WORLD COMMERCE REVIEW

ISSN 1751-0023
VOLUME 3 ISSUE 4 ■ DECEMBER 2009

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7. **S**ubstantial, successful, sustainable business base already in place across the primary, secondary and tertiary sectors. It's a case of functional magnetism – companies like to be located synergistically, with more than 65% of the Province's GGP produced in Durban, along with the Durban Chamber of Commerce being the largest Metro Chamber nationally. Business is clustered around the manufacturing, tourism, services, maritime, logistics and agricultural industries. Having the second largest business and industrial base in SA provides many options for suppliers, support services, customers and employees, which are all important factors of production.

These are the 'ALL HITS' Super 7 key reasons that make Durban attractive to both residents and visitors alike.

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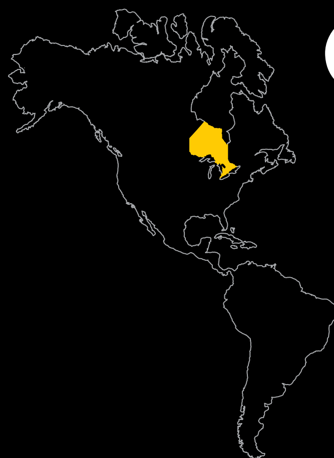

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A Successful Doha Round Is Essential

Recent headlines have been dominated by Dubai and Copenhagen. However, perhaps the most important item was an attempt to put life into the Doha talks. It's true that collapsing trade worsened the crisis, but trade's revival could do much to shore up prospects for a sustained upturn. Unlike many stimulus measures, reviving the Doha Round and strengthening the open multilateral system could be achieved with little, if any, fiscal cost.

The Dubai scare has provided a sharp reminder that while the worst of the financial crisis is over the hangover from the debt binge will still inflict more pain. Much of the banking system remains fragile, particularly in continental Europe. Dominique Strauss-Kahn, head of the IMF, has warned that banks have admitted to only half of likely losses from the financial crisis. The IMF expects write-downs in the financial sector of another $1.5 trillion (£0.9bn) bringing the estimated total to $3.4 trillion. The IMF also says that US banks have written down 60 per cent of their non-performing troubled assets, but the EU's institutions have written off only 40 per cent.

That's $900bn more in losses for US banks, and $1.9 trillion more for European banks. It is probable that many Continental banks have significant bad debts in Eastern Europe and elsewhere in the continent that have yet to come to light.

According to new estimates by Moody's, the credit rating agency, the total stock of sovereign debt worldwide will have risen by nearly 50 per cent between 2007 and 2010 to $15.3 trillion. The great bulk of this increase comes from the big advanced economies – America, Europe, and Japan.

The crisis in Dubai has been a sharp reminder that there are still more aftershocks of the credit crunch to cause concern. Getting the banks off life support will be a slow process, which has already involved substantial costs to the taxpayer. Growth will probably be disappointing during the next couple of years and events such as Dubai will make it harder to engineer a sustained recovery.

Meanwhile protectionism is spreading through trade and finance and could intensify ahead of American congressional elections next year. The Doha Round of global trade negotiations may not have all the glitz of Copenhagen and climate change, but a positive conclusion to the talks will make the world a healthier and better place.

Doha is vital because the rules that determine global trade are in the main archaic, having been drawn up decades ago, before the internet was even imagined. The friction on the free flow of goods is holding the world economy back. The amount of wealth generated from a successful Doha conclusion would be huge. The surge in world trade over the past decade was in large part due to the slashing of barriers under Doha's predecessor, the Uruguay Round, which was completed in the early 1990s.

Unfortunately vested interests have caused the Doha negotiations to drag on. Once again politics has been influenced by lobbyists, in this case US agriculture. The World Trade Organisation needs strengthening; it is the only forum where countries can discuss new forms of protectionism – such as barriers linked to commitments to reduce carbon emissions – and prevent unilateral trade measures.

It is time for the political elite to recognise that saving the world can cost little, if Doha is resurrected, and doesn't need all the grandstanding and expense that Copenhagen offers, an expense in scale to the cost of the financial crisis. ■

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ISSN 1751-0023

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Contents

Foreword 3

Contents 4

Europe and Russia: Moving to Win-Win
Dr Fraser Cameron 6

Trading With China: Win-Win Or Zero Sum Game?
Stanley Crossick 8

India's Commitment to Equitable, Fair, Free and Sustainable Trade
Pritam Banerjee 14

New Challenges to Brazil's Trade Policy Agenda
Armando Monteiro Neto 16

Trade Remedies in Brazil: Trends Post-Economic Slowdown
José Setti Diaz, Cinthia Battilani and Fernando Bueno 18

Agricultural Insurance in Brazil: Huge Potential, Many Obstacles
Marc Tueller, José Cullen and Juerg Trueb 22

Regulatory Framework for New Payment Mechanisms in the European Union
Jürgen Brandstätter 28

Renaissance of Depositary Receipts?
Dr Piotr Zapadka 30

Specialist Commodity Derivatives Firms: A Case for Differentiated Regulation
Anthony Belchambers 32

The Use of Dutch Hybrid Legal Entities in Group Structures of Multinational Enterprises
Joseph Peters 36

Ernst & Young's 2009 Global Transfer Pricing Survey – Tax Authority Insights: Perspectives, Interpretations and Regulatory Changes
Oliver Wehnert 40

Mortgage Bonds in Luxembourg
Vassiliyan Zanev 42

Professional Investor Funds and Malta
Olga Finkel and Ruth Zammit 46

Global Trade Management: The Key to International Trade Efficiencies
Karen Lobdell 48

Cyprus Joint Ventures: Flexibility for Russia, CIS and India
Demetris Loizides 50

Internet Governance Forum 2009
International Chamber of Commerce 52

Business Leaders Warn Against Demise of Internet Governance Forum
Jonathan Huneke 54

Bermuda - A Rock of Stability and a Launch Pad Into the Future
Ministry of Energy, Telecommunications and E-Commerce, Bermuda 56

In a Global Economic Downturn, Business Aviation Demonstrates Value to Companies and Economies
Dan Hubbard 62

A Flexible Way to Manage and Finance Your Private Travel - Interview with Thomas Flohr, Chairman of VistaJet Holding 66

Flying Private In Today's World 68

Central Europe's New Business Aviation Development Association Lands In The Czech Republic - Interview with Dagmar Grossmann, Founder of CEPA 70

OECD Green Growth Strategy – Beyond the Crisis
BIAC - The Business and Industry Advisory Committee to the OECD 72

Energy Efficiency, A Key Factor in Meeting the Climate Change Challenge
Carlos Busquets 76

Reduce the Carbon Footprint - Q&A with Jeremy Eaton, Vice President, Global Energy Solutions for Honeywell Building Solutions 78

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Europe and Russia: Moving to Win-Win

Fraser Cameron is the Director of the EU-Russia Centre, an independent information and expertise resource for anyone interested in the relationship between the EU and modern Russia

The EU-Russia summit in Stockholm last month was a sober, stock-taking exercise. Trade, energy, climate change and the on-going EU-Russia negotiations for a new partnership agreement were the top items on the agenda. But it is safe to assume that the minds of the leaders were elsewhere. On the EU side, attention was focused on the share-out of top EU jobs under the Lisbon Treaty. The day after the Stockholm summit, EU leaders gathered in Brussels to name Belgian Premier, Herman von Rompuy, as the new EU President and Trade Commissioner and Baroness Cathy Ashton, as the EU's new High Representative for Foreign and Security Policy. On the Russian side, President Medvedev's attention was on domestic matters and particularly how to kick-start the sluggish Russian economy.

One agreement was signed at Stockholm covering an enhanced early warning system should energy supplies be endangered. Critics would argue that a similar deal had been signed two years ago, but this had not prevented two winter gas wars between Russia and Ukraine, affecting millions of EU citizens. There was also a declaration on the importance of reducing carbon emissions in the run up to the Copenhagen climate change conference. But, unlike the EU, climate change is (regrettably) almost a non-issue in Russia.

The other issues discussed, trade and the EU-Russia negotiations, are closely inter-related. The EU had hoped for some clarity from the Russian side as regards Moscow's intentions on the question of WTO accession. Last summer, Prime Minister Vladimir Putin had stunned Brussels, and most of his colleagues in Moscow, by suddenly announcing that Russia would only join the WTO together with its customs union partners, Belarus and Kazakhstan. This would postpone Russian accession for several years and threaten the EU-Russia negotiations which were based on the premise that Russia would join the WTO as a precursor to an EU-Russia free trade agreement. The EU side left Stockholm no wiser as to Moscow's intentions and thus the EU-Russia negotiations are likely to remain in limbo for some time.

"How can the EU and Russia break out of this impasse in their relations? The obvious win-win area is economic cooperation"

How can the EU and Russia break out of this impasse in their relations? The obvious win-win area is economic cooperation. Russia has been hit more severely than the EU or most large countries by the global financial crisis. While China expects to grow at 8.5% this year, Russia faces a dramatic 11% drop in its growth rate. The IMF expects only a modest recovery of 1.5% growth in 2010.

Given the severity of the crisis in Russia what lessons has the leadership drawn for future policy? This is not an easy question to answer due to the lack of transparency in the Kremlin and the continuing disputes between the liberals and hard-liners. While the liberals would like to see Russia open up more to the outside world and reduce state interference in the economy, the hard-liners favour a more protectionist stance and a continuing strong role for the state.

The current policy rests on the Russia 2020 plan. This is an ambitious programme agreed by Putin and Medvdev to modernise the economy by concentrating on innovation, institutions, infrastructure and investment. Most experts, however, agree that it has zero chance of success as it is based on a top-down approach. The rapidly rising and increasingly corrupt state bureaucracy is a major obstacle to change.

Talk of Russia relying on its own resources to shield it from the swings of global markets has faded and its leaders have embarked on a new charm offensive to win back foreign investors. Last month, Mr Putin told a high-level group of Western investors that Russia needed foreign investment as it could not provide sufficient domestic capital. As Russia prepares to return to international debt markets for the first time in a decade, Mr Putin's message was direct: *"We have had neither a mass nationalisation, nor did we slide back to overarching administrative measures. We have kept the free movement of capital and the convertibility of the rouble. There will be no return to the past. Russia remains a liberal market economy."*

Despite Mr Putin's exhortations, there has been no rush back to the Russian market. Indeed the well publicised cases of BP, Shell, Telenor and IKEA underline how much Russia still has to do in terms of fighting corruption and establishing the rule of law. The continued imprisonment of Mikhail Khodorkovsky, the former Yukos boss, is evidence of the failings of the judicial system.

Russia also faces other problems. One of its biggest concerns is the monograds – the many cities across Russia reliant on one industry. Built in the Soviet era when central planning was the order of the day, these cities are now suffering from a fall in demand, whether for cars, cement, fertilisers, and a failure to diversify. The government is concerned about potential social unrest if these cities collapse and Prime Minister Vladimir Putin has been shown on television flying in to find solutions to some of the worse hit cities.

Another major worry is the banking system which is increasingly under state control and clogged by bad debts. While the crisis revealed the importance of having huge discretionary funds at their disposal, the government has been struggling to decide which economic sectors and enterprises should be supported. The government has also been relying on the state banks as a driver of lending growth, funnelling about Rbs1,000bn of state funds into their capital. As assets held by the biggest state banks start to mount and bad loans climb, the state now has control of more than 50 per cent of the Russian economy, according to Alexei Kudrin, the Russian finance minister. A major worry for the government is whether a banking system under so much strain through bad debts is going to be capable of financing a recovery. Dmitry Peskov, Mr Putin's spokesman, insists the state banks will sell assets they have taken over as soon as markets have recovered. Russia is also hoping to tap into foreign markets. Experts expect Russia to issue $20bn of sovereign eurobonds in the coming year to fund its budget deficit, which could be the beginning of a return to capital markets by Russian companies, which were cut off from foreign finance last year during the credit crunch.

Many liberals regret that the leadership has not used the crisis to reduce state interference and bring about deeper reforms. There is also a more fundamental debate about the future path of the economy underway in Russia. This was sparked by President Dmitry Medvedev in an unusually frank article in September on the news website Gazeta.ru. He followed this up in his state of the union message which was equally sharp. He said that 'Russia had an ineffective economy, a semi-Soviet social sphere, a weak democracy, negative demographic trends and an unstable Caucasus.' The article and speech were seen as an implicit attempt to distance himself politically from his predecessor and mentor, Mr Putin. Mr Medvedev has also championed Russia's high-tech industry and criticised the dependence on raw materials. But as is so often the case, this may just be brightly coloured window dressing. It is clear who is the dominant figure in the Medvedev-Putin tandem.

Against this background how can the EU help Russia to modernise its economy? The EU is already the top trading partner for Russia – 55% of its exports go to the EU – and the top investor – 65% of FDI comes from the EU. The EU has the finance, technology and know-how to help Russia modernise its increasingly outdated infrastructure, especially

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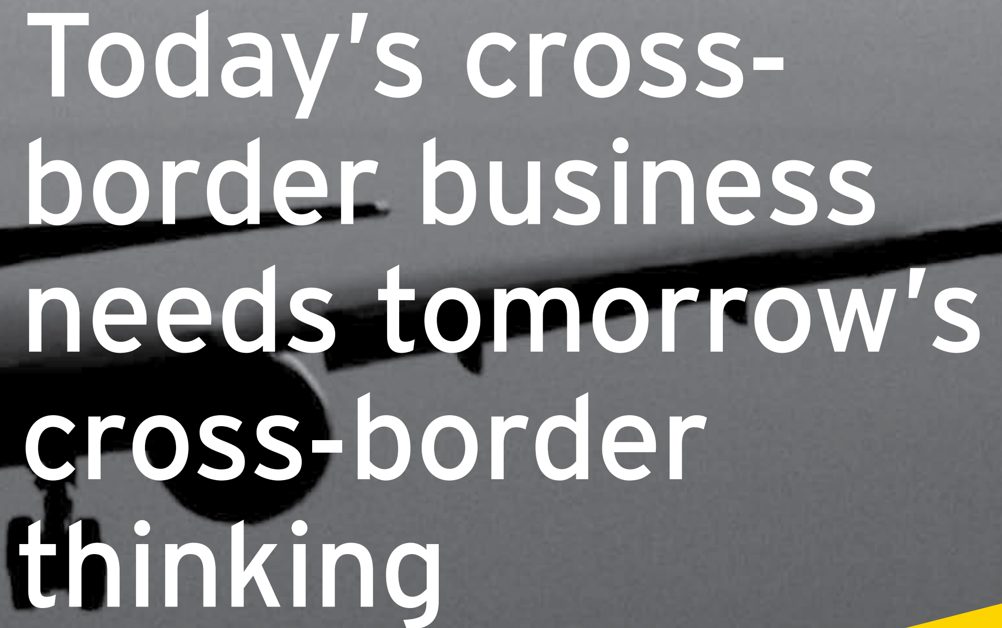

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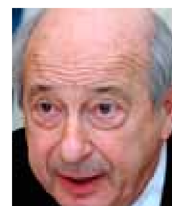
in the energy sector. The EU is heavily dependent on Russian energy but as a result of recent 'gas wars' it is looking to diversify its energy supplies and speed up the introduction of renewable energy. Russia wastes an enormous amount of energy. For example, it loses more gas each year than France consumes. Tackling this problem would also help Russia meet its Kyoto targets for CO_2 emissions.

The EU and Russia need to consider a new deal whereby the EU offers to help modernise the economy and guarantees security of demand for Russian energy. In return Russia would ease its restrictive new laws on foreign ownership and take steps to improve the court system. Russia should also recognise the importance of early membership of the WTO and drop its insistence on joining only with Belarus and Kazakhstan. This would then pave the way for a free trade agreement between the EU and Russia.

Pragmatic cooperation on the economic front should contribute to greater understanding on other issues, including the common neighbourhood and foreign policy issues such as Iran and Afghanistan. It should also be accompanied by moves to abolish visas and greatly expand educational and scientific exchanges.

It will not be easy to move from an atmosphere of suspicion to one of mutual cooperation. But both sides stand to gain from a new approach. A strong, stable, prosperous and increasingly liberal Russia is very much in the interests of the EU. ■

Trading With China: Win-Win Or Zero Sum Game?



Stanley Crossick is a Senior Fellow at the Brussels Institute of Contemporary China Studies (BICCS). BICCS is part of the Vrije Universiteit Brussel and aims to increase European political, economic, social and cultural understanding of contemporary China; and to be an academic hub between Europe and China. It has 12 experts working on China and also an extensive teaching resource. See www.vub.ac.be/biccs

A casual reader of the European and American media might be forgiven for thinking that many people see the West losing out to China over trade. It is understandable that many, including of course those who have lost their jobs to China, see a rising trade deficit (EU €169 billion and US $268 billion in 2008) and draw this conclusion. But this is only part of the story.

This article explains the current situation, reviews the trade relationship trade frictions, addresses the issue of market economy status (MES) and looks to the future.

First, some facts:

- China is the world's fourth economy.
- China is the third biggest exporter.
- China is the EU's second largest trading partner.
- The EU is China's largest trade partner.
- China is the biggest importer to the EU.
- China is the EU's fourth largest export market
- EU goods exports to China in 2008 amounted to €78.4 billion.
- EU goods imports from China in 2008 amounted to €247.6 billion.
- The EU trading deficit with China in 2008 was €169.2 billion.
- EU services exports to China in 2008: amounted to €20.1 billion.
- EU services imports from China in 2008 amounted to €14.4 billion.
- EU inward investment to China in 2008 amounted to €4.5 billion (€7 billion in 2007).
- China inward investment to the EU in 2008 amounted to €0.1 billion.

The figures are taken from EU official statistics

Current situation

The EU's open market has been a large contributor to China's export-led growth. The EU has also benefited from the growth of the Chinese market and the EU is committed to open trading relations with China. However it pushes China hard to trade fairly, respect intellectual property rights (IPRs) and meet its WTO obligations.

EU's imports from China are mainly low value-added and low technology goods. EU's exports to China are mainly high value-added and high technology goods. However, China is moving up the value chain, which will increase competition. Southern and Central European low value-added manufacturers are suffering badly from Chinese imports.

There is deep concern over the EU's growing trade deficit (nearly €170 billion in 2008). However, the extent to which it is a China-specific deficit or an overall deficit with lower cost producing countries is arguable. Put another way, if the EU reduced imports from China, would they be replaced by imports from another – probably Asian – country?

World Trade Organisation and market access

The formal accession of China to the WTO in December 2001 was strongly supported by the EU. Chinese commitments improved access for EU companies to the Chinese market. Import tariffs and non-tariff barriers were substantially and permanently reduced.

China has made good progress in implementing its WTO commitments, but there are still many problems, in particular industrial policies which discriminate against foreign companies in the automobile sector. There is inadequate protection of IPRs, and obstacles to market access in a number of services sectors including banking, construction, express postal services and telecommunications. Access to raw materials is also regarded as a serious trade barrier.

The European market is very open to imports from China. The Chinese are concerned that European protectionism is on the increase. However, "Buy local" provisions in rescue packages during the financial and economic crisis have been resisted. Strict rules are applied to any state aid for industries, ensuring that they are targeted, specific and temporary. The EU market has been kept open, with neither tariffs being raised nor quotas lowered.

There is insufficient trade reciprocity - the legal and administrative restrictions on European companies trading and investing in China are far greater than those Chinese companies face in Europe. This feeling is confirmed by the European Union Chamber of Commerce's *"European Business in China Position Paper 2009/2010"* which was published in September 2009.

European businesses have observed a slowdown in the pace of reforms over the past 12 months, with some sectors reporting that the situation has actually worsened as industrial policy interventions and foreign investment restrictions have increased.

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Trade frictions

There will always be trade disputes, and the more the trade, the more the disputes. It is vital to avoid their affecting the political relationship. There are always major transatlantic trade disputes (eg Airbus vs Boeing) but they do not affect the non-trade EU-US relationship. This having been said, there may be a spill-over if the trade deficit is not reduced, and this can only be done by increased access to the Chinese market.

Linked to trade tensions is the question of the value of the renminbi. This has always been more an American concern but, with the Chinese currency pegged to the dollar, the euro has substantially strengthened against the renmimbi, thus increasing the trade deficit and making European companies less competitive in China compared with US companies.

Manufacturing in China is helped by an undervalued exchange rate, access to cheap credit, cheap land and to other subsidized inputs and the non-enforcement of environmental and labour standards. There is a danger that trade frictions will cause international companies to reconsider their dependence on China, and diversify their factory investments and sourcing.

Beijing complains that recent anti-dumping measures are driven by protectionism. The Union carried out, in the first half of this year, two anti-dumping investigations and imposed three anti-dumping measures against imports from China. Ant-dumping duties of 24.2% were imposed on Chinese steel rods in July.

It is important to bear in mind that Chinese exports subject to EU anti-dumping duties or currently under investigation, affect less than 1% of imports from China. China acts in a similar manner and has also filed a complaint with the WTO over EU anti-dumping duties and threatened to take retaliatory measures.

However, this does not mean that the EU will adjust its trade policies, because protectionism is against the interests of Europe, being the world's largest trading block. But, in the light of the ongoing global economic recession, there is a risk that political leaders will succumb to calls for protectionism by their electorates.

"The biggest danger for China comes from the US, in the light of the special interest lobbies and the fact that Democrat sentiments are more protectionist than those of the Republican party"

The biggest danger for China comes from the US, in the light of the special interest lobbies and the fact that Democrat sentiments are more protectionist than those of the Republican party.

This can be seen, for example, in the "Buy American" provisions of the $787bn stimulus package. The perception is that China has followed suit with its joint statement in May by nine ministries and government agencies, led by the National Development and Reform Commission (NDRC), that government investment projects should purchase domestic products.

It is believed in the US that the recent WTO Panel ruling on publications and audiovisual products will help open up the Chinese market for everything from magazines, CDs and DVDs, music downloads and books, to film blockbusters, as well as curbing intellectual piracy. It could also set a precedent for others, such as automakers claiming to be hampered by cumbersome Chinese distribution rules. China has appealed against the ruling.

The US has imposed a tariff on China-made tyres - a victory for the complainant, the United Steelworkers Union, over tyre importers and some US tyre manufacturers with plants overseas. However, it does not follow that overall imports will be less as there are other cheaper sources. Even more recently, the US has imposed duties on steel pipes imported from China.

Beijing reacted immediately and opened an investigation into whether car parts and poultry from the US are being unfairly dumped on the Chinese market. A complaint has been lodged with the WTO to have the US tariffs declared illegal. China is also considering possibility imposing countervailing duties on subsidized US goods, the auto industry having been hugely bailed out. There is a history of disagreement over auto products and chickens.

While a China-US trade war is not expected, the deteriorating climate may bring extra protectionist pressure on President Obama. The number of "safeguard" measures brought against China in the first seven months of this year (16 according to WTO) is worrying. This is an insidious measure not requiring proof of unfair pricing.

Foreign direct investment

EU direct investment has fallen, partly due to the economic and financial crisis and partly due to difficulty in merging with and acquiring Chinese companies. Chinese direct investment in the EU is negligible.

High Level Economic and Trade Dialogue

A new strategic mechanism for driving trade and economic policy -the High Level Economic and Trade Dialogue (HED) - was launched in Beijing in April 2008, under the chairmanship of Chinese Vice-Premier Wang Qishan and of the then EU Trade Commissioner Peter Mandelson, as representatives of Premier Wen Jiabao and of European Commission President José Manuel Barroso.

It is intended to strengthen the dialogue between the European Commission and the State Council of China. It deals with issues of strategic importance to EU-China trade and economic relations and is intended to provide impetus to progress in sectoral dialogues. This dialogue allows issues of mutual concern to be addressed. The second HED took place in May 2009 in Brussels, under the chairmanship of Wang Qishan and of the then EU Trade Commissioner, Catherine Ashton.

According to Vice-Premier Wang Qishan, the HED must be "strategic, forward-looking and plan-setting". The HED should not itself address specific issues arising from a large, complex trade and investment relationship, but should ensure that solid results are achieved that reduce the trade deficit and trade tensions.

The EU and China have a large number of bilateral dialogues and mechanisms at working, senior officials, and ministerial level. The HED is not supposed to replace them, but ensure that they operate coherently and give them the necessary political drive when required.

Trade deficit

China had a trade deficit with the EU until 1997. Although the EU is China's largest export market, China is only the EU's fourth (after the US, Switzerland and Russia).

European and Chinese leaders have long been aware of the delicacy of the issue of the trade deficit, and how potentially destabilising it could be for the strategic economic relationship between Europe and China.

The 2007 EU-China Summit declared – at the initiative of Premier Wen Jiabao – that trade imbalances between China and Europe were not sustainable and had to be addressed in a more strategic fashion.

Current needs

Europe seeks a stable, predictable and transparent regulatory framework; a clear, stable, non-discriminatory investment environment; and effective protection of IPRs. China seeks a curb on anti-dumping actions by receiving market economy status, the avoidance of protectionist measures and the unrestricted right to invest in the EU.

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Partnership and Cooperation Agreement

The two polities are laboriously negotiating a Partnership and Cooperation Agreement. The Commission wants a single agreement, incorporating the updating of the 1985 EC-China Trade and Economic Cooperation Agreement. Beijing seeks two separate agreements, the likely outcome, as little progress has been made in the trade negotiations.

Market Economy Status (MES)

The EU, and western companies working in China, insist that there is far from a level playing field in goods and worse still in services.

The obstacles are legal, bureaucratic and practical. Early progress on granting MES is not anticipated. Beijing, however, considers the EU policy to be very unfair. MES will automatically be granted in 2015-16 under WTO rules.

The EU requires four technical conditions to be fulfilled: ensuring equal treatment of all companies by reducing State interference; improving corporate governance; ensuring equal treatment of all companies in bankruptcy procedures and in respect of property and IPRs; and bringing the banking sector under market rules by removing discriminatory barriers. However, the decision is ultimately a political one.

The big advantage to China of the reclassification would be to curb the increasing number of anti-dumping actions. The granting of MES is regarded as one of the few cards the Union has to play in trade negotiations. The obvious quid pro quo is China making market access and investment concessions.

The EU should seek an early deal on MES for two reasons: if the EU does not negotiate soon it will be granted automatically in 2015-6, rendering negotiations useless. There is still an opportunity to wring some greater IPRs protection and market & investment access commitments out of Beijing.

The Chinese need to appreciate that a positive approach to the lifting of MES is in their interests, because of its effect on protectionist trends. The time is also opportune as Beijing has raised the same question with Washington. Agreement would also act as a stimulus to the overall relationship.

> **"But is the model sustainable? It now faces three major challenges: first, how to correct China's uneven development; second, how to cope with the unsustainability of export-led growth; and third, how to handle the value of the yuan"**

The EU should state specifically what concessions are required, proposing that, say, half of them be fulfilled before MES is granted.

Both are also in China's interests. The non-enforcement of IPR is an ongoing problem for European companies. China needs European technology but both for economic development and to achieve a low-carbon economy companies are hesitant to provide it as they run the risk of their IP being improperly exploited. The services sector is inefficient and Chinese companies would benefit from the provision of improved services.

Future

Is the Chinese development model sustainable? Let us first look at its main characteristics. It cannot be defined in simple terms, being in reality a process, its origins lying with Deng Xiaoping. Its key features are pragmatism, trial and error and gradual reform.

The model is not based on ideology but practical steps, first testing the effectiveness of policies and then, when proven, rapidly implementing. Labels do not satisfactorily describe the model, which the Chinese say is based on socialism with Chinese characteristics.

The model has number of key characteristics:

- The state controls the strategic direction of the economy and therefore its strategic sectors: state-owned enterprises still dominate industry.
- The government can thus set and direct its economic priorities.
- From the outset, foreign direct investment (FDI) was encouraged as was higher education abroad of young Chinese, particularly in science and technology.
- China has not hesitated to adopt foreign ideas and practices, such as entrepreneurship, international trade, the market, but has never allowed such foreign imports to interfere with government policies.
- Successive generations of leaders have been able to ensure continued public support for modernization and, at the same time, macroeconomic stability.
- The model has delivered several hundred million people out of poverty.
- Contrary to many Western beliefs, this model, despite its shortcomings, has been more effective than, say, the exported American model based on ideology and democratization, with scant attention to local circumstances.

But is the model sustainable? It now faces three major challenges: first, how to correct China's uneven development; second, how to cope with the unsustainability of export-led growth; and third, how to handle the value of the yuan. It was recognized in 2004 that too great an emphasis was being placed on GDP growth and a more "people-oriented" approach was needed. However, the difference in economic development since then has not been noticeable. The leadership continues to call for "scientific" or sustainable development. Climate change and environmental degradation are deep concerns.

Regarding the second challenge, China relies massively on exports to achieve its growth. The US trade deficit has continued to rise, as does the Chinese currency reserves. Thus, China is lending the US money to buy its exports. This situation is not sustainable and indeed is dangerous.

There is broad agreement that it is in China's own interests to promote consumer spending so as to produce domestic demand-led growth. But the huge incentive package is being spent mainly by state-owned enterprises and on infrastructure projects. While spending has increased, the Chinese remain big savers, so as to provide for their old age, healthcare and education of children.

Needless to say, the non-sustainability of Chinese development would give rise to serious domestic unrest. On the other hand, much greater regard must be had to the environmental dimension which will slow up growth. It is in everyone's interests that substantial economic growth is maintained.

Conclusion

The trade negotiations are not progressing at all satisfactorily. A serious attempt should be made to agree that the EU grants MES in return for effective measures to increase market access, reduce investment restrictions and increase IPR protection. ■

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India's Commitment to Equitable, Fair, Free and Sustainable Trade

Pritam Banerjee is the Head of Trade and International Policy at the Confederation of Indian Industry

The government of India has been one of the key negotiators for the ongoing Doha round of WTO talks, taking a leadership role within the G-20 group of countries, as well as part of the more select group of core negotiators along with US, EU, Brazil and China. It goes without saying that Indian industry has been an integral part of this process, playing a key advisory role to the Indian government as well as engaging governments and businesses of other countries on issues that are central to the Doha round of trade talks.

The need for Indian industry to stay focused on the Doha agenda despite the many challenges and disagreements that has impeded the successful conclusion of these talks arises from a deep understanding of the importance of the Doha round to the process of globalization and the promise of development it offers. Industry stakeholders are under no illusion that the successful conclusion of the Doha round will result in some dramatic increase in trade or even market access for firms in large emerging countries like India. However, what the Doha round does offer are three critical things that lie at the heart of expanding the scope of a truly globalized system of production and consumption that has a space for economic actors from the developing world.

First, it creates greater security of market access. By binding levels of market access commitments it increases the levels of certainty that are crucial for businesses to make longer-term trade related investments. Second, it holds out the promise of addressing issues related to trade distorting measures, especially in agriculture, and making a genuine attempt to deal with non-tariff barriers (NTB) that have become increasingly important as impediments to market access for emerging country firms. Third and perhaps most importantly, it provides much need legitimacy to the WTO that has suffered steady erosion given the inability of members to conclude the Doha round. Indian business is acutely aware that WTO is the one forum that has the potential to level the playing field for all stakeholders in global trade. The relative success of WTO's dispute resolution mechanism to address concerns of the smaller economies vis-à-vis their larger trading partners is a pointer to WTO's institutional contribution. Staying engaged in the WTO process has created greater awareness among Indian firms about the safeguards and rules that are available to them to protect themselves against unfair trade practices. Thus, a successful Doha round would be a signal from the global political leadership that despite the challenges emerging out of the global economic downturn, the commitment to rules based trade liberalization remains firm.

NAMA

Indian industry approaches the Ministerial negotiations in Doha with cautious optimism. For the most part, industry is comfortable with the non-agricultural market access (NAMA) negotiations and the Swiss formula based tariff reduction approach. However, there are some concerns on specific issues that are elaborated in the following paragraphs.

<u>The demand for mandatory inclusion of large emerging economies in sectoral liberalization.</u> Participation in the sectoral liberalization process was always meant to be voluntary as per the Doha agenda. The recent attempts to make participation in such sectoral negotiations compulsory for large emerging economies will only hamper progress at Doha. Accepting the very principle of it would open a Pandora's box. What stops other countries from insisting that certain countries must participate in specific sectoral negotiations given their share of trade in that sector? Indian industry has firmly rejected any attempts to make participation in sectorals mandatory or even attempts to incentivizing participation in such sectoral negotiations.

<u>The inclusion of remanufactured goods</u> in the NAMA agenda is counterproductive, especially given the fact that there is no agreement on what constitutes a 'remanufactured' good globally. Indian industry perceives this as an attempt by multi-national firms based in developed economies to dump their used goods on developing country markets. Any attempt to develop consensus on definitions and product standards governing such trade, including sector specific details would be an extremely complicated process and delay Doha indefinitely. More importantly from a longer term perspective, allowing for trade in such products would decrease ability to build longer-term competitiveness through investments in the value-chain in emerging market economies.

<u>With reference to the sectoral standard making process</u>, the Doha mandate requires members to negotiate reduction, and where appropriate elimination of NTB. A number of product and industry specific proposals have been received thus far. However, these sector specific proposals have cross-cutting common principles that apply to all NTB proposals. This is consistent with the traditional industry position supporting elimination of all non-tariff barriers to trade in goods around the world. However, Indian industry is not very comfortable with the text of the some of the proposals. The process of global convergence on standards should be an open and transparent one, and should not prejudice the standard setting process towards norms prepared by the most advanced economies. Emerging economies would need to stay very closely engaged in the NTB negotiating process to see that their interests are safeguarded.

<u>On environmental goods (EG)</u> the debate has centered around two main issues, the definition of what constitutes an 'environmental' good and the appropriate mechanism of creating market access for such goods. The Indian industry strongly rejects any attempts to club dual-use goods into the environmental goods category and in general is against any positive list approach to liberalization. The best solution would be to adopt a project based approach so that genuine environment related projects can access EG without any tariff barriers.

Services

One area where Indian industry has been somewhat disappointed is the pace of negotiations in services and the inability and reluctance of members to deal with practical business concerns when it comes to trade in services, especially trade in professional and technical services including IT. An effective delivery strategy for services combines Mode 1 (cross-border service delivery) with Mode 4 (movement of professional to deliver a service). A large chunk of many professional services can be done remotely, but there still remains a requirement to have some minimum personnel at the client site. The lack of progress on Mode 4 is thus a terrible disappointment. Mode 4 would have tremendous development impact even for the less skilled workforce and would increase the welfare of consumers in advanced economies who require such services.

On a related issue, much more needs to be done at the multilateral level to start the process of mutual recognition of professional degrees and certifications. Non recognition of these degrees represents a barrier to the global trade in skills and as such counterproductive for global economic growth.

Agriculture

On agriculture, Indian industry fully supports the need for elimination of all distortions in trade in agricultural goods and commodities through substantial reduction in all domestic support off all types provided by developed country members by 2012. Also, full consideration needs to be given to food security and livelihood concerns of farmers in developing and least developed countries. In light of that, WTO would need to evolve rules to make it easier to trigger agricultural safeguards to protect the interests of farmers in the event of import surge or price depression. Another area of concern are the components of sensitive and special products that need to

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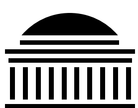

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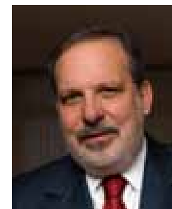
be strengthened so developing country members can address the problems of small and subsistence farmers. Further, developing countries must be given special and differential treatment for border protection and internal support measures in order to secure domestic food supply.

Having spelled out the general industry position, as opposed to some of the key concerns that specific sectors among Indian industry might share, it is important to reiterate that industry stakeholders in India has a very nuanced expectation from a successful Doha round. Doha is but a small step towards the larger goal of equitable, fair, free and sustainable trade. The ideal is of having a world where ALL factors of production, whether capital, labour, technology or goods can move relatively freely across borders. But however small a step Doha might represent towards this ideal, it would symbolize the global community's commitment to get there one day and for that reason alone its success is critical. ■

New Challenges to Brazil's Trade Policy Agenda



Armando Monteiro Neto is the President of the National Confederation of Industries, Brazil

Trade agreements are important instruments to support the international inclusion of Brazilian enterprises, and the negotiations carried out within the WTO play a key role in Brazil's trade policy agenda.

The key role of multilateralism of the Brazilian international inclusion strategies is justified by the structure of our exports, the sectoral composition and geographic distribution of which are quite diversified. The share of commodities (42%) and manufactured products (43%) in the list of Brazilian exports is relatively balanced. No region has a share in excess of 30% of our total sales abroad, and Latin America and Europe have similar shares, oscillating around 25%. These are features that differentiate Brazil from most developing countries and even from other emerging countries.

As a result of the combination of these features – diverse sectors and partners and low participation in international trade – Brazil's interests are best defended in a multilateral system based on clear rules and mechanisms for settling major disputes. This priority does not exclude the relevance of regional and bilateral trade negotiations. A broad range of trade negotiation initiatives are under way, but Brazil has been facing difficulties to make progress on these fronts.

Even before the international economic crisis got worse, in September 2008, global trade was already experiencing greater resistance to liberalization. This resistance – which took different forms, such as an increasing imposition of new non-tariff barriers to trade – was at the root of the deadlock that has undermined the Doha Round in recent years.

Challenges brought about by the crisis

The worsening of the crisis in the last quarter of last year led to cautious postures in relation to new commitments to trade liberalization. The difficulties faced in trade negotiations could be felt not only within the WTO, but also in most regional initiatives.

Although the world has not seen a widespread protectionist spree, most countries resorted to sporadic trade policy measures – usually discriminatory measures – more intensely in the previous one-year period which had restrictive effects on the trade in goods and services, contradicting commitments assumed in the first two summits.

The macroeconomic imbalances that were rooted in the global economic crisis have not been eliminated so far and some of the largest economies in the world continue to adopt trade policies focused on stimulating exports in hope that they can bring about economic recovery. These policies, in turn, nurture lobby pressures for protectionist measures against imports.

Although it has no direct bearing on the economic crisis, the climate change agenda has also contributed to stimulate new forms of trade barriers. Unilateral legislations that threaten to impose barriers on imports from countries that are not committed to reducing greenhouse gas emissions are being discussed in the US Congress and incorporated into specific areas by the European Union.

Impacts on Brazilian interests

In Brazil, trade policy responses to the international crisis have been mainly focused on ensuring greater access to and lowering the costs of export financing, tax costs, and red tape in trade activities.

Actually, no increase in demand for widespread protection on the part of Brazilian industrial sectors has been registered. Although the degree of trade liberalization in Brazil is still relatively low, the integration of imported products into the domestic production chain has grown a lot in various industrial sectors this decade. This trend made it more imperative to speed up customs clearance procedures and to increase the predictability of import operations.

Although protectionist pressures can still be felt in specific corporate sectors, the greater dependence on imported products observed in many economic sectors has led to negative responses to measures designed to reduce transparency and increase discretionary powers of foreign trade management in Brazil. This is so because, among other reasons, these measures affect production for export.

Brazil's economic recovery and the continued appreciation of the domestic currency are stimulating imports already. On the other hand, exports of industrial products continue to be the main source of concerns for Brazilian foreign trade analysts. Studies show that sales of industrial products abroad are highly dependent on the dynamic of foreign demand, which has been affected by protectionist measures adopted in various countries and by competition, as competitors have been resorting to subsidies of different kinds to boost their exports.

Much-needed WTO strengthening

In this scenario, Brazil needs to take a clear stand against protectionism. This is necessary because, among other reasons, there is not much room domestically for a widespread adoption of import-restricting measures and it is within Brazil's interest to avoid greater distortions in international trade.

The existence of the WTO, with its trade rules, dispute settlement mechanism, and role in monitoring domestic policies, seems to have had a relevant impact on reducing incentives to the widespread adoption of protectionist measures in the current crisis period. The main threat that the failure of the Doha Round can pose to Brazil is the weakening of the WTO.

The Brazilian Government and corporate sector made huge efforts to ensure the conclusion of the Doha Round. Even if it is not possible to complete this round in the short run, there is a clear need to strengthen the WTO as a forum for discussing trade rules. It is the only venue where we will be able to discuss new forms of protectionism – including barriers linked to commitments to reduce carbon emissions – and prevent unilateral trade measures from contaminating possibilities for the Brazilian foreign trade to grow. ■

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Trade Remedies in Brazil: Trends Post-Economic Slowdown

José Setti Diaz and Cinthia Battilani are Partners, and Fernando Bueno an Associate, in the International Trade Department at Demarest e Almeida Advogados, São Paulo, Brazil.

Overview

Brazil has been actively participating in the increasing global trade, reaching a highlight position among the main players. Currently, Brazil, alongside China and India, leads the developing country positions in certain sectors of products against the developed countries interests in the Doha Development Agenda (DDA).

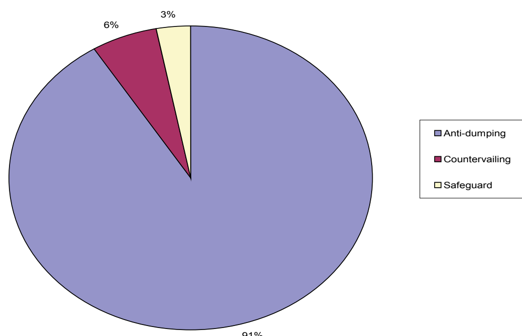
In overall terms the WTO rules aim to uphold the principles of binding tariffs and apply them equally to all trading partners, emphasizing the most-favoured-nation treatment, or MFN, as a key to assuring the regular flow of trade in goods. Nevertheless, some exceptions are also allowed, such as trade remedies.

Trade remedies are trade-policy tools that allow governments to take action against imports which are causing or threatening to cause material injury to domestic industry. These remedies are divided broadly into: anti-dumping measures, countervailing duties and safeguard actions.

Moreover, Brazil has also adopted specific trade remedies, providing rules regarding the Transitional Safeguard Measures against Chinese Products and the Competitive Adjustment Mechanism (Mecanismo de Adaptação Competitiva) negotiated with Argentina; the last was agreed but not internalized by Brazil.

As we can see in the pie chart below, after the establishment of the WTO, in 1995 Brazil firmly adopted the trade remedies provided by the WTO Agreements. Among these trade remedies, the most commonly used in Brazil has been the anti-dumping measures; since 1988 Brazil applied to 163 cases through December 2008. In the same period, countervailing measures were applied in 10 cases and safeguard measures in 5.

Measures Applied 1998-2008



Source: Trade Remedies Department Report 2008

Anti-dumping as the most important remedy

Scenario

According to a recent WTO report[1], the number of new anti-dumping investigations increased by 27 per cent in 2008 compared to 2007. In the second half of 2008 the number of new investigations was 120, while at the same period of 2007 it was 103. In the second half of 2008 Brazil was the second main user of anti-dumping measures, with 16 investigations initiated, staying only behind India.

Up to this date, there are 23 ongoing anti-dumping investigations in Brazil. In 2009 only, the Brazilian Government has initiated 14 investigations. Exports from United States of America, People's Republic of China, India, Bangladesh, Argentina and Indonesia are being affected by these investigations and the variety of products range from footwear, polypropylene - PP, glass ampoules and bottles, blankets of synthetic fibre, barium carbonate, among other products.

The choice for the anti-dumping instrument by the Brazilian domestic producers appears to occur because it includes a balance between technical and political aspects which generates less resistance from the targeted countries. Macroeconomic factors may also have a great influence in the rising of new trade remedies' investigations.

It is possible to see a correlation between the frequent use of anti-dumping measures with the following factors: (i) it is an instrument allowed under WTO rules, provided that it meets certain requirements, (ii) it is characterized by the private nature, since a company or a group of companies are entitled to request the initiation of an investigation, and (iii) selectivity, since the investigation shall specify the country and the product under investigation that are being dumped and causing or threatening to cause injury to the respective domestic industry.

China: main anti-dumping target

China is the highlight among countries that suffer from application of anti-dumping measures. Between 1995 and 2008, China suffered with the implementation of 479 anti-dumping measures, of which Brazil has implemented 38.

China has gained prominence as a target of anti-dumping measures because it is allowed under WTO to be considered as a "non-market economy" until 2016. This means that the country which intends to impose an anti-dumping measure may disregard the Chinese domestic market prices, selecting a third country to make the comparison between its prices and the Chinese export price.

Structure and consequences of an anti-dumping investigation in Brazil

Dumping occurs if the export price of the product exported is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country. If dumping causes or threatens to cause material injury to an established industry or materially retards the establishment of a domestic industry, Brazilian authorities may impose anti-dumping measures to offset the effects of the dumping.

In order to initiate an investigation the complaint must include sufficient evidence of dumping, injury and casual link between the dumped imports and the alleged injury.

During the investigation known interested parties will be notified and have ample opportunity to present in writing any evidence regarding the investigation. For that purpose, additional or complementary information may be requested or accepted in writing, and hearings may be held. Also, interested parties that are not notified may participate in the investigation.

The authorities may perform on-site investigations of the domestic industry, as well as exporters, upon previous authorization of the respective interested party.

Parties may request confidential treatment of special information, since they present sufficient arguments and a non-confidential summary which allows a reasonable understanding of the information. Confidential documents will be lodge in special files.

We have been observing an increase in active participation of exporters lately, and one of the reasons is whether a party fails to provide information timely, denies access to information to the authorities, or prevents regular proceedings. The preliminary and the final determination shall be made on the basis of the best information available in the investigation. Moreover, the investigating authorities have been granting individual treatment for foreign producers and exporters who bring evidence that demonstrates that they did not

MAZOVIA'S Great potential

About Mazovia

Mazovia is the best known Polish district which popularity is based first of all on being the biggest and centrally situated region in the country hence it has easily become an economic leader. Due to its central location, large and absorbent market (more than 5 million inhabitants) which constantly improves as well as its educated and qualified population, Mazovia tends to perform as the most frequently picked up region by overseas investors. Almost 30% of the largest foreign investments are settled exactly here and one of the main reasons of that is the central localization at the crossroads of trade routes, thanks to which Mazovia nowdays is a promising district and has the greatest chances to become an important and equal region in the entire European Union.

Mazovia is the fastest growing voivodeship in Poland that exploits the changes most effectively and is the place where all the economic dynamic transformations of the last decade are visibly seen. Promptly taking an intended advantage of these transformations led Mazovia to position of the economic and change leader among Polish regions. In no other region in the whole country changes went so instantly and so successfully. Mazovia's high in various ways attractiveness beats other regions of Poland and at the same time it draws numerous foreign tourists what makes this region the most visited in Poland. This fact is highly significant to Mazovia's economy (about 5 million people annually, almost 30% of the total number of visitors to Poland).

Mazovia is the voivodeship with a commonly known great history, stunning monuments and of course the immense economic potential and above all – it permanently gets more and more well-prepared to play a significant role among European regions.

Poland, the country situated in the very heart of Europe, is the main beneficiary of foreign direct investments (FDI) in Central Europe: in years 2006, 2007 and 2008 an average FDI worth around EUR 14,4 billion. According to the Polish Agency for Foreign Investments (PAIZ) the most important factors which incline investors to choose Poland as an investment location are the size and absorbency of the market (nearly 40 million inhabitants - the largest country in central Europe), the low labour costs (one of the lowest on the continent), favourable business environment, growing integration with the worldwide economy and the success of Polish privatization. Over 70% of the capital invested in Poland comes from European companies.

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practice dumping or the dumping margin is lower than the general dumping margin calculated by the authority.

Prior to the completion of the proceeding, but never before sixty days from the initiation, the authorities may impose provisional anti-dumping measures. This measure may take the form of a provisional duty or a security – by cash deposit bond – equal to the amount of the anti-dumping duty provisionally estimated, being not greater than the provisionally estimated margin of dumping.

During the investigation, exporters may at own discretion undertake satisfactory obligations to adjust prices or cease exporting at dumping prices. Should the Secretariat of Foreign Trade (SECEX) accept and CAMEX (Foreign Trade Chamber)[2] approve such undertaking, the dumping proceeding may be terminated or suspended with no imposition of duties.

Investigations must be completed within a year from the initiation date, subject to an additional six-month extension under special circumstances.

Anti-dumping duties and price undertakings proposed by exporters will remain in force only as long as needed to mitigate dumping which is causing injury. However, these duties will cease to exist at the most five years following its imposition, subject to extension provided that evidence demonstrates that the extinction of such duties could result in the continuation of dumping and, as a result, injury to domestic industry. For that to occur, regulation sets forth the review proceeding which follows the same regulations as a regular proceeding and it shall be terminated within one year. It is important to highlight that interested parties in review proceedings must file a submission five months before the termination of the five-year period.

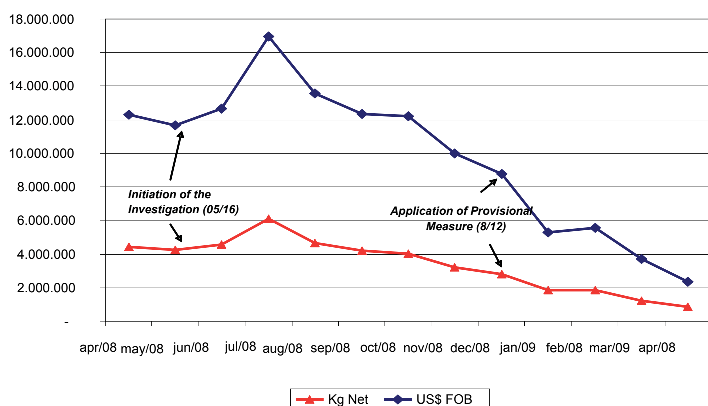
In Brazil, anti-dumping duties take the form of an additional duty on the imports tax as a ad valorem or specific tariff.

Effectiveness of anti-dumping measures

One of the reasons that domestic industries seek this type of trade remedy is the effectiveness of the anti-dumping measures to the domestic industry. This effectiveness is related to a significant decrease in imports. Below it is possible to observe two examples.

In the anti-dumping investigation on new pneumatic tires for use on buses or trucks, during the period of investigation, is verified a sudden increase in imports during the first months of the investigation, probably an attempt to avoid the further application of a duty and assure inventory of the investigated product. After the imposition of the provisional duty there is a significant decrease in the imports.

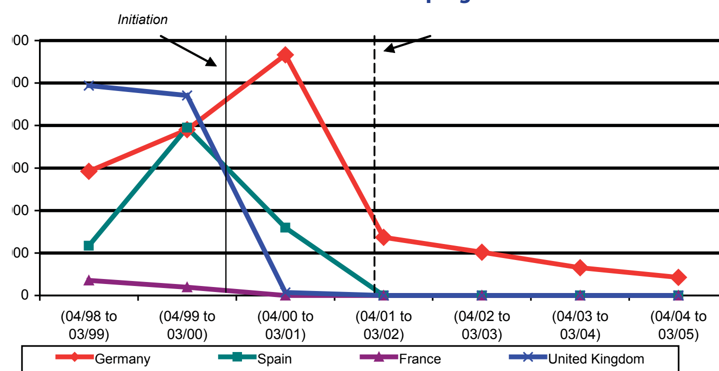
Effectiveness of anti-dumping measures 1



Source: Ministry of Development, Industry and Foreign Trade

In the same direction, the anti-dumping investigation on methyl methacrylate (MMA), when analyzed in US$ FOB, it is possible to observe that there was a decrease in the imports during the investigation (period between the full line and dotted line) and an enormous decrease after the imposition of the definitive antidumping measure (period after the dotted line).

Effectiveness of anti-dumping measures 2



Source: Ministry of Development, Industry and Foreign Trade

Safeguards are not selective

Up to this date there is one ongoing safeguard investigation in Brazil, which is a review, that may continue to reach all Brazilian imports on dried coconuts, with few exceptions.

Safeguard measures may be imposed to a product only if the product is being imported in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products. Unlike dumping, safeguard measures aim at protecting the national industry irrespective of any unfair business act and are applicable when the domestic industry shows no competitiveness as compared to foreign products.

Safeguards take the form of an increase in imports duty or quantitative restrictions.

Unlike anti-dumping, safeguard measures are not selective, since the investigation shall include all Brazilian imports of a determined product, except for the reservations provided by the applicable legislation.

Other safeguard mechanisms

Transitional safeguard measures against Chinese products seeks to limit imports from China which are entering Brazil in such increased quantities or under such conditions as to cause or threaten to cause a market disruption to domestic producers of like or directly competitive products. However, for political reasons, this instrument has not been used to date.

China textile safeguard measures against Chinese products seeks to limit textiles and apparel imports of Chinese origin which are entering Brazil in such increased quantities or under such conditions as to cause or threaten to cause a market disruption to the domestic producers of like or directly competitive products. Also, for political reasons, this instrument has not been used to date.

Another trade remedy instrument, negotiated with Argentina, is the Competitive Adjustment Mechanism, through which imports may be limited from the other country when such imports are causing or threatening to cause serious injury to domestic producers of like or directly competitive products. Nevertheless, this mechanism is not yet effective since it was not internalized neither by Brazil or Argentina.

Countervailing measures: subsidies are difficulty to be demonstrated

Countervailing measures aim to offset subsidies conferred by a state to certain industries or sectors that end up reducing artificially their production costs. The imposition of countervailing duties depends on a conclusion, during the investigation, that the subsidy granted by the other state results in injury to the domestic industry.

In Brazil, countervailing duties takes the form of an obligation to the company under investigation to deposit in cash the necessary amount to offset the subsidies.

It should be highlighted that the last three investigations carried out

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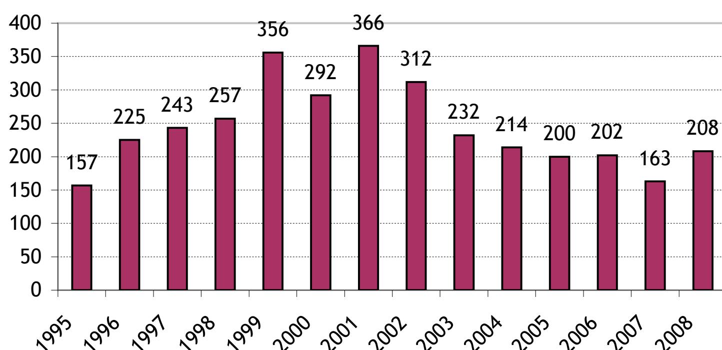
by the Brazilian investigating authorities were against India, by reason of subsidies granted by the Indian government to national producers of polyester film and steel bars.

Unlike other trade remedies, the proof of a subsidy may be extremely burdensome because of the applicable laws. Moreover, it is difficult to evaluate subsidies policies of another country.

Anti-circumvention rules vs. companies' strategies

In order to prevent the non-effectiveness of trade remedies, recent legislation has brought the possibility to extend anti-dumping or countervailing measures, that are already in force, to third countries, as well as for parts and components of products under those measures, in case of positive determination of circumvention. Notwithstanding, this general provision has not been regulated yet and, therefore, due to the lack of a specific procedure is not producing practical effects.

Anti-dumping Investigations 1995-2008



Source: WTO 2009 Press Releases

Further developments on this matter have held attention of the players involved, which aim to guarantee success in its future strategies for their companies.

Trends post-economic slowdown

In this scenario it is worth recalling that the Russian crisis led to the initiation of 366 trade remedies investigations in 2001. Since then, it is possible to observe a decrease in the number of investigations. However, in 2008 the number of investigations increased 27% over the previous year, reaching 208 new investigations.

It should be noted, according to a recent WTO report, that it is estimated 77 new anti-dumping investigations will be initiated by 19 June 2009.

As previously seen, in times of economic crisis countries tend to increase protectionism through many mechanisms. One of them is the imposition of trade remedy measures - anti-dumping, safeguard and countervailing measures. Brazil, as an important player in the international trade field, has adopted these tools, especially anti-dumping measures, to protect its domestic industry. Should we expect an opposite trend for the period post-economic slowdown?

It should be highlighted that exporters to the United States and European markets displaced by the effects of the current economic recession will seek other markets to minimize their losses. Important consumer markets like Brazil may be obvious targets for these trade flows, since it is expected a great development for the Brazilian economy in the forthcoming years. Likewise, the Brazilian currency valuation has also been contributing to an increase on imports of certain products. Given all of these factors, even post-economic slowdown, there is a likely scenario of continuous growth in the initiation of anti-dumping measures (and other trade remedy measures) by several countries, affecting global trade greatly. ■

1. See document WT/TPR/OV/W/1 at www.wto.org
2. CAMEX is an independent government entity composed of representatives from the Ministries of: Development, Industry and Foreign Trade; Finance; Planning; Foreign Affairs; Agriculture, Livestock and Food Supply; Agriculture Development and Secretary of State.

Agricultural Insurance in Brazil: Huge Potential, Many Obstacles

Marc Tueller is the Head of Agriculture - Americas, José Cullen is Senior Underwriter Agriculture - Americas, and Juerg Trueb is the Head of Environmental & Commodity Markets at Swiss Re

A Swiss Re survey finds that few Brazilian farmers take out insurance on their crops despite being aware of the financial impact of weather and commodity price risks. Improving insurance penetration in Brazil, and other emerging markets, would be beneficial for all stakeholders in the agricultural production chain. Potential solutions include building awareness among farmers, strengthening the capacity of local insurers and developing a robust agricultural insurance framework under the lead of the public sector. The development of a crop revenue coverage system for Brazil should also be considered.

Brazil is the world's fifth largest agricultural producer. Agricultural production in 2008 represented 7% of the country's Gross Domestic Product (GDP) or about BRL 163.5 billion (roughly USD 86 billion). Due to the sheer size of the country, its agricultural sector is inevitably diverse in terms of geographical conditions, crops, farm sizes and hazards across the various regions. Among the main risks to which Brazilian farmers are exposed are drought and excessive rainfall, as well as volatile market prices for their inputs and the crops and livestock they produce. And yet, despite the obvious need for robust financial risk management, insurance penetration in Brazil is relatively low compared, for example, to other Organisation for Economic Co-operation and Development (OECD) countries.

A Swiss Re commissioned survey conducted among farmers in Brazil in March-April 2009 showed that few farmers take out insurance on their crops even though they are aware of the financial impact of weather and commodity price risks. Various factors have contributed to this situation. Firstly, the diversity of the Brazilian agricultural sector requires a broad range of products to serve the specific needs of the farmers in the various regions. Secondly, there are structural issues such as lack of granularity for individual farm production data, great dependency on subsidy schemes and credit, and availability and dissemination of insurance knowledge.

Pressure on the global agricultural sector to boost production will continue to rise in view of the growing global population and the corresponding rise in demand for protein-rich foods. The overall agribusiness sector – production, processing and distribution – is estimated to account for as much as 25% of Brazil's GDP, and the importance of this market is expected to increase as we head into the next decade.

An increase in productivity calls for investments into inputs and infrastructure. However, investments will only be made if promising returns can be expected. Ease of access to financial services and a solid financial risk management approach encourage such activities. Understanding the risk management approach of the farmers to serve the market therefore is key to identifying how the Brazilian agricultural sector can realize its full potential.

Survey methodology and findings

To understand the risk and potential of the agricultural sector, Swiss Re initiated a field survey of Brazilian farms, split into 30 cooperatives,

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220 larger farms, and 20 corporate farms, mainly located in the south-eastern and central-western parts of Brazil (see figure 1).[1] The study objectives were twofold: to evaluate the farmers' risk perception and to collect information about how they currently manage these risks.[2]

Figure 1: Focus of the survey

Source: © GfK GeoMarketing Map Edition World. Map produced by Swiss Re.

The cooperatives surveyed represent on average about 4,600 members, each of which on average cultivates 113 hectares of land with four employees. They produce mainly maize, soybeans, wheat and coffee; but they also keep chicken, dairy cows, sows and beef cattle. The cooperatives support their members with respect to transportation, storage and processing of harvest and livestock. They also provide technical advice and access to financial services.

The larger farms surveyed on average have about 30 employees and cultivate about 1,800 hectares of land. They produce soybeans, maize, coffee or sugar cane; about half of them also keep cattle. Most of these farms have their own infrastructure for transportation, storage and processing of raw material and livestock; the majority of them sell their products to traders (soybeans and maize) or directly to the processing industry (sugarcane and beef). About a fourth of them sell soybeans and maize to cooperatives and 70% sell coffee to cooperatives.

The corporate farms surveyed on average have 150 employees and cultivate 7,000 hectares of land. They produce mainly soybeans and maize; most of them also keep cattle. The corporate farms have their own infrastructure for transportation, storage and processing of raw material and livestock; most of them do not work together with cooperatives. About a third of them engage in contract farming.

Of the risks identified by the farmers, natural perils, high input costs and volatility in commodity (cooperatives and large farms) or currency prices (corporate farms) came to the fore. Farmers in all three of the categories ranked the top risks in the same way (see figure 2). Each of these risks was perceived to have occurred regularly over the last decade: for example, major droughts were recorded in the summer seasons 2003/04, 2004/05 and 2008/09. Also, 2008 saw a significant spike in prices for inputs and agricultural commodities, followed by vast price drops during the last quarter. Whilst the farmers' individual estimates of the economic losses due to the materialisation of these risks ranged anywhere between 20 to 100% of total production, the average estimated loss potential was in the range of roughly 20 to 40%. For those affected, this is clearly a major blow to their farm operations.

Asked about their risk mitigation practices, farmers said they either bought insurance, diversified their crops or did nothing at all. Insurance purchasing by farmers varies broadly by operating model, farm size, and region: whilst the majority of the farmers organized in cooperatives had insurance, only 21% of the larger farms and 15% of the corporate farms were covered by insurance. There are several reasons for the differences in insurance coverage. As smaller-sized farms organized in cooperatives are predominant in the south and south-eastern region, this explains partially the differences with respect to regional insurance penetration.

Moreover, smaller-sized farms are highly dependent on outside capital because lenders tend to demand crop insurance as collateral. Other reasons for low penetration are the varying exposures to natural perils affecting agricultural production, but also the lack of insurance agents in some regions and hence limited access for farmers to insurance markets. Finally, regional differences in insurance penetration can also be explained because the production history per region represents an average of various types of farms and, for some crops, includes two growing seasons per year. Farms can differ significantly with respect to their productivity, and growing seasons differ with regard to yield. This leads to a lack of granularity of farm specific production data that in many cases would be necessary to develop more adequate insurance products. As a result, for those that typically have higher productivity than the regional average, insurance coverage is not attractive.

Roughly a quarter of those interviewed said they had some kind of insurance. On the whole, all three categories of farms purchased a broad range of insurance products including agricultural insurance, property insurance and accident insurance. For the larger farms we were able to further distinguish the type of agricultural insurance purchased. The majority of these farmers purchased Multi-Peril Crop Insurance (MPCI) and used it as a collateral to a loan; roughly a quarter of them purchased stand-alone MPCI coverage or hail insurance.

There was a variety of reasons given for why farmers did not purchase insurance. A total of 40% of those larger farms who answered the question said the main reason behind a lack of mitigation measures was a sense of fatalism: either the risks were considered acts of God, part of the risk of being an entrepreneur, impossible to counteract or simply too small to cover. Some 22% of larger farms mentioned a lack of awareness about insurance and its benefits or product design issues. The conclusion to be drawn from these results is that the task of increasing insurance penetration is twofold: the lack of awareness about the benefits of insurance needs to be addressed and the perception that the insurance offering is not attractive also needs to be tackled. This last point is a hint that there is a need for products to be targeted at specific regions, crops and different sized farms.

The most frequently cited future risks were climate change and extreme weather events. A significant number of farmers also identified financial market risks as posing a threat for future profits on their farms: these risks included input cost increases and commodity or currency price volatility foremost, but also other issues such as taxes, logistics and labour costs and the availability of credit. Among the mitigation measures that farmers mentioned for covering future risks, cooperatives suggest insurance protection as the first measure, while larger and corporate farms vote for governmental support in the form of guaranteed prices and price protection measures first.

Adjustments needed

Brazil maintains a number of domestic support measures for agriculture including farm credits at preferential conditions, price support and stabilization mechanisms, agricultural insurance premium subsidies and a government run insurance fund covering insured losses from catastrophic events.

A closer look at the interplay of farm credits and agricultural insurance revealed some major challenges. Credits at preferential conditions are limited to BRL 600,000 per farmer. Large farms need to take out additional credits from the private sector. In response to two consecutive droughts between 2003 and 2005, Brazil's government agreed to foster agricultural insurance through premium subsidies of up to 50%, and made it mandatory to have MPCI for all production credits. Agricultural insurance companies that offer insurance

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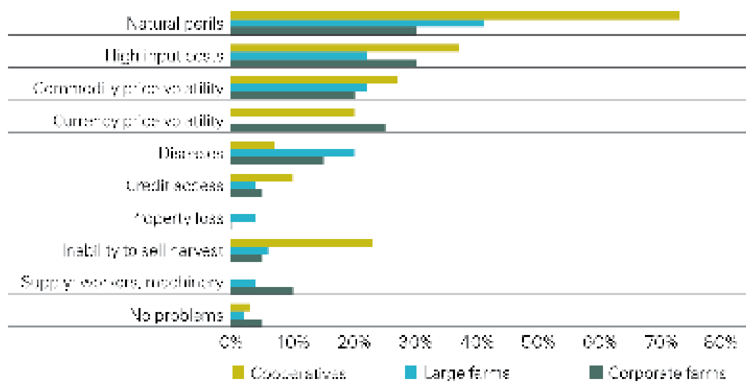
Figure 2: What are the largest risks?



Source: Swiss Re

attached to loans must participate in an insurance fund that covers catastrophic losses. However, participation in the fund was perceived as not attractive, as the premium for the coverage provided is 30% of the profits made in crop, livestock, aquaculture and forestry. As a result of these constraints, there is almost no incentive for insurance companies to provide cost-efficient services.

In the absence of insurance, farmers renegotiate their credits with lenders and put pressure on the governments to either extend deadlines for debt services or abate part of their debts. Financial institutions are extremely cautious about providing credit to farmers, and without insurance, farmers are unable to fulfil their debt obligations. Brazilian experts estimate that the unavailability of insurance has reduced credit by 30%, and that the amount of unpaid agricultural debt is about BRL 130 billion – roughly the value of one year's harvest – with the majority carried by the national budget of the Brazilian federal state.

Based on the results of the survey and the analysis of some aspects of Brazil's agricultural policy on farmers, Swiss Re has proposed a set of measures ranging from awareness building to strengthening the capacity of local insurers and developing a robust agricultural insurance framework at both the farm and the national level.

At the farm level, there is a need to increase the farmers' awareness about the benefits of insurance. Such information campaign could be conducted by the direct insurance companies, the banks, and both governmental and non-governmental institutions.

Further, insurance products need to be structured such that they are more attractive to the farmers. For example, the agricultural insurance products that are currently offered to farmers are based on pre-agreed prices per tonne of production lost. Whilst these polices provide effective coverage against natural perils, they do not address the farmers' risks related to volatile commodity market prices. Whilst the farmers interviewed ranked the impact of commodity prices among the top three risks they face, this can be especially problematic for farmers that have limited access to financial markets, either because they are not organized within a cooperative or because they are far away from markets.

A solution to these issues could take the form of a revenue insurance policy. Such policies are sold already under the US Federal Crop Insurance Program (FCIP) and cover the risk of a shortfall in the farmers' yield and a drop in commodity prices. To adopt a similar concept for Brazilian farmers, future contracts as traded at the Brazilian Mercantile and Futures Exchange (BM&F) could be used to define the price risk.

By introducing products based on more granular yield statistics, satellite imagery or weather parameters, a series of issues could be addressed effectively, including the lack of granularity of farm specific production data and a slow and costly loss assessment process. Also, index based products could be designed to cover the risks of bi-annual crops, such as coffee trees, and products could be structured such that the payout compensates the farmer not only for pruning the trees but also the reduced production related to the following year.

At the national level, there is a strong argument for the Brazilian government as well as provincial governments to enhance and restructure their support of the agricultural insurance market, for example by increasing both the total amount of premium subsidies and the limited subsidy per farmer. Whilst such support for the agricultural insurance market does not come free for the government, the costs of premium subsidies need to be balanced against the costs of the unpaid debt. The productivity gain and increased prosperity go hand in hand with the farmers' improved access to credit if they are able to use their insurance policy as collateral. The premium structure of the government's catastrophe insurance fund should work as an incentive for insurance providers to offer cost efficient services. Furthermore, support for farmers should not only come through premiums subsidies and catastrophe funds. Administrative fees could be reduced, and meteorological data that has to be bought from the private sector could be made more accessible.

Spurring growth

Brazil already is an agricultural powerhouse with the potential to significantly grow its production as we head into the next decade. To unlock its full growth potential, Brazil should invest into setting up a robust agricultural insurance market, as this will allow the farmers to have better access to credit and increase their productivity. To achieve this goal, all stakeholders of the agricultural sector need to work together.

The government could encourage the development of agricultural insurance markets through changes in its policy. Increasing agricultural insurance subsidies could prove to be more economical than extending deadlines for debt services or abating parts of the debts. Also, the government – together with the insurance industry – could help increase the farmers' awareness about the benefits of insurance through information campaigns. The premium rates of the government's catastrophe insurance fund should be structured such that direct insurers benefit from a lean and cost-efficient set up. Considering the structural improvements that could be made, agricultural markets would benefit from better access to transportation.

For their part, insurers and reinsurers could contribute by developing a broader range of products that address the farmers' individual needs. The government, universities and other parties can support the development of such products by improving data availability in general. It is the task of the insurance industry to apply its know-how and expertise – from risk assessment to loss adjustment – and invest into sales and marketing.

To obtain more information on this topic, Swiss Re has recently published a Focus report *"Betting the farm? Agricultural risks in Brazil."* To obtain a copy, please send an e-mail to Marketing_communications@swissre.com. ■

1. The field survey was carried out by the Kleffmann Group in March-April 2009. Kleffmann Group was founded in 1990 and has conducted agricultural market research in more than 60 countries.

2. Whilst the number of farmers interviewed does not allow for statistically relevant conclusions, it still provides useful insights into the farmers' risk perception and related decision making, as well as pointing to some broader trends in terms of insurance penetration.

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Regulatory Framework for New Payment Mechanisms in the European Union

Jürgen Brandstätter is the Managing Partner at BMA Brandstätter Rechtsanwälte GmbH, Vienna, Austria

To date, the European Union consists of 27 member states. In 1999, the euro was introduced as the common currency in the European Union. However not all members of the European Union are also members of the European Monetary Union. In order to accede, the economies in question have to fulfil the convergence criteria (also referred to as Maastricht Criteria), which not all economies are capable of achieving at the moment. Although some states would fulfil the criteria, they are unwilling to join for political considerations. Hence, out of 27 member states of the European Union, at the moment, only 16 are members of the Monetary Union. Major member states, such as the United Kingdom or Sweden, have not acceded to the Monetary Union due to general political considerations, while others like the Baltic States are not able to fulfil the Maastricht Criteria yet.

Although most of the European Union member states have a common currency since the introduction of the euro, non-cash payments from one member state to another were still treated as cross border payments rather than domestic payments by the banking sector. The disadvantage for participants in such payment transactions, for the payer and the payee, regardless if they were consumers or entrepreneurs, was that they were charged higher fees for cross-border payments and that payments took much longer from the moment the transaction was placed with the bank until it was actually credited to the beneficiary's account.

In order to establish the Euro Area, also called Euro Land/Zone, as a true single market with regard to the financial sector, the political institutions of the European Union, together with the European banking sector, took the initiative to create the Single Euro Payment Area (abbreviated as SEPA). The intent and purpose of SEPA is that the European economy in the eurozone may fully exploit the benefits of the Economic and Monetary Union.

"...the efforts of the regulator and the banking industry go beyond the creation of new payment mechanisms... The ultimate goal is to create an end-to-end straight-through processing (e2e STP)"

To create the Single Euro Payment Area technological and organizational measures had to be taken and legal frameworks had to be amended. In order to coordinate these technical and organizational changes, a decision-making body was set up, namely the European Payments Council (http://www.europeanpaymentscouncil.eu). The existing Directive 2560/2001/EC on cross-border payments was supplemented by the new Payment Services Directive 2007/64/EC.

Now, to create the Single Euro Payment Area new payment instruments have been developed. These are mainly the tools of SEPA-credit transfer, SEPA-direct debit and SEPA-card payment. When the instruments of SEPA-credit payment and SEP-direct debit were created, it was decided to replace the existing credit transfer and direct debit regulations with a single new instrument for Euro payments. For card payments, an "adaption"-strategy was chosen, to allow existing schemes and their operators to adjust to a new set of business and technical standards and processes.

But the efforts of the regulator and the banking industry go beyond the creation of new payment mechanisms. Already, before it comes to any payment, an electronic invoice allows bills to be sent directly to the payer's internet banking application, and once the payer has accepted the bill, an automatic payment instruction is created containing the relevant information on the payer and payee. The ultimate goal is to create an end-to-end straight-through processing (e2e STP).

Credit transfer is a payment initiated by the payer. In a credit transfer, a payment instruction is sent to the payer's bank (ie. the sender's bank) which moves the funds to the payee's bank (ie. the receiver's bank), possibly via several intermediaries.

SEPA-credit transfers stand out for the fact that they are accessible throughout the whole SEPA-zone. The entire amount is credited to the beneficiary's account. There is no limit on the value of payments. The maximum settlement time is three business days (as of 2012: one day). IBAN (International Bank Account Number) and BIC (Bank Identifier Code) are used as account identifiers. There is a comprehensive set of rules for dealing with rejected and returned payments.

Direct debit is a transfer initiated by the payee (ie. the recipient) via the payee's bank following an agreement between the payee and the payer (ie. the sender). Direct debits are often used for recurring payments (such as utility bills), but may also be used for one-off payments where the payer authorizes an individual payment. The prerequisite for direct debits is in any event the prior authorization by the payer.

SEPA direct debit is also available throughout the entire SEPA-zone. There is a maximum settlement time of five business days for one-off payments or the first in a series of recurring payments and of two business days for the following recurring payments. IBAN and BIC are used as account identifiers as well. SEPA direct debit is also accompanied by a comprehensive set of rules for dealing with rejected and returned payments.

As for **card payments**, one has to differentiate between debit card payments and credit card payments. **Debit cards** enable the cardholder to charge purchases directly and individually to an account. **Credit cards** on the other hand allow the cardholder to make purchases within a certain credit limit. The balance is either settled in full by the end of a specific period or settled by instalments. As mentioned above, the general structure of card payments was not newly defined by SEPA or the Payment Services Directive but instead an existing infrastructure was used.

The Payment Services Directive not only establishes the above described rules for SEPA-payments, but it also establishes common rules under which the member states shall permit non-banks to provide payment services and creates the new business model of payment institutions. The main feature of a payment institution is that the prescribed initial capital is much lower than the initial capital mandated for banks; in fact the initial capital requirement is €20,000, €50,000 or €125,000, depending upon types of payment services rendered.

The Payment Services Directive finally includes rules regarding the liability for an incorrect payment authorization and establishes extrajudicial complaint procedures as well as extrajudicial dispute settlement procedures.

As regards a time line, the SEPA-project may be separated into three phases: design phase, implementation phase and migration phase. The design phase began in 2004 and the implementation phase in the middle of 2006. The last phase, the migration phase, began in early 2008. By the end of 2010 all SEPA instruments shall be operative and in general use.

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The Payment Services Directive requires implementation by the member states. Austria's implementation law is the Zahlungsdienstegesetz (ZaDiG), Payment Services Act, BGBl I 66/2009, that came into force as of November 01, 2009.

What impact does SEPA have? SEPA does in fact offer advantages to all market participants. Consumers will only need one bank account. From this bank account, they will be able to effect credit transfers and direct debit throughout the Euro Area as easily as it is making national payments. For example, one could pay the rent for children studying abroad, effecting payment to the landlord's account abroad, as if it were a national payment. The use of payment cards will be more efficient, since consumers will be able to use one card for all euro payments. This reduces the necessity to carry cash in one's pocket.

For merchants it has the advantage that customers will increasingly make use of payment cards which will replace, in the long run, cheques and cash payments. This is advantageous in so far as the clearing of card payments is much more inexpensive than clearing cheques or cash payments.

Companies have the advantage that they will be able to perform their entire euro denominated transactions centrally from one bank account using SEPA-payment instruments.

To continue the development of the Single Euro Payment Area, the European Union has passed Regulation 3656/2009 on Cross-Border-Payments, which replaced Regulation 2560/2001 on Cross-Border-Payments in July 2009. The decisive change in this new regulation is that it does not only regulate that cross border payments shall be equal to national payments, but also that it establishes an interchange fee for cross border direct debit transactions. It sets a multilateral interchange fee of maximum €0,088 per transaction, to be paid to the payment service provider of the payee. ■

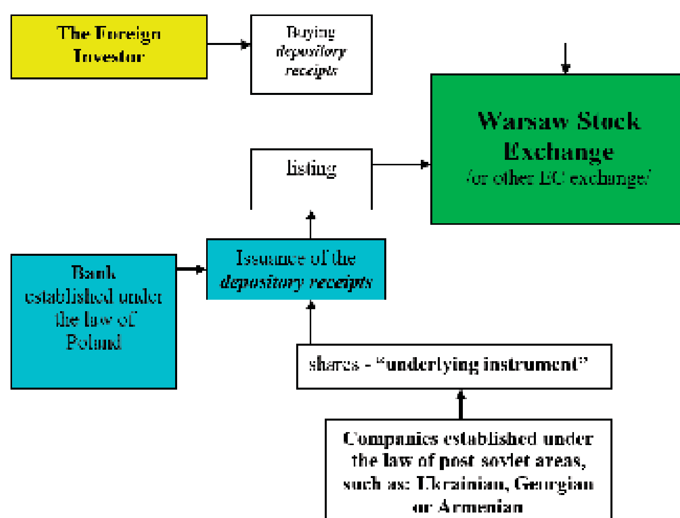
Renaissance of Depositary Receipts?

Dr Piotr Zapadka is a lawyer at Chałas and Partners Law Firm

Coming into force is the long expected amendment of the Act on Financial Instruments Transactions, and this provides a significant change in the Polish legal system in relation to the legal structure of depositary receipts. This amendment may cause increasing market interest in this type of securities, particularly in relation to offers for which characteristic "underlying instrument" may be shares in companies from the post-soviet areas, such as Ukrainian, Georgian or Armenian companies.

It should be noted that the depositary receipt is a security based on an "underlying instrument", which are for example shares in a company. This document incorporates specific rights, in particular the right to exchange of depositary receipt to define "underlying instrument" securities in the specified issue in terms of proportion, as well as the transfer on the owner of the depositary receipt the property rights which are the benefits of the "underlying" securities (ie. dividends). Moreover, it also contains the possibility of exercising corporate rights (such as voting at general meetings of shareholders) of companies whose shares are an "underlying instrument" for the issue of depositary receipts.

The Depositary Receipts Issuance Scheme



After the amendment it is possible to adopt the scheme that the issuer of above–mentioned type of security would be, for example, the bank with the statutory office in the territory of Poland. It is worth mentioning that undertaking such action by the bank would remain with the relevant regulations of the banking law determining the scope of banking activities in Poland.

Acting under the Polish law the bank would issue depositary receipts in the two (alternative) cases. Firstly, the issue would be addressed to buyers outside the territory of Poland on the basis of securities admitted to trading on the Polish regulated market. Such a scenario would not be anything new, due to the fact that it has already happened - issues of GDR (Global Depositary Receipt) or ADR (American Depositary Receipt) based on the shares of Polish public companies.

The second opportunity provided by the Act is the issue of depository receipts in Poland in connection with the securities issued outside the country. This mechanism is new and very interesting, because it creates no territorial limitation of the "underlying instruments". Theoretically, "underlying instrument" may be treated as shares in companies from the post-soviet areas. As a result, said depository receipts, issued under Polish law, can be listed on the Warsaw Stock Exchange or other EC exchanges.

Thus, the amendment of the Act on financial instruments transactions extends the possibility of classifying shares of foreign companies as the "underlying instrument" to offers for the acquisition of depository receipts.

It is therefore necessary to express the hope that the discussed change in the legal structure of depositary receipts will allow some kind of renaissance of this security, in particular by interest in new "underlying instruments", which could be for example, shares of the Ukrainian, Georgian or Armenian-law company. ■

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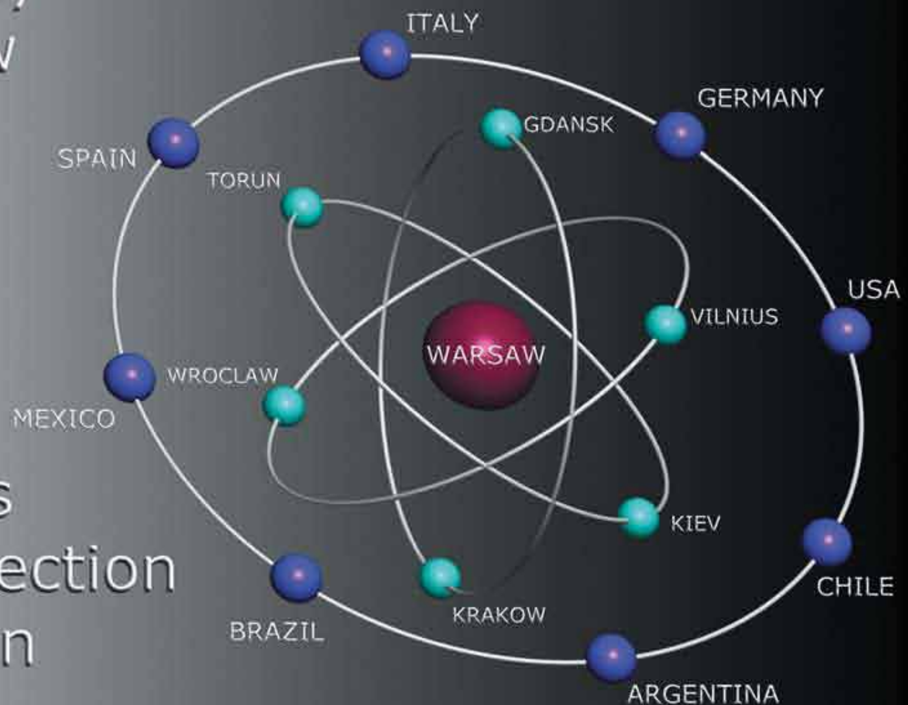

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Specialist Commodity Derivatives Firms: A Case for Differentiated Regulation

Anthony Belchambers is the Chief Executive of the Future and Options Association

In parallel with the development of the EU's Markets in Financial Instruments Directive (MiFID), the European Federation of Energy Traders (EFET), the Futures and Options Association (FOA) and the International Swaps and Derivatives Association (ISDA) have been putting forward extensive arguments as to why specialist commodity dealers and commodity markets were entitled to differentiated regulatory treatment. To that end, the associations commissioned two independent reports, one from KPMG and one from Ernst & Young, both of which underpinned the case for regulatory differentiation. The argument was predicated on the basis that such commodity houses were engaged in commercial rather than investment business, did not deal directly with retail investors and did not take deposits, ie. they posed less risk to the financial system than, say, major global financial institutions.

The European Commission, acknowledging that there was a case for review, agreed to exempt such dealers from MiFID on a temporary basis and issued a Call for Evidence on whether or not differentiated regulation for specialist commodity dealers was justified. In their combined response, the Committee of European Securities Regulators (CESR) and the Committee of European Banking Supervisors (CEBS) concluded that:

> *"Specialist commodity derivative firms generally do not pose the same level of systemic risk as banks and ISD investment firms and therefore might not warrant the same degree of prudential regulation. The full application of CRD on specialist commodity derivative firms would likely impose a regulatory burden that is misaligned with their potential systemic impact. However, as described in the Market Failure Analysis, negative externalities can still be present and may justify the imposition of prudential requirements that the current regulatory framework does not require."*

CEBS, in its own response, concluded that *"in the commodities case studies examined in this report, systemic concerns were limited and contained".*

Shortly after these conclusions were reached, the European Commission found itself dealing with the consequences of a global liquidity crisis of almost unprecedented proportions. As a result, the exemptions for specialist commodity dealers were extended to December 2014, the review was put on the back-burner and the Commission switched its resources to the vital objective of addressing the causes of the crisis, strengthening existing regulatory structures, plugging identified "black holes" in the regulatory perimeter and establishing a more robustly-capitalised financial system.

It is both inevitable and understandable that, in the aftermath of such a severe economic and financial crisis, the regulatory priority is to deliver a much safer and sounder financial services sector. This will, however, have consequences for market liquidity, innovation, diversity, growth and trading and risk management costs. Since the other top priority is to expedite economic and commercial repair, it is critical that the regulatory authorities get the balance between safety and growth right. As Lord Turner, Chairman of the UK FSA put it, *"How much we shift the trade-off deserves careful thought"* largely because, as it was put in the de Larosière Group Report, over-regulation *"slows down financial innovation and therefore undermines economic growth in the wider economy".*

One of the inevitable reactions in the aftermath of any crisis is the propensity to establish new structures and pass yet more rules. Fortunately, the overall focus (to date) has been on making the existing structures work together more efficiently and developing better rules (and better supervision and better enforcement of rules). As Commissioner McCreevy, the European Commissioner for Internal Market and Services, in his address to the European Economic and Monetary Affairs Committee in Strasbourg on 3 February said *"Everybody agrees on the need for reform, but the question is not whether we need more regulation, but what kind of regulation. We should regulate thoughtfully and carefully rather than rushing lemming-like to adopt substandard texts."* In this context, it is worth remembering that the crisis had its source in one of the most highly regulated and enforcement-led jurisdictions in the world, namely, the US and, notwithstanding the existence of legions of regulatory authorities, armies of supervisors and tens of thousands of rules (not to mention a plethora of inter-regulatory memorandum of understanding and cooperative arrangements) the crisis spread rapidly and almost unhindered across the world.

Another inevitable by-product of post-crisis repair is a loss of balance and proportionality. In this context, while it is true that many of the reports on the causes and consequences of the crisis have recognised the importance of proportionality and that the focus of repair must be on systemically important institutions, the depth of real commitment to these scattered references is difficult to gauge and, in some cases, distinctly questionable.

The proposed regulatory treatment of OTC derivative products, while commendable in many respects, is an example in point. It is true, of course, that the vast majority of the OTC derivatives markets – and is particularly true of commodity markets – had no part to play in causing the crisis and performed well throughout its duration. Nevertheless, it is generally accepted that there is a clear need for more effective regulatory oversight, more comprehensive trade reporting requirements and CCP clearing of standardised OTC derivatives. There is a real risk that this will go too far and the drive to use regulation (particularly in the area of capital) to "encourage" the use of standardised products and reshape the OTC market will (a) reduce the number of individually-tailored risk-management transactions available to end-users; and (b) increase the cost of those that are left to the point where risk management becomes uneconomic. Paradoxically, this means that the regulators themselves could be directly responsible for undermining the key post-crisis regulatory objective of enhancing the risk-management capability of institutions and organisations. As it was put in the FSA's Discussion Paper "A Regulatory Response to the Global Banking Crisis" (DP09/2), *"intervention by regulators explicitly designed to alter market structure needs to be taken with great caution"* (para 10.50).

Of course, much will turn upon the definition of what is meant by a "standardised" OTC transaction and whether or not the new requirements covering non CCP cleared OTC transactions will be fair, proportionate and authentically risk-based. Already, there are growing "rumblings" from the corporate, insurance and commodity "buy-side" that the consequences of these changes will be to impair their ability to manage their underlying risks (many of which are not susceptible to being addressed through the use of standardised hedging instruments) and increase hedging costs. Others are concerned over what appears to be a "trade-off" by which the credit risk of an OTC transaction is reduced, at the cost of increasing basis risk and, further, that the consequential mismatch between an underlying risk and the use of a standardised CCP cleared risk management transaction will deny them the use of hedge accounting treatment.

Another possible by-product of regulatory repair is "spill-over" or the adoption of a "one size fits all" approach. For small and medium-sized firms or organisations, such as commodity trade houses, which pose low levels of risk to the financial system, the imposition of high-cost rules designed for systemically important institutions will have severe economic consequences and an adverse impact on their competitiveness. Assurances by the regulatory authorities that any such "spill-over" will be properly risk-based and accompanied by a

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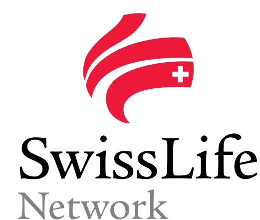

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full market impact analysis offer some comfort, but, for example, the unregulated commodity affiliates of key banking groups will still come under much closer scrutiny and may even be subjected to "indirect" or "shadow" regulation. While the implications of this are not yet clear, the prospect of differentiated regulatory treatment of commodity affiliates which are part of banking groups and those which are either freestanding or part of a non-banking group will have consequences for their competitiveness.

Aside from the threat of over-regulation of the OTC derivatives markets and the risk of a "one-size-fits-all" approach, there is now another threat to commodity market liquidity (both OTC and exchange traded), namely, the drive in the US to curb non-commercial participation in commodity markets through the use of position limits. While government concerns over the social and economic impact of severe increases in the price of consumer-sensitive commodities are understandable, blaming them on the activities of "speculators" is more populist than proven. Denying legitimate trading access to market participants in what are essentially free markets is a very serious step and is only justifiable on a properly evidenced basis. To date, the vast majority of independent reports have attributed energy price volatility to tensions in supply and demand and not to speculative trading activity.

"One of the key causes of the crisis was the fundamental mismatch between national regulation and global markets"

Even more to the point, categorising all non-commercial trading as "speculative" is both pejorative and incorrect. A high percentage of non-commercial trading activity in commodity markets is undertaken for financial investment, asset diversification or portfolio hedging purposes, reflecting the fact that commodity prices move at different times in the economic cycle to more traditional forms of investment such as equities. Nevertheless, it is clear from the "legislative language" for the proposed Over-The-Counter Derivatives Markets Act of 2009 released by the US Treasury and the related pronouncement by Gary Gensler, Chairman of the CFTC, that strict position limits will be imposed on non-commercial trading activities in commodity markets.

While much will depend upon the detail and the related exemptions, reducing the role of financial traders in commodity markets carries the severe risk of (a) reducing liquidity; and (b) impairing the capacity of commodity markets to fulfil their risk management function. Moreover, the US authorities have stated that they will be looking to impose their position limits on an extraterritorial basis to prevent business migration and/or US regulatory avoidance – irrespective of the fact that the majority of non-US authorities have developed their own effective processes and methodologies for addressing unacceptable levels of speculative trading. There is also the risk that the much broader basis of setting position limits in the OTC markets, ie. on contracts which "perform or affect a significant price discovery function with respect to a US regulated market" may be extended to exchange-traded contracts which currently need only apply US position limits to those contracts which are actually priced or settled off a US-regulated contract.

One of the key causes of the crisis was the fundamental mismatch between national regulation and global markets. In essence, the national regulatory authorities may have been geared up to deliver on their largely domestic public policy objectives, but were less able to address the impact on the financial system of globally-traded markets and products. The consequential crisis has demonstrated all too vividly the need, as it was put by the European Commission and the US SEC in their Joint Statement on Mutual Recognition in Securities Markets, signed by the EU Commission and the US SEC to *"intensify work on a possible framework for EU-US mutual recognition for securities in 2008"*. Resumption of the transatlantic open-market dialogue would also be wholly consistent with the consensus reached by the international standard-setting bodies and many of the national regulatory authorities that the crisis must not result in closed markets or protectionist regulation. Indeed, the post-crisis drive to establish common regulatory standards, enhance cross-border regulatory cooperation and develop improved structures for macro-prudential oversight provide a sound regulatory basis for not only progressing that dialogue, but extending it to include other jurisdictions.

Unfortunately and despite all these assumptions, the regulatory programme for repair is being based increasingly on protectionism, national solutions, extraterritorial application of rules and the imposition of "do as we do" conditions to any form of recognition. In the EU, current examples include the Directive on Alternative Investment Fund Managers, the call for domestic clearing of Euro-denominated CDSs and the proposed regulatory structure for credit-rating agencies. In the US, this is matched by the intended extraterritorial application of US rules (with the approach to position limits being an example in point) and the assertion in the US Treasury White Paper that the US *"leadership position in the international community"* should be used to promote *"initiatives compatible with the domestic regulatory reforms described in this report"* and that *"higher regulatory standards here in the US mean that we must ask the world to do the same"*. In other words, the basis for regulatory recognition is moving away from the test of regulatory adequacy/commonality in standards and outcomes to regulatory sameness/equivalence. This is a regressive step which will not only entrench regulatory nationalism, but will make regulatory recognition that much more difficult to achieve.

CESR's recently-issued Call for Evidence on Mutual Recognition demonstrates that there is at least one regulatory group – soon to become a new European Supervisory Authority – which is looking to progress the transatlantic dialogue (and extend it to other jurisdictions). Even so, the international standard-setting bodies, which have so decried protectionist regulation, must take a much more proactive stance to ensure that it does not happen. The fact is that the bottom line to post-crisis repair is as much about accelerating economic business repair as it is about delivering on the agenda for regulatory repair – and what better time to develop commonly-accepted standards and regulatory outputs than when all the major regulatory authorities have recognised the need for regulatory change?

Reverting to the pre-crisis conclusions of CEBS/CESR and the need for proportionate and authentically risk-based treatment of specialist commodity dealers, the inevitable question is will that consensus survive the reshaping of the OTC markets, the current protectionist mood, the drive to deliver tougher regulation and the risks of regulatory "spill-over" or the adoption of a "one-size-fits-all" approach (not to mention the Commission's review of its market abuse regime, part of which is looking at how it applies to the commodity sector)?

In its recent Communication, "Ensuring Efficient, Safe and Sound Derivatives Markets: the future policy actions", the European Commission recognises that derivatives play "a useful role in the economy" and, in their previous paper, recognised that, while the risks posed by the use of derivatives must be adequately covered by any new framework of more intensive regulation, this should not involve undermining their economic performance. The UK FSA in its Discussion Paper "A Regulatory Response to the Global Banking Crisis" has emphasised that the emergence of a sounder and more sustainable international banking system should be one "that engenders competition and will be capable of delivering the essential intermediation services that economies and consumers need". The need to strike a sensible balance between, on the one hand, establishing a safer financial system and, on the other hand, sustaining market diversity and commercial competitiveness is clearly recognised – and that means adopting a proportionate, risk-based and differentiated regulatory treatment of organisations such as commodity trade houses, which do not pose high levels of systemic risk. But will these assurances be delivered "on the ground" or are they just "words on a page"?! Markets are different for good business reasons and, even though regulatory differentiation adds unwanted complexity to the role of the regulatory authorities, the market reality is that "one size" most definitely does not fit all. ■

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The Use of Dutch Hybrid Legal Entities in Group Structures of Multinational Enterprises

Jos Peters is the Senior Tax Partner at Merlyn International Tax Solutions Group

Introduction

The Netherlands has always been one of the major locations which multinational enterprises have used to reduce the tax burden on their worldwide profits. The country offers a variety of possibilities which multinationals may use to either avoid double taxation of profits, or a considerable reduction of foreign withholding taxes on dividends, interest payments or royalty payments, plus the avoidance of foreign capital gains taxation on the sale of business divisions or stand-alone subsidiaries.

In fact, the Netherlands has been so successful in attracting foreign business in this manner that a large variety of countries have copied a number of the Dutch rules and provisions over the last 10-15 years. "Holding company" regimes are now also a popular play in countries like Cyprus, Ireland, Luxembourg, Switzerland, Malta, Spain, and Hungary to name just a few major ones.

Tax advisers in these countries may make you want to believe that the Netherlands has lost its edge as the preferred European "hub" in international tax planning, but the numbers tell a different story. The Dutch Central Bureau for Statistics has recently analysed and computed the aggregate money flows of such dividends, interest payments, royalty payments and capital gains which are routed through the Netherlands for tax purposes for the year 2007. Their findings were that the "Special Financial Institutions" sector of the Dutch economy handled an astonishing €8,000 billion (!) of aggregate cross-border payments of these four income categories in 2007 alone.

"We are left with an astonishing €5,000 billion which passes through the Netherlands for international tax reduction purposes per year"

And these "SFI's" are only part of the story, because multinationals with regular business operations in the Netherlands have no obligation to file for SFI status with the Dutch Central Bank but will also act as conduits for dividends, interest, royalties and capital gains. So the annual "turnover" in the Netherlands of incoming and outgoing money flows for tax purposes is well over a €8,000 billion per year; adjust this for the immanent double count (most of the incoming money flows go out again and are therefore counted twice for Dutch balance of payments purposes) and we are left with an astonishing €5,000 billion which passes through the Netherlands for international tax reduction purposes per year.

The very size of the amounts at stake also implies that the various Dutch tax reduction routings are strictly legal and have been chosen by international tax advisers all over the world because they are also practically implementable.

Old roads close, new roads open up

In a series of five consecutive articles, to appear in this and the 2010 issues of World Commerce Review, I plan to take the readers through both old and tested tax reduction "roads" which the Netherlands has to offer, sometimes adding a number of new ideas to further improve them, but also to warn against the use of old techniques which are becoming outdated (but are sometimes still advised by international tax counsel). In addition, I will discuss "new roads" for international tax planning which have recently opened up in the Netherlands, either based on new Dutch corporate income tax legislation, or based on recent tax case law (interpretation of existing Dutch corporate income tax law by the Dutch Supreme Tax Court).

The latest thing in international tax planning

When I started my career in international tax as a profit determination specialist in the Dutch Ministry of Finance in 1980, the focus was mainly of profit deferrals: shifting income to future taxable years was the main focus at that point in time. And when I joined Ernst & Young in 1984, the latest thing was to shift income from high tax countries to low tax countries (because shifting income to the future does not really bring "earnings per share" because of the accounting rules for deferred taxes). This play is still being further developed, but

transfer pricing has given a very serious boost to these international tax planning techniques over the last, say, five years, because transfer pricing is not just a defensive technique to keep the tax inspector from adjusting taxable corporate income upward, but also – if managed well – a technique to shift profits from high tax jurisdictions to low tax jurisdictions. After all, basic transfer pricing theory says that not only functions and tangible assets must be properly rewarded in the income computation of the members of a multi-nationally operating group, but also risks and intangible assets. These items can rather easily be moved to other (lower taxed) jurisdictions, however...

The last decade shows a further shifting of taxable income caused by so-called hybrid financing and hybrid entity tax planning. Hybrid financing occurs when one country sees a given "agreement to provide funding" as a loan agreement, whilst the other jurisdiction involved treats the agreement as a provision of (deemed) capital. Hybrid financing will be the subject of one of my upcoming contributions for 2010. For now, I should like to focus on international tax planning via Dutch hybrid entities. Before going into the details I should first like to offer readers some basic explanations with regard to this subject:

- Hybrid entities are legal or contractual entities which in the country of the parent of the multinational group are seen as legal entities, so they are considered to be subject to tax of their own accord, whilst the investment jurisdiction considers them as "partnerships" or "branch offices" so they are not subject to tax themselves but their shareholders (seen as "partners") are; or the other way around ("reverse hybrids"); many legal and contractual entities are able to be hybridized or are hybrid by nature, due to the differences in the tax classification rules for foreign entities between the tax laws of countries

- This may well lead to double taxation (one country taxes the entity, the other country taxes the partners on the same income). However, the opposite is also possible: the entity is not taxed by either tax authority of the countries it does business in because one country sees an entity abroad and will exempt its income whilst the other country sees a foreign investor which cannot be subjected to local tax as long as there is no taxable presence of that foreign "partner" in his country; this is especially true for Europe where many countries exempt foreign dividends from local tax (even the UK seems to now be going in that direction…);

- Countries do not normally take any foreign legal aspects into account when establishing their tax classification of foreign entities: they invariably use their own tax criteria. These criteria differ per country manifestly, however. There are no signs that countries are planning, or even willing, to align their entity tax classification rules with one another any time soon. The US offers a choice ("check the box") for most foreign entities; most other countries apply strict rules of their own (like the US did before the check-the-box rules were introduced in 1994); and "check the box" may well fall victim of the tax reform plans of the new Obama administration.

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- My international tax planning techniques make deliberate use of "automatic" hybrids: no tax authority will consider them odd or artificial because they are widely used by others (most of the time in a non-hybrid way);

- Tax authorities do not know, and usually do not care, what the tax treatment of a certain legal or contractual entity "abroad" is: they will treat it according to the rules of their own country. The fact that such an entity may escape taxation in both countries or may be forced to accept tax deductible expenses which are not taxed in the other country, is usually not their concern, because in order to understand this, one must have insight into foreign tax systems; in the 35 years of my career I have never come across any civil servant who took the trouble to even try and understand what the tax rules of other countries are;

- The tax reduction structures I will discuss below and in the next four issues of WCR make use of one or more Dutch hybrid entities. The Dutch corporate income tax system basically recognizes three types of legal entity which are fully open to hybridization from a German, French, Italian, Chinese, Australian etc. tax perspective including the present US "check-the-box" rules (or what may come to replace them):

  1) The regular Dutch limited liability company "BV": if such a (standard) entity becomes part of a Dutch tax consolidated group as a subsidiary, an optional event in Holland, it "ceases to exist" according to the Dutch corporate income tax act. In fact, it becomes a Dutch "branch office" of its parent. Obviously, if such a subsidiary has foreign operations, such as a branch office outside the Netherlands, the foreign tax authorities will continue to treat this Dutch entity as the tax payer; the BV only "disappears" in the Netherlands, not abroad;

  2) Certain forms of limited partnership (denominated as "CV" entities in the Netherlands) are treated as entities for Dutch corporate income tax purposes, subject to Dutch corporate income tax, whilst other CV's are considered regular tax partnerships whereby the entity itself is tax transparent and each of the partners may, or may not, be subject to tax on his share of the partnership's profits. Under the Dutch corporate income tax system one may in fact freely choose for either the one or the other format: the difference hinges on a rather minor difference in the CV's incorporation document (with major consequences, however).

  Moreover, he Netherlands applies its own tax classification method to foreign limited partnerships. So "automatic mismatches" with limited partnerships are rather the rule than the exception in the Netherlands;

  3) Dutch "Cooperative Associations" (usually abbreviated to "Coops") are another fine example: there are three formats available under Dutch civil law which differ as regards the liability of the "owners" or "partners" for the debts of the Coop. Under Dutch corporate tax law all three types of Coop are treated as tax entities for Dutch corporate income tax purposes (but not for Dutch dividend tax purposes); but the foreign tax denomination of a Dutch Coop will likely differ with the degree of partner liability it has opted for in its by-laws: a Coop with "excluded liability" will likely trigger foreign tax treatment as a Dutch entity, but Coops with "restricted liability" or even "full liability" may well cause tax treatment abroad as limited partnerships, so again a tax mismatch is born.

- As observed above: "playing" with the tax classification of entities (at home or abroad) is a dangerous exercise if one is not fully aware of the Dutch and foreign legal and tax ramifications. With 35 years of experience in this difficult but rewarding tax area I can say that it will be easy to limit the discussion to hybrids which are (almost) "automatic" and easy to implement, whereby the foreign tax consequences must be clear and unambiguous from the outset and the foreign tax treatment is governed by clear and unambiguous tax treaty rules.

Example 1: a hybrid Dutch Cooperative Association

As explained above, Dutch Cooperative Associations (hereinafter: CA or CA's) can take three legal formats in the Netherlands and although each of these three is considered a legal entity for Dutch corporate income tax purposes, the foreign tax denomination of a Dutch CA may well be that of a Dutch partnership.

One major tax classification element, worldwide, of the distinction between (foreign) entities and partnerships for corporate income tax purposes, is the question whether the founders/owners/partners/members or whatever the investors are called under foreign law, are liable for the debts of the joint venture or not. If not liable, the foreign joint venture is close to a limited company, but if the founders/owners etc. are liable for the joint venture's debts, a tax classification as foreign partnership is more likely. This will depend on the foreign entity tax classification system of the home country of the multinational enterprise and will require analysis.

Another widely used tax classification criterion is, whether the foreign joint venture format requires one owner/partner/member or more. If more than one, a tax classification of the foreign joint venture as partnership is more likely than when only one owner/partner/member is required under foreign civil law or foreign common law. Dutch CA's require at least two "members".

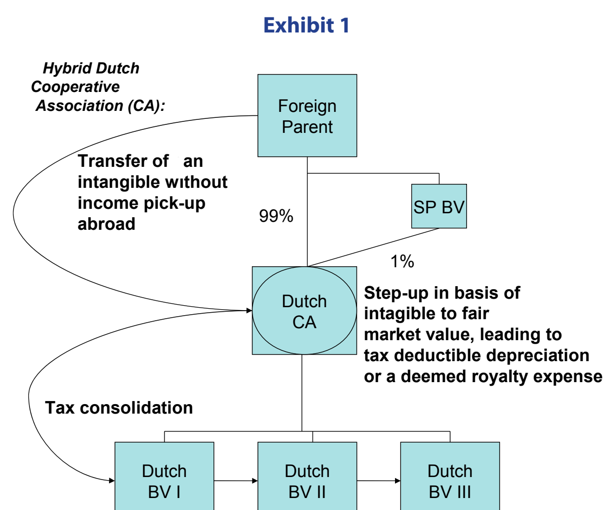
So multinationals have the option to create a Dutch CA with unlimited liability. Let's assume for a moment that this Dutch CA will indeed qualify under foreign tax law as a partnership. Let's also assume that the obligatory second member in a Dutch CA is a Dutch limited liability company owed by the group, which has a very minor interest (1%) in the CA, so it plays a very minor role in the tax analysis (a role which will also not be further discussed here).

The foreign tax consequences of setting up a Dutch CA structure will then be that the main member (ie. a foreign group entity) will be considered to operate a Dutch *permanent establishment* or *"branch office"*, not a Dutch subsidiary. It will then likely be possible to transfer intangibles to such a branch without recognizing any capital gain abroad; after all, one transfers the intangible to oneself, not to a third party.

The Dutch tax treatment of such a transfer of an intangible is spectacularly different however! The Dutch CA, a tax entity for Dutch corporate income tax purposes, is allowed to enter the intangible it will obtain in its opening balance sheet against fair market value and to depreciate it over its economic lifetime. Alternatively, the Dutch CA is allowed to deduct an annual mount of *deemed royalties* which it would have had to pay if it had obtained the intangible from a third party. A hybrid CA may therefore be a fully legitimate method to create a considerable tax deductible expense within a multinational enterprises "out of the blue" without an (immediate) pick-up of income elsewhere in the group!

Exhibit I shows how this works. Obviously, if the Dutch CA is allowed a considerable tax deductible item (depreciation of the intangible

Exhibit 1



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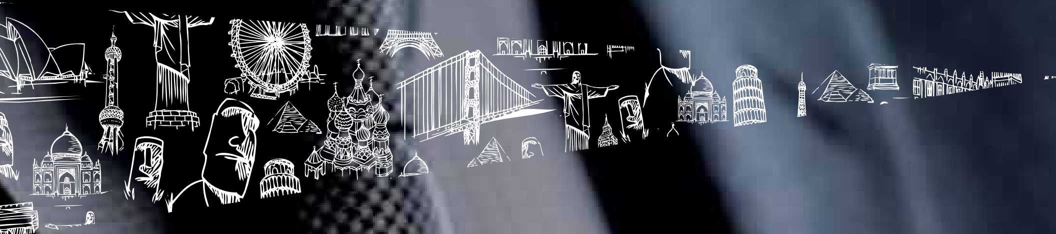

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or a deemed royalty expense related to the intangible), further tax planning is required to effectively use this deductible item against taxable income from other (group) sources. One important element in this further planning (considered out of scope for this article) is that a Dutch CA can act as parent of a Dutch tax consolidated group, so the loss created in the CA will be deductible from any operating income of its Dutch subsidiaries. One such subsidiary might well be the principal in a commissionaire structure (whereby foreign taxable profits from sales activities in the group are shifted to the Netherlands) or the principal in a contract manufacturing arrangement (whereby foreign profits from production activities in the group are shifted to the Netherlands).

In a next issue I will develop further examples of how multinationals might be able to use one or more of the Dutch hybrid entity concepts to their financial advantage. ■

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Ernst & Young's 2009 Global Transfer Pricing Survey – Tax Authority Insights: Perspectives, Interpretations and Regulatory Changes

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In September 2009, Ernst & Young published the 2009 issue of its Global Transfer Pricing Survey[1]. Having surveyed experts and tax authorities in 49 countries[2], the survey summarises the key trends in the regulatory environment that multinational enterprises (MNEs) are facing today.

Since the last Ernst & Young survey was issued in 2006, the worldwide transfer pricing environment has moved on rapidly. More than ten additional jurisdictions have introduced requirements for taxpayers to create and maintain contemporaneous documentation demonstrating the arm's-length nature of their transfer pricing arrangements (with China, Slovakia and Greece being three of the most recent). Moreover, the world has changed. The credit crunch, a worldwide recession, and turmoil in the financial markets have brought serious, and often unforeseen, challenges to MNEs in managing their transfer pricing. Some have had to deal with substantial losses, others with margin compression with or without volatile results – all factors that render the application of traditional approaches to transfer pricing at best difficult and at worst impossible.

The same economic factors have an effect on governments and their fiscal approaches. Budget deficits, stimulus packages and bail-outs, all result in significant costs. Raising revenues to cover these costs is front of mind.

At the same time, MNEs need to meet their tax obligations, often with reduced budgets and fewer resources, while coming under greater scrutiny. Tax administrations are adapting their audit strategies and developing better tools, processes and capabilities.

The survey is intended to help tax and transfer pricing professionals assess their organisation's current transfer pricing landscape, prioritise areas of focus to achieve and maintain best standards of transfer pricing practice, and, as far as it is possible in an uncertain world, predict the near term challenges they will face.

Tax authorities are increasing transfer pricing resources

Jurisdictions that are relative newcomers to transfer pricing enforcement are tending to "gear up" their capabilities quickly. Finland - with a team of approximately 45 experts involved in transfer pricing with regulations in place for only two years - is an example of this trend.

A number of jurisdictions are moving towards setting up specialist transfer pricing examination teams (eg. Austria, Indonesia and Slovenia), with the aim of focusing their efforts and resources. But many more jurisdictions are broadening capabilities, increasing full time equivalents and using external agencies to train and advise their people (eg. Colombia).

The likely outcome of this deployment of more specialists is that companies will experience more audit activity and more cross-border disputes. Tax authorities foresee that this will create further demand for transfer pricing resources, to handle the higher volumes of dispute resolution requirements. The authorities also foresee that they will need greater capability in the field of Mutual Agreement Procedures, as well as opening or extending their programs for Advance Pricing Agreements (APAs).

Industry focus continues, but to what end?

Of the 49 countries covered in the survey, sixteen state that they target specific industries and eight more are believed to do so. The main targeted industries are:

- automotive
- consumer products
- financial services
- oil and gas
- pharmaceuticals

This list is not particularly surprising – Ernst & Young has observed through its history of transfer pricing surveys that these industries have long been in the spotlight. But at the time of writing, the automotive industry is suffering a major decline, the banks and insurance companies have been announcing record losses, and consumer spending in many markets has declined heavily. Will tax authorities really be able to increase their yield from these sectors? In the next couple of years it will be fascinating to observe how - and whether - tax authorities change their approach and bring other industries under transfer pricing scrutiny.

More countries formally listing havens

A clear focus emerged on transactions with perceived tax havens and "blacklisted" jurisdictions, as well as an emphasis on high-volume transactions with key trading partners. The number of jurisdictions that formally identify blacklisted jurisdictions in their tax legislation or administrative practices continues to increase.

In practice, whether jurisdictions have enacted formal lists or not, transactions with perceived low-tax territories are a key focus of tax authorities in a majority of jurisdictions. Well over half of the surveyed tax authorities flagged transactions with these "havens" as a trigger for greater focus on taxpayers' activities. However, the mere fact of being headquartered in a specific location did not seem to be a factor in attracting audit attention.

In addition, trading blocs and major trading partners are in the focus of tax authorities from a transfer pricing perspective. Not surprisingly, the United States, the United Kingdom, Japan and Germany, as jurisdictions which represent significant markets for in-bound

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investors, feature prominently in the top five jurisdictions that come under scrutiny. Interestingly, despite its growing importance as a destination for foreign investment, China has yet to appear on these lists.

All types of transactions under scrutiny

There is a clear divide between the authorities surveyed in respect of the types of transactions that they choose to scrutinize.

Jurisdictions that have repositories of natural assets (oil, gas and minerals), such as Australia, Argentina, Kazakhstan and Russia, tend to keep a close eye on transactions in tangible goods.

By contrast, in jurisdictions outside this group, the trend is firmly towards placing more emphasis on service transactions and intangibles. Indeed, more than three quarters of responding authorities noted a focus on these service transactions.

This trend is fully consistent with regulatory changes in the United States and elsewhere, that are highlighting the complexity of services with embedded intangibles and/or services of extremely high intellectual value.

Transfer pricing penalties are set to rise

Not only is it anticipated that transfer pricing audits will increase, it also seems likely that transfer pricing penalties will rise. The overwhelming majority of jurisdictions that have transfer pricing-specific penalties anticipate that this will be the case.

This trend is consistent with the need for increased revenues. Up to now, most jurisdictions that do have penalty regimes do not impose them on all adjustments, nor do they always impose them to the maximum extent. Where specific details of penalties were provided by tax authorities directly, approximately half of the respondents indicated that penalties were imposed in less than 50% of cases.

However, it seems likely that this level will increase in the future. Some jurisdictions apply penalties more routinely than others, for example, Belgium and Hungary. Portugal and Kazakhstan say that they apply penalties in 50% to 100% of the cases where an adjustment is enforced.

Audit triggers reflect economic uncertainty

More jurisdictions than ever have moved to a risk assessment-based case selection methodology and some have adopted quite sophisticated scoring tools to enable the structured selection of high-risk cases.

The survey explored the most common reasons why tax authorities take up cases for audit. The most frequently-cited trigger was "a sudden reduction in taxable profits," with approximately three-quarters of tax authorities directly responding to the survey acknowledging their focus on taxpayers' profitability.

Around half of the respondents cited "business restructuring" as an audit trigger. This comes at a time when the OECD has issued a discussion draft on the transfer pricing implications of business restructurings.

Approximately half of all authorities identified coordination and information exchange between the organizations responsible for administering indirect and direct taxes in their jurisdictions. But fewer than 20% of jurisdictions have a firm requirement for consistent pricing for both corporate tax and indirect tax purposes.

More commitment to APAs

With APAs seen as a useful tool in dispute management, approximately half of the tax authorities responding directly to the survey indicated a formal APA program was in place in their jurisdiction.

The survey further indicates more jurisdictions (eg. India and Sweden) are committing to the introduction of APA programs, which is to be welcomed in these uncertain times.

Jurisdictions with established APA programs are finding them resource-intensive, and several jurisdictions intend to increase their resources in this field. The resource issue is also indicated by several jurisdictions observing that it takes longer to conclude an APA than in the past, which may dissuade some potential applicants.

The survey also reveals examples of the use of non-binding agreements or opinions in transfer pricing matters (eg. Austria, Russia and the Slovak Republic). This may be an effort to give taxpayers certainty at some level, but it is difficult to see the value of non-binding agreements until, and unless, there is a history of the relevant authorities honouring these agreements.

Managing the trend: next steps for corporate transfer pricing functions

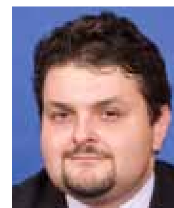
For many MNEs, the focus is - and may very well remain - minimizing potential challenges to their transfer pricing policies from tax authorities, and mitigating penalties when these challenges arise.

Given tax authorities' likely intentions to increase reviews and increase the use of penalties, this means a good deal of work for most transfer pricing functions. It may also mean a more fundamental challenge to help sustain businesses in times of depressed markets and diminished margins.

These trends make it even more important for MNE's transfer pricing function to engage with - and potentially help shape – the organizational and operational structure. The corporate transfer pricing function will often have to engage more frequently with the rest of the business to keep pace with change, identify and pre-empt tax authority challenges and, most of all, convert risk into opportunity. A proactive transfer pricing function will have a real opportunity right now to position itself as a strategic partner to the business. ■

1. http://www.ey.com/GL/en/Services/Tax/2009-Global-Transfer-Pricing-survey
2. In this article, the term "countries" is used to refer to tax jurisdictions.

Mortgage Bonds in Luxembourg



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Luxembourg covered or mortgage bonds (*lettres de gage*) constitute debt securities issued by a Luxembourg mortgage bank (*banque d'émission de lettres de gage*) and secured by a specific pool of assets allocated to such securities (the cover pool). Such instruments are inspired by the German *Pfandbriefe*. Luxembourg covered bonds are subject to the provisions of the Luxembourg law of April 5, 1993 on the financial sector, as amended (the 1993 Law). The 1993 Law was amended on October 24, 2008 in order to improve investors' protection and modernise the covered bonds' industry in Luxembourg, by including new eligible asset classes and creating new categories of covered bonds. This article will briefly analyse the main features of the mortgage banks in Luxembourg and the covered bonds' regime established under the 1993 Law.

Definition of mortgage banks

Luxembourg mortgage banks are specialist banks subject to the supervision of the Luxembourg Commission for the Supervision of the Financial Sector (the CSSF).

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Mortgage banks are credit institutions, which grant:

- loans secured by real estate rights (*droits réels immobiliers*) or by real estate security interests;
- loans secured by bonds or other similar debt instruments, satisfying certain requirements as specified below in section 2 (Forms of Lending) and having the benefit of certain security interests;
- loans to public entities;
- loans secured by: (i) public entities, (ii) bonds issued by public entities, (iii) Eligible Bonds (as defined below) issued by credit institutions established in any member state of the EU, the EEA or a the OECD (an Eligible State), such bonds being in turn secured by claims against public entities, (iv) other commitments made in any form by public entities;
- loans secured by moveable property rights or security interests over moveable property;

and issue debt instruments secured by the above rights or security interests/guarantees, such instruments being known as mortgage bonds. There is no maximum amount for the mortgage bonds in circulation.

Mortgage banks are not allowed to provide general banking services but may conduct banking and financial activities, which are incidental and ancillary to the granting of the above loans and the issuance of mortgage bonds. The acquisition of real estate property and moveable property is permitted only with a view to avoiding losses on mortgages and for the own needs of the mortgage banks.

No entity may issue transferable securities or other debt instruments under the denomination of "mortgage bonds" (in French: *lettres de gage*, in German: *Pfandbriefe*), or under any identical or similar denomination in another language, or identify itself as a "mortgage bank" (in French: *banque d'émission de lettres de gage*), if it does not satisfy the conditions of the 1993 Law.

Forms of lending

Loans may be granted by mortgage banks in any form, including in the form of the acquisition of bonds or other similar debt instruments (together with the Eligible Bonds) which:

- satisfy the criteria specified by article 43(4) of the law of 20 December 2002 relating to undertakings for collective investment (the UCI Law). Such instruments must be issued by credit institutions or by public entities and must have the benefit of certain security interests; or
- are issued by a securitisation vehicle (an SV), where a minimum of 90% of the SV's assets is constituted by claims against or secured by public entities. This threshold may be reduced to 50% in certain circumstances. These debt instruments must in each case have at least an AA- rating (Standard and Poor's or Fitch) or AA3 (Moody's); or
- are issued by an SV, where a minimum of 90% of the SV's assets is constituted by claims secured by real estate rights (*droits réels immobiliers*) or by real estate security interests. This threshold may be reduced to 50% in certain circumstances. These debt instruments must in each case have at least an AA- rating (Standard and Poor's or Fitch) or AA3 (Moody's); or
- are issued by an SV, where a minimum of 90% of the assets is constituted by moveable property rights or security interests over moveable property, taken separately by category of mortgage bonds. This threshold may be reduced to 50% where the collateral for the mortgage bonds includes no more than 20% of the instruments referred to in the previous sentence. These debt instruments must in each case have at least an AA- rating (Standard and Poor's or Fitch) or AA3 (Moody's); or
- are secured by public entities.

Collateral and investors' protection

Ordinary collateral for the mortgage bonds is constituted by the claims having the benefit of the security interests/guarantees listed above in the first section of this article on definition of mortgage banks, and being held in consideration for the mortgage bank's commitments resulting from the mortgage bonds. The collateral shall be divided into as many categories of collateral as there are different categories of mortgage bonds issued.

For each of the above categories, ordinary collateral may be replaced, up to the extent of 20% of the nominal value of the mortgage bonds in circulation by substitute collateral comprising: (i) cash, (ii) assets held in central banks or credit institutions having their seat or registered office in an Eligible State and (iii) bonds fulfilling the criteria laid down by Article 43(4) of the UCI Law.

Over-collateralisation ratio is required in order to provide additional protection to the holders of mortgage bonds (the Holders). The nominal amount of the collateral must at all times represent at least 102% of the nominal amount of the mortgage bonds in circulation, while its present value must at any time represent at least 102% of the present value of the mortgage bonds in circulation.

In order to ensure global coverage in relation to the payment of principal and interest of the mortgage bonds and the other preferred debts of the mortgage bank, the latter must take appropriate measures and may have recourse, in particular, to term financial instruments.

Residential property as well as real estate used for industrial, commercial or professional purposes may be used as collateral. As regards moveable assets, categories of assets such as aircrafts, ships, boats and objects relating to railways can be used as collateral. This list is not exhaustive and prior to the financing of a new category of moveable assets an authorisation has to be requested from the CSSF.

Each mortgage bank has to establish and maintain a mortgage bond register (*registre des gages*) (the Collateral Register), in which details of all assets serving as collateral must be recorded separately. The Collateral Register shall be composed of as many parts as there are different types of collateral securing the different types of mortgage bonds issued.

All mortgage banks must have an independent and qualified external auditor (*réviseur d'entreprises*) (the Special Auditor), who is different from the auditor controlling the accounts of the mortgage bank. The Special Auditor is appointed by the CSSF and has to ensure that the collateral (i) is duly constituted and registered in the Collateral Register, (ii) is equal to the required amount and (iii) continues to exist.

The Special Auditor, acting jointly with the mortgage bank, shall ensure the safe-keeping of the collateral registered in the Collateral Register and of all the documents relating thereto. Before mortgage bonds are issued, each of them must contain a certificate of the Special Auditor certifying the existence of the collateral required by law and the entry thereof in the Collateral Register.

The holders of mortgage bonds have a priority right in respect of the collateral securing the mortgage bonds and rank senior to the other creditors of the mortgage bank. The collateral may not be subject to attachment (*saisie*) or any enforcement measure by personal creditors of the issuer other than the Holders.

Registration of the collateral in the Collateral Register creates in favour of the Holders preferential rights over the collateral ranking senior to all other rights, preferences and priorities of any kind whatever, including Treasury rights, without there being any need for the conclusion of any special allocation agreements, security interest agreements or any other contracts, or for the delivery of the collateral to the Holders or to any agreed third party, the notification of any document or the completion of any other formality.

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Conclusion

The 1993 Law, with its flexible and lightly regulated regime, provides a large range of mortgage bonds and eligible assets and achieves a significant protection for the investors in covered bonds.

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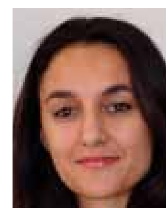
Professional Investor Funds and Malta



Olga Finkel is the Managing Partner and Ruth Zammit is a Senior Associate at WH Law Group Malta

Malta offers a favourable European onshore location for structuring and servicing retail and non-retail funds. Maltese legislation together with the Malta Financial Services Authority ('MFSA'), the single regulator of financial services in Malta, provide for a comprehensive and efficient licensing and regulatory framework for investment funds in Malta, the most popular being UCITS schemes and Professional Investor Funds.

Malta-based UCITS schemes can take various legal forms including SICAVs, limited partnerships, unit trusts or contractual funds. Maltese UCITS schemes must comply with on-going obligations relating to diversity of investments, liquidity of the scheme and are also subject to restrictions on eligibility of assets. These investment and borrowing restrictions prohibit fund managers from using more complex investment and leverage strategies and as such UCITS are generally used for retail funds marketed to the general public and are not subject to investor eligibility criteria/entry levels similar to those present for non-retail schemes.

Maltese legislation also provides for the setting up of Professional Investor Funds (PIFs) which are essentially non-retail funds targeted at financially-literate, high net worth investors and as such are not regulated as tightly as UCITS funds. Hedge funds, private equity funds and property funds are normally structured as PIFs. Legislation provides for three categories of PIFs each linked to different eligibility criteria for investors based on the experience and knowledge of the investor, and each imposing its own minimum investment threshold - the lowest entry criteria for an investor being €15,000.

PIFs are not subject to the rigid investment and borrowing restrictions that are applicable to UCITS. Indeed, there are no restrictions imposed on PIFs on the types of investment concentration levels and the investment strategies to be adopted by PIFs. The MFSA will review the proposed investment policies of a PIF on a case by case basis. Furthermore, PIFs are not subject to any borrowing or leverage restrictions, being subject only to those restrictions which are specified in their offering document. Few exceptions apply such as in the case of funds investing in immovable property or in the case of PIFs promoted to experienced investors where borrowing on a temporary basis for liquidity purposes is not restricted, whilst borrowing for investment purposes or leverage via the use of derivatives is restricted to 100% of the NAV.

PIFs enjoy a fast licensing process when compared to retail funds (an 'in principle' approval for a licence can be issued by the MFSA within seven working days provided the information submitted is complete) and are subjected to less onerous on-going disclosure requirements when compared to retail funds, especially where service providers are appointed to carry out licensable activities.

"Malta provides a very efficient and flexible regulatory regime for investment funds, characteristics which continue to contribute to its ever-growing popularity as a European fund jurisdiction"

Service providers located outside Malta may be accepted by the MFSA if they are established and regulated in a recognized jurisdiction (members of EU, EEA and signatories to MoUs with the MFSA). Service providers established in a jurisdiction other than a recognised jurisdiction may be approved on a case by case basis after satisfying a rigorous 'fit and proper' test.

Funds set up in Malta may be structured as umbrella funds. Whilst Malta provides for protected cell legislation, this is at present only possible in the ambit of insurance business. A comparable structure is the umbrella fund which can take various legal forms, the most common being the SICAV. In the case of SICAVs the law specifically provides that when constituted as an umbrella fund, the assets and the liabilities of each sub-fund shall be treated for all intents and purposes of law as a patrimony separate from the assets and liabilities of other sub-funds of such entity.

Certain fund promoters seeking to re-locate a fund to Malta and ensure continuity of the business, opt for a re-domiciliation process. The Continuation of Company Regulations in Malta allows bodies corporate of a similar nature to the Maltese company, which are established outside of Malta in an approved jurisdiction (all countries other than those on the Financial Action Task Force black list), to re-domicile to Malta via a relatively straight-forward procedure and provided certain conditions are satisfied. From a licensing perspective, the fund would undergo the licensing process with the MFSA concurrently with the corporate re-domiciliation process.

The Maltese government has recently confirmed that Malta is preparing legislation to allow Sharia-compliant banking and other financial services. The MFSA has however confirmed that Sharia-compliant funds may be set up even under the present legislation. The MFSA had clarified that currently Ijarah Funds, Commodity Funds and Murabaha Funds, which generally invest in non-conventional asset classes, may be licensed in Malta as PIFs, whilst Sharia-Compliant Equity Funds can be set up as Maltese UCITS schemes, Maltese non-UCITS schemes or PIFs.

As may be seen from the above, Malta provides a very efficient and flexible regulatory regime for investment funds, characteristics which continue to contribute to its ever-growing popularity as a European fund jurisdiction. ■

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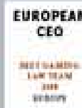

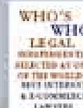

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Global Trade Management: The Key to International Trade Efficiencies

Karen Lobdell is Director of Trade Security and Supply Chain Services at Drinker Biddle & Reath LLP, Chicago, IL and a member of the current Advisory Committee on Commercial Operations of US Customs and Border Protection (COAC).

It is no longer a revelation that businesses these days operate in a global marketplace. Companies continue to increase their global procurement, direct importing and offshore manufacturing and assembly processes. Multi-national companies continue to expand global distribution through mergers and acquisition. On the government side, trade security has been under increased scrutiny in the Post-9/11 environment. Furthermore, with the current state of the global economy, many government agencies are increasingly focused on growing revenue by heightened attention to the regulatory compliance piece of international trade, as well as enacting new trade restricting measures. The result is a myriad of rules and regulations for traders to administer.

Managing the flow of goods, information and currency across borders is a complex, highly regulated and constantly changing process. Whether you are a large multi-national or a small or mid-size enterprise (SME), finding efficient ways to manage global trade operations can be a challenge. One thing is consistent regardless of company size – relying solely on manual processes to manage global trade compliance is no longer an option.

Executives who have responsibility for import/export activity at their companies are seeing a spike in the workload associated with trade compliance – at a time when most businesses are seeing a reduction in workforce and resources are limited. As a result, the ability to make use of technology to manage trade compliance and mitigate the risk inherent in international trade is becoming more important.

"Whether you are a large multi-national or a small or midsize enterprise (SME), finding efficient ways to manage global trade operations can be a challenge. One thing is consistent regardless of company size – relying solely on manual processes to manage global trade compliance is no longer an option."

The Global Trade Management concept

Global Trade Management (GTM) – as a concept – has been around for years. The scope of GTM capabilities has progressed substantially during that time, however In its infancy, GTM focused on desktop applications that allowed users to create and print documents that would be needed for import and export transactions (eg. a commercial invoice or export declaration). Today, GTM systems may encompass a vast array of features including, but not limited to:

- Performing restricted parties screening and embargo checks;
- Facilitating product classification under the Harmonized Tariff Schedule;
- Determining total landed costs;
- Creating and filing international trade documents;
- Determining preferential trade eligibility to leverage the benefits presented by free trade agreements around the world;
- Connectivity to international customs agencies for automated filings;
- Import and export license determinations; or
- Evaluating multimodal carrier options for specific trade lines for both cost and transit time.

Typically, GTM tools will address four key segments of a company's business: customs and regulatory compliance; trade financing and financial settlement; transportation procurement and contract management; and global trade visibility. Companies may elect to implement the full package of GTM tools or focus on select components they feel will best fit their needs. This article will not cover the full extent of GTM offerings but will provide illustrations of key functionality that exists in the marketplace today that can benefit traders.

Customs and regulatory compliance

In the customs and regulatory compliance arena, automation of certain activities can prove to reduce both risk and costs. The following examples provide a sampling of how GTM tools can assist companies in staying compliant with Customs regulations.

Determining and consistently utilizing the proper classification for a product is a basic – and often difficult – task for companies involved in cross-border trade. Correct product classification is a task that cannot be taken lightly, as the correct classification of an article can vary by country. Additionally, tariff classifications can change from time to time so it is important to have a system that captures and incorporates those changes.

The tariff classification is a key determinant of customs duty rates. Mistakes can be costly, in terms of additional duty, penalties, and the loss of preferential duty treatment under various Free Trade Agreements (FTA). Furthermore, reporting the proper tariff number is a requirement for advance security targeting for regulations such as the United States Importer Security Filing (ISF, or more commonly referred to as "10+2").

It is not uncommon for large multinational companies to have both in-house personnel, as well as service providers, making classification decisions on a daily basis – often duplicating effort and working with limited and/or inaccurate information. Use of a GTM module that manages tariff classification can provide numerous benefits including the ability to access full tariff data from multiple countries in a standard format for automatic classification for a specific country or multiple countries; decision tree tools to assist with assignment of tariff numbers; integration with existing ERP systems to access new product data to be classified and creation of company-wide statistics and historical data for audit purposes. This can lead to increased accuracy and a more efficient work force.

Another good illustration of the use of GTM in the compliance area is for managing preferential duty programs. The number of FTAs that exist in the global trading environment continues to increase. The US alone has FTAs in effect with 17 countries. Qualified participation in these programs can provide a competitive advantage to the trader and lead to increased sales and lower costs. Each FTA, however, comes with a complicated, product-specific set of rules of origin that must be satisfied for shipments to be eligible for the reduced duty rate. The importer must be able to prove that each preferential origin claim made, whether for NAFTA, the EU FTAs or any number of others, meets all the requirements of the applicable rule or rules. Failure to compile all the mandatory information, perform the standard calculations, document each step and retain the documentation for five or more years may result in the retroactive application of full duty rates and penalties.

A robust GTM module for trade preference programs will allow a company to manage, store and properly utilize the data required for

compliant origin determination, including tariff classification, the applicable rules of origin, the bill of material (including costs) and certificates of origin or manufacturer's affidavits gathered from the supplier base. It will need to be able to integrate with existing ERP systems, including links with engineering, purchasing/supplier, parts systems and classification databases. Some of the more dynamic options on the market can provide detailed reports on origin calculations and provide tools to assist companies in identifying why a product doesn't qualify and what steps can be taken for them to qualify going forward.

Exporters are constantly challenged with the task of ensuring that their products and/or services are not being exported to restricted parties. The number of restricted parties lists for export from the US alone can be extensive, not to mention traders monitoring for other international markets. In the case of exports from the US, failure to comply is a violation of US law and may result in criminal and/or civil prosecution, as well as jeopardize a company's export privileges. Although these various lists are typically available on-line at the respective government websites, a single source does not exist in the public space that will capture all lists in one place. Review of individual lists can be time consuming.

GTM solutions ensure the exporter has conducted the appropriate due diligence on international business transactions with a single source solution, resulting in improved efficiencies. Additionally, many GTM systems provide screening beyond the standard government lists for restricted parties and also include screening using law enforcement and banking lists (eg. FBI Most Wanted Terrorists List), as well as international listings (eg. United Nations Consolidated List). Proper implementation of GTM modules for restricted party screening will allow a business to investigate the buyer or end-user early in the sales cycle to avoid problems further down the road.

Finally, with respect to trade compliance matters, the benefit of GTM with respect to trade security matters is important to note. Take for instance the recent US Customs ISF rule. This rule, implemented on January 26, 2009, requires US importers of cargo moving via ocean vessel to electronically provide specific data element to US Customs 24 hours prior to cargo being laden on board at the foreign origin. Transparency to the 10 required data elements early in the supply chain cycle is critical.

The challenge with the 10+2 regulation is compiling various kinds of data from multiple parties involved in the specific import transaction and transmit to US Customs in a timely manner. A comprehensive GTM solution will gather the necessary data elements from the company's existing systems, as well as allow supply chain partners to send missing components and have them mapped to the specific ISF. With the proper system, not only can the importer compile the necessary data, it can also validate the data and provide connectivity with Customs to file the data. Furthermore, importers will have the capability of auditing filings for timeliness and accuracy – an important feature as progress reports provided by U.S. Customs currently do not provide transaction level detail for identification of compliance gaps.

GTM modules also exist to assist with participation in voluntary security initiatives such as the US Customs-Trade Partnership Against Terrorism (C-TPAT) program and the EU Authorized Economic Operator (AEO) program. Many providers are also investigating options to expand services to incorporate the management of product safety regulations, as this regulatory sector is receiving heightened attention in the global marketplace.

Total landed cost determination

Global sourcing is all about remaining price competitive. Options such as foreign trade zones, preferential trade agreements, and reduction or removal of quotas provide new prospects to lower priced sourcing. Without a thorough evaluation of the total landed cost, however, sourcing decisions can result in costly consequences.

Moreover, on the sales side, similar pitfalls can exist if sales management fails to look beyond a comparison of invoice price against its competitor. Understanding the cost to transport the goods to specific countries, along with expected duties, taxes and fees that the customer will incur, is critical to determining whether the company can make a satisfactory profit when expanding into new regions.

A proper total landed cost will take into account not only unit prices but will also factor in such costs as applicable duties, taxes, customs fees and transportation. Simply put, it is the sum of all costs associated with making and delivering products to the point where they produce revenue.

Companies often use an incomplete definition of total landed cost, leaving out critical elements such as inventory carrying costs, customer service penalties for late shipments, freight accessorials (eg. stop-off fees and detention/demurrage charges), fuel surcharges, and full duties and taxes. Compound this with the fact that many don't monitor how such events as increase in fuel cost or large lead time deviations due to carrier route changes. As a result, businesses rely on after-the-fact auditing of actual costs (long after the product is sold and delivered to the end user), leaving no room for corrective action to protect margins.

Comprehensive GTM systems provide businesses with a more effective method to determine total landed cost. It can provide a repository of the data in a single system that is easily accessed. Additionally, not only does it keep information in a single system, it can also make it simpler to investigate "what-if" scenarios (eg. reviewing whether a company should consider sourcing articles from India versus China).

This is not to say that a GTM system is foolproof. An effective GTM system is dependent on the accuracy of trade content and personnel trained to manage the data to the company's benefit. This can require not only having trade experts on staff but also a network of in-country sources that will complement content provided by the GTM vendor(s). Poor quality of data can result in higher supply chain costs and lower productivity.

GTM solutions

The market today offers many GTM solutions ranging from stand-alone modules that fit a particular need and integrate into leading ERP systems, to more comprehensive best-of-breed solutions, to software-as-a-service (SaaS) offerings, to complete global trade management outsourced services.

Companies that have taken the lead in employing GTM solutions in the past by and large were large corporations with in-house trade specialists. Given the time, cost and complexity of implementing such software, many SMEs did not consider GTM as an option for them. In an effort to attract more small and mid-size companies to GTM software – a number of vendors are expanding the impact of GTM data by partnering with providers of other business software, such as Microsoft and Oracle. Furthermore, they also offering solutions that are continually being updated to fit the needs of the changing landscape (eg. SaaS). Many offer products that can be customized to meet the needs of SMEs and still remain cost-effective.

Companies should review current, as well as, long-term needs to ensure that any solution selected fits their needs now and in the future.

Today, there is still no perfect solution for GTM applications. The landscape is in an ongoing state of development. Although what exists in the market today is far superior to what companies dealt with a decade ago, there are still many opportunities for improvement. Despite the ever changing landscape of GTM, however, there is certainly opportunity for international traders to mitigate risks inherent to international trade and reduce costs by considering the GTM options that are available in the market today.

If your company has not investigated GTM solutions in the past, you may wish to consider exploring options with some of the better known names in GTM solutions, including Descartes, GT Nexus, Integration Point, JP Morgan, Kewill, Management Dynamics, Oracle, Precision Software, QuestaWeb, SAP, TradeBeam TradeMerit. This list is by no means exhaustive and is provided as a courtesy to the reader as a point of reference only. ■

Cyprus Joint Ventures: Flexibility for Russia, CIS and India

Cyprus plays an important role in the structuring of overseas investments, most significantly to Russia, the CIS and India, and therefore corporate joint ventures have an important role to play for investors who wish to participate or co-operate in such investments. In this article Demetris Loizides of Harneys' Alyco in Cyprus discusses essential legal and practical matters underlying the concept of joint ventures in Cyprus.

Advantages of Cyprus

The use of a Cypriot company particularly in the capacity of holding company in a JV provides benefits relating to certainty, limited liability, separate legal personality, versatility, financing and tax flexibility.

The Companies Law of the statute laws of Cyprus (the 'Cap 113') contains a mature body of statutory principles, supported by an established commercial (both local and international) practice. Consequently the legal regime is defined by certainty regarding the JV Parties' legal position between themselves and in relation to the company or third parties.

The Cypriot company has separate legal personality whose members' liability is limited to the amount of capital they respectively contributed to the company and into the Business. It has the capacity to sue and be sued and has the power to own property and contract in its own right. The separate legal personality makes a JV particularly appropriate to a business where continuity is essential to JV Parties.

A JV in Cyprus can be versatile and able to cope with complex arrangements in terms of funding the business (in relation to both equity and loan) and in terms of returns and earnings on such funding. The loan financing can be secured in various ways including the granting of fixed and floating charges over some or all of the JVCo assets.

Finally, the separate taxation of the JV allows the JV Parties a high degree of latitude in planning their own and their venture's tax position.

The Cypriot company is a creature of statute, a fictitious entity without physical, tangible, existence or presence and for this reason Cap 113 focuses primarily on the relationship of those which "constitute" the company, in particular, its members and directors. Cap 113 is founded on the ancient principle "the majority rules".

The Constitution of the Cypriot company

The Cypriot company has two sets of documents which define its constitution, namely the memorandum of association (the 'MA') and the articles of association (the 'AA'). Both the MA and the AA are filed with the Registrar of Companies (the official company registration office of Cyprus, a department of the Ministry of Commerce and Industry) and are available to the public.

The MA and the AA by virtue of Cap 113 form together a contract, known as the "statutory contract", between the Cypriot company and the members as well as the members inter se.

The MA contains five clauses setting out the company name, its domicile, the company objects (and powers), the limitation of its members (shareholders), and its authorised share capital. The MA has more to do with the company's external relations.

The AA contains regulations concerning the internal management of the company broadly relating to the following main matters: the issue of shares; the rights and restrictions of members; the transfer of shares; the composition, powers and duties of directors; the conduct of meeting and voting both at the level of directors (board meetings) and at the level of members (general meetings); and the right to and the distribution of dividends.

The AA is therefore an essential document in a JV which should be tailored to accord with the particular circumstances and requirements of the venture and to reflect the bargaining power of the JV Parties.

The Shareholders' Agreement

JVs almost invariably, except in simple arrangements, require some form of a shareholders' agreement (the SHA), also referred to as joint venture agreement. Although most of the provisions likely to be included in a SHA can, in principle and in substance, be included in the AA the object and the role of the SHA differ from those of the AA.

Although the actual rights and obligations of the JV Parties under a SHA are capable of wide variation depending on their commercial objectives and bargaining power, matters ordinarily addressed in a SHA include the following: the on-going relationship of the JV Parties; the funding of the Business; the management of the Business and the division of matters reserved to the decision of the board of directors and of the JV Parties; the control of the board of directors; the resolution of deadlocks; and the eventualities relating to the withdrawal of the JV Parties and the termination of the JV.

Remedies and forum

The remedies available to the innocent JV Party in an event of a breach of the SHA include damages, specific performance and injunction. Damages in principle aim to put, in so far as money can do so, the innocent JV Party in the position he would have been had the SHA been performed without breach in accordance with its provisions.

Specific performance requires the JV Party in breach to perform the SHA in accordance with its provisions. Unlike damages a remedy available as of right, specific performance is subject to the discretion of the court. A SHA can in appropriate circumstances be specifically enforceable. The remedy will be awarded if it is fair, practical and if it sought promptly after the occurrence of the breach. Despite these conditions it will not be awarded if, inter-alia, damages is an adequate remedy.

Injunction is in nature a prohibitive remedy and requires the JV Party in breach to halt his course of action. Like the remedy of specific performance, the remedy of injunction is discretionary and it is subject to the same conditions referred to above relating to specific performance.

Generally the JV Parties may choose any law (forum) to govern the SHA. Nevertheless whatever law is chosen the Cypriot law and regulations will always be relevant to a JV for it applies to the MA and AA regardless of the chosen law. Ideally the SHA should be governed by Cypriot law.

Conclusion

The legal and tax regimes in Cyprus are able to cope with a wide variety of commercial arrangements and corporate structures. Cypriot law is flexible to allow those participating to plan their tax position while accommodating their commercial wishes under an established legal environment.

The participants are largely free to formulate any rules they wish to regulate and govern their joint venture relationship. These rules can be divided between the constitution of the joint venture company

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and the joint venture agreement without compromising their effect, validity or enforceability. The rules contained in the joint venture agreement may be kept in confidence from the public.

Although the joint venture company may be a party to the joint venture agreement the participants can instead direct the company to conduct its affairs in accordance with the agreement without the company itself needing to be involved or be a party to it.

Cypriot law has sufficient remedies available to the participants to ensure the performance of the rules which formulate the joint venture and to secure their respective rights under or in connection with it. ■

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Internet Governance Forum 2009

As users around the world celebrate the birth of the internet 40 years ago, there is no denying that the network of networks has revolutionized the way we live and do business today. Yet the evolutionary nature of the internet means that we continually face new challenges, which makes internet governance issues increasingly important for all users, from businesses and governments to academia and the general public.

Convened under the aegis of the UN Secretary General, the Internet Governance Forum is the only forum where all entities – including business, governments, civil society and the technical community – can discuss the future of the internet on an equal footing. This establishes an environment of open exchange critical to informed policy-making takes the views of all internet users into consideration.

The United Nations formally set up the Internet Governance Forum (IGF) in 2006 to act as an international forum for exchange and discussion on internet-related public policy issues.

It was born out of two UN World Summits on the Information Society (WSIS) held by the UN in 2003 and 2005, in Geneva and Tunis respectively, which looked at ways of bringing the benefits of the information society to more people around the world.

This year's IGF took place in Sharm el-Sheikh, Egypt, from November 15–18. It saw the continuation of discussions begun at last year's IGF in Hyderabad, India, as well as discussion of new and emerging issues such as online social media and policy challenges.

ICC Secretary General Jean Rozwadowski delivers opening ceremony speech

Over 1,500 people from around the world gathered for four days of discussions on a range of Internet issues, with a focus on boosting internet inclusivity, especially for those in developing countries. Such participation pays testimony to the importance of the event and the exchanges that take place there.

Business Action to Support the Information Society (BASIS), an initiative of the International Chamber of Commerce (ICC), has given its full support to the continuation of the forum – with its multi-stakeholder approach and structure – when its five-year mandate expires at the end of 2010, saying it is a crucial component in global policy discussions to ensure continued internet innovation and the required conditions to attract investment.

Forum discussions take place in the form of interactive workshops and main sessions. They are as diverse as IGF participants. Most recent topics for discussion and action have included cyber security, language diversity, accessibility, openness, privacy and managing critical internet resources, with special regard for marginalized communities. Now in its fourth year, the IGF has become a crucial component in global policy discussions on such issues.

BASIS brings business expertise to and encourages business participation in the IGF. Under the umbrella of BASIS, business engages with all stakeholders with the aim of spreading the benefits of the information society more widely across the world.

Addressing the opening ceremony of this year's forum, ICC Secretary General Jean Rozwadowski said: *"Many of our members are involved in regional and national initiatives – from e-banking in Kenya to pollution control measures for reducing greenhouse gas emissions in India. Coherent and informed policy approaches help them to reach more people. BASIS recognizes the value of working together with all stakeholders to build smart, sound internet policies that allow us to play our parts effectively."*

Comprised of companies and associations from across sectors and continents, BASIS believes that the IGF provides a unique opportunity for the generation of new partnerships, ideas, discussion of real experiences and challenges and the sharing of best practices, which are all necessary for the successful development of Internet-related policies.

BASIS leaders point out that innovation in internet and communication technologies is a central plank to many countries' economic recovery plans. They warn that the demise of the IGF could impede the ability of the Internet to drive economic growth and improve societal benefits.

"The internet needs to continue to develop in an environment that encourages innovation that, in turn, will attract investment from the business community," said Herbert Heitmann, SAP Chief Global Communications Officer and Chair of the ICC Commission on E-Business, IT and Telecoms (EBITT). *"The IGF allows for this innovation by bringing all the stakeholders together in an environment where they can openly exchange ideas."*

The non-negotiating, multi-stakeholder nature of the IGF, criticised by some, has enabled us to build knowledge and forge the relationships necessary to move us closer to a more inclusive and people-centred information society. The fact that the IGF enables stakeholders to meet on an equal footing to discuss internet issues, rather than spending time negotiating texts of documents, is a strength, not a weakness.

Because they do not meet at the IGF to negotiate, community leaders can participate in frank and open discussions that have ultimately led to more informed policy and decision making.

As a key information and communication technology (ICT) and internet innovator, investor, developer and user, business contributes

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significantly to the success of the internet. However, continued internet development requires an environment in which innovation and investment can thrive. Such an environment relies on informed policy making – which results from working with all stakeholders.

"An environment that enables development is the best way to promote innovation, attract investment and help build infrastructures necessary to improve access," said Subramaniam Ramadorai, Chair of BASIS and Vice Chairman of Tata Consultancy Services. *"Regulation should avoid hampering companies' ability to compete, which slows innovation. Instead policies should encourage innovation and competition that are essential to developing an internet that can reach the next billion users."*

The importance of the IGF as a key driver for informed policy at local level was backed by the findings of a Diplo Foundation survey, distributed during the meeting. Commissioned by AT&T, it surveyed over 200 IGF participants from 81 countries.

Results reveal that almost half (47.2%) of respondents found the knowledge gathered through the IGF to be practical enough for them to make a good start on policy development and implementation in their respective communities, while a further 15.4% found it to be immediately applicable.

Further data shows that 54% of respondents claimed they communicated relevant knowledge from the IGF to members of their local community, and 23% communicated with representatives to their local administrations.

"By bringing together different stakeholder sectors, the IGF provides an appropriate, effective forum for addressing internet governance issues. The IGF has an important role in the future of the internet," said Dorothy Attwood, Senior Vice President of Public Policy and Chief Privacy Officer at AT&T.

The creation of regional and national IGF events and initiatives is also testament to the forum's success at stimulating pro-competitive policy, while enabling the free flow of information, data protection, and security.

There is no existing alternative to the IGF.

"As a major contributor to the success of the internet, business knows that effective, internet-related policies can bolster the information society and bring the benefits of the internet to more people," said Mr Heitmann, the head of the EBITT Commission. *"Given the fast-paced evolutionary nature of the internet, keeping momentum and building on discussions in a timely and effective manner is crucial."*

About ICC

The International Chamber of Commerce is the largest, most representative business organization in the world. Its hundreds of thousands of member companies in over 130 countries have interests spanning every sector of private enterprise.

A world network of national committees keeps the ICC International Secretariat in Paris informed about national and regional business priorities. More than 2,000 experts drawn from ICC's member companies feed their knowledge and experience into crafting the ICC stance on specific business issues.

The United Nations, the World Trade Organization, and many other intergovernmental bodies, both international and regional, are kept in touch with the views of international business through ICC. ■

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For more information about BASIS, please visit: www.iccwbo.org/basis

Business Leaders Warn Against Demise of Internet Governance Forum

Jonathan Huneke is Vice President, Communications & Public Affairs, at the United States Council for International Business

At the conclusion of December's meeting of the Internet Governance Forum (IGF) in Sharm el-Sheikh, Egypt, business leaders representing the International Chamber of Commerce (ICC) issued a stark warning that the demise of the UN-linked IGF could impede the ability of the internet to drive economic growth and improve societal benefits.

The main warning came from Herbert Heitmann, chief communications officer with SAP and chair of ICC's Commission on E-Business, IT and Telecommunications, in remarks that looked ahead to next year's five-year review of the IGF. The forum was set up as an open platform for businesses, governments, civil society and technical experts to discuss Internet policy issues such as privacy, security and access costs.

"The lack of multi-stakeholder involvement has often led to ill-informed decision making, resistance in society and suspicions among the different players," said Mr Heitmann. *"The Internet Governance Forum, as we know it today has fortunately prevented these shortfalls so far. It has helped to make the internet a universally applauded, appreciated and heavily utilized medium globally. Business wants the IGF to be continued and strongly opposes changes to its founding principles."*

The IGF is the only forum where all entities – including business, governments, civil society and the technical community – can discuss the future of the Internet on an equal footing. This establishes an environment of open exchange, critical to informed policy-making that takes the views of all Internet users into consideration.

An invaluable forum for all stakeholders

A number of US business leaders attended the IGF meeting in Sharm el-Sheikh as part of a delegation from the United States Council for International Business (USCIB), ICC's American national committee. They spoke highly of the forum's importance as a forum for all internet stakeholders.

"By bringing together different stakeholder sectors, the IGF provides an appropriate, effective forum for addressing internet governance issues," according to Dorothy Attwood, senior vice president of public policy and chief privacy officer at AT&T. *"The IGF has an important role in the future of the internet."*

The creation of regional and national IGF events and initiatives is also testament to the forum's success at stimulating pro-competitive policy, while enabling the free flow of information, data protection, and security, added Art Reilly, senior director of strategic technology policy at Cisco Systems and chair of USCIB's Information, Communications and Technology Committee.

"This one-of-a-kind environment of multi-stakeholder exchange helps us to find new understandings, common interests and opportunities," he said. *"Because our focus has been on substantively exchanging experiences and views instead of negotiating text our time here has been put to good and practical use that can inform participant's actions in the aftermath of the IGF."*

ICANN agreement hailed

Meanwhile, US business applauded October's announcement by the US Department of Commerce and the Internet Corporation for Assigned Names and Numbers (ICANN) to institutionalize and affirm ICANN's responsibilities as a multi-stakeholder, private sector-led organization to coordinate the internet's global domain name and addressing system.

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The agreement marks a new period in the technical management of the domain name system (DNS) following the expiration of a Joint Project Agreement between the two parties on September 30.

"The US business community has supported the ICANN model since its inception 11 years ago, and we still do," said USCIB President and CEO Peter M Robinson. *"This agreement allows ICANN to continue to evolve, and cements the private sector-led model as a key enabler in appropriately guiding the organization in its limited, technical, but critical role in managing the internet's domain name system. We believe this will benefit global internet users everywhere, including the businesses we represent, for whom the internet is such a crucial infrastructure and commercial platform."*

Cisco's Mr Reilly also hailed the agreement. *"USCIB commends ICANN and the US Department of Commerce on the commitments laid forth,"* he said. *"It is important to preserve the security and stability of the system, and ensure that decisions are made in the global public interest, transparently and with sufficient accountability. So is facilitating worldwide participation through international domain names."* ■

Bermuda - A Rock of Stability and a Launch Pad Into the Future

At the heart of Bermuda's success as a centre for business and technology has always been a partnership between the public and private sectors. In this regard, Bermuda's relatively small size works in its favour: it is possible for both sectors to enunciate their needs and discuss paths of progress in a way that leads to solutions rather than roadblocks.

Generally, the people of Bermuda and the Government of Bermuda have agreed for more than 40 years on the basic approach: ensuring that the economy is at once a rock of stability and a launch pad into the future. There has also been widespread agreement for some time that the ICT sector is and must remain a central pillar of the economy.

Isolation may have been a key driver of such thinking in the days when a five-hour flight separated the island from the Eastern Seaboard. Today, with the whole world no further than a single click away, incorporating and encouraging ICT is more of a matter of common sense. Bermuda's natural advantages favour the development of certain industries, with ICT taking a leading place.

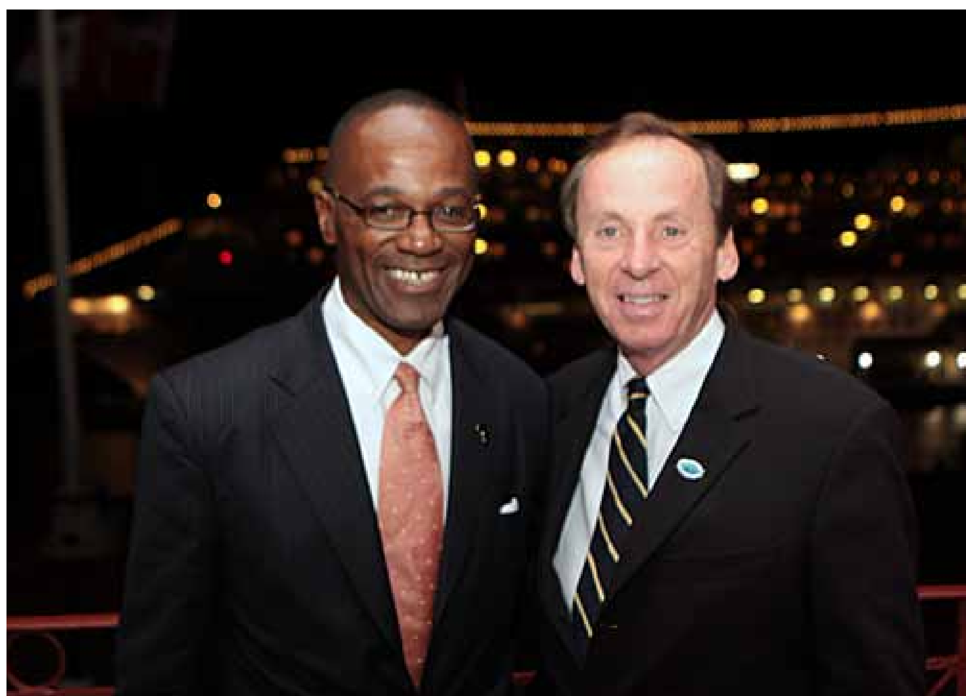
In this context, of course, Bermuda does not mean giant server farms or warehouses stocked to the eaves with every imaginable product. Instead, Bermuda facilitates thought processes and organisational infrastructure: brains over brawn, as it were.

Bermuda's early embrace of ICT — the initial Bermudian legislation on the subject, a decade ago, was among the world's first — followed an intense period of public discussion, to outline a strategy that would place the island at the centre of the debate over how to keep information technology innovative, diverse, and accessible.

The fallout from that original thinking has been two-fold. Domestically, Bermuda has become the ultimate "wired," e-ready economy, founded on principles of fairness, transparency, and predictability. Its infrastructure is equal to that of the top global financial centres. More than 90 percent of Bermuda households own a computer, and 81 percent of those use high-speed internet.

Bermuda's connectivity is supplied by providers of CDMA, GSM, 3G and WiMax services, all carried over three mobile networks, three fixed-line networks, and overlaid by six ISPs. This diversity flourishes because the regulatory framework is light but consistent. Highly-evolved e-commerce legislation and the most up-to-date electronic transactions laws in the world are the legacy of the decision to make the support of the ICT industry a national initiative. Bermuda upholds internet safety guidelines; has in place meaningful child-protection laws; will not sanction pornography or gambling sites to be hosted from the island; and leads the world in setting data security standards.

Typical of the way Bermuda encourages technological development is its emerging power in the space industry, succeeding in attracting a critical mass of satellite companies and space service providers operating from Bermuda. Again, Bermuda is not home to the manufacturing or launch sectors of the satellite business, but has developed an intellectual pool drawn from operators and their advisors.



The Hon Michael J Scott, JP, MP, Minister of Energy, Telecommunications and E-Commerce (on the left) and Dr James Poisant, Secretary-General of WITSA on the right

In the area of security and digital certificates, for example, one home-grown business is providing managed services to UBS, the London 2012 Olympics, Credit Suisse, HBOS/Lloyds, and Capita.

A great deal of thought has gone into the future of ICT in Bermuda. The island is developing a privacy model to enable multinational companies to move data easily and quickly to other jurisdictions in conformity with various national rules. Mindful of physical constraints, Bermuda companies have installed multiple disaster-recovery and business-continuity facilities, a must for an economy that stores vast amounts of electronic data. This approach has allowed Bermuda's to be the first government to partner with Research in Motion, the creators of Blackberry, to develop and host a local mobile application development competition with local mobile carriers, one which led to a set of innovative applications that can be used both locally, or globally.

Bermuda's efforts have been recognised globally. The Economist Intelligence Unit has ranked Bermuda among the top 25

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The Bermuda Declaration

The World Information Technology and Services Alliance (WITSA) is the global body that represents the information and communications technology industry. The Global Public Policy Summit (GPPS) is a WITSA event that focuses on global policies affecting the information and communications technology industry.

The Declaration issued at the conclusion of the 2009 GPPS in Bermuda is intended to:

- raise public and institutional awareness and attention to the benefits of a coordinated global ICT policy;
- stimulate increased ICT investment, projects, and opportunities;
- re-commit WITSA to the continued global promotion and development of ICT solutions.

The current global economic crisis requires a coordinated policy response that recognises the critical role played by ICT in economic recovery and the overall benefits that it brings to all nations and communities. Future economic growth should be environmentally as well as economically sustainable.

Therefore, participants at WITSA's GPPS 2009 declare that:

1. ICT is a proven driver for global economic activity and growth.

2. The economic growth generated by the development of the ICT sector will benefit all economies.

3. Access to ICT and the knowledge and information provided by the internet is an important part of an inclusive information society and is essential for broader sustainable economic growth.

4. Public-private partnerships are a critical part in building ICT infrastructure and an information society.

5. There should be an open trading system between nations free from barriers for ICT products and services. We urge WTO members to reach the compromises needed to achieve a successful conclusion to the Doha Development Agenda with an ambitious and balanced outcome, including comprehensive results in services.

6. Harnessing the power and benefits of ICT for society will not come automatically. Only if business and governments work together with other partners, including their education systems, can people everywhere be assured of access to ICT tools and the knowledge and empowerment they deliver.

7. International strategies to tackle climate change need to make full use of ICT as one of the most powerful tools available, and one of the only ones that can produce dramatic changes without negative effects on prosperity or individual lifestyles.

8. With the pressure on global public finances, governments should recognise the use of ICT and technology-enabled change as tools to address their operational costs and efficiencies.

9. The continued success and growth of ICT depends on trust and confidence; privacy and security should be appropriately integrated into ICT programmes, systems, and products from the beginning.

countries in the world, in terms of e-readiness, for the last four years running. Were the island larger, and therefore more easily able to satisfy some of the measurements on which the EIU bases its rankings, Bermuda would sit among the top few jurisdictions in the world for e-readiness.

It was further recognition of the island's strong place in the ICT world that led to the World Information Technology And Services Alliance (WITSA) decision to partner with the Bermuda Government and the Bermuda Chamber of Commerce's Business Technology Division, to co-host its biennial Global Public Policy Summit (GPPS) in Bermuda in November 2009. The event was an enormous success. Information and communications technologies (ICT) professionals from more than 40 countries gathered on the island for three intense days of meetings and discussions that concluded with The Bermuda Declaration, proposed jointly by the Government of Bermuda's Department of E-Commerce and WITSA, (see sidebar) on the way forward for the development and growth of global ICT.

Representatives attended from many of the key global participants, including the Internet Corporation for Assigned Names and Numbers (ICANN), the Internet Governance Forum (IGF), the International Telecommunications Union (ITU), the Organisation for Economic Cooperation and Development (OECD), the World Bank, and the World Trade Organisation (WTO), among others.

"I was extremely pleased to see delegates from around the world tackle the most pertinent issues facing our industry today in Bermuda", said WITSA Chairman Dan E Khoo. *"As an enabler of other industries, ICT can raise productivity and efficiency in all economic sectors. The GPPS is an important venue for world ICT leaders, senior government officials and policy makers to work together to identify the best solutions for building out the ICT infrastructure through pro-competitive market policies and sound investments."*

Bermuda's Minister of Energy, Telecommunications & E-Commerce, the Hon Michael Scott JP MP, said: *"My Ministry was most pleased to be a partner in this incredible event, which again shows that Government fully understands the importance of technology in a fast-paced and rapidly changing world. We will continue to support initiatives that demonstrate the ways in which Bermuda is at the forefront of ICT."*

"The overall message from the Summit," said David A Olive, WITSA's Public Policy Chairman, *"is that we should embrace ICT and place ICT in our plans and programmes as a strategic economic driver for recovery and future sustainable economic growth. In addition, carefully crafted and flexible public policy attracts and facilitates innovation, trade and investment, information flows, and infrastructure."*

Areas of focus

The conference was divided into seven main areas: the state of the global ICT industry; information security and privacy; ICT and economic stimulus plans; the Internet and its governance; ICT and the environment; international institutions and the role they play in the arena of policy and ICT; and future technology trends.

The global ICT industry

Robert Flanagan, Global Insight's Principal, Technology Markets said that the first green shoots have been appearing in several countries, indicating signals of economic recovery and growth for the world economy and for the ICT industry. He noted five driving forces: convergence; mobile leapfrogging; expanded broadband; empowered citizens; and ICT for healthcare.

Information security and privacy

Collaborative solutions were recommended among the industry and policymakers in order to minimise threats from cyber-attacks and to ensure that systems and data remain protected.

It was also noted an appropriate balance must be maintained between privacy protection and information security; the one should complement the other. An imbalance would run the risk of privacy protection inhibiting information security and cyber-security approaches.

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ICT and economic stimulus plans

A panel of distinguished government and business experts held a lively discussion on the role of governments in providing economic stimulus and public sector investment, the critical role of innovation as an economic driver, and the role of ICT skills.

On the role of government stimulus in ICT projects during a recession, a general wariness was expressed about such government programmes, even as the panellists recognised that they might be beneficial at the macroeconomic level.

A lively debate on innovation recognised that while the spur of innovation had come from individuals and businesses, governments do have a role in maintaining a suitable climate and working on global solutions that relate particularly to copyright and intellectual property rights. An energetic discussion followed on whether foreign direct investment helped in the process of innovation, with contrary arguments being made on the need for innovation to be considered as more of a lifecycle issue.

The internet and its governance

The internet governance panel concurred that WITSA is on target in its adoption of the following principles: keeping the internet open and accessible to all; ensuring reliability and security; recognising the multi-stakeholder nature of the IGF and its continuation for further policy development discussions; strengthening and broadening the involvement in leadership in the ICT industry in these relevant fora; and ensuring that the global public policy in governing national systems enables the use of ICT products.

ICT and the environment

A presentation of data and trends on global warming and climate change drew the conference's attention to the seriousness of this issue. Panellists discussed projects and approaches that ICT organisations and companies are adopting to address the issue, including recycling and the reduction of power consumption in the data centre and by ICT products.

It was pointed out that most policymakers are focused on the carbon footprint of the ICT industry, which is about two percent of the global total, but few pay sufficient attention to the fact that ICT could be the solution to much of the other 98 percent of the problem.

International institutions and their role

Representatives of four institutions traditionally focused on global policy — the ITU, OECD, WTO and World Bank — presented a lively defence of their institutions.

An audience-led discussion focussed on coordination and cooperation among the international institutions and their efforts to reach out to national governments to enable them to understand the opportunities the programmes presented and, more importantly, the obligations that the agreements imposed upon them.

Future technology trends

A panel on innovation was asked to identify the next-generation technologies, or the next new technology wave. Sensors, cloud computing with ubiquitous networks, and consumer-driven personalisation to remove complexities for the user were suggested. The panel discussed the progression from hardware to software, technology users, and aspects of policy. ■

In a Global Economic Downturn, Business Aviation Demonstrates Value to Companies and Economies

Dan Hubbard is Vice President of Communications at the National Business Aviation Association

The global importance of business aviation was evident throughout the year in both attendance and participation in major events in Europe and the US, and studies that reveal the breadth of utilization and contribution that business aviation returns to companies of all sizes – especially in economically challenging times.

Participation by exhibitors and attendees at both the European Business Aviation Convention & Exhibition (EBACE2009) and the Annual Meeting & Convention of the National Business Aviation Association (NBAA) in the United States reflected the industry's underlying strength despite the economic turmoil experienced worldwide in 2009.

The 9th Annual EBACE, jointly presented by the European Business Aviation Association (EBAA) and NBAA, from May 12 through 14 at the Geneva PALEXPO, drew 10,917 registered attendees, its third-largest total after back-to-back record attendance in 2008 and 2007.

Brian Humphries, President and CEO of EBAA, said the gathering exceeded expectations. *"I take great encouragement from the level of participation and support we had for this year's event, and from all the favourable comments we have received from Exhibitors,"* he said.

"As everyone knows, the business aviation community has been confronting one of the worst economic storms anyone can remember," said Ed Bolen, President and CEO of NBAA. *"That EBACE would have its third-largest turnout this year demonstrates the value of the show to our industry."*

A total of 411 Exhibitors participated, along with a Static Display of 65 business aircraft, up from 60 the previous year, at nearby Geneva International Airport.

The flagship forum for the European business aviation community – where the international industry comes to find products and services from the world's top vendors – drew participants from Africa, Asia, the Middle East and North America as well as from across Europe to sessions that included the results of the first-ever look at the economic impact of the industry in Europe.

Measures of business aviation's value

The study for EBAA by Pricewaterhouse Coopers (PwC Economics) found that business aviation in the European region was responsible for 164,000 jobs and €19.7bn in gross value added (GVA) in 2007 alone. Until this analysis, only estimates have been made of the economic contribution of business aviation to the European economy.

In addition, this annual GVA contribution accounted for roughly 0.2 percent of the combined GDP of the European Union (EU), Norway and Switzerland. The largest impacts from business aviation were shown to be in Western Europe, principally in France, Germany and the UK. The total impact of business aviation in these three countries alone was €12.6 bn in 2007, with a combined 75 percent share of business aviation employment.

The Europe study mirrors a US study conducted as part of a wide-ranging advocacy effort sponsored by NBAA and the General Aviation Manufacturers Association (GAMA) to educate US opinion leaders about the essential role of today's business aviation industry.

The US study by NEXA Capital Partners for the No Plane No Gain campaign was a follow-up to a landmark 2001 study which found that a

www.ebace.aero

business airplane is the sign of a well-managed company, and that companies using business airplanes outperform those that do not.

The fresh look confirmed the 2001 findings, including that *"companies using business aircraft outperform non-users across every key financial and non-financial measure of business success,"* said Michael Dyment, Managing Director and CEO of NEXA Capital Partners, and author of the study. *"In fact, business aircraft users had a dominant presence among top performing companies, an average of 92 percent, among the most innovative, most admired, best brands, and best places to work, as well as dominating the list of companies strongest in corporate governance and responsibility,"* Dyment said.

Studies like these complement the recent survey in the US conducted by Harris Interactive that shows the diversity of business aviation, and contrary to the views of some industry critics, that the typical "profile" is a small to mid-size company operating a single aircraft that is used by a wide range of employees.

EBACE attendances reflected the industry's underlying strength

The Harris survey, conducted between June and early October this year, found that nearly 60 percent of the companies operating business aircraft have fewer than 500 employees, and seven out of 10 have fewer than 1,0000 employees. In addition, three-fourths of the companies operate only one turbine-powered aircraft.

But perhaps the most telling finding was that managers and other mid-level employees are the typical passengers. Only 22 percent of passengers are top management, including a company's Chairman, Board member, CEO or CFO.

Venues highlight business aviation's value

Global events like EBACE2009 and NBAA2009 allow the industry to showcase the essential role of business aviation in supporting jobs, mobility and economic opportunity around the world, and to portray the diversity of the community of business aviation users.

For instance, EBACE also featured special session devoted to this topic called, "Business Aviation: Perception Versus Reality," that described the efforts of EBAA, NBAA and GAMA to educate policymakers and opinion leaders about the true value of business aviation to citizens and communities in all parts of the world.

Other sessions at EBACE provided updates on the rapidly changing aviation environment across Europe, from the EU emissions trading scheme (ETS), new avionics and other operations requirements of the coming "single European sky," and the monitoring, reporting and operational changes in store for the international business aviation community.

In addition, the event included the highly regarded Safety Standdown, and a session on Safety Management Systems (SMS) as important contributors to continuous improvement in business aviation's safety record in Europe and around the world.

"More than ever, EBACE demonstrated that business aviation is the right tool for challenging times," Humphries said.

Next year's EBACE, which will mark the 10th anniversary of the event, is scheduled for May 4-6, 2010, at Geneva PALEXPO and Geneva International Airport. Co-hosts EBAA and NBAA have secured dates for this exceptional event and exhibition through 2015.

NBAA will sponsor its 63rd Annual Meeting & Convention from October 19-21, 2010, in Atlanta, GA, and intends to build on its successful 2009 event that drew representatives from 86 countries, from six continents, an increase from 82 countries the previous year.

ABACE to return in 2011

Equally significant for the international business aviation industry, NBAA has announced that the Association's Asian Business Aviation Conference & Exhibition (ABACE) will be held on January 18-19, 2011, at the Hong Kong Business Aviation Centre (HKBAC) at the Hong Kong International Airport.

"NBAA recognizes the importance of the Asian region to the future of business aviation," Bolen explained, adding that *"we will continue to work very closely with our Exhibitors and colleagues at the Asian business Aviation Association (AsBAA) to promote the growth of business aviation in Asia."*

Employees can meet, plan and work with each other aboard business aircraft, greatly enhancing productivity en route

In 2011, all elements of the ABACE event will be located at the Hong Kong business Aviation Centre, including exhibits, education sessions and registration located inside the hangars, with the static display on the ramps outside the hangars.

"We're also very pleased to partner with AsBAA and the International Business Aviation council (IBAC) on content for sessions dealing with issues of importance for Asian operators and those operating in that large and diverse part of the world," Bolen said. ■

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Thomas Flohr is the Founder and Chairman of VistaJet Holding. In 2004, driven by his passion for and desire to create and provide an unrivalled private aviation experience, Flohr established VistaJet. Today, with its revolutionary business model and commitment to excellence, VistaJet is the world's second largest private aviation company with the largest wholly-owned commercial fleet outside the Americas.

A Flexible Way to Manage and Finance Your Private Travel

Thomas Flohr, Chairman and founder of VistaJet Holding, introduces his company and his revolutionary new business model in an interview with Tom Page

What is the unique approach pioneered by VistaJet?
There are two key elements that differentiate VistaJet from our competitors – we are the only luxury brand in private aviation and our simple, transparent business model.

The global financial crisis has highlighted the significant capital commitment and asset risks associated with full or fractional ownership. For the first time in more than 25 years, there is an alternative to the fractional market. Our business model delivers to the client the unique combination of a luxury brand, a customized solution, and pricing transparency.

VistaJet's flight solutions - Program and On Demand - meet the needs and requirements of our customers today and in the future. For the frequent traveller, 100 hours per year or more, VistaJet offers the Program solution, where customers can customize their travel requirements; have access to our entire fleet of aircraft and receive guaranteed availability, all for a simple occupied hourly rate. For those customers who travel only occasionally, we offer On-Demand; one call to our sales representatives and they can put together that special trip.

We offer complete pricing transparency to our customers with no hidden costs. While other providers' programs have positioning fees, monthly fees, ownership fees, hourly fees, the VistaJet business model is built on simplicity and transparency. Our customers asked for a simple, inclusive occupied hourly rate, and VistaJet delivers on that, together with a statement of the hours used at the end of each month.

How important is a young fleet with strong manufacturer support?
There are only a few manufacturers that produce airplanes with the combination of capacity, range and quality that we require for our customers. Bombardier recognized that strength of our business model, and we are delighted to have them as our partner. Our aircraft are less than three years old on average and having a consistent, guaranteed offering for our clients is a major marketing promise and Bombardier helps us to deliver those assurances.

How is the European market developing in relation to more established markets such as the Americas?
In terms of private aviation, America is a very developed region but is not an area we are focusing on due to market saturation – although we are more than happy to fly clients there should they require it. Europe, and in particular Moscow and Russia, are of strategic importance to VistaJet and we continue to invest our aircraft assets heavily in these markets. We are a leader in Russia and fly clients in or out at several times daily.

Our other key markets include the Middle East and Asia and these regions are at different stages in development. The Middle East is much more attuned to using private jets and we have seen our business grow rapidly there over the past 12 months. In Asia, private aviation is a less established market but is catching up fast and we have targeted major growth in Asia over the next few years.

Obviously, people will want to travel across continents and VistaJet customers can take advantage of the largest single service area in business aviation – from the US east coast to Asia/Pacific. Customers can fly within, or between, each region within the VistaJet service area with no positioning costs. Whether the trip is London to New York, Geneva to Riyadh or Bahrain to Beijing, Program customers only pay for the hours they fly, on the aircraft that meets their requirements.

What are the benefits to the bottom line of working with VistaJet?
Most companies view private jets as a business tool rather than a perk for their senior executives. No doubt, flying aboard a private aircraft is more expensive than flying commercial, but the experience is vastly

different, and this experience is the most important discriminator. VistaJet's customers tell us the most important benefit of flying privately is "time". VistaJet allows you to make more efficient use of your time – from arriving at an uncongested private aviation airport moments before your departure, using the airplane as an office in the sky, and upon landing it's off to your business meeting. The schedule a CEO can keep using private aviation dramatically improves his/her productivity outside the office, which improves the bottom line.

How can VistaJet help companies frame a strategy that encompasses corporate aviation?
With VistaJet each offer is customized to each customer. We spend a considerable amount of time with each of our customers, understanding their flying patterns and their requirements, and then we tailor a solution with that customer. As opposed to more traditional models from our competitors which tend to have compromises that customers are forced to pay for and live with, we build transparent solutions around their needs so the partnership is mutually beneficial.

How do you view the sector overall?
The economic slowdown has hit all sectors hard and private aviation has not escaped. I would estimate that the overall market has contracted by around 15-20 per cent. At the same time our revenues for H1 2009 have increased by 22 per cent so we are pleased with progress even though it is less than we were predicting this time last year.

The global credit crisis has shown that the market is ready for an alternative approach to private aviation and at VistaJet we believe our methodology has been shown to be winning hearts and minds.

While fractional ownership offers the opportunity to fly private, the complexity and the total cost have been the issues that I have heard most from our new customers. Our simple and transparent approach is giving clients the right jet at the right time at the right price and I believe it is the future for the private aviation industry.

Please describe a typical VistaJet customer?
A VistaJet customer is someone who is value-driven, and who demands a consistent top quality service. They are someone who appreciates and expects a luxury experience similar to their favourite hotel, restaurant or holiday destination. They may be a business leader or entrepreneur who requires the flexibility and guaranteed availability which allows them to visit colleagues, companies, suppliers, partners or advisers anywhere on the planet at a moments notice. We offer a bespoke service, encapsulating the highest standards of service in the skies, which allows customers to pull together journeys and timescales simply not possible through commercial operators.

How do you view the On Demand/Program service in relation to purchase?
We believe that the financial crisis has highlighted the flaws in whole and fractional aircraft ownership due to the cash commitment and residual value risk. Our business model is built around VistaJet owning the fleet and customers partnering with us for time. Program customers buy annual hours, often a 100 hours or more per year. For example, in one year, a European entrepreneur may require 60 hours on a Learjet for sales meetings in London, Paris or Rome. He may then need 25 hours on a Challenger to meet business partners in the Middle East and a further 15 hours on a Global Express to visit suppliers in Asia. There is no point purchasing one type of plane, when your requirements are such that you need flexibility. It is the same for our On Demand service. If someone is flying one week on business with two associates and the following week on holiday with friends and family, they require a different type of jet. One size does not fit all, but VistaJet's fleet and our business models can fit all.

What does the future hold for VistaJet and its customers?
I am committed to VistaJet's continued growth and to driving innovation in the aviation industry. VistaJet's plan is to grow deeper in the Europe market (which includes the Commonwealth of Independent States), and to grow broader through the Middle East and Asia – as well as Africa. A new management team has been put in place this year and we have on board a team with considerable aviation industry experience which can take us to greater success and growth. My aim is to grow this business smartly and consistently, while keeping our cost base as efficient as possible. VistaJet will continue to be the premier, luxury partner in business aviation. ■

Flying Private In Today's World

Despite a rocky road to global economic recovery, the long term drivers for private aviation remain intact: globalisation, the deterioration of the scheduled air experience, the instability of the geo-political environment and the value placed on time have all made flying private as important as ever. Post the credit crunch, several lessons have been learned; not least that owning a fraction of an aircraft can be a painful experience when changes in business needs require more flexible supply solutions that are not locked into three or five year contracts.

Air Partner, a leading provider of private aviation services to industry, commerce, governments and private individuals worldwide, offers a range of private jet products including ad hoc charter and jet membership. These services provide the flexibility, transparency in price and refund options that fractional ownership cannot offer. In recent months, Air Partner, which is the only aviation company to be awarded a Royal Warrant from Her Majesty Queen Elizabeth II, has seen more than 50 per cent of new clients migrate from the leading European fractional ownership company. David Macdonald, Sales Director of Air Partner Private Jets division explains *"in today's climate, people want to be completely in control. Services like ad hoc charter and jet card membership enable customers to enjoy the benefits of private aviation, without the contractual and financial obligation of owning a jet. There are also no additional hidden charges like fuel or landing surcharges, or positioning fees, and that is very appealing."*

Ad hoc charter

Ad hoc charter is available on an as needed basis for clients wishing to avoid commitment beyond the short-term or who continually require a range of different aircraft. It is one of the most economical and flexible methods of flying private, with an outlay that is limited to a one-off flight payment according to the size and type of aircraft used, distance involved, and the duration of trip. Air Partner, brokers private jets and airliners for a variety of clients including High Net Worth Individuals (HNWI), governments – including 6 of the G8, humanitarian aid organisations and royal families worldwide. Capable of locating appropriate and approved aircraft within 20 minutes, the company is also a major supplier of long and short haul air ambulance and organ transplant flights to leading insurance and repatriation companies.

JetCard

Jet cards are a more recent addition to the private aviation suite of products and are suitable for clients wishing to make several short trips during the year. Customers typically prepay for 25 to 50 hours of flight time and are given a choice of private jets to fly with. Air Partner recently launched its Winter JetCard which has been designed for ski enthusiasts. In keeping with today's requirements of flexibility and low commitment, the new card enables clients to purchase just 10 hours of flight time, reducing the cost to less than half that of a normal jet card. It has also added two new categories of jet to its existing light, midsize, large and global cabins: the very light jet, which is ideal for short journeys with a small party and the super midsize cabin, which provides a larger cabin, more baggage capacity and longer range without the cost of the larger jets. As a result, the company now offers the widest range of aircraft available on any jet card. Moreover, with the Air Partner JetCard, the hours never expire, can be used throughout the year and are fully refundable upon request.

Reputation

Despite the economy, Air Partner has maintained a loyal client base. This is not only testament to the company's quality of service, but also points to the emphasis placed by customers on company reputation. While the boom years saw the rise of a large number of opportunistic suppliers, the last year and a half has seen them fold just as quickly, leaving many customers with their fingers burnt. Air Partner operates its own in-house Quality Management Department that focuses on operator risk management and all contracts include the company's CharterPLUS financial protection guarantee. This ensures that customers receive a replacement aircraft or refund in the event of an aircraft failure.

Moreover, the company has almost 50 years of experience with 20 offices spanning Europe, Asia, the Middle East and North America. It has been fully listed on the London Stock Exchange since 1995. Mr Macdonald explains *"Air Partner has been around a long time, it has been in and out of recessions and it has grown internationally on the merit of its service and quality of its employees. As a publically listed company it updates the market quarterly so it is a very transparent business. All these factors are proving more of a comfort than ever to our customers".*

What is becoming clear about the new age of private aviation is that it is no longer considered a luxurious "must have" of the rich and famous but an indispensible tool for time pressed individuals, businesses and governments that has continued to be utilised despite the economic climate. Flying private with Air Partner enables clients to set their own schedule at just 24 hours notice, flying to any destination from virtually any airport. There is no security queue and for check-in passengers are simply required to present their passports, walk to the aircraft and climb aboard. The swine flu pandemic has also highlighted the benefits of flying private, enabling clients to fly with just family friends or chosen company to help reduce the risk of infection. "Clients have realised that private aviation is not a fad for the good years" David concludes, *"it offers a service for which there is no real alternative. You just need stand in the departure lounge at Heathrow for a few hours to realise that. What Air Partner has succeeded in offering is the flexibility, quality of service and reputation that suits the private aviation needs of customers today and tomorrow."* ■

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Central Europe's New Business Aviation Development Association Lands In The Czech Republic

Business aviation is a relatively new field in Central Europe with a huge growth potential for its share on the European market. Industry leaders established the CEPA association on 2nd November in Prague, Czech Republic, with the aim to support and develop business aviation in Central Europe. With this step the Czech Republic becomes a key hub for private aviation in the region and strengthens its position on the European market.

Dagmar Grossmann, Chairman and Founder of CEPA

CEPA (Central Europe Private Aviation) is a voluntary, non-profit association that enjoins the interests of producers, operators, service organizations, training organizations, aircraft and helicopter brokers and supporting organizations including financial, insurance and publishing companies. CEPA will initially focus on Bulgaria, the Czech Republic, Croatia, Hungary, Poland, Romania, Slovakia and Slovenia. All these countries are a potential wealth of new business for the region, providing new markets for the business aviation industry. In the Czech Republic, private jets held only a small percentage of total flight volume until recently, and interested clients were often directed toward foreign companies who could provide the service. Today, there are 19 business jets registered in the Czech Republic. Secondly, CEPA will focus on promising markets such as Belarus, Ukraine and Russia.

Dagmar Grossmann, Chairman and Founder of CEPA has answered following questions:

What is the main reason for establishing CEPA?
Looking back to my long career in aviation I found out that it is extremely important to be connected within the environment. Many things happened and being a member of several associations I always hoped to get support, but in only very rare cases this really took place. When I decided five years ago to set up an aviation company in Central Europe, I understood that even all these states are members of EU, and members of the European associations, it is very difficult to connect these two still very different worlds. Currencies, financial aspects as well as operational differences lead to the fact that many deals and opportunities are not realized in a way they could be. Basically I realized what I was always missing in my career – a functioning network – and I founded CEPA.

There are many existing associations - do you see a space for another one?
Our association is focused on the connection between Central and Western Europe with all the existing differences. We offer to all the operators, future clients or interested people a networking tool to get support, help or simply a huge amount of exchanged interest on the field of business aviation.

Why do you focus on Central and Eastern Europe region?
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OECD Green Growth Strategy – Beyond the Crisis

In its discussion paper submitted to OECD Leadership and Ambassadors for its annual high-level Consultation on 24 November 2009, BIAC provides business perspectives on various aspects of Green Growth that will be important for economic recovery[1]

Introduction

In June 2009, the OECD Ministerial Council Meeting adopted the Declaration on Green Growth and invited the Organisation to develop a cross-cutting Green Growth Strategy to facilitate economic recovery and environmentally and socially sustainable economic growth. BIAC welcomes the launch of the strategy, which is timely in light of the major challenges we are facing.

For business, green growth is not a new concept. Over the last few decades, changing consumer preferences in favour of more sustainable products and practices as well as efforts to drive out unnecessary costs have encouraged business investment in a range of sectors, leading to major improvements in efficiency. Simultaneously, business has successfully developed new sectors and new business opportunities thanks in large part to innovation. Creating the right investment framework for business to make its contribution to green growth is therefore essential. What business needs is clarity and an international framework where it can invest with confidence.

Defining green growth is a challenging issue. For business, there should not be a separation between "green" and traditional industries, as all industrial sectors have the potential to develop green approaches. Green growth should be understood as a continuous process that requires governments, consumers and business from a wide range of sectors, both "existing" and "future", to work towards economically and environmentally sustainable global growth.

Green growth should be viewed broadly and interrelated with other major global challenges, such as food security, water, health, energy security and poverty eradication. Policies need to be developed and coordinated globally, with input from all stakeholders including business, labour and civil society. The economic crisis should not be an excuse to weaken long-term efforts to achieve sustainable growth. What is needed is a long-term global signal supported by predictable policy frameworks. This will encourage market-based solutions, enabling both private and public investors to efficiently allocate the scarce investment resources that will be decisive for green growth, and generally the "greening" of our economies, in the longer term.

The world's attention now focuses on the UN climate change conference in Copenhagen and efforts to negotiate an international agreement. BIAC strongly believes it is crucial to reach a balanced agreement that would provide business with an acceptable and stable framework to stimulate investment and encourage technological development taking into consideration other global challenges mentioned above.

This paper presents business views in the areas of investment, trade, innovation, employment, skills, and global co-operation, which in our view are indispensable factors for achieving global green growth.

Business contribution to a greener economy

Targeted investment, innovation and private initiatives will enable the global economy to meet the challenge of sustainable economic recovery, taking into account societal and environmental challenges. Business has played and must continue to play a major role in the implementation of green growth in many different ways, including through the reduction of environmental impacts of the production process, efficient use of natural resources, waste prevention, and the development of new products and services.

Business contribution to a greener economy will involve all industrial sectors. Traditional industries, such as iron, steel and chemicals, provide input and support to many "green" industries and the economy in general. In return, traditional industries will introduce innovative technologies from "green" industries into their systems.

Today, many companies are involved in forward-looking projects that combine "greening" with "making business". Environmental and climate protection can drive economic development and present new business opportunities. It is important to build on technological advantages, not just to address environmental challenges, but also to create sustainable jobs.

At the same time, more and more companies representing many different sectors are using a life cycle approach to improve their products along the supply chain. All the effects of a product, from extracting and processing the raw material to its disposal, can be incorporated into this approach.[2]

Moving beyond the crisis

Stimulus packages together with extraordinary monetary and financial measures, in response to the economic crisis, have undoubtedly played a major role in addressing the immediate effects of the recession and have triggered concrete measures to facilitate green growth. It is encouraging to see that many of the stimulus packages in both OECD and non-OECD countries include green measures as a priority, notably China and Korea.[3] As endorsed by the G20 meeting in Pittsburgh, governments must continue to implement stimulus programmes to support economic activity until recovery clearly has taken hold.

However, recovery remains weak and there is concern about increasing public budget deficits. Long-term recovery cannot be achieved through continued subsidies for job creation or through green initiatives alone. Governments need to develop a transparent and credible process for withdrawing extraordinary fiscal, monetary and financial sector support. The goal must be to return to sustainable enterprise and job creation accompanied by private sector initiatives and investment driven by forces of a competitive market, geared where possible towards green growth. While short-term measures have a role to play, the overall focus needs to be on how to address these challenges in a long-term sustainable way.

Key business considerations for OECD's Green Growth Strategy

Investment for "greening" the economy

The changes needed to build a sustainable economy will call for huge investments in low-carbon technologies, advanced power plants of all types, smart grids, energy efficient manufacturing, equipment, appliances, buildings and transport. Having the right investment framework in place should therefore be an overarching priority for the Green Growth Strategy.

This framework should not just secure investment conditions in low-carbon industries, such as energy and clean-tech production, but also incorporate improved investment opportunities in the economy as a whole, since these will be part of the solution for obtaining green growth. This broader scope for improved investments must also be seen in the context of dealing with other global challenges, such as food security, health, water, energy security and development.

Governments have a key role to play by creating the policy framework and partnerships that transform the global economy, deliver green growth and allow the private sector to act as a key delivery agent of a greener economy. Given its central role, business must continue to be an integral part of the discussions to identify the most effective ways to accelerate transformation to a low-carbon economy.

Hurdles to business investment need to be addressed, taking into account the often long investment cycles. The global development and deployment of advanced technologies to address climate change and other environmental challenges will require appropriate

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institutional frameworks, including adequate protection of intellectual property rights, to accelerate the spread of technologies. Also, better lending conditions and access to financial capital for companies involved in green innovation investments are necessary. At the same time appropriate frameworks must rely on non-distortive tax and pro-competitive regulatory frameworks that facilitate growth-generating cross-border activities by business.[4]

Both OECD and non-OECD countries will benefit from the establishment of supportive investment frameworks, market conditions and incentives for the necessary investment to come forward. With the correct regulatory, legal and economic framework in place, forward-looking companies, applying their experience and expertise in both home and foreign markets, can help improve environmental performance while contributing to economic growth.

Resisting trade and investment protectionism

Free international trade and investment are important fundamentals and key drivers for obtaining global economic growth that is environmentally and socially sustainable, thus increasing economic welfare in the long run. Re-emerging protectionism as a response to the financial and economic crisis – in the forms of increased tariffs, non-tariff barriers, buy national or local procurement policy, export credit products that distort international competition as well as FDI protectionist measures – is therefore a serious threat to global growth and recovery.

Specifically in relation to green growth, while business agrees to the increased government support for green priorities, it is on the other hand important to show vigilance. The green share of total stimulus measures has increased – estimated at around 16% on average and considerably higher in some countries.[5] But it is at the same time essential that governments do not adopt policies that protect their domestic green industries if the positive effects are to be realised. Therefore non-discriminatory policies in supporting green growth are essential, and the use of subsidy schemes should fully comply with the WTO agreement on subsidies.

Green protectionism can take many forms, both at the border and behind the border. Border adjustment measures are highly unlikely to be implemented in a way that would avoid carbon leakage, and would instead lead to increased bureaucracy and an unlevel playing field. This is therefore not the appropriate approach to convince other governments to implement stricter CO_2 reduction targets.

Protectionism in the form of behind-the-border measures is also highly counter-productive (eg. by subsidising domestic environmental industries, by delivering investment aid in green sectors exclusively to domestic companies or by introducing environmental regulations at the disadvantage of internationally competing industries). This green protectionism under the excuse of addressing environmental goals will act as a critical brake on intentions to encourage global green growth.

Any subsidies should therefore be based on a general and non-discriminatory approach that treats both foreign and domestic companies equally. Both internationally and on the domestic level, it is essential that stimulus packages are designed so as to preserve the level playing field of fair competition.

Innovation-led growth

Innovation is a "must" for productivity growth, addressing global challenges and advancing on a green growth path. It should therefore be considered an overarching priority for policy makers from different ministries. This requires high-level political commitment, leadership and the co-ordination of policies by taking a whole-of-government approach. While business has a key role to play in this area, governments need to provide the frameworks to support research and development and the successful commercialisation of promising technologies, and should foster both the technological and non-technological innovation that can lead to green growth in the overall economy.

We need innovation in a wide range of technologies. This requires major progress in the development and deployment of key technologies, better use of existing knowledge and technologies across sectors and geographical boundaries, and increased international and public-private co-operation. All options need to be pursued as we will need a wide range of green technologies.

This requires fostering international co-operation and creating the right framework for business to invest, bearing in mind that investors need a transparent, stable and long-term policy horizon. Competition authorities in particular must make sure that they grant to innovation the appropriate level of consideration in their analysis of economic situations. We also need capacity building in a wide range of fields, including, for example, energy efficiency, urban planning, construction, and waste management.

Business has been calling for greater coherence in policies aimed at fostering innovation and entrepreneurship. BIAC has therefore strongly supported the development of a cross-cutting OECD Innovation Strategy, which seeks to harness innovation for stronger and more sustainable growth and development and to help address increasingly urgent global challenges. A stable and coherent policy framework, which encourages the private sector to invest and engage in technology co-operation, is essential. One key element of such a policy framework should be a high-quality IPR system including effective implementation, which is essential for the development and diffusion of both new and existing technologies.

In BIAC's view, the OECD Innovation Strategy as well as its work on eco-innovation and sustainable manufacturing should provide a major input to the OECD Green Growth Strategy. In addition, continued work on the spread of energy efficiency in industry, transport, buildings, and as applied by consumers broadly remains equally important.

The role of information and communication technologies

One specific example of an innovative technology that enables green growth is ICT.[6] ICTs and the internet support increased efficiency and productivity in manufacturing, provision of services and in working methods. They help to reduce energy consumption and manage scarce resources. Both the "greening of ICT" and "greening by ICT" are important in this respect.

Governments must continue to ensure regulatory and policy environments that support innovation in ICT technologies and continued capital investment in the telecommunications infrastructure, such as high speed networks and broadband, necessary to support and green ICT applications across sectors.

Employment issues in relation to green growth

Great emphasis has been placed on so-called green jobs as important sources of job creation. However, all jobs can and should be made "greener".

As previously introduced in this paper, without traditional industries, such as steel and chemicals, "green" innovations, such as wind power and insulation, would be impossible. The existence of so-called "green jobs" often depends on jobs to which this appellation would not be applied. Business encourages governments to think in terms of overall "greening" instead of "green". In fact the "greening" of existing jobs is already underway through use of technologies, such as ICT to reduce travel and promote more flexible work such as telecommuting.

An important goal is also to stimulate as quickly as possible job creation in emerging innovative sectors and innovation in more traditional industries. While development of new industries and technologies will be an important part of recovery and future job creation, it is unrealistic to expect it to be a cure for the jobs crisis. Changing the energy mix and manufacturing processes of the global economy is a long term process, and will require massive investment by business and governments over time, including in education and training, essential to enable individuals and firms to adapt and move into these new areas.

Education and skills for green growth

Without the right skills, we cannot achieve green growth. Education and training are therefore not only necessary to ensure against shortages of highly-skilled workers in key economic sectors, including

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new sectors, but also necessary to help individuals' adaptability to the greening of jobs across all sectors.

First, this will involve the reorientation of education curricula and teacher-training programmes from early childhood education through to tertiary and vocational education and training (VET) programmes to ensure sustainability issues are dealt with adequately. In addition to focusing on generic employability skills, particular attention should be placed on encouraging education in science, technology, engineering and mathematics. VET programmes should focus on refining sector-specific expertise and workplace skills to keep pace with advances in policy-making, technology, and to address environmental challenges. When carried out transparently and efficiently, partnerships between business and government can help with the passing on of the practical expertise required for the greening of the economy.

Second, attention must be paid to raising public awareness through informal and non-formal education structures to communicate fact-based and objective information. The aim should be to increase public debate about green growth strategies and new technologies, and thus potentially foster increased social acceptance of policies, necessary investments and new technologies.

The need for global co-operation

The success of the OECD Green Growth Strategy will depend very much on the active involvement of major emerging economies. Several important emerging economies were not signatories to the OECD 2009 Declaration on Green Growth, including notably China and India. We call upon the OECD to actively involve these countries on an "equal footing" to learn from the proactive steps and best practices taken by both OECD and non-OECD countries.

The Green Growth Strategy represents a real opportunity to accelerate "enhanced engagement", which would be facilitated by a dedicated working group focusing on promoting credible and interactive dialogue with key emerging countries. The Heiligendamm-L'Aquila process could be a suitable model for this. BIAC stands ready to provide business input from BIAC members in OECD countries as well as BIAC observers from a growing number of non-OECD business communities.[7]

Conclusion

BIAC strongly supports OECD efforts to help governments foster economic growth, while reducing emissions, pollution and waste, promoting a more efficient use of natural resources and addressing other global challenges. The Strategy should be based on lessons learnt from OECD analysis and draw on on-going initiatives, such as the Innovation Strategy, work on sustainable development, and the contribution from a wide range of OECD Directorates. Greening of growth is needed throughout the world. We strongly recommend involving key non-member countries in OECD analysis and policy recommendations.

Green growth that is welfare-enhancing should be recognised as a key objective by all parts of society, including governments, consumers, stakeholders and business in general. But it should not be considered in isolation. It needs to encompass issues such as investment, market openness, innovation, skills development and entrepreneurship, sustainable job creation and the development of metrics to support analysis of these issues and be able to measure progress. Realising the potential of green growth strategies across sectors will only be attainable if we put the right investment framework in place, foster innovation, keep markets open, eliminate market distortions, upgrade skills and human capital, and provide an overall enabling and stable policy environment. BIAC looks forward to engaging in an open and constructive dialogue with the OECD as the Green Growth Strategy is being designed. ■

1. Founded in 1962 as an independent organisation, the Business and Industry Advisory Committee to the OECD (BIAC) is the officially recognised representative of the OECD business community. BIAC's members are the major business organisations in the OECD member countries and a number of OECD observer countries - www.biac.org
2. To highlight the contribution of traditional industry by a specific example, the International Council of Chemical Associations has recently published a global report which reveals that greenhouse gas emission savings enabled by the chemical industry are more than double the industry's emissions.
3. OECD draft report, "Trade and economic effects of responses to the economic crisis", TAD/TC(2009)2
4. As an example, the OECD project on the tax treatment of tradable permits is an important opportunity to identify best practices in this area, and preclude tax obstacles to cross border trade as it relates to emissions trading systems.
5. OECD draft report, TAD/TC(2009)2
6. Examples of ICT green applications include: smart grids, cleaner transportation, clean building design and use. ICT can also provide important information platforms for energy efficient industries. Developments such as cloud computing significantly enhance the scalability of ICT services via the internet and their potential for supporting green growth.
7. Eleven national business organisations from ten different countries currently participate in BIAC as observers: Argentina, Brazil, Chile, India, Israel, Latvia, Morocco, Russia, Slovenia, and South Africa.

Energy Efficiency, A Key Factor in Meeting the Climate Change Challenge

Carlos Busquets is the Policy Manager, ICC Commission on Environment and Energy, at the International Chamber of Commerce

The challenge of climate change is intrinsically linked to demands for energy. As global energy demand continues to grow, actions to increase energy efficiency will be essential.

There is a strong business case for energy efficiency, it enables companies to save costs and improve their competitiveness and productivity. There are many opportunities to enhance efficiency across countries and sectors, several barriers remain to energy efficiency improvements.

More sustainable energy pathways provide a win-win situation. They ensure that economic activity brings forward social development and environmental protection in both developed and developing countries. In light of the global economic crisis, new challenges have emerged and it has become increasingly important and urgent to strike a balance between an increased demand for energy and environmental protection.

Energy efficiency can be a key factor in meeting this challenge. There are many environmental benefits to energy efficiency including reduced emissions and reduced use of resources.

Need for energy

Any successful action on climate change must stabilize atmospheric greenhouse gases while at the same time maintaining economic growth. There is a clear need for the services that energy provides (eg. clean water, heat, light and mobility) to fuel economic growth.

As access to modern energy services expands, quality of life improves. A robust and flexible energy infrastructure is of critical importance to the provision of many other services such as clean water, food preservation, transportation, healthcare, sanitation, education and communications. Maintaining and expanding the energy supplies required to provide access to those lacking it and to meet future demand with reduced environmental impacts will require significant long-term investment in every element of the supply and use chain.

Business case for energy efficiency

Energy efficiency has been on the business agenda for many years with significant strides already achieved in several sectors. According to the International Energy Agency (IEA), the building and residential commercial energy-using equipment sector in particular has high potential for large cost-effective energy savings. It currently accounts for 40% of global energy use. Opportunities to improve energy efficiency also exist also in the industry and transport sectors. Substantial energy can also be saved when the power generation and refining sectors transform energy from one form to another.

Many companies today make efforts to educate their employees, customers and the general public on this subject matter. This is achieved through focused communication, interventions, demonstrations of energy efficient technologies and regular feedback on both successes and failures. An increasing number of companies have integrated energy efficiency into their business practices by developing Energy Management Systems (EMS) that has demonstrated impressive results.

"Energy efficiency measures provide a win-win situation by promoting cost-savings, lowering environmental impact while at the same time promoting economic growth and social development ... investment today in energy efficiency would avoid future outlays in energy infrastructure that would be needed to keep pace with accelerating demand"

Short and long-term improvements

Energy efficiency improvements can be implemented in the short term and many technologies are available today. Widespread commercialization of energy efficient technologies and services, on the supply and demand side, is one of the most effective strategies to address climate change and energy access and security concerns, especially in developing countries.

Energy efficiency measures provide a win-win situation by promoting cost-savings, lowering environmental impact while at the same time promoting economic growth and social development. In addition to generating very large annual energy savings, investment today in energy efficiency would avoid future outlays in energy infrastructure that would be needed to keep pace with accelerating demand.

The IEA estimates that on average an additional $US1 spent on more efficient electrical equipment, appliances and buildings avoids more than $US2 in investment in electricity supply – particularly valuable in economies where lack of capital is a constraint to growth. Indeed it is much more economic to incorporate improved energy efficiency features when installing new capital than to retrofit at a later stage.

Need for a policy framework

Whilst business supports and acts on energy efficiency, it needs governments to provide the right regulatory policy frameworks in order for it to achieve the triple objectives of growth, jobs and environmental improvements. As suppliers and consumers of energy all over the world, International Chamber of Commerce (ICC) members strongly support and pursue various approaches to energy efficiency, and are strongly in favour of framework agreements that would provide business with a clear and predicable agenda to contribute solutions.

Government policymakers need to create an environment that rewards energy-efficient choices and encourages innovation. Economic and financial incentives and government support for professional training and consulting, research, development and deployment is a first step. Reinforcing the market for energy efficiency through innovative mechanisms, such as standards, labels, public-private partnerships and energy performance contracting will lead to increased certainty and demand for energy efficiency which will foster private sector initiatives. Strong communication campaigns should also be enacted to help shape public opinion.

In the lead-up to the United Nations Framework Convention on Climate Change (UNFCCC) meeting in Copenhagen, 7-18 December 2009, ICC has presented a wide range of business solutions to climate change. A critical area is clearly energy efficiency and ICC will provide a number of concrete examples and case studies to further demonstrate the business case for energy efficiency.

Building (residential, commercial and public)

The building sector, which accounts for nearly 40% of global energy use[1], is the largest area of potential and has very high-return opportunities in high-efficiency building shells and more efficient air conditioning, water heating, appliances and equipment, as well as in compact fluorescent (CFL) and light-emitting diode (LED) lighting.

Industrial

This sector has a broad array of fragmented opportunities in steel, chemicals, aluminium, food processing, textiles, electronics, and many other industries. There are also large cross-sector prospects such as combined heat and power (CHP) generation, heat pumps and the optimization of motor-driven systems.

Transformation

Energy is lost when the power generation and refining sectors transform energy from one form to another. The conversion efficiency of these operations can be improved through optimal operation and maintenance of power plants.

Transport

While automotive manufacturers are likely to adopt engine-related fuel-economy improvements and electric vehicles, opportunities exist in reducing vehicle weight and size through material substitution and vehicle redesign.

ICC and its members are convinced that energy efficiency makes good business sense and enhances competitiveness. It is a critical part of the global evolution towards a more sustainable energy future, and is one of the most cost-effective way to cut greenhouse gas emissions. Existing market drivers already offer powerful incentives to improve energy efficiency. Today technology solutions and policy frameworks exist that can improve energy efficiency and technological innovation will continue to add solutions over time. An increasing number of companies have well-established energy management systems to capture benefits and have demonstrated impressive results.

Worldwide, clear energy efficiency action plans are needed to identify the range of measures that will work with markets to improve information and lower barriers to deployment of economic solutions. To capitalize on the improvements that can be made through technology transfer, barriers need to be identified and removed as well as improving the national and international frameworks that support clean development. ■

Please visit www.iccwbo.org for further information.

1. IEA 2008b

Reduce the Carbon Footprint

Jeremy Eaton, Vice President, Global Energy Solutions for Honeywell Building Solutions, in a Q&A with World Commerce Review's Tom Page, explains how businesses can reduce energy consumption and carbon emissions

What expertise does Honeywell bring to a green building plan?
Honeywell's roots go back over 100 years, originating with energy control in buildings and this has remained a focus of the company ever since, making Honeywell the world leader in energy efficiency solutions for buildings that it is today. And since the 1980s, Honeywell has completed more than 5,000 energy efficiency projects in facilities across the world, with energy projects retrofitted each year saving building owners over 188 million kWh of electricity and 322 million kWh of gas.

We have the ability to develop technical programmes that offer great financial returns for building owners. We offer a wide range of services, from helping customers set their energy savings and carbon capture strategies and measuring their carbon footprints, to engineering and managing projects to measuring and verifying results.

The need for greener buildings and sustainability has been in discussion for the last two decades but it's been the last few years that have seen an accelerated drive from businesses and government to implement the changes. One innovation we're particularly proud of is our Renewable Energy Scorecard, a first-of-its-kind selection tool that provides customers with the data to make an informed buying decision when they are considering renewable energy products. The scorecard analyzes the variables for any given location to pinpoint the renewable technology that can generate the most significant environmental and business impact given their geographical location and underlying government policies and incentive schemes. In short, this tool gives customers the data they need to justify their investment in renewable solutions.

How has the expertise developed within Honeywell?
Our expertise is based on the changing needs of our customers and the market over the past 25 years. For example, our customers' priorities have shifted from simply reducing energy costs to embarking on all-encompassing sustainability and carbon reduction programmes. We've developed innovative tools that are driving this change, from Smart Grid and wireless connectivity solutions to integrated utility plans and water management products.

One service that we've developed to adapt to this changing need is the Greenhouse Gas (GHG) Emissions audit. Our team of experts work with the customer to baseline the facility's GHG emission and sets a strategy and process for future carbon management. Having this data is the first – and most crucial – step for any facility to achieve carbon neutrality.

Please describe the background to the green buildings initiative?
Buildings worldwide account for 40% of global energy consumption and are the single biggest emitter of carbon emissions, significantly exceeding that of all transportation combined. While there is a need to ensure that all new buildings are built to new zero-carbon codes, the key opportunity for change is to retrofit existing buildings. It is a little-known fact that 80% of the buildings that will be around in 2050 are standing today. If we are to reduce carbon emissions by 80% by 2050, a combined approach is needed.

Honeywell works with the customers both on a design-build and execution basis for new buildings and also performs retrofit improvements on existing buildings so that the green challenges can be addressed at whatever stage of your facility.

In his role as Vice President of Global Energy Solutions for Honeywell Building Solutions, Jeremy Eaton leads the effort to develop a comprehensive energy growth strategy that will build on the successes of Honeywell Building Solutions' existing performance contract business as well as to expand into renewable offerings globally.

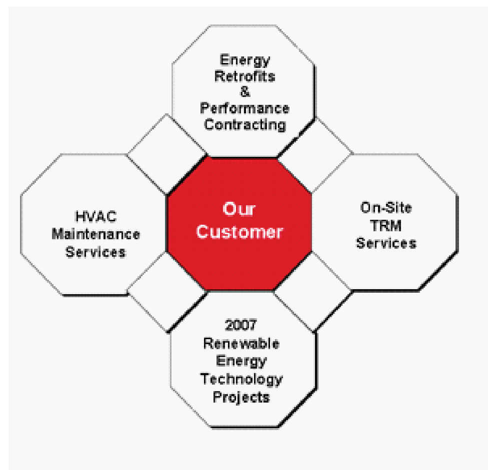
Jeremy brings a strong mix of strategic vision and industry experience and has worked with McKinsey & Co, a management consultancy, where he was responsible for improving commercial performance of industrial companies. He was the leader of the firm's Automotive & Assembly Sector and Pricing Practice and his specialties included marketing strategy, segmentation, channel strategy and management, and strategic pricing.

How can you provide a complete solution to a company's needs?
We first start with the customer's business and sustainability objectives in mind. There is a vast array of technologies that can be used so it's a matter of understanding the business operations, the physical facilities on site, and the resources of our customers and engineering a solution that is the right mix of retrofit, service and technical applications that can deliver the best return on investment.

That means becoming a strategic energy partner for our customers. We work with customers from setting the strategy and goals, to project engineering and its execution. We also help measure savings – and guaranteeing those savings with financing – so that the solution is financially sound and viable to the business. We also work as a long term partner to service and maintain the site so that it is not a one-off deal and that results can be measured and compared over time.

Beyond that, we tap into Honeywell's expertise in specific applications such as Smart Grid, demand response and sustainability programmes, for customers requiring multi-platform solutions that include communications and awareness programmes or staff training.

Traditional ESCO Model



Please explain how these solutions can be self-funding?
Let's take our Energy Performance Contracts as an example. Honeywell developed Energy Performance Contracts for those who find it difficult to fund facility improvements using on current operating budgets. The concept behind performance contracts is simple: customers work with energy services companies (ESCO), such as Honeywell, to plan improvements on their facility or equipment with projected savings.

The ESCO guarantees the savings which is sufficient to match the loans of the capital improvements – so in essence, customers do not need to find upfront cash to fund the improvement project as the project is under-written by the ESCO.

Performance contracting offers an alternative to the traditional bid and spec process by placing the burden of performance and guaranteed results on energy engineers such as Honeywell. The success of the project is driven by the expertise of the performance contract engineers to balance the cost of the energy conservation measures with the projected economic return and savings that the measure can generate.

"Buildings worldwide account for 40% of global energy consumption and are the single biggest emitter of carbon emissions, significantly exceeding that of all transportation combined"

Please describe an example of a Honeywell project?
Honeywell was one of the original signatories of the Clinton Climate Initiative (CCI) and as one of its first projects, Honeywell worked with the city of London to implement one of Europe's first public energy efficiency programme. The London retrofit program, led by Transport for London (TfL), included the retrofit of 22 of the city's historically significant buildings. The retrofit and improvement works allowed the city to substantially reduce its electrical emissions by 25% and its gas reduction of 20% - the 2,500 metric tonnes is equivalent to taking more than 450 cars off the road.

Honeywell as Strategic Energy Partner

As part of the program, Honeywell performed audits on the buildings to assess each building's operating efficiency and comfort concerns. This involved reviewing utility bills for each building and compared the usage data to similar facilities to determine energy intensities and potential for upgrades. A further investment grade proposal defined the energy reduction and payback criteria of the program.

The London program is an example of how cities and other organizations can achieve sustainability goals while making sound financial decisions. The success of this financial model has been developed as the foundation of the latest retrofit programs for London's continued improvement work. As one of the 12 ESCOs selected to implement the new program, Honeywell is proud to continue working with TfL to achieving its sustainability goals.

What technologies are you currently developing?
Honeywell has a vast portfolio of products and services that help companies achieve energy efficiency. In fact, just by using today's existing Honeywell technologies, the global economy could operate on 10-25 percent less energy.

Honeywell is also focused on solving our customer's businesses and energy challenges so as a solutions-driven business, we respond to and deliver what our customers need, and can assemble and deliver the best of Honeywell technologies as well as other third party applications. From green roof to smart grid to demand-response thermostats, technology is but just one tool and not in itself the solution.

How do you engineer an overall plan from the drawing board to completion?
Our approach is to create a strategic team comprised of both Honeywell and customer stakeholders – this includes a cross functional team of engineers, project managers and other business decision makers from both sides to ensure the program is thought through from all angles. It is important to us that our customers are involved in the decision making throughout the process. From design, to execution, to measurement and verification, the key is to foster regular communication is in place to ensure we are collectively mapping the plan and progress according to schedule.

Do you run educational seminars for architects etc?
We run different types of training courses. First, we offer informational overviews to various audiences - whether financiers, architects or engineers - on timely topics such as financing strategies, procurement approaches and best-practice implementation. Once the programs are implemented, we can also work with the customer to conduct educational seminars to communicate the benefits of a particular project to our customer's stakeholders. For example, we recently undertook a project with the Pittsburgh Housing Authority in the US where we communicated the energy efficiency benefits of our work to the residents. This greatly helped boost understanding and rallied support for the program – everyone gained as a result.

How does working with Honeywell help with corporate responsibility?
We turn intent into action by offering our customers a wide variety of support, from identifying what your carbon footprint is to developing, implementing and guaranteeing a particular plan and helping meet environmental stewardship objectives. Whereas some companies offer a fragmented solution, bringing in a number of different independent parties, we do everything as one consistent and integrated team – an approach which yields far better results. Another key difference is that we offer tailored solutions – so regardless of the size or scope of your corporate responsibility goals, Honeywell can work with you to define and execute an achievable plan.

In conclusion what progress has been made in raising awareness of the importance of greener buildings?
There's been a lot of progress in recent years. First, there is the wide-spread influence of sustainability organisations such as the Dixon Sustainability Index (DSI) and American College & University Presidents Climate Commitment (ACUPCC). The DSI for example is a measurement framework for the information and communication technologies (ICT) community and their stakeholders. Its purpose is to allow the accurate, meaningful and auditable assessment of the sustainability of an organisation's ICT facility (be that an in-house department or an external, third party supplied service), which can be compared against peers, against national and international targets or used for compliance with relevant standards and regulations.

There is also the work of NGOs and visibility generated by groups such as the US Conference of Mayors or even the climate change initiatives of university and college presidents. Lastly, there are building standards such as NABERS and Green Star in Australia and Energy Star and LEED in the US that have dramatically boosted public awareness.■

Honeywell Energy Management Solution

DIFA CitiQuartier Frankfurter Welle optimises energy consumption and cuts running costs with help of Honeywell Energy Management Services

Honeywell Energy Management Services is helping Deutsche Immobilien Fonds AG (DIFA) to optimise energy consumption at its multi-tenanted CityQuartier Frankfurter Welle development. As well as reducing costs, Honeywell's energy expertise makes the 224 units more user-friendly and commercially viable.

> **"Honeywell Energy Management Services allow us to optimise the operation of our properties and reduce running costs. At the same time we can meet our customers' needs for prompt utility bills and improved user-friendliness."**

The customer

DIFA is the second largest property investor in Germany with a fund value of approx. €14B. It specialises in city centre – CityQuartier - real estate.

The eye-catching CityQuartier Frankfurter Welle – the Frankfurt Wave – comprises six buildings linked by a central, 13-storey wave structure. Built in 2001 for €650M its 120,000m² floor space sports a mix of residential, service and leisure facilities – epitomising a new life-work balance for the Frankfurt business community.

The issue

Energy efficiency is a priority for DIFA. It specified a comprehensive energy management solution that would optimise consumption, support accurate record keeping and billing of incidental costs and quickly identify any issues – by individual unit. As the building owner, DIFA wanted flexible and transparent energy usage reports and bill calculations.

The ability to fine-tune the 'second rent' strengthens the commercial appeal of the development and makes the 224 units easier to rent out.

The solution

Honeywell Energy Management Services met all the challenges posed. It saw Honeywell energy experts applying their proven energy expertise to the installation of 1,600 meters and bespoke report creation. The package, with the inclusion of Honeywell Energy Manager™, assigned meters to each individual rental space thereby enabling monitoring, measuring, optimising – and billing for - utility consumption by individual owner/tenant.

As a single solutions and service provider, Honeywell also oversees all metering services including engineering, delivery, assembly, maintenance and meter replacement at the end of the calibration period. Every meter is automatically read and monitored 24/7, the data being compiled in a validated and seamless log. Anything untoward – a defective meter or an unusually high or low reading for example - triggers an alarm which is promptly investigated.

This uninterrupted information chain also provides DIFA with comprehensive usage reports - instantly, on line and at any time. Bills for incidental charges can also be generated simply by the push of a button.

The business benefit

Honeywell's energy 'know how' delivers a micro-view of a macro, multi-tenanted development. This benefits both the landlord and leaseholders alike. It supports energy efficiency, transparency of information and right-first-time billing.

Honeywell Energy Management Services ensure tight management of all 224 different cost centres. As well as monitoring and optimising energy usage and managing cost allocations, the package provides flexible analysis and reporting functions which, in turn, spotlight potential savings.

Archived meter data also enables comparisons to be made between years, months, days, buildings and operating shifts. It records accrued cost savings over time enabling DIFA to validate the return on its original investment. Added to that this data can be used in conjunction with smart weather forecasting to predict likely energy demand and manage utility supply accordingly.

Finally, the Honeywell solution supports a greener facility. Not only does it record and minimise emissions, it monitors compliance with strict environmental guidelines.

Says Ms Beate Massa, Technical Building Manager for DIFA CityQuartier Frankfurte Welle: *"Honeywell Energy Management Services allow us to optimise the operation of our properties and reduce running costs. At the same time we can meet our customers' needs for prompt utility bills and improved user-friendliness."* ■

DIFA CitiQuartier Frankfurter Welle optimises energy consumption and cuts running costs with the help of Honeywell Energy Management Services

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