determine since what countries had done in relation in their bilateral tariff negotiations remained largely unknown.

Proposal on criteria and modalities – the European Community and their Member States (S/CSS/W/133 22 February 2002):

1. General considerations

- Modalities and criteria for the treatment of autonomous liberalisation should be developed to allow Members to seek credit for such measures on the basis of agreed principles. ***Special consideration should be given to the situation of developing, and in particular least developed, country Members.***
- In the context of the negotiating process favourable consideration will be given by Members to requests for credit for measures of autonomous liberalisation if and to the extent such measures are bound in the schedule of specific commitments of the Member concerned as part of the final outcome of the negotiations.
- Full transparency is an important element for the process of assessing requests for credit for measures of autonomous liberalisation. GATS Article III already contains transparency obligations for Members and these could be supplemented by the procedures set out in section 4, particularly for sectors where no specific commitments have yet been made.
- Members having provided information about autonomous liberalisation measures shall be given appropriate opportunity to discuss their request with the Members from whom credit is sought.

2. Relevant Measures

- Measures that could give rise to credit are those susceptible of being scheduled in the Member's list of specific commitments.
- Such measures should have been undertaken autonomously since previous negotiations by the Member seeking credit in the sector concerned

3.Criteria to be taken into account in determination of credit

- In seeking to agree on the appropriate credit, the Members concerned shall, inter alia, take account of the following criteria:
- the liberalising nature of the specific measure concerned,
- the WTO conformity of the measure,
- the contribution of the measure to the objectives of the GATS negotiations,
- the relevance of the measure to the Member from whom credit is sought,
- the binding nature of the liberalisation.
- Verifiable statistical evidence, where available, should also be taken into account.

4.Procedures

- A Member wishing to seek credit for any or all of its relevant measures should inform either the Council for Trade in Services, or the specific Members, of its intention to seek appropriate credit for such measures.
- Such information should clearly identify the measure for which credit is being sought, give details based on the criteria above and specify the credit being sought.
- Information about relevant measures shall be given at such time to allow appropriate time to evaluate the request.

These proposed procedures provide for addressing relevant transparency related issues with regard to the treatment of AL measures.

Hong Kong, China Proposal on Modalities and Criteria for the Treatment of Autonomous Liberalisation (S/CSS/W/134, 15 March 2002)

The Communication from Hong Kong and China on “Autonomous Liberalisation” proposes that the criteria and modalities for the treatment of autonomous liberalisation are to be established for the purpose of negotiations of specific commitments under Article XIX. ***In accordance with the Negotiating Guidelines, "account shall be taken and credit shall be given in the negotiations of specific commitments to autonomous liberalisation measures, based on multilaterally agreed criteria"***. Thus any criteria and modalities developed should also recognise the need for them to complement the modalities for the negotiation of specific commitments as a whole.

The main elements identified in this proposal are:

1. ***Measures to be considered should be over and above the bound level of commitments of the liberalising Member.*** (In this context, the value of a certain liberalisation measure will be dependent upon the actual and/or potential level of trade that would be allowed to take place with the introduction of such measures, as well as the legal certainty of that measure.)
2. ***That there should be a readiness to bind the specific commitment as part of the current round of negotiations.*** (The supporting argument is that measures for which credit would be granted and the credit so granted should be bound, so as to provide predictability, legal certainty, and fairness. Moreover the question should not arise as to whether the credit should also be subject to withdrawal at later stage, especially if the measures in question were to be adjusted or invoked subsequently.)
3. ***The value of an autonomous liberalisation measure should be judged both in terms of the actual and/or potential commercial value of the measure to the liberalising***

Member's trading partners, as well as its role in facilitating the economic development of the liberalising Member itself. (For instance, a liberalisation measure undertaken in the telecommunications or other infrastructural sector of an individual Member may be of relatively little interest to its trading partners in general, but it could be of significant value to the economic development of the Member itself. In line with the general objective of promoting progressive trade liberalisation, account should be taken of this factor when determining the value of the measure.)

4. ***Given that a fair amount of autonomous liberalisation measures might have been in force for sometime, they could be fairly well known to the liberalising Members' trading partners, and may be accorded relatively low negotiating priorities in requests. These measures might not therefore be "requested" in the request and offer negotiations, or might even become the de facto starting point for negotiations in practice.***

The need for multilaterally agreed modalities and criteria was emphasised.

Proposed Elements for Criteria:

In addition to previous proposals on the criteria to be applied for determining autonomous liberalisation, listed in paragraph 11(d) of Job No. 7580, the following set of elements are proposed, which may be agreed to multilaterally, and which may also be taken into account during bilateral negotiations where the treatment of autonomous liberalisation is being considered.

(a) All liberalisation measures that were undertaken outside the context of all WTO negotiations leading to the current schedules of commitments should potentially be recognised as autonomously taken by Members since previous negotiations (in the present context this should mean the Uruguay Round and the extended negotiations).

(b) Liberalisation taken over and above the existing schedules of commitments could include:

- (i) de facto measures over and above the existing binding;
- (ii) measures undertaken unilaterally by a Member as a result of domestic policy change; and
- (iii) measures undertaken by a Member as a result of FTAs and to be extended to all Members on an MFN basis in accordance with sub-paragraph (d).

(c) For a measure to be recognised for credit, it must be susceptible of being scheduled or committed under GATS, i.e. those schedulable under Art. XVI, XVII and XVIII, or those leading to the elimination of MFN exemptions.

(d) In line with the principle of MFN and non-discrimination, which is a fundamental tenet of the multilateral trading system, only AL measures which are applied on an MFN basis should be recognised for credit under the criteria and modalities for treatment of AL measures. This should include extending measures which are currently applied on a non-MFN basis (in sectors where MFN exemptions have been undertaken) to all Members on an MFN basis.

(e) AL measures which a Member is willing to bind at the end of negotiations should be recognised as eligible for credit.

(f)The trading value of the AL measure to the trading partner concerned, having regard to actual and/or potential commercial interests. This may be considered in the light of, for example, the weighting of the sector or mode in which autonomous liberalisation is taken, to the GDPs of the relevant trading partners, subject to availability of credible statistics.

(g) The significance of the AL measure in promoting the economic development of the liberalising Member, having regard to its level of development.

(h)The gap between the AL measure and the de facto level, if the AL measure for which credit is claimed is not the de facto measure.

Proposed Elements for Modalities:

As regards possible elements for modalities, it was proposed that an AL measure may be used to claim credit either:

- (i) in making requests in respect of specific trading partners for liberalisation in general or in specific sectors; or
- (ii) in making offers either in response to requests in the same or a related sector. Here, the requesting Member should be responsible for providing information regarding the AL measure for which credit is sought, describing its significance to the Member's economic development, indicating a willingness to bind the measure by the end of the negotiations if credit is granted, and explaining its relevance to the requests being made (if applicable).

The trading partner(s) should evaluate the trading value of the AL measure put forward to it by the liberalising Member, having regard to its actual or potential commercial interests. Where it is considered that an AL measure is of little or no trading value, the trading partner(s) should provide information on the evaluation as early as possible to allow time for the liberalising Member to request consultation.

Where the liberalising Member, after consultation with the trading partner concerned, failed to gain credit for its AL measure requested for either in requests or offers, the Member may notify the Council for Trade in Services, Special Session and requests for a peer review of the AL measure and the credit sought.

An oversight role is envisaged for the Council for Trade in Services, Special Session in order to ensure that the multilaterally agreed criteria are applied in an appropriate manner, in line with the understanding of the membership. This is consistent with the function of the Council for Trade in Services, Special Session as the forum overseeing the conduct of services negotiations at Council and subsidiary level.

For the modalities of treatment for AL measures to be operational, notification and transparency of AL measures, for which recognition is sought and credit is granted in the negotiation process, would be necessary. Such notification and transparency should meet the same level of requirements as under Art. III. In particular, the notification should describe the measure and its significance to the Member's economic development, and indicate a readiness to bind the measure by the end of the negotiations, if credit is granted. Phased-in notification and transparency should be allowed to tie in with the negotiation process.

Proposed outline of notification procedures:

- (a) If a Member wishes to claim credit for an AL measure from its trading partners for its requests, the AL measure should be inscribed alongside the Member's requests for its trading partners.
- (b) If a Member wishes to claim credit for an AL measure from its trading partners in it offers, the AL measure should be inscribed alongside the Member's offer.
- (c) Alternatively, a Member who wishes to claim credit for an AL measure may notify the Council for Trade in Services, Special Session at any time its intention to claim credit for that particular AL measure.
- (d) All AL measures for which credit has been claimed and is to be granted should be notified, if not already done under (c).

It should be noted that the proposal by Hong Kong, China does not address the question of the nature and form of the credit to be granted for eligible autonomous liberalisation measures.

Proposal on the Treatment of Autonomous Liberalisation – Korea (S/CSS/W126, 30 November 2001):

Modalities for the Treatment of AL Measures:

The Korea submission proposed that any modality developed for the treatment of autonomous liberalisation measures should satisfy at least the following two requirements:

- First a Member which had liberalised trade autonomously must not be required to liberalize more than other Members that had not undertaken as much liberalisation; and
- Second, the modalities to be developed should be applied on a cross-sectoral basis, not on a sectoral basis i.e. autonomous liberalisation in one sector could confer benefit to other sectors.

The Korean proposal also emphasised the need for a formula. It was argued that without such a formula, all the service negotiations will be based on the request-offer approach, where the negotiations leverage is tilted to the disadvantage of countries, which have autonomously liberalized. Hence, it is desirable to have a simple and practical formula, which would facilitate the assessment of the value of autonomous liberalisation measures. *Such a formula would serve as a reference point or benchmark, not a binding formula at the negotiations process.*

AL Measures to be considered:

The Korean submission proposed that AL measures to be considered for credit should be limited to those autonomous liberalisation measures, which can be reflected in the national schedule. That is, horizontal measures affecting overall sectors, and measures related to market access, national treatment, and additional commitments.

Binding:

The Korean submission supports the binding of autonomous liberalisation measures undertaken in the context of regional trading arrangement, noting that these measures can be considered for credit with the understanding that they would be bound at the end of the negotiations, so that they would be applicable to all WTO Members on an MFN basis.

Notification:

To identify the nature and scope of autonomous liberalisation measures for credit, Members need to notify their autonomously liberalized measures. To alleviate concern that such a notification would lead to pressure from negotiating partners to bind those measures, a procedure of handling those notified measures and a credit allocation mechanism need to be put in place prior to notification. Otherwise, some Members may opt not to notify their autonomous liberalisation measures.

Calculating Credit for AL Measures:

It was proposed that credit for autonomous liberalisation measures should be granted with the understanding that all the measures for which credit are granted would be bound at the end of the negotiations. With respect to the modalities for granting credit, the Korean paper recommends the improvement index as a basis for credit and explains that the index can be calculated at various dimensions including for the overall service sectors, for certain service sector, for a certain sub-sector and for a certain mode of supply.

In the absence of the exact weights of significance among market access, national treatment and national treatment, the above-mentioned Index could be calculated for market access, national treatment and additional commitment independently. For example the Improvement Index of market access for communications services would be calculated independently of the Improvement Index of national treatment for mode 3. For the purpose of calculating the Improvement Index, horizontal measures are to be allocated in the relevant parts of market access, national treatment and additional commitment.

The Improvement Index value can be used as a basis for credit and for the exchange of concessions in the negotiations. WTO members may want to use this credit to request an equivalent improvement of market access and national treatment in the relevant areas (overall sectors, some specific sectors or specific mode of supply) from their negotiating partners.

The most clear-cut way of using the Improvement Index is to use the Index for the purpose of exchanging concession within and across the modes of supply. For instance, if a country improved its Improvement Index for mode 3 related to market access by the value of 20 %, it may request a comparable increase of the same mode 3 or other mode of its interest from the negotiating partners, under the condition that its autonomous liberalisation measure would be bound at the conclusion of the negotiations. For example, if the country improved its market access by 30% in a certain service sector, it may request its negotiating partner to improve market access by a comparable degree in the same service sector, under the condition that its autonomous liberalisation measure would be bound at the conclusion of the negotiations.

Hence, all these different value assessments of each mode of supply within a particular sector and for the overall sectors imply that any reasonable formulation of agreeable weight to a mode of supply may not be practical. A possible way out of this problem is to assign the same weight to each mode in the absence of consensus on the exact weights.

One may calculate the weight value of a sector on the volume of trade and investment, but it is not easy to do so. Different countries may assign different values to the sector reflecting its productivity, market size, and so on. The same argument as developed in the mode of supply is applied in this case as well.

Calculation of the Improvement Index:

In the first step, depending upon what the parties are trying to compare for purposes of negotiation, we calculate a score based on the current situation and a score based on the notified autonomous liberalisation (NAL). In the negotiations, parties may want to calculate the improvement index for (a) a particular mode of delivery, (b) for a particular sub-sector, (c) for a particular sector, or (d) for the national schedule as a whole. Depending upon what the parties want to calculate, they follow the calculation procedures outlined below.

3. In the second step, using the two scores derived in the first step, we calculate the actual Improvement Index (II) which measures the degree of improvement resulting from the notified autonomous liberalisation.

The Korean submission is the only one which proposes a formula for calculating credit for autonomous liberalisation measures.

Submission on Autonomous Liberalisation and Developing Countries (S/CSS/W/130, 30 November 2001):

The submission from Brazil, Colombia, Cuba, Ecuador, Dominican Republic, Guatemala, Honduras, Indonesia, Malaysia, Nicaragua, Pakistan, Panama, Paraguay, Peru, Philippines, Senegal, Uruguay and Venezuela posits that “*the origin of this issue of autonomous liberalisation and the subsequent discussions during the Uruguay Round show that it was specially thought up in favour of developing countries.*” Therefore the aim of the discussions should be to establish how these countries could obtain recognition and/or credit for their autonomous liberalisation measures. It was noted that at the Mid-Term Review 7 (Montreal, 5-9 December 1988 and Geneva 5-8 April 1989), paragraph 7 (f) of the document “*Increasing participation of Developing Countries*” of Part II. *Negotiations on Trade in Services*” states that “Autonomous liberalisation of market access in favour of services exports of developing countries should be allowed.”

Criteria for granting credit:

This submission focused primarily on the granting of credit and recognition of autonomous liberalisation measures under the GATT. It was noted that the traditional GATT approach towards granting credit and recognition for autonomous liberalisation measures was to assess the value of specific tariff bindings by individual developing countries within the Uruguay Round. The Chairman's Guidelines on a common approach towards granting credit and recognition for autonomous liberalisation measures prepared by the Negotiating Group on Market Access under the title “*Uruguay Round Market Access Negotiations and Developing Countries*”, December 1991, aimed at supplementing the traditional GATT approach. ***These guidelines were to provide a minimum level of credit which should be given practical effect in the negotiations where each participant can make a qualitative assessment of tariff bindings and reductions, including on what constitutes a meaningful rate of ceiling bindings.*** This could take into account the trade coverage of the tariff bindings, and have regard to particular developing countries' trade and economic development stage. These guidelines were to be applied in accordance with the relevant provisions of the Punta del Este Declaration and the Mid-Term Review on Market Access, including the principle of “differential and more favourable treatment.”

In the Chairman's Guidelines it is also proposed that developing countries which reduce substantially or eliminate totally NTMs should be given additional credit towards achieving the Montreal target.

This submission makes the case that autonomous liberalisation was “specially thought up in favour of developing countries” by pointing to the discussions in the Uruguay Round and specific references in the Chairman’s Guidelines under the Negotiating Group on Market Access (paragraphs 6,7,8 and 9) which include express references to developing countries. It is on this basis that the submission argues that the link between autonomous liberalisation and developing countries must be emphasized during the current negotiations on trade in services, particularly when establishing the modalities and/or criteria for the treatment to AL Measures. It also makes the case that modalities and/or criteria established should provide a minimum level of credit which could be given practical effect in the negotiations.

Communication from Cuba, Pakistan, Senegal, Sri Lanka, Tanzania, Uganda, Zambia and Zimbabwe:

A communication from Cuba, Pakistan, Senegal, Sri Lanka, Tanzania, Uganda, Zambia and Zimbabwe on “Increasing Participation of Developing Countries in International Trade in Services” (S/CSS/W/131 6 December 2001) links autonomous liberalisation directly to special treatment for LDCs, pointing to paragraph 3 of Article XIX which also mandates that the Negotiating Guidelines shall establish modalities for the treatment of autonomous liberalisation as well as for the special treatment for the LDCs.

United States Proposal on for Modalities Treating with Autonomous Liberalisation (S/CSS/W/4, 13 July 2000):

In its Communication Framework for Negotiation the United States proposed the following such modalities:

- First, any Member that has liberalised autonomously in a particular sector, mode, or type of measure since the end of the Uruguay Round and through the end of the current round should make the nature of the liberalisation known to interested trading partners.
- Further, that Member and any interested trading partner should discuss and seek agreement on their respective bindings relative to the autonomous liberalisation. The liberalising Member could discuss the issue of credit with more than one trading partner. Additionally, it may be possible to set agreed targets for multilateral liberalisation (e.g., in the form of model schedules) against which the value of particular autonomous liberalisation measures might be gauged.

An Analysis of the Proposals and Recommendations:

The submissions on autonomous liberalisation have focused on issues such as the nature of autonomous liberalisation; the relationship between autonomous liberalisation and binding of measures autonomously liberalised; transparency; ways of assessing the value of autonomous liberalisation and ways of transferring this value into credit. Rather than get into the technicalities of various methods for calculating credit such as the one outlined in the Korean proposal, CARICOM may wish to focus on broader notions of “credit” and explore the various ways for granting such credit. In this regard, it is in the interest of CARICOM Member States to assess the extent of autonomous liberalisation that has taken place since the Uruguay Round. Trade officials may wish to revisit the matter of adequate statistical data in the area of services in an effort to determine whether there is sufficient information to facilitate a comprehensive

assessment, at the level of Member States and at the Regional Level, of the extent of autonomous liberalisation. Such an assessment would allow for a general appreciation of the broad implications of the recognition autonomous liberalisation for the region and form the basis of a pro-active strategy for lobbying the WTO on autonomous liberalisation and for formulating an approach to the granting of credit for autonomous liberalisation which would favour the interests of the region. What is equally important is the development of a strategy for maximising any credit obtained i.e. identifying areas where CARICOM Member States may want liberalisation or market access from its trading partners.

It is notable that paragraph 13 of the March 2002 Negotiating Guidelines addressing autonomous liberalisation states the following:

“Based on multilaterally agreed criteria, account shall be taken and credit given in the negotiations for autonomous liberalisation undertaken by Members since previous negotiations. Members shall endeavour to develop such criteria prior to the start of the negotiation of specific commitments.”

With regard to multilaterally agreed criteria, an integral part of CARICOM’s strategy should be an intensive lobby to ensure that such criteria is agreed upon, so as to ensure that there is no postponement of the granting of credit simply through blocking the adoption of multilaterally agreed criteria. It is therefore important for CARICOM to examine the various submissions and to identify elements which it is willing to support in the context of a “multilaterally agreed criteria.”

Possible Elements of a CARICOM Proposal on the Treatment of Autonomous Liberalisation in Services:

General Considerations: CARICOM may wish to support or reiterate the proposal by the European Union that the modalities and criteria for the treatment of autonomous liberalisation should allow Members to seek credit for AL measures on the basis of agreed principles, while giving Special consideration to the situation of developing-country Members.

CARICOM may also wish to state in its general considerations its preference that the granting of credit should not be contingent on the binding of autonomous liberalisation.

With regard to transparency obligations being based on GATS Article III, this has already been signed on to in the context of the existing General Agreement on Trade in Services. Procedures for ensuring transparency are also set out in the Chair’s document on “Modalities for the Treatment of Autonomous Liberalisation.” This document requires further consideration by Negotiators for Member States and Trade Officials particularly with respect to section IV on Procedures. (See JOB(02)/35).

Criteria: CARICOM may wish to give favourable consideration to the following proposals for criteria for the recognition of autonomous liberalisation measures:

1. All liberalisation measures that were undertaken outside the context of all WTO negotiations leading to the current schedules of commitments should potentially be recognised as autonomously taken by Members since previous negotiations (Hong Kong, China)
2. Liberalisation taken over and above the existing schedules of commitments could include:

- (a) de facto measures over and above the existing binding;
- (b) measures undertaken unilaterally by a Member as a result of domestic policy change; and
- (c) measures undertaken by a Member as a result of FTAs (Hong Kong – it should be noted that the original Hong Kong proposal states that only AL measures applied on an MFN basis should be recognised for credit. The implications of this need to be explored further)

In the area of criteria to be taken into account in determination of credit, CARICOM may wish to give favourable consideration to the inclusion of the following proposed criteria:

1. The liberalising nature of the specific measure in question (European Community)
2. The contribution of the measure to the objectives of the GATS negotiations (European Community)
3. The value of an autonomous liberalisation measure should be judged both in terms of the actual and/or potential value of the measure to the liberalising Member's trading partners, as well as its role in facilitating the economic development of the Member itself, having regard for its level of development. (Hong Kong, China)

Modalities: CARICOM may wish to consider the following possible elements to be included in modalities governing how AL measures may be used to claim credit:

1. In making requests in respect of specific trading partners for liberalisation in general or in specific sectors; or
2. In making offers either in response to requests in the same or a related sector. Here, the requesting Member should be responsible for providing information regarding the AL measure for which credit is sought (Hong Kong – the original proposal included reference to binding).

It is critical that Trade Officials in CARICOM review and give guidance on the Chair's Draft on "Modalities for the Treatment of Autonomous Liberalisation," March 2002, particularly since any proposal/submission being made would have to take into consideration the discussions thus far.

There are several other important questions which should be considered in the drafting of a proposal and these would require the input of trade policy officials in the region.

1. **The Scope of the trade liberalisation measures:** It should be decided whether the liberalisation measures included all the measures as defined in the GATS, or whether they had to be confined to measures listed in the schedule of specific commitments, including additional commitments. Proposals tabled includes Korea's which proposed that credit should be limited to those measures which can be reflected in the national schedule and; Hong Kong's which is more general "measures considered should be over and above the bound level commitments of the liberalising Member."
2. **Notification:** It should be decided whether all liberalisation measures were to be notified or only those measures for which a Member wanted recognition. In the discussions in the Council on Trade in Services, some countries argued that notification should be voluntary and that the notifying Member should not be bound by the notified measures. CARICOM may wish to give further consideration to this position when defining its position on notification. It should however, be borne in mind that the argument was made that while at the outset measures being notified would not be bound, it is anticipated that measures granted corresponding credits would be bound at the end of the negotiations.

The proposal by Korea is also worth considering with a view to endorsing. It proposes that a procedure of handling notified AL measures should be put in place to alleviate concerns that such notification would lead to pressure from negotiating partners to bind measures notified. Korea also proposes that a credit allocation mechanism be put in place prior to notification.

The Hong Kong, China submission includes a general outline of notification procedures, while these should be reviewed, it should be noted that the proposed outline does not address the above-mentioned concerns referred to in the Korean proposal.

3. ***Value of the liberalisation measures:*** In order to facilitate the granting of credit, there will have to be some criteria to determine how the value of a liberalisation measure should be assessed. Liberalisation measures may be considered to have different values depending on the modes, sectors and also their weight in the economy. However, the same measure might be valued differently by trading partners. The Korean proposal is the only one which makes recommendations on a measure to serve as a basis for credit. It proposes the improvement index as a basis for calculating credit at various levels including the overall service sectors, for certain service sectors and sub-sectors. This proposal would require further consideration, including an assessment of whether the relevant data exists to facilitate the calculations and the possible implications of such calculations.

The fact is that the use of a formula to calculate the value of liberalisation measures is a highly technical undertaking which requires that consideration be given to:

- The number of sub-sectors with each service sector;
- The weight of different modes of delivery for sub-sectors;
- The weight of different service sectors;
- The criteria for assigning numerical values; and
- A scoring system

The submission by the group of developing countries including the Dominican Republic and Cuba, makes mention of the use of guidelines under the GATT to provide for a *minimal level of credit* which could be given practical effect in the negotiations where each participant makes a qualitative assessment of the relevant measures. This may be somewhat more difficult to establish in services negotiations, but the use of a “minimal level of credit” should be given further consideration. In addition this proposal emphasizes that the negotiating guidelines were to be established taking into consideration the principle of “differential and more favourable treatment.” Developed member countries, however, may not welcome the inclusion of this kind of language.

4. ***Assessing entity:*** Who would assess liberalisation measures? Even if the same criteria were used, the assessment would be different depending on who actually made it. Thus, it might be more appropriate if all assessments were made by the same entity. The submissions examined did not address the matter of an assessing entity in any definitive manner and this will continue to be matter for consideration in the Council for Trade in Services.
5. ***Binding status:*** With regard to the binding of AL measures several submissions including those by the European Union proposed that favourable consideration be given to requests for credit for measures of autonomous liberalisation *if and to the extent* such measures are bound in the schedule of specific commitments of the Member concerned as

part of the final outcome of the negotiations. Hong Kong's proposal refers to eligibility for credit based on a willingness to bind, albeit at the end of the negotiations.

In discussions under the Council for Trade in Services, Kenya argued that due recognition should be given to autonomous liberalization, without necessarily binding those measures, since this would, in essence, be contrary to the whole notion of progressive liberalization.

CARICOM may wish to join its voice with other developing countries which support the position that recognition and credit of AL measures should not be contingent upon those measures being bound. In its proposal it may wish to argue that the statement in the Negotiating Guidelines formulated by the Council on Trade in Services "account shall be taken and credit shall be given in the negotiations" does not imply that credit can only be received by *binding* the autonomous liberalisation as a commitment in the framework of the GATS market access negotiations. CARICOM may also wish to underscore that the nature of autonomous liberalisation is different from "binding commitments in the negotiations" and that taking account of autonomous liberalisation should not result by simply asking countries to bind such liberalisation. Furthermore, the question of binding is a complex issue for a developing country, particularly when that country is undergoing structural and regulatory reforms in the services sector. CARICOM may therefore wish to consider the argument that binding AL measures could prove to be problematic for its developing countries which for obvious reasons need the flexibility to adjust and modify an unbound measure. At the same time however, it would be important to underscore the point that autonomous liberalisation and the recognition of AL measures could be an important way of achieving the objectives of the GATS without listing the commitments in a schedule.

The proposal of recognising autonomous liberalisation measures and the granting credit for those measures with the aim of binding those measures at the end of the negotiations would require further consideration by CARICOM as an approach to dealing with the question of binding. In this manner credit is not contingent on AL measures being bound, at least in the initial stages of the negotiation, allowing Members to retain some degree of flexibility, while not compromising their negotiating position. ***The challenge is to ensure that credit granted for autonomous liberalisation is not contingent on binding the measures in question***, and that the language adopted under criteria and modalities for the treatment of AL measures reflect this.

DG
RNM Jamaica
6/6/2002.