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Summary Report

Kathy-Ann Brown

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Abstract

CARIFORUM States have generally taken a cautious approach in adopting commitments under the Economic Partnership Agreement by having them reflect their World Trade Organization commitments, excluding sensitive subsectors, and inscribing broad horizontal reservations. This report assesses the regulatory framework for trade and investment in five areas – horizontal measures, information and communications technologies, transport services, professional services, and tourism services in Barbados, Belize, Guyana, Jamaica, and Trinidad and Tobago under the CARIFORUM – European Union Economic Partnership Agreement. The analysis concludes that of the five areas reviewed, adjustments are recommended principally to legislation covering information and communications technologies, professional services, and transport services.

The report is part of the series: SERVICES REGULATION IN THE CARIBBEAN, which includes the present Summary Report as well as five technical notes. To access them, you may either go to the web page www.iadb.org/publications or use the links below:

Horizontal Measures

Information and Communications Technology

Transport Services

Professional Services

Tourism services

SUMMARY REPORT

This review assesses the areas – horizontal measures, information and communications technologies (ICT), transport services, professional services, and tourism services ―in Barbados, Belize, Guyana, Jamaica, and Trinidad and Tobago under the CARIFORUM-EU Economic Partnership Agreement (EPA). At present, the EPA is the only "fully" reciprocal free trade agreement entered into by all CARICOM Member States.[1]

The discussion that follows examines the general obligations imposed by the WTO General Agreement on Trade in Services (GATS) and the specific commitments undertaken in the EPA. The proposed CARICOM-Canada Trade and Development Agreement has not reached the stage where it could serve as a meaningful part of this analysis. Negotiations on the CARICOM-Canada agreement on trade in services are moving slowly due to divergent positions on scheduling modalities, which has impeded progress on the development of text on both trade in services and investment as well as in the exchange of services and investment offers. CARICOM generally continues to maintain in the CARICOM-Canada negotiations the approach adopted in the EPA, including the treatment of subsidies. The position adopted by CARICOM is, no doubt, partially influenced by the EPA MFN clause requiring the extension of benefits conferred in any future economic integration agreements signed by CARICOM States to the EU.[2] The EPA MFN clause serves as a significant disincentive for CARICOM countries to adopt greater flexibility in free trade negotiations with developed partners and larger developing economies. For the purposes of the present analysis, it is therefore assumed that the EPA is the most useful reference for constructing any new liberalization disciplines on CARICOM-Canada trade that might emerge from the on-going negotiations.

Summary recommendations on EPA compliance

This present examination of the regulatory framework of Barbados, Belize, Guyana, Jamaica and Trinidad and Tobago raises few concerns with respect to the specific commitments that they have undertaken in the EPA. CARIFORUM States have generally taken a cautious approach in adopting these commitments by having them reflect their WTO commitments in certain areas,

[1] The reference to "fully reciprocal" is meant to distinguish the EPA from other CARICOM bilateral agreements, which do not impose liberalization commitments on CARICOM designated "Less Developed Countries", i.e., Antigua & Barbuda, Belize, Dominica, Grenada, Saint Lucia, St Kitts & Nevis, and St Vincent & the Grenadines.
[2] See EPA, Article 70 and 79.

excluding sensitive subsectors, and inscribing broad horizontal reservations in some cases. At times the countries have also defined specific commitments in a way that calls into question the nature of the substantive obligation—if any— that has been undertaken. The supply of a service through mode 4, i.e., the movement of natural persons, is in almost all cases unbound and subject to economic needs tests. Additionally, some matters that would be relevant to an analysis on compliance under the GATS, such as fiscal measures (which are covered in the report as provided for in the terms of reference), are in principle not subject to EPA disciplines, given the "carve out" for subsidies in services.

The analysis presented in the adjoining chapters highlights the few instances where legislative amendments may be required for the purposes of EPA implementation. Of the four sectors reviewed, small adjustments are recommended with respect to legislation on ICT, professional services, and transport services. In only one instance, that of telecommunications services is a general across-the-board recommendation applicable, and it concerns the EPA obligation to establish a system for the authorization of ICT services based on mere notification. This is an area where further research and consultations could be undertaken with a view to determining the feasibility of implementing the EPA requirements that reflect the current EU approach.

The ICT sector is in need of major reform in Guyana. This is widely recognized and new legislation to take such action has been proposed in Parliament, though it has not yet passed. Restrictions on the supply of certain professional services based on nationality and/or residence requirements may pose difficulties for those States that have undertaken specific commitments to liberalize such services. This appears to be the case for Guyana as regards legal and medical services; Jamaica for legal and accounting services; and Trinidad and Tobago for legal services. The transport sector is the final area where adjustments may be required. For Jamaica, such adjustments would concern the grant of exclusive rights, given the country's liberalization commitments on road transport services. For Trinidad and Tobago, the adjustment would concern differential fees charged for the use of wharf facilities.

In addition to the measures mentioned above, the summary recommendations presented below include observations on relevant EPA rules and guidelines that should inform the exercise of the broad discretionary authority granted to administrators under certain pieces of legislation with a view to promoting EPA compliance.

RECOMMENDATIONS FOR REFORM

Licensing regime for ICT services: all countries reviewed

Article 96 of the EPA establishes the basic rule that the provision of ICT services "shall, as much as possible, be authorized following mere notification." A license can be required to address issues of attributions of numbers and frequencies. The clear identification of two areas where licensing may be required would seem to underscore the obligation against the general use of a non-automatic licensing regime. The inclusion of the phrase "as much as possible" softens the undertaking but supports the view that authorization following mere notification should be the norm and not than the exception. The maintenance of a non-automatic licensing regime, as exists in all five countries reviewed, would therefore seem to require justification, i.e., some demonstration that a mere notification system is not feasible.

The Telecommunications Acts of all five countries require any person seeking to provide ICT services to obtain a license (in Trinidad and Tobago this is referred to as a "concession"). There appears to be little discussion on transitioning to a mere notification regime. Having endorsed this principle in signing the EPA it is therefore unclear the extent to which countries in the region are committed to it. In light of the obligations imposed by the EPA regulatory framework it is recommended that further research be undertaken on the practical means through which a less burdensome authorization regime may be implemented, if possible.

It may be noted that in the case of Belize, reservations inscribed in Annex IV.F of the EPA only permit market access through licensed operators and subject service suppliers to current operating conditions. As such, Belize's commitments affirm the *status quo* and arguably qualify its obligations under Article 96 of the EPA.

Country-specific proposals on reform

Guyana

The Public Utilities Commission Act 1999; the Telecommunications Act; Post and Telegraph Act CAP 47:01

Article 95 of the EPA provides that the regulatory authority shall be sufficiently empowered to regulate the sector and, as such, the regulator must be adequately resourced.

In Guyana the regulation of ICT services is undertaken by more than one authority. The director of telecommunications is largely responsible for administering the Telecommunications Act. The Public Utilities Commission (PUC) is also tasked under the Public Utilities Commission Act with responsibilities in relation to telecommunications tariffs, interconnection, expansion programs, and quality of service. There are certain regulatory overlaps between the director of telecommunications and the PUC. Reportedly, however, there have been few conflicts as the post of director of telecommunications was apparently not filled until November 2007 (some 17 years after the legislation was enacted) and the director reportedly has no staff or other facilities to provide support.[3] If these reports are correct, the provision of adequate resources to the telecommunications regulatory authorities is an EPA obligation that is not being met.

A significant undertaking of the EPA is the requirement stated in Article 96(3)(d) that license fees should not exceed administrative costs. This is a "WTO plus" obligation and precludes the auctioning of licenses (save where managing scarce resources, for example, the spectrum) and other charges such as percentage fees not directly linked to administrative costs.

The Telecommunications Act provides that one of the conditions included in a license may concern fees, but provides few details in this regard. The Public Utilities Commission Act also addresses the matter and limits the assessment on ICT providers to a sum not exceeding 1 per cent of gross revenues derived from services in the most recently-ended financial year. The relationship between the assessment imposed by the PUC under the Public Utilities Commission Act and the provision for a fee as a possible condition of granting a license under the Telecommunications Act is unclear. There is no requirement that fees approximate the costs of administrative services as provided for in Article 96 of the EPA, nor any evidence to suggest that this is in fact the case. The matter would seem deserve further scrutiny.

Article 97 of the EPA requires States to impose competitive safeguards on major suppliers addressing, in particular, anti-competitive cross-subsidization and the sharing or use of technical and commercially relevant information with and/or obtained from competitors.

The promotion of competition under the Telecommunications Act is expressly made subject to any special arrangements (monopoly or exclusive rights or licenses) as may be granted to an ICT supplier. The act therefore does not provide the necessary assurances on the implementation of competitive safeguards on major suppliers in accordance with Article 97 of

[3] See WTO TPR Report at p. 76, paragraph 107.

the EPA. The Competition and Fair Trading Act of 2006 should establish a competition commission and broad regulatory framework to deal with competition concerns including activities involving public utilities, in consultation with and subject to the authority conferred on the PUC under the Public Utilities Commission Act. The Competition Commission, which was more recently crafted as a proposal for a Competition and Consumer Affairs Commission, is still not functional. As such, the regulatory framework does not establish the competitive safeguards on major suppliers as required by the EPA. This is an important deficiency that should be addressed.

The legislation in Guyana is also deficient in that it does not expressly fulfil the requirements of Article 98 of the EPA. The rules on interconnection, including the provision for cost-oriented rates, publicity for procedures for interconnection and, in particular, interconnection agreements with major suppliers, and for the referral of disputes to an independent agency, are not clearly addressed in the legislation. The Telecommunications Act of Guyana addresses the provision of access to and sharing of ICT facilities and infrastructure, but provides few details on the terms for accessing technical interfaces that would allow for the inter-operability of public network services.

The Telecommunications Act provides that a license may authorize interconnection with other ICT systems of any apparatus, and/or the provision of any specified ICT services, and include any conditions as may appear requisite or expedient. The authority of the PUC to require service providers to enter into arrangements, for interchange, interconnection, joint or combined or other arrangements for the provision of any service, upon such terms and conditions as the PUC may determine is subject to the conditions stated in the license or agreement with the government. The license granted to GT&T reportedly requires it to negotiate with other providers on interconnection. However, the legislation does not mandate any specific terms, and it is unclear whether the legislation is being implemented in a manner which is consistent with the EPA regulatory framework.

Article 99 of the EPA requires that procedures for the allocation and use of frequencies be implemented in an objective, timely, transparent, and non-discriminatory manner. The regulation of the spectrum is based on section 63 of the Post and Telegraph Act CAP 47:01. Spectrum licenses are awarded on a first come, first-served basis. However, there is evidence of

inordinate delays in granting spectrum licenses.[4] In light of this, the operations of the National Frequency Management Unit (NFMU), which processes applications for spectrum licenses, would seem to merit closer review.

The legislation in Guyana does not address the key EPA principles pertaining to universal service. Article 100 of the EPA requires that universal service obligations should be administered in a transparent, objective, and non-discriminatory manner. They should be neutral with respect to competition and not more burdensome than necessary. All suppliers should be eligible to ensure universal service, and the designation should be made through an efficient, transparent, and non-discriminatory mechanism.

The Telecommunications Act directs the minister and the director to exercise their functions in a manner best calculated to secure universal service throughout Guyana. In addition to this, the Public Utilities Act provides that the PUC, subject to the provisions of a license, government agreement or law (most notably, the Telecommunications Act), may order a public utility to extend its service as it may deem reasonable and expedient where such extension of existing service would provide sufficient business to justify this. Few other details are provided in the legislation. The license granted to Guyana Telephone and Telegraph Co. Ltd (GT&T) reportedly includes universal service obligations with regard to ensuring universal fixed telephony services in Guyana. However, it is alleged that GT&T has systematically missed its universal service targets and the PUC, though empowered to impose fines, has not done so.[5]

The obligations on universal service set out in Article 100 should be incorporated into the new telecommunications bill which should introduce a more liberalized market.

Legal Practitioners Act

The Legal Practitioners Act CAP 4:01 provides for the admission of any person to practice law who is a national of a State party to the Agreement Establishing the Council of Legal Education (CLE); most Commonwealth CARICOM countries are party to this agreement. Nationals of other countries may also be eligible for admission to practice law in Guyana on the basis of reciprocity. However, Guyana has undertaken bound commitments on legal services for modes 1, 2, and 3, and has not conditioned market access on reciprocity. The nationality conditions

[4] *E.g. Vieira Communications Limited (VCT) v. AG* (2009) where the court found that the period of 15 years for an acknowledgement of an application for a license could not be justified and signaled an inordinate delay in considering the request.

[5] See WTO TPR Report, WT/TPR/S/218/Rev.1, p. 77, paragraph 110.

imposed by the Legal Practitioners Act effectively preclude EU nationals from supplying legal services, which may only be provided by a person who is admitted to practice in Guyana. Relevant WTO jurisprudence would suggest that this may be equated to the application of a "zero-quota", and contrary to Guyana's bound commitments.[6] It is therefore recommended that the nationality requirement of the Legal Practitioners Act be reviewed.

Medical Practitioners Act

The Medical Practitioners Act CAP 32:02 provides for the registration of medical practitioners who must be either a citizen of Guyana, or the spouse of a citizen, or person resident in Guyana and/or a national of a CARICOM Member State. Foreign service providers not satisfying the nationality and/or residency requirements would not seem to be entitled to provide medical services.

It is noted, however, that the Medical Practitioners Act provides for the grant of "institutional registration" for a period of not more than three years where any of the requirements for registration are not satisfied, but where there is evidence of the possession of the requisite knowledge and skill for the efficient practice of medicine or surgery and the individual is employed in an approved institution. Full registration will be granted to a person who has satisfactorily completed the period of institutional registration. Institutional registration may therefore provide a vehicle through which foreign practitioners may qualify for full registration. It is unclear, however, whether a foreigner qualifying for full registration on this basis may leave Guyana and still be entitled to provide medical services remotely. If not, registration would still be conditioned on residency.

The Medical Practitioners Act also provides that persons qualified to practice medicine, but not satisfying nationality and English language requirements, may be permitted to practice in Guyana for a period not exceeding nine months, provided that no fee is accepted by such person(s) for all medical services rendered under the license. The prohibition on charging a fee discriminates against Foreign Service suppliers. Article 60(4) of the EPA recognizes that States

[6] *E.g. US- Measures Affecting the Cross-Border Supply of Gambling and Betting Services,* WT/DS285/AB/R/Corr.1, paragraphs 227 and 236-238. See also the 1993 Scheduling Guidelines, MTN.GNS/W/164 of September 3, 1993, which provide the following example of the type of limitation that falls within the scope of sub-paragraph (a) of Article XVI:2 of the GATS (similar to EPA, Articles 67(2)(a) & 76(2)(a)): "nationality requirements for suppliers of services (equivalent to zero quota)." This example confirms the view that measures equivalent to a zero quota fall within the scope of GATS, Article XVI:2(a) & EPA, Articles 67(2)(a) & 76(2)(a).

have a right to regulate and to introduce new regulations to meet legitimate policy objectives. It is not immediately clear, however, the legitimate policy objective that the prohibition on fees is designed to achieve.

It may be recalled that Guyana has undertaken bound commitments on modes 1, 2, and 3. A person not registered under the Medical Practitioners Act may not practice medicine in Guyana. The delivery of services cross-border through mode 1 would require registration, and EU professionals would not meet the registration requirements. Nevertheless, should the legislation be implemented to allow for the full registration of professionals not meeting nationality and residency requirements, through a period of institutional registration, the measure would seem to be permissible, even if unduly burdensome.

Jamaica

Public Passenger Transport (Kingston Metropolitan Transport Region) Act; Public Passenger Transport (Rural Area) Act

Section 3(1) of the Public Passenger Transport (Kingston Metropolitan Transport Region) Act permits the minister to grant an exclusive license to provide public passenger transport services within and throughout the Kingston Metropolitan Transport Region. Where an exclusive license is granted, no other license of the same category may be granted for that area without the consent of the exclusive licensee. Similar provision is made in the Public Passenger Transport (Rural Area) Act with respect to exclusive licenses granted outside of the Kingston Metropolitan Transport Region. The State-run Jamaica Urban Transit Company (JUTC) currently operates under an exclusive license under section 3(1) of the Public Passenger Transport (Kingston Metropolitan Transport Region) Act.

Jamaica has undertaken bound commitments without reservation on passenger transport services by road (CPC 7121 and 7122) covering urban, suburban, and interurban regular and special services, including transportation by taxi, bus, and coach. The services supplied under the exclusive license granted to the JUTC are among those which Jamaica has committed to liberalize. It should be noted that the EPA does not prevent a State from designating or maintaining public or private monopolies according to its respective laws.[7] However, in sectors where market access commitments are undertaken, States may not maintain or adopt, either on

[7] See EPA, Article 129.

the basis of a regional subdivision or on the basis of their entire territory, unless otherwise specified in Annex IV, measures that limit the number of services suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers, or other requirements, such as an economic needs test.[8] This basic undertaking is subject to permissible general and security exceptions, including measures necessary to protect public security or maintain public order.[9] The exclusive license that has been granted to the JUTC should be reviewed in this context.

Legal Profession Act

The Legal Profession Act provides that a person who is classified as an alien, i.e., a person who is not a Commonwealth citizen, a British protected person or a citizen of the Republic of Ireland, is not eligible for enrolment, and therefore may not provide legal services as an attorney-at-law. Certain legal services, most notably, legal consultancy services in international law or home law of the service provider or general advisory or information services, could arguably be provided, but only where the Foreign Service provider does not use a name, title, or description suggesting that he/she is recognized as a qualified attorney-at-law.

The Council of Legal Education Act, which also governs the provision of legal services in Jamaica, contemplates the State entering into reciprocal arrangements that would facilitate foreign attorneys practicing within the jurisdiction. No such arrangements have been made, although there would seem to be a legitimate expectation that if bound liberalization commitments are made, measures would be taken to facilitate market access.[10]

The commitments undertaken by Jamaica on legal services (CPC 861) under the EPA mirror its commitments under the GATS. Jamaica has undertaken bound commitments on modes 1, 2, and 3. Although affirming no reservations on market access, on commercial presence Jamaica inscribes in its schedule the following notation: "Local certificate required: Attorneys from other Jurisdictions cannot practice in JAM without acceptance by Jamaica General Legal Counsel." The qualification inscribed in the market access column understates the nature of the

[8] See EPA, Articles 67(2)(a) & 76(2)(a).
[9] See EPA, Articles 224 & 225.
[10] See also *Mexico – Measures Affecting Telecommunications Services*, WT/DS204/R at paragraphs 7.353-7.371, which suggests that even where a market access commitment is conditioned on the development of regulations, the absence of an appropriate regulatory framework may not be used for a prolonged period of time to prohibit access to foreign service providers. See also Eric H. Leroux "Eleven Years of GATS Case Law: What Have We Learned?" (2007) 10(4) J.I.E.L. 749 at p.770, which further argues that preventing market access in such circumstances could be the basis for a nullification and impairment (non-violation) complaint.

condition as it is impossible for certain nationalities to meet the requirements of the Legal Profession Act and no reciprocal arrangements have been made to facilitate access under the Council of Legal Education Act.[11]

In so far as the legislative framework prevents non-Commonwealth citizens (excluding persons from the Republic of Ireland) from being enrolled simply by virtue of their nationality, it is discriminatory and precludes market access for services that may only be supplied by persons holding a practicing certificate. WTO jurisprudence suggests that the restriction may be equated with the application of a "zero-quota" contrary to Jamaica's international (EPA and WTO) commitments.[12] It is therefore recommended that the Legal Profession Act should be reviewed.

Public Accountancy Act

The Public Accountancy Act provides that a person must be ordinarily resident in Jamaica in order to be registered as a public accountant and obtain a practicing certificate. The practice of accountancy is defined as undertaking for reward the preparation or examination of financial, accounting or related statements, or provision of any written opinion, report or certificate concerning any such statement, save for doing so only in the course of one's duties as an employee of any person, or engaging in limited bookkeeping or cost accounting work. The services covered by Jamaica's EPA commitments on accounting, auditing and bookkeeping services (CPC 862) and taxation (CPC 863) are therefore largely regulated by the Public Accountancy Act. No provision is made for the registration of a body corporate under the act and registration is limited to persons ordinarily resident in Jamaica. The former restriction would not necessarily preclude a supplier from establishing as a sole trader. However, the latter restriction relating to residence effectively precludes mode 1 cross-border trade. Jamaica has bound commitments on modes 1, 2, and 3 for both CPC 862 and 863. The Public Accountancy Act merits closer scrutiny with a view to ensuring consistency with Jamaica's EPA commitments.

[11] Note also that the reservation is limited to commercial presence and is not expressly extended to Jamaica's commitment on cross-border supply. See also Annex IV.F, introductory notes, paragraph 10, clarifying that measures relating to qualification and licensing requirements and procedures that do not constitute a market access or a national treatment limitation within the meaning of Articles 67 and 68and 76 and 77 of the EPA may, nevertheless, be legitimately imposed even though may not be listed in the annex

[12] See *supra,* note 4.

Trinidad and Tobago

Port Authority (tariff) regulations

Article 109 of the EPA requires States to provide ships flying the flag or operated by service suppliers of another party treatment no less favourable than that accorded to their own ships with regard to, *inter alia*, auxiliary maritime services of the ports, as well as related fees and charges, customs facilities and facilities for loading and unloading. The application of the national treatment principle in this context (irrespective of a State's specific commitments) is a "GATS plus" obligation, and would seem to require that any preferential rates that benefit Trinidad and Tobago ships and service suppliers are extended to ships and their operators of all States party to the EPA.

The Port Authority (Tariff) Regulations that establishes the basis for calculating dues and other charges made payable for utilizing port facilities makes distinctions between CARICOM and non-CARICOM wharves as well as CARICOM and non-CARICOM cargo. Regulation 15 and the Port Authority of Trinidad and Tobago Tariff Book (found in the Schedule to the Regulations) suggest that handling charges at conventional wharves are higher for non-CARICOM cargo than for CARICOM cargo. Distinct charges also apply to non-CARICOM cargo handled on CARICOM wharves. The differential treatment of CARICOM and non-CARICOM cargoes should be more closely examined in light of Article 109. The exception provided in Article 238 of the EPA which would allow for more favourable treatment which is applied within each of the parties as part of its respective regional integration process would not appear to apply as the application of differential rates does not seem to be based on any specific requirement of the Revised Treaty of Chaguaramas (CARICOM Treaty).[13]

Legal Profession Act

The Legal Profession Act provides for the admission to practice as an attorney-at-law of Commonwealth citizens and/or CARICOM nationals. The criteria for the admission of Trinidad and Tobago nationals are more flexible and more favourable, constituting a denial of national

[13] Note that the general principle of non-discrimination on grounds of nationality as regards matters within the scope of the CARICOM Treaty is a relevant consideration; see CARICOM Treaty, Article 7. However, the EPA regulatory framework on maritime services imposes a similar national treatment obligation. See also *ibid*, Article 140 on the development of maritime transport services providing for Member States to cooperate through, *inter alia*, measures for the establishment, improvement and rationalization of port facilities in the community.

treatment to all service suppliers. Provision is also made for admission to practice on grounds of reciprocity.

Trinidad and Tobago has undertaken broader commitments on legal services under the EPA than it has under the GATS.[14] This is significant, particularly with respect to CPC 86130 covering the preparation, drawing up, and certification services of legal documents, such as marriage contracts, commercial contracts, and business charters, as well as a number of related legal services associated with these tasks. Generally, these services may only be provided by persons admitted to practice within the jurisdiction. It may also be noted that Trinidad and Tobago has not inscribed a reservation conditioning market access on reciprocity.

Nationality requirements that preclude market access for foreign service suppliers may be equated with the imposition of a "zero quota," which is not a legitimate measure where bound commitments have been undertaken without reservation.[15] The denial of national treatment is also not permissible where no limitations have been inscribed. It is therefore recommended that the Legal Profession Act be reviewed.

Relevant rules to be addressed in the exercise of discretionary authority

Barbados

Exchange Control Act

Article 122 of the EPA generally prohibits the imposition of restrictions on payments for current transactions between EC and CARIFORUM residents. Restrictions however have been placed on the general authority granted by the Central Bank to commercial banks to meet requests for certain current transactions, including payments for business travel, legal fees and charges, architectural fees, management fees, royalties, dividends, profits, and interest.[16] In administering these restrictions, the Central Bank may not apply a ceiling on payments to EC residents without following the procedures established in Article 240 on "Balance of payments difficulties." This holds true irrespective of the inscription by Barbados of a horizontal limitation in Annex IV.F of

[14] The commitments made by Trinidad and Tobago under the GATS are limited to legal services consultancy in international law, CPC 86119.
[15] See *supra,* note 4.
[16] Source: Central Bank of Barbados, Regulatory Framework "Update on Exchange Control Liberalization" http://www.centralbank.org.bb/WEBCBB.nsf/web_documents/4BAFC84397833FD2042572FF0060692C/$File/ExchangeControlLiberalizationUpdated.pdf.

the EPA to the effect that "ALL MODES Transfers and payments of currency are governed by the Exchange Control Act."

Telecommunications Act; Fair Trading Commission Act

A significant undertaking of the EPA is the requirement stated in Article 96(3)(d) that license fees should not exceed administrative costs. This is a "WTO plus" obligation and precludes the auctioning of licenses (save where managing scarce resources, such as the spectrum) and imposition of other charges such as percentage fees not directly linked to administrative costs. The Telecommunications Act of Barbados imposes a combination of flat and variable fees depending on the circumstances; variable fees are set at a percentage of annual gross turnover or, in certain cases, adjusted revenues.

The Fair Trading Commission (FTC) is primarily financed by sums voted by Parliament and levied on service providers to meet annual expenses. The Fair Trading Commission Act provides that the total amount levied on service providers should, taking one year with another, be equal to the costs properly attributable to the regulation of utility services provided by the service providers, and the maximum amount that may be levied on a service provider is 1 percent of that service provider's gross sales. It is not clear whether the licensing fees imposed by the Telecommunications Act relate to those levied under the Fair Trading Commission Act or if they are additional. It is recommended that clarification be sought given the EPA requirement that licensing fees should be limited to the approximate administrative costs.

Liner Conferences Act

Article 109(4)(a) of the EPA requires that States not introduce cargo-sharing arrangements in future bilateral agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and that they terminate, within a reasonable period of time such cargo-sharing arrangements as may exist in previous bilateral agreements. The Liner Conferences Act CAP 290 gives the United Nations Convention on a Code of Conduct for Liner Conferences the force of law in Barbados. However, there is no evidence to suggest that Barbados has entered into any cargo-sharing agreements in the past and, in light of the requirements of Article 109(4)(a), Barbados may no longer enter into any such arrangements.

Legal Profession Act

The Legal Profession Act CAP 370A provides for the admission to practice of qualified individuals who are citizens of Barbados or another CARICOM Member or Associated State (including British Overseas Territories in the Caribbean) and any other person treated by law as belonging to such country. Provision is also made for the admission of persons to practice law on the basis of reciprocity. As such, the law in Barbados bears certain similarities to the law of Guyana, Jamaica, or Trinidad and Tobago, which have all been recommended for review. However, Barbados' EPA commitments on legal services are generally unbound, and practically limited to cross-border trade (modes 1 and 2) in consulting in the home law of the service provider. It would seem unlikely that the requirement of admission to practice is intended to cover an expert on foreign law. If this is accepted, there arguably would be little basis on which to suggest a review of the legislation.

Belize

Exchange control regulations

The Exchange Control Regulations authorize the Central Bank of Belize to impose a number of restrictions on current transfers and capital payments that potentially affect trade and investment in services. Articles 122 and 123 of the EPA do not allow for the imposition of restrictions on payments for current transactions between EC and CARIFORUM residents or on the free movement of capital made in accordance with the laws of the host country and investments established in accordance with the provisions of Title II, and the liquidation and repatriation of these capitals and of any profit stemming therefrom. Belize has inscribed a horizontal limitation on market access for mode 3 conditioning commercial presence on "any operating condition that may be subject to existing laws and regulations." The reference to "any operating condition" could cover potential restrictions on capital movements associated with bound commitments but do not provide a basis for restricting current transfers given the strict EPA proscriptions. A ceiling may not be applied on payments to EC residents without following the procedures established in Article 240 of the EPA on "Balance of payments difficulties." As such, the authority provided to the Central Bank should be exercised, where necessary, having regard to Belize's international obligations, including the EPA.

Trade Licensing Act

The Trade Licensing Act CAP 66 provides for establishing a Trade Licensing Board in every town; the board is responsible for, *inter alia*, considering and determining applications for licenses to persons wishing to commence any business or pursue certain vocations (including professional services and hotel businesses). The act requires a person to apply for a trade license in addition to any other licenses and certifications as may be required in a particular field; no person may carry on any trade within the limits of any town without a license granted by the board for that town. Significantly, the act allows (*versus* mandates) the imposition of economic needs tests (ENTs). Belize has made a horizontal reservation on mode 3, commercial presence, conditioning market access on "any operating condition that may be subject to existing laws and regulations." Additionally, like all CARIFORUM States, Belize has reserved its right to impose ENTs on mode 4, movement of natural persons. The Trade Licensing Act arguably would also seemingly have little impact on cross-border supply (modes 1 and 2). The provision for the imposition of ENTs may be legitimate in certain cases. Nevertheless, it is felt that the implementation of section 8 of the Trade Licensing Act merits closer review.

Telecommunications Act

A significant undertaking of the EPA is the requirement stated in Article 96(3)(d) that license fees should not exceed administrative costs. The Telecommunications (Licensing Classification, Authorisation and Fee Structure) Regulations stipulates that telecommunications licensees pay an annual license fee to the Public Utilities Commission (PUC) from the second year of the license, consisting of 1.5 per cent of gross revenues from the previous year. A revenue-based contribution regime may meet the requirements of Article 93 of the EPA where revenues approximate expenditures attributable to the tasks assigned to the regulator. Some ICT regimes provide for annual adjustments to supplement or lay a basis for repaying (or giving credit for) a portion of fees collected based on the actual expenditures of the regulator.[17] While this is not required by the EPA, it is reasonable to suggest that attempts should be made to ensure that the licensing fees imposed remain somewhat approximate to administrative costs.

[17] E.g., Canada Radio-television and Telecommunications Commission, www.crtc.gc.ca.

The EPA Regulatory Framework requires States to maintain certain pro-competitive safeguards on major suppliers. The Telecommunications Act and regulations adopted thereunder, in principle, affirm and conform to the EPA requirements. This, however, has not necessarily fostered a high level of competition in the ICT market. The Belize Constitution (Ninth Amendment) Act, 2011, provides that the "Government shall have and maintain at all times majority ownership and control of a public utility provider." The term "public utilities" is defined as including telecommunication services, and Belize Telemedia Limited (BTL) is defined as a "public utility provider," although no other ICT providers have been so designated; "majority ownership and control" refers to the holding of not less than 51 per cent of the issued share capital of a public utility provider together with a majority in the Board of Directors, and the absence of any veto power or other special right given to a minority shareholder which would inhibit the government from administering the affairs of the public utility provider freely and without restriction. The implications for the implementation of pro-competitive disciplines are unclear and merit further review.

Guyana

Amerindian Act

The EPA market access obligation applies to measures maintained or adopted by States "either on the basis of a regional subdivision or on the basis of their entire territory."[18] The Amerindian Act effectively proscribes foreign participation in most economic activities and limits the number of commercial presences that will be able to access land (as only 10 per cent of village lands may be leased to non-residents) in certain regions of Guyana. Village lands are not *per se* protected areas, though village councils may seek to have village lands recognized as part of a national protected areas system. The restrictions imposed on village lands are discriminatory, though it is not clear whether these lands are organized in a manner that would constitute a "regional subdivision" of the territory. In the absence of a horizontal reservation on commercial presence it is suggested that the Amerindian Act merits further review.

[18] See EPA, Article 67(2).

Cargo sharing arrangements

Article 109(4)(a) of the EPA requires States not to introduce cargo-sharing arrangements in future bilateral agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and to terminate, within a reasonable period of time, any existing cargo-sharing arrangements. Guyana is a party to the United Nations Convention on a Code of Conduct for Liner Conferences. However, there is no evidence of any cargo-sharing arrangements involving Guyana, nor may Guyana now pursue such arrangements given its obligations under the EPA.

Motor Vehicles and Road Traffic Act

The Motor Vehicles and Road Traffic Act CAP 51:02 establishes a licensing regime for road transport service suppliers and provides for the possible grant of an exclusive license to a hire car service operating as a shared taxi (referred to as a route taxi in some other jurisdictions), a feeder service, or a motor bus. The granting of an exclusive license precludes issuing licenses to competitors within the designated area. The act also provides for the imposition of economic needs tests in granting or refusing licenses for passenger transportation services. The minister must have regard to the extent to which the needs of the proposed routes are already adequately served or the proposed service is necessary or desirable in the public interest. The minister must assess the needs of the area as a whole in relation to traffic (including the provision of adequate, suitable and efficient services, the elimination of unnecessary services, and the provision of non-remunerative services) and the co-ordination of all forms of passenger transport, including transport by rail. In deciding whether to grant or refuse an application for a goods transportation license in connection with any trade or business, the minister must have regard to the needs and interests of the public, including those of persons requiring or providing facilities for transport.

Guyana has undertaken bound commitments on passenger and freight road transportation on modes 1, 2, and 3. It is therefore bound to permit new service suppliers meeting the required technical standards into the market, unless public order or other general exceptions may be applied.[19] The exercise of the ministerial discretion to grant or refuse a license must be informed by the undertakings made in articles 67(2)(a) and 76(2)(a) of the EPA, which preclude the adoption of limitations on the number of services suppliers (including commercial presences)

[19] E.g., EPA, Articles 224-226.

whether in the form of numerical quotas, monopolies, exclusive rights or other requirements such as an economic needs test. This applies to EU services suppliers and, by extension, to service suppliers from any CARIFORUM State, given the regional preference clause.[20]

Sale of Travel Tickets Act

The Sale of Travel Tickets Act 1985 prohibits any person other than an airline or an authorized travel agent from selling travel tickets in Guyana. Travel agents must apply for a license and the minister, in granting licenses, must have regard to all relevant matters, including the number of authorized travel agents already carrying on business in Guyana and, where there are more applicants than one, the comparative merit of the applicants. The Sale of Travel Tickets Act, as such, facilitates the use of economic needs tests (ENTs) in licensing travel agency services. It may be recalled that Guyana has undertaken bound commitments on modes 1, 2, and 3 on travel agencies and tour operators. Articles 67(2)(a) and 76(2)(a) of the EPA preclude the adoption of limitations on the number of services suppliers (including commercial presences) whether in the form of numerical quotas or other requirements, such as an economic needs test. Guyana may not therefore impose ENTs on EU and (by extension given the regional preference clause) CARIFORUM service providers.

Jamaica

Telecommunications Act; Office of Utilities Regulation Act

A significant undertaking of the EPA is the requirement stated in Article 96(3)(d) that license fees should not exceed administrative costs; exceptions apply with respect to the allocation and use

The Telecommunications Act provides for an application fee which covers the costs of processing the application, and an annual regulatory fee to be imposed by the Office of Utilities Regulation (OUR) on all carrier licenses and service provider licenses. The amount of the regulatory fee is established as a reasonable estimate of the costs that will be incurred by the OUR in relation to the regulation of the specified services to which the licenses relate, i.e., the regulation costs. The OUR is mandated to apportion regulation costs reasonably and equitably among licensees, and may impose a surcharge for late payment.

[20] See also EPA, Article 238.

However, Section 6 of the Office of Utilities Regulation Act provides that the funds of the OUR consist of license fees, regulatory service fees, and sums and other property made payable to the office. This would seem to suggest that the OUR regulatory fee is distinct from the prescribed licensing fee. Clarification should be sought as to whether any additional fees that may be imposed in this regard are also cost-based or simply a premium payment.

Article 102 of the EPA requires the telecommunications regulator, at the request of either party to a dispute between suppliers of ICT networks or services, concerning rights and obligations arising from the EPA regulatory framework, to issue a binding decision to resolve the dispute.

The Telecommunications Act provides that either party to a pre-contract dispute between an interconnection provider and interconnection seeker as to the terms and conditions of interconnection may refer the dispute to the OUR for resolution. However, section 34 of the Telecommunications Act provides that where neither party to the dispute is a dominant public voice carrier, the OUR may decline to act as an arbitrator in relation to the dispute. The obligation stated in Article 102 of the EPA is not limited to disputes involving dominant suppliers. The discretion given to the OUR under the Telecommunications Act to decline to serve as arbitrator in certain cases involving pre-contract disputes must be exercised in accordance with the objectives of the legislation. The objectives as stated in section 3 of the act provide for its implementation in a manner consistent with Jamaica's international commitments in relation to the liberalization of ICT. Adopting a purposeful interpretation, the OUR would seem obliged to respect Jamaica’s international obligations in exercising its discretion. It may be noted that recent amendments to the Act address the OUR’s authority to resolve post-contract disputes.

Cargo Preference Act

The Cargo Preference Act generally proscribes the importation into or exportation from Jamaica of certain cargoes (natural resources of Jamaica and their by-products, agricultural products, and prescribed government-controlled goods), except in ships owned, chartered or operated by the government and approved for the purpose by the minister. Significantly, although provision is made for the minister to make regulations implementing the legislation, no regulations prescribing the products to be carried in government ships have been promulgated, nor has the

government entered into any cargo-sharing arrangements. The act appears to be unused and is perhaps outdated.

Article 109(4)(a) of the EPA proscribes the introduction of cargo-sharing arrangements in future bilateral agreements with third countries. In light of this undertaking it is recommended that the Cargo Preference Act should be repealed.

Road Traffic Act

The Road Traffic Act provides for the licensing of public passenger vehicles and facilitates the use of economic needs tests. In reviewing license applications, the Transport Authority takes into account the extent to which the needs of the proposed route are already adequately served, and whether the proposed service is necessary or desirable in the public interest with regard to the need to eliminate and/or prevent unnecessary and/or non-remunerative services. Where the number of road licenses that may be granted in respect of any class of vehicle, or in relation to any licensing area during any period, is limited in accordance with an order made by the minister, the authority must ensure that any limitation on the number of licenses to be granted is, as far as possible, equitably applied.

The facility for possibly restricting trade through limiting the number of licenses appears designed to maximize efficiencies in the context of a relatively small economy. However, where market access commitments have been undertaken without reservation, States may not maintain or adopt measures that impose limitations on the number of services suppliers, whether in the form of numerical quotas or other requirements such as an economic needs tests, unless circumstances justify the invocation of the General Exceptions Clause or other limited derogations as provided in the EPA.[21]

Nurses and Midwives Act

The Nurses and Midwives Act facilitates trade in health services in line with Jamaica's commitments. However, it is recommended that the Nurses and Midwives Act and relevant regulations should be amended for purposes of clarity and consistency as nurses, midwives, and assistant nurses are at times referred to as persons in a gender neutral manner and at other times

[21] E.g., EPA, Articles 224-226.

through the use of feminine pronouns.[22] Section 4 of the Interpretation Act provides that "in all Acts, regulations and other instruments of a public character relating to the Island now in force or hereafter to be made, unless there is something in the subject or context inconsistent with such construction, or unless it is therein otherwise expressly provided - (a) words importing the masculine gender include females." However, the converse, i.e., that the feminine gender may be read to include males, does not necessarily apply.

Trinidad and Tobago

Foreign Investment Act

The Foreign Investment Act repeals and replaces the Alien (Landholding) Act of 1921 but retains the basic restrictions on the ownership and use of land by foreigners as originally imposed by the 1921 legislation. The act permits a foreign investor to acquire land the area of which does not exceed one acre for residential purposes or five acres for the purposes of trade or business without obtaining a license under the act. This provision is reflected in the horizontal reservation made by Trinidad and Tobago in Annex IV.F of the EPA. Section 6 of the Foreign Investment Act further provides that the minister may by order prescribe areas in which a foreign investor may not acquire any land whether for residential, trade or business purposes, without obtaining a license. This additional restriction is not reflected in the reservation made by Trinidad and Tobago.

The legislative provision for possibly imposing a licensing requirement on acquiring land below the thresholds stated in Trinidad and Tobago's horizontal limitation could potentially raise concerns if used to deny access to land to EC and CARIFORUM investors (given the EPA Regional Preference clause)[23] where this would be required for trade in services in areas where specific commitments have been undertaken.

Cargo preference arrangements

Article 109(4)(a) of the EPA requires States not introduce cargo-sharing arrangements in future bilateral agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and to terminate, within a reasonable period of time, any existing

[22] E.g., Nurses and Midwives Act, section 14; Nurses and Midwives Regulations, 1966, regulations 4, 9, 17, 22, 36, 37 and 56, which appears to limit the legislative prescriptions to the female gender.
[23] See EPA, Article 238(2).

cargo-sharing arrangements. Trinidad and Tobago is a signatory to the United Nations Code of Conduct on Liner Conferences Convention, which it ratified in 1983, and has scheduled a WTO GATS MFN exemption in this regard. There is, however, no evidence of any arrangements to set uniform rates or any cargo-sharing agreements, and the undertaking made in the EPA precludes the introduction of such arrangements in the future.

Nurses and Midwives Registration Act

The Nurses and Midwives Registration Act CAP 29:53 provides for the registration of nurses and enrolment of nursing assistants. The act calls for the maintenance of a register of nurses that may be divided into male and female nurses. In addressing the profession of midwifery, the act consistently refers to female persons. The Interpretation Act CAP 3:01, section 16(1), provides that "[w]ords in a written law importing, whether in relation to an offence or not, persons or male persons include male and female persons, corporations, whether aggregate or sole, and unincorporated bodies of persons." No provision is, however, made for reference to female persons to cover male persons. The legislation is open to an interpretation that could restrict applicants for registration as midwives to women.

Trinidad and Tobago has undertaken bound commitments without reservation on services provided by midwives, nurses, and other paramedical professions (CPC 93191), on modes 1 and 2, and 3 as regards national treatment; mode 3 market access is left unbound, and mode 4 except as indicated in the horizontal commitments. It is recommended that the Nurses and Midwives Registration Act be amended for purposes of clarity and certainty. The approach adopted in Barbados in the Nurses and Midwives (Registration) Act CAP 372 may be commended, that is, the introduction of an amendment indicating that for the purposes of the Act the female gender covers the male.[24]

[24] See Barbados Nurses and Midwives (Registration) Act CAP 372, section 2(2).